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CREDIT RATING AGENCY DUOPOLY RELIEF ACT OF 2006

JULY 7, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OXLEY, from the Committee on Financial Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2990]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2990) to improve ratings quality by fostering competition, transparency, and accountability in the credit rating agency industry, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Credit Rating Agency Duopoly Relief Act of 2006".

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

SEC. 2. FINDINGS.

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 (116 Stat. 797), hearings before the House Committee on Financial Services during the 108th and 109th Congresses, comment letters to the concept releases and proposed rules of the Securities and Exchange Commission, and facts otherwise disclosed and ascertained, the Congress finds that—

(1) credit rating agencies are of national concern, in that, among other things—

(A) 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 means and instrumentalities of interstate commerce;

(B) 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;

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

(D) their regulation serves the compelling interest of investor protection; and

(2) the Securities and Exchange Commission—

(A) has, through its designation of certain credit rating agencies as nationally recognized statistical rating organizations, created an artificial barrier to entry for new participants; and

(B) will, in its latest proposed rule defining nationally recognized statistical rating organizations, codify and strengthen this barrier.

SEC. 3. DEFINITIONS.

Section 3(a) (15 U.S.C. 78c(a)) is amended by adding at the end the following new paragraphs:

"(60) CREDIT RATING.—The term 'credit rating' means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

"(61) CREDIT RATING AGENCY.—The term 'credit rating agency' means any person—

"(A) engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee;

"(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 OR NRSRO.—The term 'nationally recognized statistical rating organization' means a credit rating agency that—

"(A) has been in business for at least three consecutive years; and

"(B) is registered under section 15E.

"(63) PERSON ASSOCIATED WITH A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term 'person associated with a nationally recognized statistical rating organization' means any partner, officer, director, or branch manager of such nationally recognized statistical rating organization (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such nationally recognized statistical rating organization, or any employee of such nationally recognized statistical rating organization.".

SEC. 4. REGISTRATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

(a) AMENDMENT.—The Securities Exchange Act of 1934 is amended by inserting after section 15D (15 U.S.C. 78*o*–6) the following new section:

"SEC. 15E. REGISTRATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

"(a) REGISTRATION PROCEDURES.—

"(1) FILING OF APPLICATION FORM.—A credit rating agency that elects to be treated as a nationally recognized statistical rating organization for the purposes of Federal statutes, rules, and regulations may be registered by filing with the Commission an application for registration in such form and containing such of the following and any other information and documents concerning such organization and any persons associated with such organization as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors:

"(A) any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization;

"(B) the procedures and methodologies such nationally recognized statistical rating organization uses in determining credit ratings;

"(C) credit ratings performance measurement statistics over short-term, mid-term, and long-term periods of such nationally recognized statistical rating organization;

"(D) policies or procedures adopted and implemented by such nationally recognized statistical rating organization to prevent the misuse in violation of this title (or the rules and regulations thereunder) of material, non-public information; and

"(E) the organizational structure of such nationally recognized statistical rating organization.

"(2) REVIEW OF APPLICATION.—

"(A) INITIAL DETERMINATION.—Within 90 days of the date of the filing of such application (or within such longer period as to which the applicant consents) the Commission shall—

"(i) by order grant such registration; or

"(ii) institute proceedings to determine whether registration should be denied.

"(B) CONDUCT OF PROCEEDINGS.—Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 120 days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

"(C) GROUNDS FOR DECISION.—The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (b).

"(3) PUBLIC AVAILABILITY OF INFORMATION.—Subject to section 24, the Commission, by rule, shall require a nationally recognized statistical rating organization, upon the granting of registration under this section, to make the information and documents filed with the Commission in its application for registration, or in any amendment filed under subsection (b)(1) or (2), publicly available on the website or comparable readily accessible means of such nationally recognized statistical rating organization.

"(b) UPDATE OF REGISTRATION.—

"(1) UPDATE.—Each nationally recognized statistical rating organization shall promptly amend its application for registration under this section if any information or documents provided therein become materially inaccurate, except that a nationally recognized statistical rating organization is not required to amend the information required to be filed under subsection (a)(1)(C) by a filing under this paragraph, but shall amend such information in such organization's annual filing under paragraph (2) of this subsection.

"(2) CERTIFICATION.—Not later than 90 days after the end of each calendar year, each nationally recognized statistical rating organization shall file with the Commission an amendment to its registration, in such form as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors—

"(A) certifying that the information and documents in the application for registration of such nationally recognized statistical rating organization continue to be accurate; and

"(B) listing any material changes that occurred to such information or documents during the previous calendar year.

"(c) ACCOUNTABILITY FOR RATINGS PROCEDURES.—

"(1) AUTHORITY.—The Commission shall have the authority under this Act to take action against any nationally recognized statistical rating organization if such nationally recognized statistical rating organization issues credit ratings in contravention of those procedures, criteria, and methodologies that such nationally recognized statistical rating organization—

"(A) includes in its application for registration under this section; or

"(B) makes and disseminates in reports pursuant to section 17(a) or the rules and regulations thereunder.

"(2) LIMITATION.—The rules and regulations applicable to nationally recognized statistical rating organizations the Commission may prescribe pursuant to this Act shall be narrowly tailored to meet the requirements of this Act applicable to nationally recognized statistical rating organizations and shall not purport to regulate the substance of credit ratings or the procedures and meth-

odologies by which such nationally recognized statistical rating organizations determine credit ratings.

"(d) CENSURE, DENIAL, OR SUSPENSION OF REGISTRATION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any nationally recognized statistical rating organization if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, whether prior to or subsequent to becoming so associated—

"(1) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 15(b), has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

"(2) has been convicted during the 10-year period preceding the date of filing of any application for registration, or at any time thereafter, of—

"(A) any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4)(B); or

"(B) a substantially equivalent crime by a foreign court of competent jurisdiction; or

"(3) is subject to any order of the Commission barring or suspending the right of the person to be associated with a nationally recognized statistical rating organization.

"(e) WITHDRAWAL FROM REGISTRATION.—A nationally recognized statistical rating organization registered under this section may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any nationally recognized statistical rating organization is no longer in existence or has ceased to do business as a credit rating agency, the Commission, by order, shall cancel the registration of such nationally recognized statistical rating organization.

"(f) REPRESENTATIONS.—

"(1) REPRESENTATIONS OF SPONSORSHIP BY UNITED STATES OR AGENCY THEREOF.—It shall be unlawful for any nationally recognized statistical rating organization registered under this section to represent or imply in any manner whatsoever that such nationally recognized statistical rating organization has been designated, sponsored, recommended, or approved, or that such nationally recognized statistical rating organization's abilities or qualifications have in any respect been passed upon, by the United States or any agency, any officer, or any employee thereof.

"(2) REPRESENTATION AS NRSRO OF UNREGISTERED CREDIT RATING AGENCIES.—It shall be unlawful for any credit rating agency to represent or imply in any manner whatsoever that such credit rating agency has been designated, sponsored, recommended, or approved, or that such credit rating agency's abilities or qualifications have in any respect been passed upon, by the United States or any agency, any officer, or any employee thereof. It shall be unlawful for any credit rating agency that is not registered under this section as a nationally recognized statistical rating organization to state that such credit rating agency is a nationally recognized statistical rating organization under this Act.

"(3) STATEMENT OF REGISTRATION UNDER SECURITIES EXCHANGE ACT OF 1934 PROVISIONS.—No provision of paragraph (1) shall be construed to prohibit a statement that a nationally recognized statistical rating organization is a nationally recognized statistical rating organization under this Act, if such statement is true in fact and if the effect of such registration is not misrepresented.

"(g) PREVENTION OF MISUSE OF NONPUBLIC INFORMATION.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such nationally recognized statistical rating organization's business, to prevent the misuse in violation of this title, or the rules or regulations thereunder, of material, nonpublic information by such nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this title (or the rules or regulations thereunder) of material, nonpublic information.

"(h) MANAGEMENT OF CONFLICTS OF INTEREST.—Each nationally recognized statistical rating 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 of such nationally recognized statistical rating organization, to address and manage the conflicts of interest that can arise from such business. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to prohibit, or require the management or 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—

"(1) 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;

"(2) 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;

"(3) business relationships, ownership interests, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor; and

"(4) any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person that underwrites the securities or money market instruments that are the subject of a credit rating.

"(i) PROHIBITED CONDUCT.—

"(1) PROHIBITED ACTS AND PRACTICES.—The Commission may adopt rules or regulations to prohibit any act or practice relating to the issuance of credit ratings by a nationally recognized statistical rating organization that the Commission determines to be unfair, coercive, or abusive, including any act or practice relating to—

"(A) seeking payment for a credit rating that has not been specifically requested by the obligor—

"(i) from an obligor; or

"(ii) from an affiliate of an obligor, unless—

"(I) the organization is organized under subsection (a)(1)(E) to receive fees from investors or other market participants, or a combination thereof; and

"(II) the affiliate is such an investor or participant;

"(B) conditioning or threatening to condition the issuance of a credit rating on the obligor's, or an affiliate of the obligor's, purchase of other services or products, including pre-credit rating assessment products, of the nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization;

"(C) lowering or threatening to lower a credit rating on, or refusing to rate, securities or money market instruments issued by an asset pool unless a portion of the assets within such pool also is rated by the nationally recognized statistical rating organization;

"(D) modifying or threatening to modify a credit rating or otherwise departing from its adopted systematic procedures and methodologies in determining credit ratings, based on whether the obligor, or an affiliate of the obligor, pays or will pay for the credit rating or any other services or products of the nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization.

"(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1), or in any rules or regulations adopted thereunder, shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For the purposes of the preceding sentence, the term 'antitrust laws' has the meaning given it in the first section of the Clayton Act (15 U.S.C. 12), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition.

"(j) DESIGNATION OF COMPLIANCE OFFICER.—Each nationally recognized statistical rating organization shall designate an individual responsible for administering the policies and procedures that are required to be established pursuant to subsections (g) and (h), and for ensuring compliance with the securities laws and the rules and regulations thereunder, including those promulgated by the Commission pursuant to this section.

"(k) STATEMENTS OF FINANCIAL CONDITION.—Each nationally recognized statistical rating organization shall, on a confidential basis, file with the Commission, at intervals determined by the Commission, such financial statements, certified (if required by the rules or regulations of the Commission) by an independent public accountant, and information concerning its financial condition as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(l) ELIMINATION OF COMMISSION DESIGNATION PROCESS FOR NRSRO'S.—

"(1) CESSATION OF DESIGNATION.—Within 30 days after the enactment of the Credit Rating Agency Duopoly Relief Act of 2006, the Commission shall cease to designate persons and companies as nationally recognized statistical rating organizations, as that term is used under rule 15c3–1 of the Commission's rules (17 CFR 240.15c3–1).

"(2) PROHIBITION ON RELIANCE ON NO-ACTION RELIEF.—The no-action relief that the Commission has granted with respect to the designation of nationally recognized statistical rating organizations, as that term is used under rule 15c3–1 of the Commission's rules (17 CFR 240.15c3–1), shall be void and of no force or effect.

"(3) NOTICE TO OTHER AGENCIES.—Within 30 days after the date of enactment of the Credit Rating Agency Duopoly Relief Act of 2006, the Commission shall give notice to the Federal agencies which employ the term 'nationally recognized statistical rating organization' (as that term is used under rule 15c3–1 of the Commission's rules (17 CFR 240.15c3–1)) in their rules and regulations regarding the actions undertaken pursuant to this section.

"(4) REVIEW OF EXISTING REGULATIONS.—Within 180 days after the date of enactment of the Credit Rating Agency Duopoly Relief Act of 2006, the Commission shall review its existing rules and regulations which employ the term 'nationally recognized statistical rating organization' or 'NRSRO' and promulgate new or revised rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.".

(b) CONFORMING AMENDMENTS TO THE 1934 ACT.—

(1) Section 15(b)(4)(B)(ii) (15 U.S.C. 78*o*(b)(4)(B)(ii)) is amended by inserting "nationally recognized statistical rating organization," after "transfer agent,".

(2) Section 15(b)(4)(C) (15 U.S.C. 78*o*(b)(4)(C)) is amended by inserting "nationally recognized statistical rating organization," after "transfer agent,".

(3) Section 21B(a) (15 U.S.C. 78u-2(a)) is amended by inserting "15E," after "15C,".

(c) OTHER CONFORMING AMENDMENTS.—

(1) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)) is amended by adding at the end the following new paragraph:

"(53) The term 'credit rating agency' has the same meaning as given in section 3 of the Securities Exchange Act of 1934.".

(2) Section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)) is amended by inserting "credit rating agency," after "transfer agent,".

(3) Section 9(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)) is amended by inserting "credit rating agency," after "transfer agent,".

(4) Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end the following new paragraph:

"(28) The term 'credit rating agency' has the same meaning as given in section 3 of the Securities Exchange Act of 1934.".

(5) Section 203(e)(2)(B) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e)) is amended by inserting "credit rating agency," after "transfer agent,".

(6) Section 203(e)(4) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e)) is amended by inserting "credit rating agency," after "transfer agent,".

(7) Section 1319 of the Housing and Community Development Act of 1992 (12 U.S.C. 4519) is amended by striking "effectively" and all that follows through "broker-dealers" and inserting "that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934".

(8) Section 439 of the Higher Education Act of 1965 (20 U.S.C. 1087–2) is amended in subsection (r)(15)(A) by striking "means any entity recognized as such by the Securities and Exchange Commission" and inserting "means any nationally recognized statistical rating organization as that term is defined under the Securities Exchange Act of 1934".

(9) Section 601(10) of title 23, United States Code, is amended by striking "identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization" and inserting "registered with the Securities and Exchange Commission as a nationally recognized statistical rating or-

ganization as that term is defined under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.)".

SEC. 5. ANNUAL AND OTHER REPORTS.

Section 17(a)(1) (15 U.S.C. 78q(a)(1)) is amended by inserting "nationally recognized statistical rating organization," after "registered transfer agent,".

SEC. 6. GAO STUDY AND REPORT REGARDING CONSOLIDATION OF CREDIT RATING AGENCIES.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study—

(1) to identify—

(A) the factors that have led to the consolidation of credit rating agencies;

(B) the present and future impact of the condition described in subparagraph (A) on the securities markets, both domestic and international; and

(C) solutions to any problems identified under subparagraph (B), including ways to increase competition and the number of firms capable of providing credit rating services to large national and multinational business organizations that are subject to the securities laws;

(2) of the problems, if any, faced by business organizations that have resulted from limited competition among credit rating agencies, including—

(A) higher costs;

(B) lower quality of services;

(C) anti-competitive practices;

(D) impairment of independence; and

(E) lack of choice; and

(3) whether and to what extent Federal or State regulations impede competition among credit rating agencies.

(b) CONSULTATION.—In planning and conducting the study under this section, the Comptroller General shall consult with—

(1) the Securities and Exchange Commission;

(2) the Department of Justice; and

(3) any other public or private sector organization that the Comptroller General considers appropriate.

(c) REPORT REQUIRED.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 7. EFFECTIVE DATE.

The amendments made by sections 4 and 5 shall take effect on January 1, 2008, except as otherwise provided in paragraphs (1), (3), and (4) of subsection (l) of section 15E of the Securities Exchange Act of 1934 (as added by such amendments), and except that the Securities and Exchange Commission is authorized to prescribe rules and regulations to carry out such amendments beginning on the date of enactment of this Act.

PURPOSE AND SUMMARY OF LEGISLATION

H.R. 2990, the Credit Rating Agency Duopoly Relief Act, will bring competition, transparency, and accountability to the credit rating agency industry, improving ratings quality and enhancing investor protection. H.R. 2990 will increase competition by replacing the Securities and Exchange Commission's staff role in designating rating agencies as Nationally Recognized Statistical Rating Organizations (NRSROs) with a registration system for those agencies who want their ratings to be able to be used for regulatory purposes. Rating agencies issuing credit ratings for at least three years and registering with the SEC will be deemed to be NRSROs.

H.R. 2990 will enhance transparency of the ratings industry by mandating that NRSROs disclose in their registration applications long-term, mid-term, and short-term record at rating securities and public companies through performance statistics, the methodologies it uses in deriving its ratings and the conflicts its business model raises and the manner in which it manages those conflicts, and the

firm's organizational structure. NRSROs will also be subject to the reporting and recordkeeping requirements of the Securities Exchange Act of 1934. NRSROs will also be required to implement systematic procedures to manage conflicts of interest and prevent the misuse of non-public information.

To enhance accountability of the rating agencies and further investor protection, H.R. 2990 will allow the SEC to inspect, examine and bring enforcement actions under the Securities Exchange Act of 1934. NRSROs will be required to appoint a chief compliance officer to ensure compliance with the securities laws, rules, and regulations.

BACKGROUND AND NEED FOR LEGISLATION

Agencies rating debt securities began to appear in the United States in the early twentieth century when John Moody started to sell to investors lists of ratings of railroad bonds in 1909 and utility and industrial bonds in 1910. Moody had based the credit rating agency upon its mid-nineteenth century predecessor, the mercantile rating agency, which rated merchants' ability to pay their financial obligations. By the onset of the Depression, Poor's Publishing Company ("Poor"), Standard Statistics Company ("Standard"), which eventually merged with Poor's to form Standard and Poor's ("S&P"), and Fitch Publishing Company ("Fitch") had joined Moody's Investor Services ("Moody's") in publishing ratings on the likelihood of an issuer's default on debt payments.[1]

Rating agencies typically employ a scale of ratings based on credit quality. S&P and Fitch use a range from categories A (highest) to D (lowest), and three subcategories for each major category (e.g., three levels of "As", three levels of "Bs", etc.). Investment grade securities make up the four highest rating categories: AAA, AA, A, and BBB. Below investment-grade categories range from BB to D. S&P issues ratings based only on the likelihood of default, while Moody's and Fitch base their ratings about the likelihood of default as well the amount of face value bondholders would likely recover in the event of a default.[2]

Originally the major rating agencies only received revenue from selling lists of their ratings to investors. This changed due to two facts: technology and the 1970 default of Penn Central on $82 million in commercial paper. First, with the introduction of the copying machine, these ratings lists could be easily copied and disseminated; the agencies needed another source of revenue. Second, the unforeseen default of Penn Central, a blue chip company, compelled many investors to refuse to roll over their commercial paper, causing a liquidity crisis, and forcing a slew of other companies into default. To reassure investors they would meet their obligations, issuers themselves now actively sought credit ratings. This demand allowed the rating agencies to charge issuers fees for rat-

[1] Richard Cantor and Frank Packer, The Credit Rating Industry, FRBNY Quarterly Review 1–2 (Summer–Fall 1994). For an in-depth history of the origins and family tree of the rating agencies, see Richard S. Wilson, Corporate Senior Securities Analysis and Evaluation of Bonds, Convertibles, and Preferreds, Probus Publishing Company, Chicago, Illinois (1987).

[2] Richard Johnson, An Examination of Rating Agencies' Actions Around the Investment-Grade Boundary, Federal Reserve Bank of Kansas City 5 (February 2003).

ings and ultimately changed the business model of the dominant rating agencies.[3]

Since the 1930s, rating agencies have continued to increase in importance. The various company defaults during the Depression spurred investors to actively seek credit ratings and made the rating agency a financially viable service provider.[4] Recently the globalization of the capital markets and the introduction of all sorts of debt-type products, including asset-backed securities and collateralized debt obligations have provided new markets and instruments to rate. Credit rating agencies are no longer solely focused on global organizations as they were during the first half of the twentieth century.[5] Moody's and S&P dominate the international markets as much as the U.S. market, with Moody's more dominant in Asia, S&P in Latin America.[6]

In addition to these market forces, regulators contributed to the growing influence of rating agencies. Having been caught off-guard by the financial institution failures during the Depression, regulators needed a tool to, at the least, signal potential defaults. Regulators began to propound "safety-and-soundness" regulations using credit ratings as arbiters of this safety and soundness. For instance, in 1931 the Office of the Comptroller of the Currency (the "OCC") maintained that financial institutions' holdings of corporate debt "had to be rated BBB or better by at least one rating agency" to be carried at book value; if not, the debt was to be written down to market value and "50 percent of the resulting book losses were to be charged against capital."[7] A few years later, through a joint statement, the OCC, the Federal Deposit Insurance Corporation, and the Federal Reserve, prohibited banks from "holding bonds not rated BBB or above by at least two agencies."[8]

Around this same time, credit ratings were being used to determine the amount of capital that had to be set aside for insurance companies' securities holdings. The National Association of Insurance Commissioners "established a system of internal quality categories in which the top-quality classification corresponded to ratings of BBB and above, effectively establish[ing] uniformity in the definition of 'investment grade' across bank and insurance regulators."[9]

The Securities and Exchange Commission (the "SEC") first entered the terrain of employing the credit rating as safety and soundness arbiter in its 1975 rulemaking on net capital requirements for broker-dealers. Rule 15c3–1 promulgated under the Securities Exchange Act of 1934 obligates broker-dealers to hold more capital for those bonds rated "junk" by "a nationally recognized sta-

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[3] Richard Cantor and Frank Packer, The Credit Rating Industry, FRBNY Quarterly Review 4 (Summer–Fall 1994) ("Fitch and Moody's started to charge corporate issuers for ratings in 1970, and Standard and Poor's followed suit a few years later. (Standard and Poor's started to charge municipal bond issuers for ratings in 1968).")

[4] Frank Partnoy, The Siskel and Eberts of Financial Markets?: Two Thumbs Down for the Credit Rating Agencies, Wash. U.L.Q. (1999) 640.

[5] Isaac C. Hunt, Jr., Commissioner, Securities and Exchange Commission, Concerning the Roles of Credit Rating Agencies in the U.S. Securities Markets, Testimony before the Committee on Governmental Affairs, U.S. Senate (Mar. 20, 2002).

[6] Claire A. Hill, Regulating the Rating Agencies, Business, Economics and Regulatory Policy Working Paper No. 452022, 60 n.87.

[7] Richard Cantor and Frank Packer, The Credit Rating Industry, FRBNY Quarterly Review 6 (Summer–Fall 1994); Richard Johnson, An Examination of Rating Agencies' Actions Around the Investment-Grade Boundary, Federal Reserve Bank of Kansas City 1 (February 2003).

[8] Cantor and Packer, Id.

[9] Id.

tistical rating organization" ("NRSRO").[10] The SEC did not define NRSRO, but granted the status to the three then-and-now dominant rating agencies—S&P, Moody's, and Fitch—through an SEC staff's no-action letter. The no-action letter, addressed to a broker-dealer, stated that the SEC would take no action against this broker-dealer if it relied on the ratings of these three NRSROs in calculating its net capital requirements. The letter did not provide any elaboration on the term NRSRO, just the following sentence: "With respect to 'nationally recognized statistical rating organizations,' no question will be raised by the Division when the following organizations are utilized for the purposes of applying subdivision (c)(2)(vi)(F) of Rule 15c3–1: Standard & Poor's Corporation ('Standard & Poor's'), Moody's Investors Services, Inc. ('Moody's'), and Fitch Investors Services, Inc. ('Fitch')."

The SEC has then continued to cement the use of NRSRO in its rulemakings without defining the term. For example, in 1982, as part of its Integrated Disclosure System Release, the SEC allowed simplified shelf registration for debt rated investment grade by an NRSRO and, in 1993, under Rule 3a–7 of the Investment Company Act of 1940, the SEC exempted from the definition of a mutual fund issuers of asset-backed securities rated investment grade by an NRSRO. The SEC also restricted the investments of money market mutual funds to investment grade securities as rated by an NRSRO in 1991 under Rule 2a–7 of the Investment Company Act of 1940.

Other regulators and the private investment community have taken up the term (also without defining it) and "[u]nder most current ratings-dependent regulations in the United States, ratings matter only if they are issued by an NRSRO."[11]

In the early 1990s, SEC Commissioners began to question the NRSRO designation.[12] There was no clearly defined process to become an NRSRO. Other critics claimed the agency had not approved enough rating agencies as NRSROs. The pressure from these complaints compelled the SEC to issue a Concept Release in 1994 (the "1994 Concept Release") requesting comments regarding the use of the NRSRO concept to distinguish among debt securities, the adoption of a definition of the term NRSRO, the current no-action letter process with respect to NRSRO designation, and the SEC's regulatory oversight of NRSROs.

The SEC set out in the 1994 Concept Release what criteria staff considers when determining whether to grant NRSRO status. Note that these criteria were not unknown—they could be gleaned from the past NRSRO no-action letters the SEC had issued. Of primary

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[10] These requirements obligate broker-dealers, "when computing net capital, to deduct from their net worth certain percentages of the market value ('haircuts') of their proprietary securities positions . . . The Commission determined that it was appropriate to apply a lower haircut to securities held by a broker-dealer that were rated investment grade by a credit rating agency of national repute because those securities typically were more liquid and less volatile in price than those securities that were not so highly rated." Isaac C. Hunt, Jr., Commissioner, Securities and Exchange Commission, Concerning the Role of Credit Rating Agencies in the U.S. Securities Markets, Testimony before the Committee on Governmental Affairs, U.S. Senate (Mar. 20, 2002).

[11] Richard Cantor and Frank Packer, The Credit Rating Industry, FRBNY Quarterly Review 8 (Summer–Fall 1994).

[12] See e.g., Richard Y. Roberts, Commissioner, SEC, Formal Regulatory Handle Needed for NRSRO Designation: Part I, PSA Regional Compliance Seminar (Apr. 6, 1992); Richard Y. Roberts, Commissioner, SEC, Formal Regulatory Handle Needed for NRSRO Designation: Part II, PSA Regional Compliance Seminar (Apr. 9, 1992).

importance according to the SEC is that the credit rating agency be "nationally recognized," that is, considered by the financial markets as "an issuer of credible ratings." Secondly, to assess the operational capability and reliability of ratings, the SEC reviews the following: the agency's organizational structure; the agency's financial resources; the size and quality of the agency's staff; the agency's independence; the agency's rating procedures; and the agency's establishment and compliance with internal procedures to prevent misuses of non-public information.[13]

Following this Concept Release, in 1997 the SEC issued a proposed rule Capital Requirements for Brokers or Dealers under the Securities Exchange Act of 1934 (the "1997 Proposed Rule") codifying the requirements laid out in the 1994 Concept Release for NRSRO designation. In comments submitted to the SEC, the Department of Justice ("DoJ") objected to the "national recognition" requirement, contending that "[t]he adoption of such a criterion is likely to create a nearly insurmountable barrier to de novo entry into the market for NRSRO services. For this reason, the recognition requirement is likely to be anticompetitive and could lead to higher prices for securities ratings than would otherwise occur."[14] The DoJ's incumbency concern had been noted before.[15] Perhaps dissuaded by the DoJ's concerns, the SEC did not act on the 1997 Proposed Rule.

It took the bankruptcy filings of Enron in 2001 and WorldCom in 2002 to resuscitate NRSRO designation discussion. All three then-NRSROs rated Enron at investment grade until four days before its bankruptcy filing in 2001 and all three rated WorldCom at investment grade until 42 days before its filing in 2002.[16] Congress noted these failures[17] and reacted by requiring the SEC to study and issue a report on credit rating agencies pursuant to the Sarbanes-Oxley Act, the corporate reform legislation passed in July 2002 in response to these corporate accounting scandals. The SEC released the "Report on the Role and Function of Credit Rating Agencies in the Operation of Securities Markets" on January 24, 2003 (the "2003 SEC Report"), after hosting two hearings in November 2002 where current NRSROs, institutional investors, academics, and other credit rating agencies testified regarding the state of the industry, the NRSRO designation, and alternative regulations.

The 2003 SEC Report documented the regulatory barriers to entry in the ratings industry, potential conflicts of interest and alleged anticompetitive or unfair practices at the rating agencies, and

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[13] SEC Release No. 33–7085, Nationally Recognized Statistical Rating Organization (1994).

[14] Department of Justice, Comments of the United States Department of Justice Before the Securities and Exchange Commission (March 1998).

[15] Richard Cantor and Frank Packer, The Credit Rating Industry, FRBNY Quarterly Review 8 (Summer–Fall 1994).

[16] Richard Johnson, An Examination of Rating Agencies' Actions Around the Investment-Grade Boundary, Federal Reserve Bank of Kansas City 1 (February 2003).

[17] Congress had in other financial crises taken note of the rating agencies (see e.g., High-Yield Debt Market/Junk Bonds, Hearing before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce, U.S. House of Representatives, Serial No. 101–125 (March 8, 1990)), but never to such an extent as following the corporate scandals of the early twenty-first century. The Senate Governmental Affairs Committee held hearings on the Enron debacle and issued two reports detailing the role of the agencies in the Enron accounting scandal, Financial Oversight of Enron: The SEC and Private-Sector Watchdogs (October 8, 2002) (the "October 2002 Senate Report") and Enron's Credit Rating: Enron's Bankers' Contacts with Moody's and Government Officials (January 3, 2003) (the "January 2003 Senate Report").

accountability. The SEC expressed the view that the agency needed more information on the rating agencies to complete a thorough review and announced it would be issuing a concept release to seek public comment on these issues. Having been criticized for the opaque designation process and the few NRSRO designated firms, the SEC's staff designated Dominion Bond Rating Service as an NRSRO in February 2003.

On April 2, 2003, the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises held a hearing on credit rating agencies. Subcommittee Chairman Richard Baker followed up the hearing with a letter to SEC Chairman William H. Donaldson laying out a series of questions, underscoring his concerns regarding the NRSRO designation process. The SEC responded with a letter on June 4, 2003, the same day the SEC issued the anticipated Concept Release, Rating Agencies and the Use of Credit Ratings under the Federal Securities Laws (the "2003 Concept Release"). The answers to Chairman Baker's questions regarding the NRSRO designation process and its anti-competitive effects were deferred to the 2003 Concept Release's receiving comments from market participants. In the 2003 Concept Release, the SEC posed 54 questions regarding credit rating agencies and received nearly fifty comment letters.

The SEC never acted upon the comment letters. Disturbed by the lack of SEC response, in September 2004, the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held its second hearing in the 108th Congress on credit rating agencies. Again, all the witnesses lamented the SEC's inaction in this arena, bemoaning the opaque NRSRO designation process and its anti-competitive effects.

Pressured into action, in March 2005, the SEC not only designated a fifth NRSRO, A.M. Best, but also proposed a rule (the "2005 Proposed Rule") to define the term "NRSRO" in three prongs: (1) an NRSRO must issue current credit ratings that are publicly available on a widespread basis at no cost; (2) an NRSRO must be "generally accepted" as an issuer of credible and reliable ratings; and (3) an NRSRO must use "systematic procedures" to ensure ratings quality, manage conflicts, prevent misuse of nonpublic information, and possess sufficient financial resources. The SEC limited its proposal solely to implementing this definition. SEC staff and Commissioners had expressed their beliefs that the SEC did not possess sufficient authority to regulate credit rating agencies without congressional action.[18]

Although the 2005 Proposed Rule differs from the 1997 Proposed Rule,[19] the "generally accepted" requirement reflects the same con-

[18] See e.g, Annette Nazareth, Director, Division of Market Regulation, SEC, Reforming Credit Rating Agenices: The SEC's Need for Statutory Authority, Testimony before the Committee on Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, U.S. House of Representatives (Apr. 12, 2005).

[19] A comparison of the current proposed rule with that of the 1997 proposed rule may highlight this cautionary position. In no provision of the current proposal is the SEC's designation process mentioned. So seemingly a rating agency would not have to be designated by the SEC as an NRSRO, it would just need to meet the three prongs of the definition to capture that status: issues publicly available credit ratings, generally accepted by market as issuer of credible and reliable ratings, and has internal controls and sufficient financial resources. Whereas in the 1997 proposal, the definition of an NRSRO "means any entity that: (A) Issues ratings which are current assessments of the creditworthiness of obligors with respect to specific securities or money market instruments and that is registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) and (B) Is designated as an NRSRO by the Commission." So, within

cept behind the national recognition requirement, thus provoking the same "barrier to entry issues" the DoJ had highlighted in its 1997 comment letter.

In response to concerns with the 2005 Proposed Rule, on June 20, 2005, Congressman Michael Fitzpatrick (R–PA) introduced the Credit Rating Agency Duopoly Relief Act, H.R. 2990. The seminal provision of the bill is the replacement of the SEC staff's NRSRO designation process with a registration system of eligible credit rating agencies. No longer will "national recognition" be a requirement to be an NRSRO. A rating agency will have to be issuing ratings for three years in order to register as an NRSRO.

At the five hearings held during the 108th and 109th Congresses, witnesses repeatedly testified on the barrier to entry and the lack of competition caused by the SEC's staff designation. For instance, Professor Frank Partnoy testified on his earlier academic work that this NRSRO designation is a regulatory license reinforcing and creating artificial barriers to entry in the ratings industry.[20]

Although H.R. 2990 was originally introduced as a mandatory registration system for all credit rating agencies, the Manager's Amendment (adopted by the Committee on Financial Services on June 14, 2006) provides for a system of voluntary registration whereby credit rating agencies (defined as any person engaged who is in the business of issuing credit ratings through the Internet or any other readily accessible means, who uses either a quantitative or qualitative model to determine ratings, and who receives fees from issuers, investors, or other market participants) who have issued ratings for three years may register with the SEC as Nationally Recognized Statistical Rating Organizations (defined as such a registered credit rating agency).

Thus, only those agencies that want to be used for regulatory purposes as an NRSRO will register. This system of voluntary registration eliminates the barriers to entry caused by the current SEC designation process, promotes competition in the ratings industry, and does so using the least restrictive means of regulation.

The definition does not discriminate against certain business models (currently all SEC staff-designated rating agencies have issuer-fee based business models), but instead allows entities with purely quantitative models and investor-fee based models the chance to compete with the dominant agencies.[21]

The Manager's Amendment retains the NRSRO moniker, obviating the need to amend existing statutes and regulations that have historically referred to and utilized the NRSRO label.

H.R. 2990 also will ensure a level playing field for all rating agencies by authorizing the SEC to adopt rules prohibiting abusive industry practices that allow the dominant agencies to unfairly maintain their preeminence. At the hearings held by the Com-

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the 1997 proposal was the actual mandate that an NRSRO be designated by the SEC. The 1997 proposal also discussed the no-action process a potential NRSRO applicant must go through.

[20] Frank Partnoy, Professor of Law, University of San Diego School of Law, Legislative Solutions for the Rating Agency Duopoly, Testimony before the Committee on Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, U.S. House of Representatives (June 29, 2005).

[21] Alex J. Pollock, Resident Fellow, American Enterprise Institute, Legislative Solutions for the Rating Agency Duopoly, Testimony before the Committee on Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, U.S. House of Representatives (June 29, 2005); Glenn Reynolds, Chief Executive Officer, CreditSights, Inc. H.R. 2990, the Credit Rating Agency Duopoly Relief Act, Committee on Financial Services, U.S. House of Representatives (November 29, 2005).

mittee on Financial Services, witnesses testified to these abusive practices, such as issuing unsolicited ratings (sending an unsolicited rating with a bill), notching (lowering ratings on asset-backed securities unless the rating firm rates a substantial portion of the assets making up those securities), and tying (forcing rated companies to purchase ancillary services).[22]

As an additional protection for investors, NRSROs will be subject to reporting and recordkeeping requirements, similar to those for mutual funds, investment advisers, and brokers. An NRSRO will be required to disclose in its registration application not only its long, mid-term, and short-term record at rating securities and public companies through performance statistics, but also the methodologies it uses in deriving its ratings, the conflicts its business model raises, and the manner in which it manages those conflicts. In addition, the Manager's Amendment mandates the disclosure of the firm's organizational structure.

To further increase the transparency of NRSROs, the Manager's Amendment directs the SEC to require NRSROs to make all information and documents filed with the SEC available electronically on the company's website or other readily accessible means. NRSROs must also update their SEC disclosures with any material information that causes previous submissions to become inaccurate, and within 90 days after the end of the calendar year, must file with the SEC a certification that the information and documents previously submitted remain accurate.

Subsequent to registration, NRSROs must file, on a confidential basis with the SEC, audited financial statements and any other information relating to financial condition that the SEC deems appropriate. Furthermore, each NRSRO must establish a chief compliance officer, responsible for ensuring compliance with the securities laws and the rules promulgating pursuant to H.R. 2990.

Moreover, NRSROs will be held accountable under the securities laws: The SEC will be able to inspect, examine, and bring enforcement actions against rating agencies under the 1934 Act. There is no private right of action under H.R. 2990.

A few of the currently designated rating agencies have claimed that Congress and the SEC must be cautious not to intrude into the ratings procedures and methodologies. H.R. 2990 does not intrude into these procedures and the Manager's Amendment expressly affirms that the SEC may not intrude into the ratings procedures and methodologies.

The Manager's Amendment promotes market stability by expressly stating that the voluntary regime established by this bill does not go into effect until January 1, 2008. Furthermore, it directs the SEC to assess the Commission's rules and regulations that utilize the NRSRO label.

HEARINGS

The Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises held a hearing on credit rating agencies entitled "Rating the Rating Agencies: the State of Trans-

[22] See e.g., Nancy Stroker, Group Managing Director, Fitch Ratings, Legislative Solutions for the Rating Agency Duopoly, Testimony before the Committee on Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, U.S. House of Representatives (June 29, 2005).

parency and Competition" on April 2, 2003. The Subcommittee received testimony from the following witnesses: Ms. Annette Nazareth, Director, Division of Market Regulation, Securities and Exchange Commission; Mr. Sean J. Egan, Managing Director, Egan-Jones Rating Co.; Ms. Deborah A. Cunningham, Senior Vice President, Federated Investors; Mr. Greg Root, Executive Vice President, Dominion Bond Rating Service; Dr. Lawrence J. White, Professor of Economics, Stern School of Business, New York University; Mr. Stephen W. Joynt, President and Chief Executive Officer, Fitch, Inc.; Mr. James A. Kaitz, President and Chief Executive Officer, Association for Financial Professionals; and Mr. Raymond W. McDaniel, President, Moody's Investors Services, Inc. The Subcommittee received statements for the record from the following: Fidelity Investments and Standard & Poor's.

The Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises held a hearing on credit rating agencies entitled " The Ratings Game: Improving Transparency and Competition Among the Credit Rating Agencies" on September 14, 2004. The Subcommittee received testimony from the following witnesses: Mr. Sean J. Egan, Managing Director, Egan-Jones Ratings Co.; Mr. James A. Kaitz, President and Chief Executive Officer, Association for Financial Professionals; Dr. Barron H. Putnam, President and Chief Economist, LACE Financial Corporation; and Mr. Alex J. Pollock, Resident Fellow, American Enterprise Institute.

The Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises held a hearing on credit rating agencies entitled "Reforming Credit Rating Agencies: The SEC's Need for Statutory Authority" on April 12, 2005. The Subcommittee received testimony from the following witness: Ms. Annette Nazareth, Director, Division of Market Regulation, Securities and Exchange Commission.

The Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises held a hearing on H.R. 2990, the Credit Rating Agency Duopoly Relief Act, and the SEC staff's proposed legislative framework for regulating credit rating agencies entitled "Legislative Solutions for the Rating Agency Duopoly" on June 29, 2005. The Subcommittee received testimony from the following witnesses: Mr. Frank Partnoy, Professor of Law, University of San Diego School of Law; Ms. Nancy Stroker, Group Managing Director, Fitch Ratings; Mr. Sean Egan, Managing Director, Egan-Jones Ratings Co.; Mr. Alex J. Pollock, Resident Fellow, American Enterprise Institute; Ms. Rita M. Bolger, Managing Director and Associate General Counsel, Standard and Poor's; and Mr. James A. Kaitz, President and Chief Executive Officer, Association for Financial Professionals. The Subcommittee received a statement for the record from the following: the Bond Market Association.

The Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises held a hearing on H.R. 2990, the Credit Rating Agency Duopoly Relief Act, on November 29, 2005. The Subcommittee received testimony from the following witnesses: Mr. Glenn Reynolds, Chief Executive Officer, CreditSights, Inc.; Mr. Paul Schott Stevens, President, Investment Company Institute; Mr. Richard Y. Roberts, Partner, Thelen Reid & Priest LLP, on behalf of Rapid Ratings Pty Ltd.; Mr. Jonathan R. Macey, Sam Harris Professor of Corporate Law, Corporate Finance, and Securities

Law, Yale Law School; and Mr. Sean Egan, Managing Director, Egan-Jones Ratings Co.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 14, 2006, and ordered H.R. 2990, the Credit Rating Agency Duopoly Relief Act, favorably reported, as amended, to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Oxley to order the bill, as amended, reported to the House with a favorable recommendation was agreed to by a voice vote. During consideration of the bill the following amendments were considered:

An amendment in the nature of a substitute by Mr. Oxley, No. 1, making technical and substantive changes, was AGREED TO by a voice vote.

A substitute for the amendment in the nature of a substitute by Mr. Kanjorski, No. 1a, was NOT AGREED TO by a record vote of 31 ayes and 36 nays. (Record vote no. FC–21). The names of Members voting for and against follow:

RECORD VOTE NO. FC–21

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Oxley		X		Mr. Frank (MA)	X		
Mr. Leach		X		Mr. Kanjorski	X		
Mr. Baker		X		Ms. Waters	X		
Ms. Pryce (OH)				Mr. Sanders*	X		
Mr. Bachus		X		Mrs. Maloney	X		
Mr. Castle		X		Mr. Gutierrez	X		
Mr. Royce		X		Ms. Velázquez	X		
Mr. Lucas		X		Mr. Watt	X		
Mr. Ney		X		Mr. Ackerman	X		
Mrs. Kelly		X		Ms. Hooley	X		
Mr. Paul		X		Ms. Carson	X		
Mr. Gillmor		X		Mr. Sherman	X		
Mr. Ryun (KS)		X		Mr. Meeks (NY)	X		
Mr. LaTourette		X		Ms. Lee	X		
Mr. Manzullo		X		Mr. Moore (KS)	X		
Mr. Jones (NC)		X		Mr. Capuano	X		
Mrs. Biggert		X		Mr. Ford	X		
Mr. Shays		X		Mr. Hinojosa	X		
Mr. Fossella		X		Mr. Crowley	X		
Mr. Gary G. Miller (CA)		X		Mr. Clay	X		
Mr. Tiberi		X		Mr. Israel	X		
Mr. Kennedy (MN)		X		Mrs. McCarthy	X		
Mr. Feeney		X		Mr. Baca	X		
Mr. Hensarling		X		Mr. Matheson	X		
Mr. Garrett (NJ)		X		Mr. Lynch			
Ms. Brown-Waite (FL)		X		Mr. Miller (NC)	X		
Mr. Barrett (SC)		X		Mr. Scott (GA)	X		
Ms. Harris		X		Mr. Davis (AL)	X		
Mr. Renzi		X		Mr. Al Green (TX)	X		
Mr. Gerlach		X		Mr. Cleaver	X		
Mr. Pearce		X		Ms. Bean			
Mr. Neugebauer		X		Ms. Wasserman Schultz	X		
Mr. Price (GA)		X		Ms. Moore (WI)	X		

RECORD VOTE NO. FC–21—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Fitzpatrick (PA)		X					
Mr. Davis (KY)		X					
Mr. McHenry		X					
Mr. Campbell		X					

Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 2990, the Credit Rating Agency Duopoly Relief Act, will bring competition, transparency, and accountability to the credit rating agency industry, improving ratings quality and enhancing investor protection. H.R. 2990 will increase competition by replacing the Securities and Exchange Commission's staff role in designating rating agencies as Nationally Recognized Statistical Rating Organizations (NRSROs) with a registration system for those agencies who want their ratings to be able to be used for regulatory purposes.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 29, 2006.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2990, the Credit Rating Agency Duopoly Relief Act of 2006.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Gregory Waring (for federal costs), and Patrice Gordon and Carla-Marie Ulerie (for the impact on the private sector).

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

H.R. 2990—Credit Rating Agency Duopoly Relief Act of 2006

H.R. 2990 would require the Securities and Exchange Commission (SEC) to establish a registration process for credit rating agencies (groups that determine credit worthiness of securities or money market instruments) that seek to be designated by the SEC as a nationally recognized statistical rating organization (NRSRO). Under current law, there is no formal registration process; SEC staff currently recognizes five credit rating agencies as NRSROs.

Under the bill, SEC would impose disclosure and filing requirements on credit rating agencies seeking registration. The SEC would prohibit certain activities of registered credit rating agencies, including seeking payment for unsolicited ratings and issuing or modifying ratings on the condition of the customer purchasing other services from the credit rating agency. Based on information from the Commission and assuming the availability of appropriated funds, CBO estimates that implementing the registration and enforcement requirements of the bill would cost $3 million over the 2007–2011 period. Enacting H.R. 2990 would not affect direct spending or revenues.

H.R. 2990 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 2990 would impose a new private-sector mandate, as defined in UMRA, on credit rating agencies that are currently designated as NRSROs. The bill would redefine the term NRSRO, cease any further designation under the present meaning, eliminate the current process by which the designation is received, and allow registration under the new definition of the term. NRSROs will continue to be regulated by the SEC.

Although credit rating agencies that chose to become NRSROs under this bill would be agreeing to abide by all the rules and processes attached to the designation, this bill would result in increased administrative costs to currently designated NRSROs who want to retain that designation. CBO estimates that the incremental cost would be limited to the time, money, and effort necessary to transfer the registration form from the credit rating agen-

cy to the SEC. Given that small cost per credit rating agency and the fact that only five such agencies now have the NRSRO designation, CBO estimates that costs would not exceed the annual threshold for private-sector mandates ($128 million in 2006, adjusted annually for inflation).

The CBO staff contacts for this estimate are Gregory Waring (for federal costs), and Patrice Gordon and Carla-Marie Ulerie (for the impact on the private sector). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; references

This section provides the short title, the "Credit Rating Agency Duopoly Relief Act of 2006."

Section 2. Findings

This section sets forth certain Congressional findings describing the importance of rating agencies and their ratings upon the financial markets. This section also sets forth the deleterious effects of the Securities and Exchange Commission's (SEC) approval of certain credit rating agencies as "nationally recognized," a designation that has created and strengthened a duopoly and has allowed these rating agencies to engage in abusive practices, such as notching and tying. The SEC has issued a proposed rule defining a nationally recognized statistical rating organization as an entity whose ratings are "generally accepted" in the marketplace, which would codify this barrier to entry.

Section 3. Definitions

This section amends Section 3 of the Securities Exchange Act of 1934 to add the following definitions. The term "credit rating" is defined as an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market funds. A "credit rating agency" is defined as any person engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or a reasonable fee; who employs either a quantitative and/or qualitative model to determine ratings; and who receives fees from issuers, investors, or other market participants. The term "nationally recognized statistical rating organization" or "NRSRO" is a credit rating agency that has been in business for at least three consecutive years and is registered under Section 15E. A "person associated with a nationally recognized statistical rating organization" is defined as any partner, officer, director, branch manager, or person occupying similar status for an NRSRO; any person directly or indirectly controlling or controlled by an NRSRO; and any employee of an NRSRO.

Section 4. Registration of nationally recognized statistical rating organizations

This section adds Section 15E to the Securities Exchange Act of 1934 to permit a credit rating agency that elects to be treated as an NRSRO to be registered with the SEC as such by filing an application for registration. This section directs the SEC to adopt a disclosure form for such registration, including disclosure of conflicts of interest the rating agency faces and the management of those conflicts; the procedures and methodologies the rating agency uses in determining ratings; statistics of ratings performance over short-, medium- and long-term periods; procedures in place to prevent the misuse of non-public information; and the credit rating agency's organizational structure. This section directs the SEC to grant registration if the aforementioned requirements are satisfied or institute proceedings to deny the application within 90 days of its filing.

This section directs the SEC to require an NRSRO to make information and documents filed with the SEC, and any amendments thereto, publicly available on the rating agency's website or another readily accessible means. The SEC is also directed to require an NRSRO to update its disclosures with any material information that causes previous submissions to become inaccurate (except for performance statistics, which must only be updated once a year). An NRSRO must also file with the SEC, within 90 days of the end of the calendar year, a certification that the information and documents previously submitted remain accurate.

This section provides the SEC with the authority to take action against any NRSRO that issues ratings in contravention of its stated procedures and methodologies. It also specifies that any rules or regulations prescribed by the SEC must be narrowly tailored and shall not regulate the substance of ratings or the procedures and methodologies used. Furthermore, this section permits an NRSRO to withdraw its registration, pursuant to terms and conditions established by the SEC, by filing a written notice of withdrawal.

This section prohibits an NRSRO from representing that it has been sponsored, recommended, or approved by the SEC or a Fed-

eral agency; however, an NRSRO may state that it is, in fact, registered as an NRSRO. It also makes it unlawful for a non-registered rating agency to represent that it is an NRSRO. These provisions ensure that a rating agency does not mislead investors about its status and the SEC's role in that status.

This section mandates that every NRSRO must have systematic policies and procedures in place to prevent the misuse of nonpublic information and to manage conflicts of interest and allows the SEC to adopt regulations relating to these issues. This section also permits the SEC to adopt regulations to prohibit NRSROs from acting in any way that is unfair, coercive, or abusive, including issuing unsolicited ratings (sending an unsolicited rating with a bill) or engaging in notching (lowering ratings on asset-backed securities unless the rating firm rates a substantial portion of the assets making up those securities) or tying (forcing rated companies to purchase ancillary services). The bill clarifies that the SEC should not prohibit NRSROs from seeking payments for issuing unsolicited ratings to an affiliate of an obligor if it is a rating agency with an investor fee-based model and if the affiliate is an investor and/or market participant from which the NRSRO receives payments. Each NRSRO is also required to appoint a Chief Compliance Officer to be responsible for administering the rating agency's policies established pursuant to this Act and to ensure compliance with the securities laws. This section also requires an NRSRO to file with the SEC its financial statements and any information regarding its financial condition that the SEC deems appropriate, at intervals to be determined by the SEC.

This section also eliminates both the SEC's ability to designate certain credit rating agencies as "nationally recognized statistical rating organizations," a practice the SEC staff has engaged in through the no-action process since 1975, and investors' ability to rely on the SEC's designations. This is to make certain that there are no longer any artificial barriers to entry created by the SEC. The SEC is also required to give notice to the various Federal agencies using the term "nationally recognized statistical rating organization" regarding the elimination of the SEC's designation process and the prohibition on relying on these designations. The SEC shall review, within 180 days of enactment of this Act, its existing rules and regulations that employ the term NRSRO and promulgate any appropriate new or revised rules as appropriate. This section also ensures that an NRSRO is subject to criminal and civil liability if it violates the federal securities laws. However, there is no private right of action under this legislation. Finally, this section makes conforming amendments to several Federal statutes, including the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

Section 5. Annual and other reports

This section directs the SEC to adopt recordkeeping and reporting requirements appropriate for NRSROs. The purpose of the recordkeeping requirement is to make certain that NRSROs keep appropriate records for the specific periods of time the SEC determines for its inspections and examination process. The purpose of the reporting requirements is to make certain those purchasing or

using credit ratings understand the operations and methodologies of the particular NRSRO.

Section 6. GAO study and report regarding consolidation of credit rating agencies

This section directs the Comptroller General to study and report to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs on the effects of the consolidation of market power in the credit rating industry, including higher costs, lower quality of services, anti-competitive practices, impairment of independence, and lack of choice. This report must be presented within 180 days of the date of enactment of this legislation.

Section 7. Effective date

This section identifies January 1, 2008, as the effective date of the registration and reporting requirements under the Credit Rating Agency Duopoly Relief Act, unless otherwise prescribed under Section 4 of this legislation. The purpose of this section is to ensure that all NRSROs have ample opportunity to file an application and the SEC has the necessary time to prescribe rules and regulations.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934

* * * * * * *

DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * * * *

(60) CREDIT RATING.—The term "credit rating" means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

(61) CREDIT RATING AGENCY.—The term "credit rating agency" means any person—

(A) engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee;

(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 OR NRSRO.—The term "nationally recognized statistical rating organization" means a credit rating agency that—

(A) has been in business for at least three consecutive years; and

(B) is registered under section 15E.

(63) PERSON ASSOCIATED WITH A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term "person associated with a nationally recognized statistical rating organization" means any partner, officer, director, or branch manager of such nationally recognized statistical rating organization (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such nationally recognized statistical rating organization, or any employee of such nationally recognized statistical rating organization.

* * * * * * *

REGISTRATION AND REGULATION OF BROKERS AND DEALERS

SEC. 15. (a) * * *

(b)(1) * * *

* * * * * * *

(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

(A) * * *

(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(i) * * *

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;

* * * * * * *

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or

regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

* * * * * * *

SEC. 15E. REGISTRATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

(a) REGISTRATION PROCEDURES.—

(1) FILING OF APPLICATION FORM.—A credit rating agency that elects to be treated as a nationally recognized statistical rating organization for the purposes of Federal statutes, rules, and regulations may be registered by filing with the Commission an application for registration in such form and containing such of the following and any other information and documents concerning such organization and any persons associated with such organization as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors:

(A) any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization;

(B) the procedures and methodologies such nationally recognized statistical rating organization uses in determining credit ratings;

(C) credit ratings performance measurement statistics over short-term, mid-term, and long-term periods of such nationally recognized statistical rating organization;

(D) policies or procedures adopted and implemented by such nationally recognized statistical rating organization to prevent the misuse in violation of this title (or the rules and regulations thereunder) of material, non-public information; and

(E) the organizational structure of such nationally recognized statistical rating organization.

(2) REVIEW OF APPLICATION.—

(A) INITIAL DETERMINATION.—Within 90 days of the date of the filing of such application (or within such longer period as to which the applicant consents) the Commission shall—

(i) by order grant such registration; or

(ii) institute proceedings to determine whether registration should be denied.

(B) CONDUCT OF PROCEEDINGS.—Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 120 days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to 90 days if it finds good cause

for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

(C) GROUNDS FOR DECISION.—The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (b).

(3) PUBLIC AVAILABILITY OF INFORMATION.—Subject to section 24, the Commission, by rule, shall require a nationally recognized statistical rating organization, upon the granting of registration under this section, to make the information and documents filed with the Commission in its application for registration, or in any amendment filed under subsection (b)(1) or (2), publicly available on the website or comparable readily accessible means of such nationally recognized statistical rating organization.

(b) UPDATE OF REGISTRATION.—

(1) UPDATE.—Each nationally recognized statistical rating organization shall promptly amend its application for registration under this section if any information or documents provided therein become materially inaccurate, except that a nationally recognized statistical rating organization is not required to amend the information required to be filed under subsection (a)(1)(C) by a filing under this paragraph, but shall amend such information in such organization's annual filing under paragraph (2) of this subsection.

(2) CERTIFICATION.—Not later than 90 days after the end of each calendar year, each nationally recognized statistical rating organization shall file with the Commission an amendment to its registration, in such form as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) certifying that the information and documents in the application for registration of such nationally recognized statistical rating organization continue to be accurate; and

(B) listing any material changes that occurred to such information or documents during the previous calendar year.

(c) ACCOUNTABILITY FOR RATINGS PROCEDURES.—

(1) AUTHORITY.—The Commission shall have the authority under this Act to take action against any nationally recognized statistical rating organization if such nationally recognized statistical rating organization issues credit ratings in contravention of those procedures, criteria, and methodologies that such nationally recognized statistical rating organization—

(A) includes in its application for registration under this section; or

(B) makes and disseminates in reports pursuant to section 17(a) or the rules and regulations thereunder.

(2) LIMITATION.—The rules and regulations applicable to nationally recognized statistical rating organizations the Commission may prescribe pursuant to this Act shall be narrowly tailored to meet the requirements of this Act applicable to nation-

ally recognized statistical rating organizations and shall not purport to regulate the substance of credit ratings or the procedures and methodologies by which such nationally recognized statistical rating organizations determine credit ratings.

(d) CENSURE, DENIAL, OR SUSPENSION OF REGISTRATION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any nationally recognized statistical rating organization if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, whether prior to or subsequent to becoming so associated—

(1) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 15(b), has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

(2) has been convicted during the 10-year period preceding the date of filing of any application for registration, or at any time thereafter, of—

(A) any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4)(B); or

(B) a substantially equivalent crime by a foreign court of competent jurisdiction; or

(3) is subject to any order of the Commission barring or suspending the right of the person to be associated with a nationally recognized statistical rating organization.

(e) WITHDRAWAL FROM REGISTRATION.—A nationally recognized statistical rating organization registered under this section may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any nationally recognized statistical rating organization is no longer in existence or has ceased to do business as a credit rating agency, the Commission, by order, shall cancel the registration of such nationally recognized statistical rating organization.

(f) REPRESENTATIONS.—

(1) REPRESENTATIONS OF SPONSORSHIP BY UNITED STATES OR AGENCY THEREOF.—It shall be unlawful for any nationally recognized statistical rating organization registered under this section to represent or imply in any manner whatsoever that such nationally recognized statistical rating organization has been designated, sponsored, recommended, or approved, or that such nationally recognized statistical rating organization's abilities or qualifications have in any respect been passed upon, by the United States or any agency, any officer, or any employee thereof.

(2) REPRESENTATION AS NRSRO OF UNREGISTERED CREDIT RATING AGENCIES.—It shall be unlawful for any credit rating agency to represent or imply in any manner whatsoever that such credit rating agency has been designated, sponsored, recommended, or approved, or that such credit rating agency's abilities or qualifications have in any respect been passed upon, by the United States or any agency, any officer, or any employee thereof. It shall be unlawful for any credit rating agency that is not registered under this section as a nationally recognized statistical rating organization to state that such credit rating agency is a nationally recognized statistical rating organization under this Act.

(3) STATEMENT OF REGISTRATION UNDER SECURITIES EXCHANGE ACT OF 1934 PROVISIONS.—No provision of paragraph (1) shall be construed to prohibit a statement that a nationally recognized statistical rating organization is a nationally recognized statistical rating organization under this Act, if such statement is true in fact and if the effect of such registration is not misrepresented.

(g) PREVENTION OF MISUSE OF NONPUBLIC INFORMATION.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such nationally recognized statistical rating organization's business, to prevent the misuse in violation of this title, or the rules or regulations thereunder, of material, nonpublic information by such nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this title (or the rules or regulations thereunder) of material, nonpublic information.

(h) MANAGEMENT OF CONFLICTS OF INTEREST.—Each nationally recognized statistical rating 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 of such nationally recognized statistical rating organization, to address and manage the conflicts of interest that can arise from such business. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to prohibit, or require the management or 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—

(1) 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;

(2) 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;

(3) business relationships, ownership interests, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor; and

(4) any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person that underwrites the securities or money market instruments that are the subject of a credit rating.

(i) PROHIBITED CONDUCT.—

(1) PROHIBITED ACTS AND PRACTICES.—The Commission may adopt rules or regulations to prohibit any act or practice relating to the issuance of credit ratings by a nationally recognized statistical rating organization that the Commission determines to be unfair, coercive, or abusive, including any act or practice relating to—

(A) seeking payment for a credit rating that has not been specifically requested by the obligor—

(i) from an obligor; or

(ii) from an affiliate of an obligor, unless—

(I) the organization is organized under subsection (a)(1)(E) to receive fees from investors or other market participants, or a combination thereof; and

(II) the affiliate is such an investor or participant;

(B) conditioning or threatening to condition the issuance of a credit rating on the obligor's, or an affiliate of the obligor's, purchase of other services or products, including pre-credit rating assessment products, of the nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization;

(C) lowering or threatening to lower a credit rating on, or refusing to rate, securities or money market instruments issued by an asset pool unless a portion of the assets within such pool also is rated by the nationally recognized statistical rating organization;

(D) modifying or threatening to modify a credit rating or otherwise departing from its adopted systematic procedures and methodologies in determining credit ratings, based on whether the obligor, or an affiliate of the obligor, pays or will pay for the credit rating or any other services or products of the nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1), or in any rules or regulations adopted thereunder, shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For the purposes of the preceding sentence, the term "antitrust laws" has the meaning given it in the first section of the Clayton Act (15 U.S.C. 12), except that such term includes

section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition.

(j) DESIGNATION OF COMPLIANCE OFFICER.—Each nationally recognized statistical rating organization shall designate an individual responsible for administering the policies and procedures that are required to be established pursuant to subsections (g) and (h), and for ensuring compliance with the securities laws and the rules and regulations thereunder, including those promulgated by the Commission pursuant to this section.

(k) STATEMENTS OF FINANCIAL CONDITION.—Each nationally recognized statistical rating organization shall, on a confidential basis, file with the Commission, at intervals determined by the Commission, such financial statements, certified (if required by the rules or regulations of the Commission) by an independent public accountant, and information concerning its financial condition as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(l) ELIMINATION OF COMMISSION DESIGNATION PROCESS FOR NRSRO'S.—

(1) CESSATION OF DESIGNATION.—Within 30 days after the enactment of the Credit Rating Agency Duopoly Relief Act of 2006, the Commission shall cease to designate persons and companies as nationally recognized statistical rating organizations, as that term is used under rule 15c3–1 of the Commission's rules (17 CFR 240.15c3–1).

(2) PROHIBITION ON RELIANCE ON NO-ACTION RELIEF.—The no-action relief that the Commission has granted with respect to the designation of nationally recognized statistical rating organizations, as that term is used under rule 15c3–1 of the Commission's rules (17 CFR 240.15c3–1), shall be void and of no force or effect.

(3) NOTICE TO OTHER AGENCIES.—Within 30 days after the date of enactment of the Credit Rating Agency Duopoly Relief Act of 2006, the Commission shall give notice to the Federal agencies which employ the term "nationally recognized statistical rating organization" (as that term is used under rule 15c3–1 of the Commission's rules (17 CFR 240.15c3–1)) in their rules and regulations regarding the actions undertaken pursuant to this section.

(4) REVIEW OF EXISTING REGULATIONS.—Within 180 days after the date of enactment of the Credit Rating Agency Duopoly Relief Act of 2006, the Commission shall review its existing rules and regulations which employ the term "nationally recognized statistical rating organization" or "NRSRO" and promulgate new or revised rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

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ACCOUNTS AND RECORDS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS

SEC. 17. (a)(1) Every national securities exchange, member thereof, broker or dealer who transacts a business in securities through

the medium of any such member, registered securities association, registered broker or dealer, registered municipal securities dealer, registered securities information processor, registered transfer agent, nationally recognized statistical rating organization, and registered clearing agency and the Municipal Securities Rulemaking Board shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

* * * * * * *

CIVIL REMEDIES IN ADMINISTRATIVE PROCEEDINGS

SEC. 21B. (a) Commission Authority To Assess Money Penalties.—In any proceeding instituted pursuant to sections 15(b)(4), 15(b)(6), 15D, 15B, 15C, 15E, or 17A of this title against any person, the Commission or the appropriate regulatory agency may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

(1) * * *

* * * * * * *

INVESTMENT COMPANY ACT OF 1940

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GENERAL DEFINITIONS

SEC. 2. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * * * *

(53) The term "credit rating agency" has the same meaning as given in section 3 of the Securities Exchange Act of 1934.

* * * * * * *

INELIGIBILITY OF CERTAIN AFFILIATED PERSONS AND UNDERWRITERS

SEC. 9. (a) It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company:

(1) any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or enti-

ty or person required to be registered under the Commodity Exchange Act;

(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or

* * * * * * *

INVESTMENT ADVISERS ACT OF 1940

* * * * * * *

TITLE II—INVESTMENT ADVISERS

DEFINITIONS

SEC. 202. (a) When used in this title, unless the context otherwise requires, the following definitions shall apply:

(1) * * *

* * * * * * *

(28) The term "credit rating agency" has the same meaning as given in section 3 of the Securities Exchange Act of 1934.

* * * * * * *

REGISTRATION OF INVESTMENT ADVISERS

SEC. 203. (a) * * *

* * * * * * *

(e) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any investment adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such investment adviser, or any person associated with such investment adviser, whether prior to or subsequent to becoming so associated—

(1) * * *

(2) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(A) * * *

(B) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser,

bank, insurance company, government securities broker, government securities dealer, fiduciary, transfer agent, credit rating agency, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent statute or regulation;

* * * * * * *

(4) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction, including any foreign court of competent jurisdiction, from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, *credit rating agency*, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

* * * * * * *

SECTION 1319 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992

SEC. 1319. AUTHORITY TO PROVIDE FOR REVIEW OF ENTERPRISES BY RATING ORGANIZATION.

The Director may, on such terms and conditions as the Director deems appropriate, contract with any entity **[**effectively recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for the purposes of the capital rules for broker-dealers**]** *that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934*, to conduct a review of the enterprises.

SECTION 439 OF THE HIGHER EDUCATION ACT OF 1965

SEC. 439. STUDENT LOAN MARKETING ASSOCIATION.

(a) * * *

* * * * * * *

(r) SAFETY AND SOUNDNESS OF ASSOCIATION.—

(1) * * *

* * * * * * *

(15) DEFINITIONS.—As used in this subsection:

(A) The term "nationally recognized statistical rating organization" **[**means any entity recognized as such by the

Securities and Exchange Commission] *means any nationally recognized statistical rating organization as that term is defined under the Securities Exchange Act of 1934.*

* * * * * * *

SECTION 601 OF TITLE 23, UNITED STATES CODE

§ 601. Generally applicable provisions

(a) DEFINITIONS.—In this chapter, the following definitions apply:

(1) * * *

* * * * * * *

(10) RATING AGENCY.—The term "rating agency" means a credit rating agency [identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization] *registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization as that term is defined under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.).*

* * * * * * *

DISSENTING VIEWS

H.R. 2990, the Credit Rating Agency Duopoly Relief Act, fails in our view to sufficiently protect investors. Specifically, the bill would create an opportunity to issue credit ratings for regulatory purposes after an entity meets minimal and almost meaningless standards. These standards are akin to granting a driver's license to anyone who meets a residency requirement. We know, however, that every potential driver must pass one or more quality-assurance tests before getting a license. As approved by the Committee, this bill would reject the current system for ensuring credible and reliable ratings and make our capital markets less safe, particularly for average investors and for the regulators that rely on the credible ratings produced by the current system.

In an effort to hear from the Commission regarding its views of the legislation, we also repeatedly requested that the Committee invite the Commission to testify on the bill, but we never received a response to our requests and the Commission was never invited to testify. This failure to hear from the nation's primary securities regulator on legislation that it will be required to implement is unexplainable and a poor way to develop public policy. The Commission has closely studied these issues for more than a decade, issuing regulatory proposals, examining answers to comprehensive concept releases, negotiating international codes, and interacting with industry participants. The Committee therefore would have been well advised to work closely with these experts to ensure the development of good public policy before moving forward with a markup.

In short, because H.R. 2990 fails to achieve its stated goals of ensuring quality among credit rating agencies and because it was developed without careful consultation with the Commission's experts on these matters, we believe that it is bad policy and that it should be rejected.

NRSROs and Quality Ratings

Credit rating agencies identified as nationally recognized statistical rating organizations (NRSROs) first came into existence in 1975. Specifically, the U.S. Securities and Exchange Commission (Commission) decided to use credit ratings issued by NRSROs as an indication of the creditworthiness of an investment in connection with determining the net capital requirements for broker-dealers under Rule 15c3–1 of the Securities Exchange Act of 1934.

From this narrow initial usage, the term NRSRO and its inference of quality, credibility and reliability has blossomed. It has become embedded in numerous federal, state, and local statutes, rules, and regulations. Many private parties have also included references to NRSROs in the terms of their contracts, corporate bylaws, mutual fund prospectuses, and pension trust agreements.

Foreign governments and international bodies have also used the NRSRO concept in their agreements and standards. Thus, any effort to reform the identification or regulation of NRSROs must take into account the effect on all of these various players in our capital markets. By forging ahead with a new and untested system for establishing NRSROs without considering matters of quality, H.R. 2990 turns its back on this already existing state of the world.

During hearings in the last two sessions of Congress held in the aftermath of failures by then-existing NRSROs to predict in a more timely manner the downfall of Enron and WorldCom, the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises examined questions concerning the Commission's role in determining which entities receive NRSRO status and the effect of this process on competition in the credit ratings industry. These hearings culminated with the consideration of H.R. 2990 to address these concerns.

The Committee Report on H.R. 2990 also states that the bill "will bring competition, transparency, and accountability to the credit rating agency industry, improving ratings quality and enhancing investor protection". In its present form, however, H.R. 2990 seems highly unlikely to accomplish its stated objective of ensuring accountability in the issuance of credit ratings because the bill abandons the current "credible and reliable ratings" standard used by the Commission staff when evaluating credit rating agencies for identification as NRSROs. It is this credible and reliable standard on which countless governmental units, private parties, and international entities have come to rely in developing their standards, contracts, and agreements. Abandoning this time-proven standard would therefore likely create unnecessary chaos and confusion in our capital markets.

THE BILL SACRIFICES QUALITY FOR QUANTITY

We agree with the supporters of this legislation that increasing competition in the credit ratings used for regulatory purposes is a desirable goal, and that the current process used by Commission staff to identify credit rating agencies suitable for the NRSRO designation should be improved. H.R. 2990, however, seeks to make changes that will come at a dangerous cost. Through its voluntary registration regime, the bill will increase the number of NRSROs without establishing sufficient authority for the Commission to assure that the issued ratings are generally accepted, credible, reliable and of a consistent quality. We must achieve an appropriate equilibrium in these matters by balancing the desire to increase the quantity of NRSROs with the need to ensure that the ratings issued by NRSROs are of a high quality.

Under the bill, any person "engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or a reasonable fee" and who employs "either a quantitative or qualitative model, or both, to determine credit ratings" and is "receiving fees from either issuers, investors, or other market participants, or a combination thereof" is eligible to register with the Commission as an NRSRO.

In addition to the entities mentioned above that have incorporated the NRSRO term into laws, rules, contracts and other

agreements, the ratings issued by NRSROs are relied upon by innumerable institutional and retail investors in evaluating credit risks and making investment decisions. Through the years, the Commission's identification of certain credit rating agencies as NRSROs has given the users of these ratings confidence that the entities have been reviewed by the Commission and determined to be capable of issuing consistently credible and reliable ratings. The bill's voluntary registration regime merely increases the number of credit rating agencies holding the NRSRO designation without requiring these firms to adequately demonstrate that they are capable of producing consistently high-quality ratings. As we previously suggested, such a regime is analogous to granting anyone a driver's license who lives in a state and applies for one.

Proponents of the bill may suggest that the requirement that credit rating agencies seeking NRSRO status disclose past performance information will permit potential users to make informed decisions about how well a credit rating agency has performed in the past and how well it will do in the future. This argument, however, neglects the potential for "rating shopping" that may occur when entities that would not otherwise be able to obtain a high rating are able to do so.

The changes put in place by this bill could also subsequently lead to market confusion in that the many federal, state, and local agencies, as well as private investors, will continue to rely, to their detriment, upon the NRSRO designation and operate under the same presumption that the ratings are of a high quality. Lower quality ratings could also harm investors who purchase the fixed-income instruments at prices inflated by inappropriately high ratings. Even worse, the proposed regulatory regime increases the risk of leaving investors holding debt paper of little value in the event of a default on an instrument previously rated by an NRSRO.

Some investor advocates, such as the AFL–CIO, strongly believe that quality should be an important factor in assigning the NRSRO designation to any credit rating agency. We agree. In his written testimony before the Senate Banking Committee on March 7, 2006, Damon Silvers, Associate General Counsel for the AFL–CIO, stated, "[t]he NRSRO concept is helpful in dealing with information costs to investors, government agencies, and a wide variety of financial market actors. Replacing it with a mere registration process without substantive oversight, as some have suggested, will be harmful to investors" and "ultimately to the functioning of our credit markets."

Furthermore, the bill defines a credit rating agency as one that employs either a quantitative or qualitative methodology, or both. Granting NRSRO status to firms that use only a quantitative model could ultimately lead to less credible and reliable ratings because these models by definition fail to consider the nuances of a company that may impact its creditworthiness. Such models can also produce volatile ratings and generate false positives, as the Bond Market Association noted in its statement submitted for the record at the Capital Markets Subcommittee hearing on June 29, 2005. While there may be a role for quantitative-only credit ratings, we should move carefully in order to protect investors and

give the Commission sufficient authority to address any concerns about such a model. H.R. 2990 does neither.

Moreover, we have strong reason to believe that the leadership of the Commission wants to ensure the continued issuance of credible and reliable ratings used for regulatory purposes. In a written response to a follow-up question posed by Congressman Kanjorski after a May 3, 2006, oversight hearing to review the agenda of the Commission, Chairman Christopher Cox responded, "You also asked whether the quality of credit ratings concerns me. My answer is most assuredly yes." We ought to heed these concerns.

We have, finally, very strong apprehensions that this bill could allow history to repeat itself. In the wake of the savings and loan crisis, Congress put in place requirements that the capital held in portfolio by financial institutions must be of investment grade as determined by an NRSRO. We put this requirement in place because we found that a number of those institutions that failed did not maintain high-quality investments in their portfolios. This bill's failure to ensure that the ratings issued by NRSROs continue to be credible and reliable could one day create another regrettable situation whereby taxpayers would again need to finance a bailout.

PROPOSED RULE

The Commission, which has the foremost expertise on issues related to NRSROs, is also very aware of the concerns surrounding credit rating agencies and continues to consider potential ways to foster the issuance of high-quality credit ratings used for regulatory purposes, including going forward with its March 2005 rule proposal to define the term "NRSRO." The proposed rule would define an NRSRO as an entity that: (1) issues current credit ratings that are publicly available on a widespread basis at no cost; (2) is "generally accepted" as an issuer of credible and reliable ratings; and (3) uses "systemic procedures" to ensure ratings quality, manage conflicts, and prevent the misuse of nonpublic information.

The proposed definition also requires rating agencies to possess sufficient financial resources. H.R. 2990 imposes no such requirement at the time of voluntary registration. Not requiring some third-party examination of a minimal level of financial stability before granting a designation to issue credit ratings for regulatory purposes could lead to, among other things, firms agreeing to issue certain ratings that are unjustified so that they can receive fees to remain in business.

The Committee Report states that the "generally accepted" language in the proposed rule erects a barrier to entry that may result in higher prices for ratings. This, it claims, is similar to language contained in a 1997 proposed rule for broker-dealer capital requirements. The Department of Justice submitted a comment letter in connection with this rule proposal questioning whether having a "national recognition" requirement would create a barrier to competition and result in higher prices for ratings.

The Commission did not go forward with the 1997 proposed rulemaking, but the fact that it has included a similar concept in the 2005 NRSRO proposed rule suggests that it believes that a certain level of acceptance by the predominant users of the information is an important factor in assessing the credibility and reliability of

ratings. This legislation should not go forward until we can discern how the Commission's proposed rule change, if adopted, would enhance competition by injecting transparency into the process for identifying new NRSROs.

VOLUNTARY FRAMEWORK

At the time that the bill was considered by the Committee, we offered an amendment in the nature of a substitute that, among other things, would encourage the Commission and the current NRSROs to expeditiously complete discussions to improve oversight of their activities through the adoption of a Voluntary Framework. This framework would apply the self-regulatory model recently adopted by the European Commission to NRSROs in the United States. This framework is also based on the code established by the International Organization of Securities Commissions (IOSCO Code), of which the U.S. Securities and Exchange Commission is a participant.

In unrelated testimony on general oversight matters before the Committee in May 2006, Chairman Christopher Cox in an answer to a question stated that Commission staff is providing advice to representatives of the NRSROs regarding the framework's provisions. We ought to allow these parties to complete their discussions before moving forward with legislation. It is also appropriate for us to encourage the prompt completion of these talks.

In our view, implementing a voluntary framework similar to that adopted by the European Commission would enhance market discipline and advance investor protection. Such a framework would include provisions requiring disclosure of written policies and procedures to address, among other things, conflicts of interest, the misuse of nonpublic information, compliance with applicable federal securities laws, ensuring that each NRSRO is capable of issuing independent, predictive, consistent and reliable ratings, and that they provide performance data for the immediately preceding four years. The ISOCO Code, which has been endorsed by all of the existing NRSROs in the United States, also includes an "explain or comply" provision that requires a credit rating agency to explain if and how its own code differs from the ISOCO Code.

The adoption of a Voluntary Framework, unlike H.R. 2990, would facilitate the harmonization of international standards in the area of credit ratings. Heretofore, the Committee has regularly sought in recent years to promote international harmonization on a number of issues, such as those related to auditing regimes, accounting rules, and capital levels. The issue of the proper oversight system for credit ratings agencies in a post-Enron world is yet another area that very much lends itself to an international approach. Importantly, in his June 26, 2006, written response to a follow-up question from Ranking Member Frank, Chairman Cox stated that "[t]he potential advantages of adopting a unified international regulatory arrangement in this area are clear, especially from the perspective of the credit ratings agencies—greater regulatory certainty and lower regulatory costs."

AMENDMENT IN THE NATURE OF A SUBSTITUTE

During consideration of H.R. 2990 by the Committee, we offered an amendment in the nature of a substitute that would require the Commission to conclude its proposed rulemaking to define NRSROs within 60 days of enactment; encourage the participating parties to expedite discussions regarding the Voluntary Framework; and require annual hearings concerning rating agencies for five years to consider the effectiveness of the prior reforms and determine the need for further action. By urging the Commission to move forward with its proposed rule and the Voluntary Framework discussions, we have sought to put in place a globally consistent, market-based approach to rating agency oversight. Unlike H.R. 2990, this standard would also protect investors by ensuring high-quality, reliable and credible ratings. Moreover, the amendment would have ensured that Congress worked closely with the Commission on these sensitive matters going forward.

CONCLUSION

In the aftermath of Enron's insolvency and WorldCom's bankruptcy, Congress wisely adopted standards in the Sarbanes-Oxley Act to strengthen financial reporting, restore investor confidence, and assure the integrity of our capital markets. In an effort to promote competition among NRSROs, however, H.R. 2990 would weaken quality-assurance standards, thereby damaging investor confidence and the integrity of our markets going forward. We find such developments highly regrettable.

Moreover, H.R. 2990 was drafted and considered by the Committee without the crucial input of the primary securities regulator: the Securities and Exchange Commission. On complicated policy matters like this one, we need to give them a seat at the table in the development of any new statutory authority and standards.

In sum, H.R. 2990 is bad public policy developed in the absence of assistance by the regulator most knowledgeable on these matters. Given the important role that NRSROs play in our capital markets, it is imperative that we take prudent, measured and well-considered steps to address legitimate concerns. H.R. 2990, while well-intentioned, will do more harm to our capital markets than it will do good. We cannot therefore support this bill in its present form.

BARNEY FRANK.
PAUL E. KANJORSKI.

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