contract to $.0045 per contract.[12] The new ORF was to take effect on January 3, 2011, therefore the old ORF rate of $.004 per contract was not removed from Section 12(A) of the Fees Schedule at that time. The Exchange proposes to delete the reference to the old rate of $.004 per contract from Section 12(A) of the Fees Schedule.

The proposed fee changes will take effect on May 2, 2011.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[13] in general, and furthers the objectives of Section 6(b)(4)[14] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using its facilities. The Exchange believes the proposed rule change is equitable, reasonable and not unfairly discriminatory in that it would further lower fees for market participants that trade these strategies by expanding the fee cap for reversal, conversion and jelly roll strategies to apply to all options classes traded on the Exchange except those which are subject to the Index License surcharge fee. In addition, the proposed rule change would allow the Exchange to remain competitive with other exchanges that offer similar fee cap programs.[15] The proposed rule change would also clarify portions of the Fees Schedule relating to the strategy fee cap program and the Options Regulatory Fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[12] *See* Securities Exchange Act Release No. 63524 (December 10, 2010), 75 FR 78780 (December 16, 2010).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] *Supra* footnote 6.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[16] and subparagraph (f)(2) of Rule 19b–4.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–043. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–043 and should be submitted on or before June 6, 2011.

[16] 15 U.S.C. 78s(b)(3)(a)(ii).

[17] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–11838 Filed 5–13–11; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64456; File No. 4–629]

Solicitation of Comment To Assist in Study on Assigned Credit Ratings

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Securities and Exchange Commission ("Commission") requests public comment to assist it in carrying out a study on, among other matters, the feasibility of establishing a system in which a public or private utility or a self-regulatory organization ("SRO") assigns nationally recognized statistical rating organizations ("NRSROs") to determine credit ratings for structured finance products. This study, and a resulting report to Congress, are required by Section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act").

DATES: The Commission will accept comments on matters related to the study on or before September 13, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number 4–629 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. All submissions should refer to File Number 4–629. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Randall W. Roy, Assistant Director, at (202) 551–5522; Alan A. Dunetz, Branch Chief, at (212) 336–0072; Kevin S. Davey, Securities Compliance Examiner, at (212) 336–0075; Kristin A. Devitto, Securities Compliance Examiner, at (212) 336–0038; Diane Audino, Securities Compliance Examiner, at (212) 336–0076, or Timothy C. Fox, at (202) 551–5687, Special Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act into law.[1] Under Section 939F of the Dodd-Frank Act ("Section 939F"), the Commission must submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 24 months after the date of enactment of the Dodd-Frank Act, a report containing: (1) The findings of a study on matters related to assigning credit ratings for structured finance products; and (2) any recommendations for regulatory or statutory changes that the Commission determines should be made to implement the findings of the study.[2]

Section 939F provides that the Commission, in carrying out the study, shall address four areas. One, the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models.[3] Two, the feasibility of establishing a system in which a public or private utility or an SRO assigns NRSROs to determine the credit ratings for structured finance products, including: (1) An assessment of potential mechanisms for determining fees for NRSROs for structured finance products; (2) appropriate methods for paying fees to NRSROs to rate structured finance products; (3) the extent to which the creation of such a system would be viewed as the creation of moral hazard by the Federal Government; and (4) any constitutional or other issues concerning the establishment of such a system.[4] Three, the range of metrics one could use to determine the accuracy of credit ratings for structured finance products.[5] Four, alternative means for compensating NRSROs that would create incentives for accurate credit ratings for structured finance products.[6]

In addition, Section 939F provides that, after submission of the report to Congress resulting from the study, the Commission shall, by rule, as the Commission determines is necessary or appropriate in the public interest or for the protection of investors, establish a system for the assignment of NRSROs to determine the initial credit ratings of structured finance products, in a manner that prevents the issuer, sponsor, or underwriter of the structured finance product from selecting the NRSRO that will determine the initial credit ratings and monitor such credit ratings.[7] In issuing any rule, the Commission is required to give thorough consideration to the provisions of Section 15E(w) of the Securities Exchange Act of 1934, as that provision would have been added by Section 939D of H.R. 4173 (111th Congress), as passed by the Senate on May 20, 2010 (the "Section 15E(w) Provisions"), and shall implement the system described in such Section 939D (the "Section 15E(w) System") unless the Commission determines that an alternative system would better serve the public interest and the protection of investors.[8]

In carrying out the study required by Section 939F, the Commission believes that comments, proposals, data, and analysis from interested parties representing a wide range views of, and involvement in, the market for structured finance products and the role of NRSROs in that market would provide valuable assistance. In this regard, the Commission seeks comment from: (1) Investors and other persons who use credit ratings; (2) participants in pensions funds and other retirement vehicles that may hold structured finance products; (3) portfolio and fund managers; (4) investment advisers; (5) insurance companies; (6) credit rating agencies; (7) financial institutions; (8) originators of financial assets that are securitized into structured finance products (including, but not limited to, originators of residential and commercial real estate loans, corporate loans, student loans, credit card receivables, consumer loans and leases, auto loans and leases, auto floor plans, equipment loans and leases, and any other financial assets that are securitized); (9) issuers, underwriters, sponsors, and depositors involved in the issuance of structured finance products; (10) regulators; (11) members of the academic community; and (12) any other persons who have views concerning, and involvement in, the market for structured finance products and the role of NRSROs in that market. In addition, given the complexity of the issues surrounding the matters to be addressed in the study, the Commission believes an extended comment period of 120 days is appropriate in order to provide sufficient opportunity for all interested parties to consider and respond to the questions and provide any additional comments, proposals, data, and analysis they believe germane to the study.

II. Request for Comment

The Commission requests that interested parties provide comments,

[1] Public Law 111–203, 124 Stat. 1376, H.R. 4173 (2010).

[2] *See* Section 939F. Section 939F(a) provides that, for purposes of Section 939F, the term "structured finance product" means an "asset-backed security," as defined in Section 3(a)(77) of the Securities Exchange Act of 1934 ("Exchange Act"), as added by Section 941 of the Dodd-Frank Act (15 U.S.C. 78c(a)(77)), and any structured product based on an asset-backed security, as determined by the Commission, by rule. For the purposes of this solicitation of comment, the term "structured finance product" means an "asset-backed security" as defined in Section 3(a)(77) of the Exchange Act and, to the extent not included in that definition, any security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction. *See, e.g.,* 17 CFR 240.17g–2(a)(2)(iii), (a)(7), and (b)(9), 17 CFR 240.17g–3(a)(6), 17 CFR 240.17g–5(a)(3) and (b)(9), and 17 CFR 17g–6(a)(4). *See also Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR at 63832 (Dec. 4, 2009), at 74 FR 63832, footnote 3.

[3] *See* Public Law 111–203 § 939F(b)(1).

[4] *See* Public Law 111–203 § 939F(b)(2)(A) through (B).

[5] *See* Public Law 111–203 § 939F(b)(3).

[6] *See* Public Law 111–203 § 939F(b)(4).

[7] *See* Public Law 111–203 § 939F(d).

[8] *Id.* For ease of reference, the Section 15E(w) Provisions are attached as an Appendix to this solicitation of comments.

proposals, data, and analysis in response to the questions below, as appropriate, given their views of, and involvement in, the market for structured finance products and the role of NRSROs in that market.[9] In this regard, the Commission requests that interested parties address the topics and questions set forth in three sections below. Section II.A seeks comment on the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models.[10] Section II.B seeks comment on the Section 15E(w) System for assigning NRSROs to determine credit ratings for structured finance products. Finally, Section II.C seeks comment on potential alternatives to the Section 15E(w) System.

In addition, the General Accountability Office ("GAO") has developed a framework ("GAO Framework") for Congress and others to use in evaluating or crafting alternative compensation models for NRSROs.[11] The GAO notes that this framework could be used by the Commission to "evaluate current proposals for compensating NRSROs, develop new proposals, and identify trade-offs among them" in carrying out the study required by Section 939F.[12] Consequently, the Commission requests in Sections II.B and II.C that interested parties use the GAO Framework to evaluate, respectively, the Section 15E(w) System and potential alternatives to that system, including alternatives not identified in this release.[13]

Finally, the Commission notes that 10 credit rating agencies currently are registered as NRSROs, eight of which are registered in the class of credit rating for issuers of asset-backed securities.[14] Based on information disclosed by these eight NRSROs in their most recently updated Form NRSROs, the Commission estimates that approximately 94% of the outstanding credit ratings for structured finance products were determined by the three largest NRSROs (*see* Figure 1 below).[15] The Commission requests that interested parties, in responding to the topics and questions below address, as applicable, the likely impact the proposals would have on the concentration of issuance of credit ratings for structured finance products among NRSROs.

[9] The Commission has received a comment that relates to matters in this solicitation of comment as part of its general request for public input on regulatory initiatives under the Dodd-Frank Act. *See* letter from Anne Simpson of CalPERS dated October 4, 2010. This comment and others relating to credit rating agencies are available at: *http://www.sec.gov/comments/df-title-ix/credit-rating-agencies/credit-rating-agencies.shtml.*

[10] Section 939F(b)(1) requires the Commission to address these matters in carrying out the study. *See* Public Law 111–203 § 939F(b)(1).

[11] *See Securities and Exchange Commission: Action Needed to Improve Rating Agency Registration Program and Performance Related Disclosures,* GAO Report 10–782 (September 2010) ("GAO Report 10–782") at pp. 79–93. As discussed below, the GAO Framework consists of a seven factor test to use in evaluating alternative compensation models for NRSROs. *Id.* The seven factors are: (1) Independence (the ability for the compensation model to mitigate conflicts of interest inherent between the entity paying for the rating and the NRSRO); (2) accountability (the ability of the compensation model to promote NRSRO responsibility for the accuracy and timeliness of their ratings); (3) competition (the extent to which the compensation model creates an environment in which NRSROs compete for customers by producing higher-quality ratings at competitive prices); (4) transparency (the accessibility, usability, and clarity of the compensation model and the dissemination of information on the model to market participants); (5) feasibility (the simplicity and ease with which the compensation model can be implemented in the securities market); (6) market acceptance and choice (the willingness of the securities market to accept the compensation model, the ratings produced under that model, and any new market players established by the compensation model); and (7) oversight (the evaluation of the model to help ensure it works as intended). Section 939E of the Dodd-Frank requires the GAO to conduct a study on alternative means for compensating NRSROs in order to create incentives for NRSROs to provide more accurate credit ratings, including any statutory changes that would be required to facilitate the use of an alternative means of compensation. *See* Public Law 111–203 § 939E. Section 939E further requires the GAO to provide the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 18 months after the date of enactment of the Dodd-Frank Act, a report on the results of the study, including recommendations, if any, for providing incentives to credit rating agencies to improve the credit rating process. *Id.*

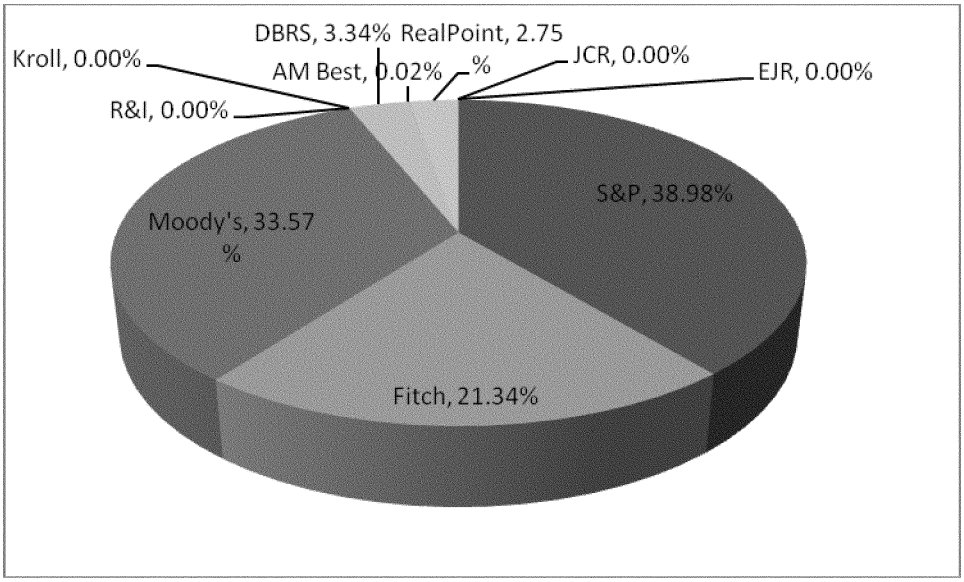
[12] GAO Report 10–782 at pp. 92–93.

[13] In addition, Section 939F requires the Commission to address specific matters with respect to the Section 15E(w) System. *See* Public Law 111–203 § 939F. While these matters may be covered broadly by the GAO Framework, the Commission requests, in Section II.B, that interested parties address these matters through a series of additional targeted questions.

[14] The classes of credit ratings for which an NRSRO can be registered are enumerated in the definition of "nationally recognized statistical rating organization" in Section 3(a)(62) of the Exchange Act: (1) Financial institutions, brokers, or dealers; (2) insurance companies; (3) corporate issuers; (4) issuers of asset-backed securities (as that term is defined in Section 1101(c) of part 229 of Title 17, Code of Federal Regulations, as in effect on the date of enactment of this paragraph); and (5) issuers of government securities, municipal securities, or securities issued by a foreign government. 15 U.S.C. 78c(a)(62).

[15] Item 7 of Form NRSRO requires an NRSRO to provide the approximate number of credit ratings outstanding in each class of credit rating for which the NRSRO is registered.

Figure 1



A. The Credit Rating Process for Structured Finance Products and the Conflicts of Interest Associated With the Issuer-Pay and the Subscriber-Pay Models

Section 939F(b)(1) provides that the Commission, in carrying out the study, shall address the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models.

Request for Comment

The Commission requests comments, proposals, data, and analysis to assist in analyzing the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models. In addition, the Commission requests comments, proposals, data, and analysis in response to the following questions:

1. Describe the processes by which an NRSRO determines an initial credit rating for a structured finance product and, thereafter, monitors that credit rating.[16] If the processes differ based on the type of structured finance product (*e.g.,* a residential mortgage backed security ("RMBS"), a commercial mortgage-backed security ("CMBS"), a collateralized debt obligation ("CDO"), a collateralized loan obligation ("CLO"), an asset backed security collateralized by credit card receivables, auto loans, auto leases, dealer floor plan financing, student loans, consumer loans, consumer leases, equipment loans, equipment leases, or other similar financial assets ("other ABS"), an issuance by an asset-backed commercial paper conduit ("ABCP"), or any other structured finance product), describe the different processes and provide any supporting data and analysis. In describing the processes for these asset classes, interested parties are encouraged to describe any strengths or weaknesses of such processes. Responses should include:

a. A description of the process by which NRSROs are compensated for determining initial credit ratings for structured finance products and for ongoing monitoring of those ratings.

b. A description of the data collection phase of the process for determining and monitoring credit ratings for structured finance products, including: The types of data collected; the sources from which the data is obtained; whether, and, if so how, the data is validated; whether the data is public or non-public; and how, if at all, the data is captured in the NRSRO's systems.

c. A description of the analytical phase of the process for determining and monitoring credit ratings for structured finance products, including the types of analyses performed (*e.g.,* cash flow, sensitivity, loss, and stress analysis).

d. A description of the process for approving and publishing a credit rating for a structured finance product, including the steps that could lead to the modification of the credit rating before it is published (*e.g.,* an issuer "appeal" process).

e. A description of how the processes identified above and any other processes relating to determining and monitoring of structured finance products (including absent or missing process steps or other process-related weaknesses) contributed, if at all, to the performance of credit ratings for structured finance products leading up and during the financial crisis. If process-related weaknesses contributed to the poor performance of credit ratings for structured finance products, describe whether and, if so, how those weaknesses have been addressed.

2. Provide data on the number of credit ratings for structured finance products initially determined by each NRSRO each year for the last ten years or identify sources of information where that data can be located. If possible, provide data for each asset class of structured finance products identified above.

3. Describe the potential conflicts of interest in the issuer-pay model in rating structured finance products. For example, in what ways, if any, does the issuer, underwriter, or sponsor ("arranger") of the structured finance product paying the NRSRO to determine the credit rating create conflicts of interest? What are the potential impacts on the NRSRO and the credit ratings issued from these conflicts of interest? Also, compare the potential conflicts in rating structured finance products with the potential conflicts in rating other classes of obligors, securities, or money

[16] In responding to the questions below about processes, interested parties are encouraged to use flow charts, if appropriate, to illustrate the processes described in responses, including using visual channels ("swim lanes") to identify NRSRO resources (*e.g.,* entities, departments, personnel) involved or used in each step of the process and the interactions between NRSRO personnel and internal and external parties during each step in the process.

market instruments, such as issuers that are financial institutions, non-financial corporations, insurance companies, and governments and municipalities. In this regard, does the concentration of underwriters and sponsors of structured finance products potentially make any conflicts more acute in this class of credit ratings? Does having a large number of clients reduce risk that a single client could unduly influence the NRSRO? In addition, are the potential conflicts of interest more acute in terms of rating certain types of structured finance products as compared with other types of structured finance products? For example, do certain types of structured finance products account for a larger percentage of revenues to NRSROs than other types of products in today's market and the market as it existed prior to the credit crisis?

4. Is there empirical data, studies, or other information that the issuer-pay conflict of interest influenced credit ratings issued by NRSROs? If so, identify and describe any such data, studies, or other information. For example, is there empirical data, studies, or other information that initial credit ratings for structured finance products determined by NRSROs operating under the issuer-pay model are higher than initial credit ratings determined by NRSROs operating under the subscriber-pay model? If so, identify and describe any such data, studies, or other information. In addition, if it can be demonstrated that conflicts influenced the credit ratings for structured finance products, is there empirical data, studies, or other information that market participants understood the impact, by for example, pricing structured finance products differently than other types of securities or money market instruments with identical ratings? If so, identify and describe any such data, studies, or other information.

5. Describe any actions that NRSROs have taken or internal controls that NRSROs have in place, or could take or put in place, to mitigate conflicts of interests in the issuer-pay model.

6. Describe the potential conflicts of interest in the subscriber-pay model in rating structured finance products. Subscriber-paid credit ratings commonly are not made available for free (and, consequently, not broadly disseminated to the marketplace). What impact, if any, does this have on market participants' ability to detect conflicts of interest? In addition, address how the interests of subscribers may create potential incentives to unduly influence an NRSRO in determining a credit rating? For example, does a subscriber's investing limitations (*e.g.,* a subscriber may only invest in structured finance products that are rated above a certain level in the rating scale of an NRSRO or may have a long or short position that could produce gains or losses depending on how a product is rated) create conflicts of interests? If so, in what manner and to what extent? Also, do subscriber-paid NRSROs have individual subscribers that account for a material portion of their annual revenues? For example, a subscriber could be a large financial institution that purchases multiple data feeds (subscriptions) to the NRSRO's credit ratings and analysis. If so, does this create a concentrated revenue source that may make the subscriber-paid conflict more acute, similar to the concentration of structured finance sponsors in the issuer-paid context? Also address whether the diversity of interest among the subscribers mitigates the possibility that a single subscriber can unduly influence ratings? For example, is this conflict mitigated to the extent that different subscribers may have different interests with respect to how a particular security is rated?

7. Is there empirical data, studies, or other information that the subscriber-pay conflict of interest influenced credit ratings issued by NRSROs? If so, identify and describe any such data, studies, or other information.

8. Describe any actions that NRSROs have taken or internal controls that NRSROs have in place, or could take or put in place, to mitigate the conflicts of interests in the subscriber-pay model.

9. Compare the types and degree of conflicts of interest presented by the issuer-pay and subscriber-pay models.

10. Does reputational risk mitigate potential conflicts of interest in the credit rating industry? If so, describe how? If not, describe why. In responding to these questions concerning reputational risk, identify and describe any supporting empirical data, studies, or other information.

11. NRSROs as such did not become subject to registration and oversight requirements until June 2007.[17] Given that much of the activity relating to the rating of RMBS and CDOs linked to subprime mortgages occurred prior to that date, describe if, and how the registration and oversight requirements have mitigated potential conflicts of interest in the rating of structured finance products? For example, Section 15E of the Exchange Act and the Commission's rules require NRSROs, among other things, to disclose and manage conflicts of interest and, in some cases, establish absolute prohibitions against having certain conflicts of interest.[18] In addition, the goal of the Credit Rating Agency Reform Act of 2006—which established a registration and oversight program for NRSROs through self-executing provisions added to the Exchange Act and implementing rules adopted by the Commission under the Exchange Act as amended by the Rating Agency Act of 2006—was to improve ratings quality by fostering accountability, transparency, and competition in the credit rating industry. Is there empirical data, studies, or other information that the measures in Section 15E of the Exchange Act and the Commission's rules have or have not mitigated conflicts of interest in rating structured finance products? If so, identify and describe any such data, studies, or other information.

12. Would government efforts to reduce investor reliance on credit ratings such as through provisions in Sections 939 and 939A of the Dodd-Frank Act mitigate the potential conflicts of interest in the rating of structured finance products? If so, how? Would the Section 15E(w) System have the potential to increase or mitigate the impact of other efforts to reduce investor reliance on credit ratings?

13. Describe the benefits of the current process for determining credit ratings for structured finance products. For example, what are the incentives under the current processes to produce accurate credit ratings? In addition, are there benefits in allowing the arranger to select the NRSRO to determine a credit rating for a structured finance product? For example, do arrangers select NRSROs based on their knowledge of which NRSROs investors will accept as issuing credible credit ratings? In addition, do arrangers select NRSROs based on their knowledge of which NRSROs have the resources, capacity, and technical competence to determine credit ratings for the structured finance product they are intending to bring to market, or, do arrangers select an NRSRO because they believe it will give them the highest rating?

14. The Section 15E(w) System would apply only to structured finance products. What are the differences, if any, between structured finance products and other products NRSROs rate? Do these differences warrant a

[17] *See* the Credit Rating Agency Reform Act of 2006 (Pub. L. 109–291 (2006)); *see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 55857 (June 5, 2007), 72 FR 33564 (June 18, 2007).

[18] *See, e.g.,* 15 U.S.C. 78o–7(h), 17 CFR 240.17g–5, and Exhibit 6 to Form NRSRO (17 CFR 249b.300).

separate system for assigning credit ratings to NRSROs? If so, why?

B. The Section 15E(w) System

The Section 15E(w) System, among other things, would require the Commission to: (1) Establish a Credit Rating Agency Board ("CRA Board"), which would be an SRO; (2) select the initial members of the CRA Board; and (3) establish a schedule to ensure that the CRA Board begins assigning qualified NRSROs ("Qualified NRSROs") to provide initial ratings not later than one year after the selection of the members of the CRA Board.[19] A Qualified NRSRO would be an NRSRO that the CRA Board determines to be qualified to issue initial credit ratings with respect to one or more categories of structured finance products.[20]

An issuer that seeks an initial credit rating for a structured finance product would be prohibited from requesting such a rating from an NRSRO and, instead, be required to submit a request for the initial credit rating to the CRA Board.[21] The CRA Board would select a Qualified NRSRO to provide the initial credit rating to the issuer.[22] A Qualified NRSRO selected to determine an initial credit rating could refuse to accept a particular request by notifying the CRA Board of such refusal, and submitting to the CRA Board a written explanation of the refusal.[23] The CRA Board then would select a different Qualified NRSRO to determine the initial credit rating.[24] Qualified NRSROs would be able to determine fees unless the CRA Board determines it is necessary to issue rules on fees.[25] If rules are deemed necessary, a Qualified NRSRO would be required to charge an issuer a reasonable fee as determined by the Commission.[26]

The CRA Board would be required to prescribe rules by which it evaluates the performance of each Qualified NRSRO, including rules that require, at a minimum, an annual evaluation of each Qualified NRSRO.[27] The CRA Board, in conducting the annual evaluation would be required to consider: (1) The results of an annual examination of the Qualified NRSRO; (2) surveillance of credit ratings conducted by the Qualified NRSRO after the credit ratings are issued, including, how the rated instruments perform, the accuracy of the ratings as compared to the other NRSROs, and the effectiveness of the methodologies used by the Qualified NRSRO; and (3) any additional factors the CRA Board determines to be relevant.[28]

Request for Comment

The Commission requests comments, proposals, data, or analysis that could assist in analyzing the Section 15E(w) System. In addition, the Commission requests comments, proposals, data, and analysis in response to the following questions and, to the extent that responses would differ based on whether the CRA Board is an SRO, a public utility, or private utility, please explain the differences.[29]

1. Identify and describe the benefits of implementing the Section 15E(w) System.

2. Identify and describe the costs of implementing the Section 15E(w) System.

3. Evaluate the Section 15E(w) System using the GAO Framework by addressing the following factors:[30]

a. *Independence*—Address the ability of the Section 15E(w) System to mitigate conflicts of interest between the entity paying for the rating and the NRSRO.[31] To what extent, if any, would the Section 15E(w) System influence the relationship between the NRSRO and the entity paying for the rating? Would the Section 15E(w) System eliminate or mitigate conflict of interests between the entity paying for the rating and the NRSRO? If so, in what ways and to what extent? In addition, what potential conflicts would be created by such a system? What controls, if any would need to be implemented to mitigate these conflicts? In addition, how would the system limit conflicts of interest between users of ratings and the NRSRO, and between issuers and the NRSRO?

b. *Accountability*—Address the ability of the Section 15E(w) System to

[19] *See* subparagraph (2)(A) of the Section 15E(w) Provisions. The CRA Board initially would be composed of an odd number of members selected from the industry, with the total numerical membership of the CRA Board to be determined by the Commission. *See* subparagraph (2)(C)(i) of the Section 15E(w) Provisions. Of the members initially selected to serve on the CRA Board: (1) Not less than a majority of the members would need to be representatives of the investor industry who do not represent issuers; (2) not less than one member would need to be a representative of the issuer industry; (3) not less than one member would need to be a representative of the credit rating agency industry; and (4) not less than one member would need to be an independent member. *See* subparagraphs (2)(C)(ii)(I) through (IV) of the Section 15E(w) Provisions. The initial members of the CRA Board would be appointed to terms of 4 years. *See* subparagraph (2)(C)(i) of the Section 15E(w) Provisions. Prior to the expiration of the terms of office of the initial CRA Board members, the Commission would be required to establish fair procedures for the nomination and election of future members of the Board. *See* subparagraph (2)(C)(iv) of the Section 15E(w) Provisions.

[20] *See* subparagraphs (1)(B) and (3) of the Section 15E(w) Provisions. An NRSRO seeking to become a Qualified NRSRO with respect to a category of structured finance products would need to submit an application to the CRA Board. *See* subparagraphs (3)(A) and (B) of the Section 15E(w) Provisions. The application would need to contain: (1) Information about the institutional and technical capacity of the NRSRO to issue credit ratings; (2) information on whether the NRSRO has been exempted by the Commission from any requirements under Section 15E of the Exchange Act; and (3) any additional information the Board may require. *See* subparagraphs (3)(A)(ii)(I) through (III) of the Section 15E(w) Provisions.

[21] *See* subparagraph (4) of the Section 15E(w) Provisions. An issuer would be permitted to request or receive additional credit ratings for the structured finance product, if the initial credit rating is provided using the CRA Board assignment process. *See* subparagraph (9) of the Section 15E(w) Provisions.

[22] *See* subparagraph (5)(A) of the Section 15E(w) Provisions. The method of selecting the Qualified NRSRO would be based on an evaluation by the CRA Board of a number of alternatives designed to reduce the conflicts of interest that exist under the issuer-pays model, including a lottery or rotating assignment system. *See* subparagraph (5)(B) of the Section 15E(w) Provisions. In addition, in evaluating the selection method, the CRA Board would be required to consider: (1) The information submitted by the Qualified NRSRO in its application to become a Qualified NRSRO regarding the institutional and technical capacity of the Qualified NRSRO to issue credit ratings; (2) an, at least, annual evaluation of the performance of each Qualified NRSRO; (3) formal feedback from institutional investors; and (4) information from items (1) and (2) to implement a mechanism which increases or decreases assignments based on past performance. *See* subparagraph (5)(B)(ii) of the Section 15E(w) Provisions. The CRA Board, in choosing a selection method, would not be able to use a method that allows for the solicitation or consideration of the preferred NRSRO of the issuer. *See* subparagraph (5)(B)(iii) of the Section 15E(w) Provisions.

[23] *See* subparagraph (5)(C)(i) of the Section 15E(w) Provisions.

[24] *See* subparagraph (5)(C)(ii) of the Section 15E(w) Provisions.

[25] *See* subparagraph (8)(B) of the Section 15E(w) Provisions.

[26] *See* subparagraph (8)(A) of the Section 15E(w) Provisions.

[27] *See* subparagraph (7)(A) of the Section 15E(w) Provisions.

[28] *See* subparagraph (7)(B) of the Section 15E(w) Provisions. While the evaluation contemplates an annual examination of the Qualified NRSRO, the Section 15E(w) Provisions do not contain an explicit requirement for the CRA Board to conduct an annual examination of each Qualified NRSRO.

[29] While the Section 15E(w) Provisions would require the Commission to establish a CRA Board that is an SRO, Section 939F expands the possible types of entities that would assign credit ratings to include potentially a public or private utility. Consequently, for the purposes of evaluating the Section 15E(w) Provisions, the Commission requests that interested parties address how the nature of each of these alternative assigning entities (SRO, Public Utility, and Private Utility) might change analysis in the responses to the questions asked below. For the purposes of the questions, the Commission uses the term "CRA Board," however, interested parties should read that term to mean potentially an SRO, public utility, or private utility.

[30] The questions for each factor in the GAO Framework in most cases mirror questions contained in GAO Report 10–782. *See* GAO Report 10–782 at pp. 85–93. Commenters are encouraged to read the relevant sections of GAO Report 10–782 for more details on the reasoning behind these questions and the issues they seek to target and elicit comment on.

[31] *See* GAO Report 10–782 at p. 85 for a broader discussion of this factor in the GAO Framework.

promote NRSRO responsibility for the accuracy and timeliness of credit ratings.[32] Specifically:

i. How would the system create or distort economic incentives for NRSROs to produce quality ratings over the life of a security?

ii. To what extent, if any, would the system create political or other influences that potentially could cause an NRSRO to consider factors other than the credit characteristics of the structured finance product when determining a credit rating for the product?

iii. How would NRSRO performance be evaluated and by whom under the system? For example, would the system rely on market forces or third parties to evaluate performance? Would the system rely on evaluations of performance by the CRA Board that assigns NRSROs to provide ratings? How would "quality" credit ratings be defined and what criteria would be used to assess ratings performance?

iv. When an NRSRO demonstrates poor performance, what would be the economic consequences under the system and who would determine those consequences? For example, how would an NRSRO's compensation or opportunity for future ratings business be linked to ratings performance?

c. *Competition*—Address the extent to which the Section 15E(w) System would create an environment in which NRSROs compete for customers by producing higher-quality ratings at competitive prices.[33] Specifically:

i. In which ways would the system encourage NRSROs to compete? To what extent would the system encourage competition around the quality of ratings, ratings fees, and product innovation? To what extent would NRSROs with higher-quality ratings be rewarded with additional ratings business? For example, once an NRSRO is deemed a qualified NRSRO would it be entitled to a *pro rata* share to all deals brought to the CRA Board based solely on its capacity? Alternatively, would the CRA Board assess the quality of the NRSRO and assign business based on qualitative metrics?

ii. To what extent would the system encourage new entrants and reduce barriers to entry in the industry? Alternatively, to what extent would the system discourage new entrants and increase barriers to entry?

iii. To what extent would the system allow for flexibility in the differing sizes, resources, and specialties of NRSROs?

iv. To what extent would market forces impact ratings fees under the system?

v. To what extent, if any, would the system incentivize NRSROs to compete other than on the basis of the accuracy and quality of their ratings?

d. *Transparency*—Address the accessibility, usability, and clarity of the Section 15E(w) System and the dissemination of information on the program to market participants.[34] Specifically, how clear would the mechanics of the system be to market participants? For example, describe the level of transparency that would exist under the system with respect to: (1) How the NRSRO would obtain ratings business; (2) how ratings fees would be determined; (3) how NRSROs would be compensated; and (4) how the program would link ratings performance to NRSRO compensation or the award of additional business.

e. *Feasibility*—Address the simplicity and ease with which the Section 15E(w) System could be implemented in the securities market.[35] Specifically:

i. Would the system be easily implemented? If not, how difficult would implementing the system be?

ii. Could the system be instituted through existing regulatory or statutory authority or is additional authority needed?

iii. What would be the costs to implement the system and who would fund them?

iv. Which body would administer the system, and would this be an established body? If not, how would it be created?

v. What, if any, infrastructure would be needed to implement the system? What information technology would be required? Which body would be responsible for developing and maintaining it?

vi. What impact would the system have on bringing new issuances to market and trading on the secondary market?

vii. How many NRSROs would be required for the system to function as intended? How would the exit of an NRSRO from the ratings industry affect the system's feasibility? What impact would the system have on the financial viability of an NRSRO?

f. *Market acceptance and choice*—Address the willingness of the securities market to accept the Section 15E(w) System, the credit ratings produced under such a system, and any new market players established by the system.[36] Specifically:

i. What role, if any, would market participants have in selecting NRSROs to produce credit ratings, assessing the quality of credit ratings, and determining NRSRO compensation? More specifically, what would the roles of issuers and investors be in these processes? Where would these roles differ between the Section 15E(w) System and other potential programs and what would be the trade-offs? Would all market participants be likely to accept the credit ratings produced under the Section 15E(w) System? If not, what would be the potential consequences for the securitization market?

ii. What impact, if any, would the system have on each market participant using the credit ratings?

iii. Would market participation need to be mandated, and if so, for which participants?

iv. To what extent, if any, might market participants discount the quality and reliability of a credit rating based on the system's approach to selecting which Qualified NRSRO would rate a structured finance product?

g. *Oversight:* Address how the Section 15E(w) System would be evaluated to help ensure that it works as intended.[37] Specifically:

i. Would the system provide for an independent internal control function?

ii. What external oversight (from a regulator or third-party auditor) would the system provide to ensure it is working as intended? In what ways would the CRA Board be held accountable for its decisions?

iii. If third-party auditors would provide external oversight with respect to the system, how would they be selected, what would be their reporting responsibilities, and to whom would they report?

iv. Who would compensate the regulatory or third-party auditor for auditing the system? How would the compensation for the regulator/auditor

[32] *See* GAO Report 10–782 at pp. 85–86 for a broader discussion of this factor in the GAO Framework.

[33] *See* GAO Report 10–782 at pp. 86–87 for a broader discussion of this factor in the GAO Framework.

[34] *See* GAO Report 10–782 at p. 88 for a broader discussion of this factor in the GAO Framework. The GAO notes that transparency in this context does not refer to the transparency or disclosure regime of the NRSROs but is specific to the transparency of the compensation model only. GAO Report 10–782 at p. 88, Footnote 112.

[35] *See* GAO Report 10–782 at pp. 88–90 for a broader discussion of this factor in the GAO Framework.

[36] *See* GAO Report 10–782 at pp. 90–91 for a broader discussion of this factor in the GAO Framework.

[37] *See* GAO Report 10–782 at pp. 92–93 for a broader discussion of this factor in the GAO Framework.

be determined? How would it be funded?

v. To what extent would a third-party auditor allow flexibility in oversight to accommodate NRSROs of different sizes?

4. *Assessment of potential mechanisms for determining fees for NRSROs.* Section 939F(b)(2)(A) requires that the Commission's study address the feasibility of establishing a system in which a CRA Board assigns NRSROs to determine the credit ratings for structured finance products, including an assessment of the potential mechanisms for determining fees for NRSROs. Consequently, to the extent not addressed in responses to the questions above with respect to the GAO Framework, the Commission requests comment, proposals, data, and analysis on the following:

a. Under the Section 15E(w) System, the CRA Board would be required to assign which NRSRO (from a pool of Qualified NRSROs) is employed to determine the initial credit rating for a structured finance product. Consequently, would the fee a Qualified NRSRO could charge the arranger need to be set by rule? For example, each Qualified NRSRO would be assured of being assigned a percentage of the credit rating business brought to the CRA Board by issuers. Depending on capacity, certain NRSROs may be assigned to determine more credit ratings than other NRSROs. Therefore, in the absence of competitive market forces, would Qualified NRSROs charge unreasonably high fees? If so, what mechanism could be used to determine the reasonable fee? Should, for example, arrangers be able to reject a Qualified NRSRO that charges above market fees? Moreover, would the amount of the fee need to depend on the type of structured finance product being rated or the complexity of the structured finance product? For example, do NRSROs typically charge different fees depending on whether the structured finance product is, for example, an RMBS, a CMBS, a CDO, a CLO, other ABS, an issuance of ABCP, or another type of structured finance product? If so, would it be appropriate to set different fees on each type of structured finance product? In addition, how would fees be determined for new product types? Furthermore, do the fees charged by NRSROs depend on their business models? If so, how would this impact the determination of what constitutes a reasonable fee? In addition, would the amount of the fee need to depend on the complexity of a structured finance product, independently of its type? Finally, do the fees charged by NRSROs depend on the policies and procedures they use to determine credit ratings? If so, how would this impact the determination of what constitutes a reasonable fee?

b. In determining the reasonableness of fees, could the fees charged by NRSROs and other credit rating agencies to rate structured finance products outside the context of the assignment process serve as a benchmark? For example, under the Section 15E(w) System, the issuer, after obtaining an initial credit rating through the assignment process, would be able to obtain additional credit ratings not assigned by the CRA Board. Would the fee charged for these unassigned credit ratings for structured finance products provide a basis to set the fees used for assigned credit ratings? Alternatively, would the fees NRSROs charge to determine other classes of credit ratings such as for financial institutions, corporate issuers, insurance companies, and government issuers provide a basis to set the fees used for the assignment process? How do the fees charged to rate these types of obligors, securities, and money market instruments differ from the fees charged to rate structured finance products?

c. How could the fee setter determine and, thereafter, monitor whether the fee established by rule constitutes an "above market fee" that over-compensates the Qualified NRSRO (potentially imposing unfair costs on issuers that might be passed on to investors) or under-compensates the NRSRO (potentially causing it to devote less resources to determining the credit rating with possible consequences in terms of the quality of the credit rating)?

d. What would be the impact if the fee set by rule was viewed as too low by NRSROs? For example, would NRSROs refuse to apply to be Qualified NRSROs? Or, would too few NRSROs apply to be Qualified NRSROs to implement the program? How would the fee setter determine the appropriate level of fee to attract a sufficient number of NRSROs to the program without imposing greater costs on issuers than would be the case when fees are determined through a competitive process?

e. Could setting fees by rule have negative impacts on the quality of credit ratings? For example, could it reduce incentives for NRSROs to compete based on producing accurate credit ratings?

f. Are there instances where SROs, public utilities, or private utilities set fees between a company and an entity providing a service to the company that could serve as models for how to set reasonable fees for purposes of assigning credit ratings business? If so, describe how the mechanisms these entities use to set reasonable fees could apply in the assigned credit rating context.

g. Provide any other comments, proposals, data, or analysis that could assist in assessing potential mechanisms determining how to set reasonable fees for assigned structured finance credit ratings.

5. *Appropriate methods for paying fees to the NRSRO.* Section 939F(b)(2)(B) requires the Commission's study to address the feasibility of establishing a system in which a CRA Board assigns NRSROs to determine the credit ratings for structured finance products, including, an assessment of appropriate methods for paying fees to the NRSROs. Consequently, to the extent not addressed in responses to the questions above with respect to the GAO Framework, the Commission requests comment, proposals, data, and analysis on the following:

a. Under the 15E(w) System, how should a fee be provided to the Qualified NRSRO selected to determine an initial credit rating for an arranger? For example, should the arranger provide the fee to the CRA Board, which, in turn, would provide the funds to the NRSRO? Would it be appropriate for the CRA Board to receive and disburse funds in this manner? For example, the CRA Board acting as a conduit for the funds could create potential risk in terms of appropriately maintaining custody of the funds, accounting for the funds, and allocating the funds to the Qualified NRSROs. In addition, it would require the CRA Board to have sophisticated operational capabilities in terms of having access to systems to process financial transactions involving hundreds of thousands of dollars between potentially hundreds of arrangers of structured finance products and the Qualified NRSROs. For these reasons, having the CRA Board serve as temporary custodian of the funds paid by arrangers to Qualified NRSROs could substantially increase the costs of operating the CRA Board. Furthermore, if the CRA Board became insolvent, would the arranger or the Qualified NRSRO have a claim for the funds? Would this depend on how much work the NRSRO had performed in terms of determining the initial credit rating? In this regard, should the CRA Board provide the funds to the Qualified NRSRO when the Qualified NRSRO is selected to determine the credit rating or when the Qualified NRSRO issues the initial credit rating? What is the current practice in terms of the timing when arrangers pay NRSROs for determining initial credit ratings? In addition, how

long is the period between the time an NRSRO is hired to determine an initial credit rating and the time the credit rating is issued? Does the length of time depend on the type of structured finance product being rated? If so, describe the different time periods.

b. Alternatively, should the arranger pay the fee directly to the selected Qualified NRSRO? If so, would this potentially negatively impact the goal of the Section 15E(w) System to address the conflict of interest arising from the issuer-pay model?

c. Should the CRA Board allocate the fee to determine the initial credit rating to the selected Qualified NRSRO over the term of the structured finance product? For example, should 50% of the fee be paid up-front and the balance of the fee be distributed periodically until all the principal and interest outstanding on the structured finance product is paid? Moreover, if the structured finance product goes into default, would it be appropriate to withhold the unpaid balance of the fee from the NRSRO? Would the appropriateness of withholding the fee depend on the initial rating? For example, if the initial rating is in one of the highest categories (*e.g.,* AAA or AA) and the bond defaults, would it be more appropriate to withhold the fee from the NRSRO than if the initial rating were in a lower category (*e.g.,* BB or CCC)? If it would be appropriate to withhold the unpaid balance of the fee in the case of default, what entity would be legally entitled to the unpaid balance of the fee? Would it be appropriate to return the unpaid balance to the issuer, underwriter, or sponsor of the structured finance product? Would it be appropriate to provide the unpaid balance to investors in the structured finance product? The Commission notes that the fees paid to rate structured finance products are a small fraction of the principal amount invested in an issuance of a structured finance product. Consequently, would a requirement to return the unpaid amount to investors create an expectation that the investors would be compensated for losses suffered if the structured finance product defaults? The Commission notes that a program of allocating the fee over the term of the structured finance product might require the CRA Board to serve as the conduit for the funds transferred from the arrangers to the Qualified NRSROs, raising the issues about custodial responsibility and attendant costs discussed above.

d. How should fees for performing surveillance of credit ratings be addressed under the Section 15E(w) System? For example, should the Qualified NRSRO selected to determine the initial credit rating be allowed to negotiate a surveillance fee directly with the arranger and receive such a fee directly from the arranger? Alternatively, should the fee to determine the initial credit rating include an amount to cover the cost of surveillance? If so, should the CRA Board disburse the surveillance fee to the Qualified NRSRO? If so, when should that distribution take place? In addition, if the Section 15E(w) System only applies to the fee for the initial credit rating, what issues would arise in terms of finding an NRSRO to provide surveillance? For example, if the selected Qualified NRSRO only agreed to provide the initial credit rating, what would happen if the arranger could not find an NRSRO to perform surveillance for a reasonable fee?

e. Provide any other comments, proposals, data, or analysis that could assist in assessing appropriate methods for paying fees to NRSROs.

6. *Extent to which the creation of such a system would be viewed as the creation of moral hazard by the Federal Government.* Section 939F(b)(2)(C) requires the Commission's study to address the feasibility of establishing a system in which a CRA Board assigns NRSROs to determine the credit ratings for structured finance products, including, an assessment of the extent to which the creation of such a system would be viewed as the creation of moral hazard by the Federal Government. Consequently, to the extent not addressed in responses to the questions above with respect to the GAO Framework, the Commission requests comment, proposals, data, and analysis on the following:

a. Would investors and other users of credit ratings view credit ratings for structured finance products determined through the CRA Board assignment process as more reliable than other credit ratings and, consequently, perform less analysis themselves before investing in a structured finance product? For example, under the Section 15E(w) System, the CRA Board would determine whether an NRSRO is qualified to issue initial credit ratings with respect to one or more categories of structured finance products. In addition, the CRA Board would be required to conduct an annual evaluation of a Qualified NRSRO to consider, among other things, (1) the surveillance of credit ratings conducted by the Qualified NRSRO after the credit ratings are issued, including, how the rated instruments perform; (2) the accuracy of the ratings as compared to the other NRSROs; and (3) the effectiveness of the methodologies used by the Qualified NRSRO. Would investors view the CRA Board as providing a "stamp of approval" on, or an endorsement of, the credit ratings determined through the assignment process? If the Section 15E(w) System would increase investor reliance on credit ratings, what potential impact would such a consequence have on government efforts to reduce investor reliance on credit ratings such as through provisions in Sections 939 and 939A of the Dodd-Frank Act? For example, would the system cause investors and other users of credit ratings to increase their reliance credit ratings for structured finance products? If so, how much do investors and other users of credit ratings currently rely on credit ratings for structured finance products and how might that level of reliance change if the Section 15E(w) System was implemented?

b. Would the CRA Board, as a governmental or quasi-governmental entity, be susceptible to political pressure in terms of its assignment of credit ratings to Qualified NRSROs or its other responsibilities? In addition, would a Qualified NRSRO assigned to determine a credit rating be susceptible to political pressure to issue a credit rating at a level favored by the CRA Board in order to obtain additional assignments from the CRA Board?

c. Provide any other comments, proposals, data, or analysis that could assist in assessing the extent to which the creation of such a system would be viewed as the creation of moral hazard by the Federal Government.

7. *Constitutional or other issues concerning the establishment of such a system.* Section 939F(b)(2)(D) requires the Commission's study to address the feasibility of establishing a system in which a CRA Board assigns NRSROs to determine the credit ratings for structured finance products, including, an assessment of any constitutional or other issues concerning the establishment of such a system. Consequently, to the extent not addressed in responses to the questions above with respect to the GAO Framework, the Commission requests comment, proposals, data, and analysis on the following:

a. In terms of operational feasibility, what is the likelihood that the number of NRSROs applying to be treated as Qualified NRSROs would be sufficient to achieve the goals of the Section 15E(w) System? For example, how many NRSROs would need to be determined to be Qualified NRSROs for the system to operate as envisioned? What would

be the metric or process for measuring or determining the number of NRSROs necessary for the system to function? For example, how would the system match the number of structured finance product issuances with the necessary capacity, resources, and expertise to rate the products in a competent and timely manner? What would be the implications for the securitization markets if an insufficient number of NRSROs are determined to be Qualified NRSROs (either because not enough applied or because the applicants did not satisfy the criteria to be treated as Qualified NRSROs)?

b. In terms of operational feasibility, what level of staffing would be necessary for the CRA Board to carry out its responsibilities? In addition, what would be the necessary expertise and qualifications of the CRA Board members and staff to carry out the CRA Board's responsibilities? How could the CRA Board ensure that it has the necessary staffing and that its staff has the necessary expertise and qualifications?

c. In terms of operational feasibility, could the process by which the CRA Board selects a Qualified NRSRO materially delay the issuance of a structured finance product and diminish the quality of the credit ratings determined through the assignment process? For example, how would the CRA Board monitor which Qualified NRSROs have current capacity to undertake the determination of a credit rating sought by an arranger? If the CRA Board selects a Qualified NRSRO that refuses to rate the structured finance product because, for example, it has reached its capacity to determine initial credit ratings, how long would it take for the CRA Board to select another Qualified NRSRO? In addition, how would the CRA Board address situations where a Qualified NRSRO misjudges its ability to undertake the assignment to determine an initial credit rating? For example, the Qualified NRSRO, in order to increase revenues, might agree to more assignments than it is capable of handling or to an assignment to rate a type of structured finance product it does not have the technical expertise to rate. Could this circumstance potentially put the arranger in a situation where it must wait far longer to obtain a credit rating than would normally be the case because the Qualified NRSRO spends time attempting to determine the initial credit rating before ultimately refusing the assignment? Moreover, could the quality of the credit ratings determined through the assignment process be compromised because the Qualified NRSRO devotes fewer resources to rating structured finance products in order to accept more assignments or accepts an assignment to rate a type of structured finance product for which it lacks adequate technical expertise? If so, how could these issues be addressed?

d. In terms of operational feasibility, how would the CRA Board under the Section 15E(w) System perform the annual evaluation of each qualified NRSRO? Would an annual evaluation be sufficient to determine which Qualified NRSROs are selected on an on-going basis to determine initial credit ratings? For example, what if a Qualified NRSRO undergoes material changes between evaluations that would impact its ability to determine credit ratings? How would this be brought to the CRA Board's attention?

e. In terms of market effects, how would the Section 15E(w) System impact the securitization markets? For example, how would it impact the origination of residential mortgages, commercial mortgages, commercial loans, credit card receivables, auto loans, auto leases, dealer floor-plans, student loans, consumer loans, consumer leases, equipment loans, equipment leases, asset-backed commercial paper, or any other financial assets that are securitized? For example, would the uncertainty over which Qualified NRSRO would be selected to determine the initial credit rating or when the initial credit rating might be issued cause originators to finance the origination of these assets through means other than securitizing them? If so, what would be the implications for these markets? For example, would it cause originators to extend less credit? If so, how would this impact the economy? Alternatively, would the 15E(w) System give investors greater confidence in the integrity of credit ratings for structured finance products? Would that increased confidence facilitate the flow of credit?

f. In terms of legal feasibility, would the establishment of a CRA Board to assign credit ratings for structured finance products raise legal issues under the U.S. Constitution? Please provide legal analysis explaining any such issues.

g. In terms of legal feasibility, would the role of the Commission in overseeing the CRA Board raise legal issues? Please provide legal analysis explaining any such issues?

h. In terms of legal feasibility, do the securities laws provide the Commission with authority to implement the Section 15E(w) System? Interested parties who believe existing authority is sufficient to implement such a system should provide legal analysis supporting their conclusions, including identifying relevant statutory authority. Interested parties who believe existing authority is not sufficient to implement such a system should provide legal analysis supporting their conclusions. In addition, interested parties are encouraged to recommend statutory amendments that could provide the authority necessary for the Commission to implement such a system.

i. In terms of the potential to mitigate conflicts, would a Qualified NRSRO assigned to determine a credit rating for a structured finance product under the Section 15E(w) System potentially have the incentive to provide a favorable credit rating to obtain future business from arrangers to determine credit ratings outside the process of the Section 15E(w) System? The Commission notes that under the Section 15E(w) System an arranger can obtain additional credit ratings from NRSROs after obtaining an initial credit rating through the CRA Board selection process. If this potential conflict would be in the Section 15E(w) System, how could it be addressed? Would the annual evaluations of the Qualified NRSROs by the CRA Board, as required under the Section 15E(w) Provisions, identify an NRSRO that was unduly influenced by this conflict?

j. In terms of the potential to mitigate conflicts, would an arranger be able to select more favorable credit ratings ("rating shop") notwithstanding the implementation of the Section 15E(w) System? If so, how?

k. In terms of the potential to mitigate conflicts, to what extent, if any, might market participants be able to create securities or money market instruments, or otherwise finance the assets underlying or linked to a structured finance product, so that the transaction does not fit within the definition of "structure finance product" and thereby avoid having to submit the deal to Section 15E(w) System? In addition, how would it be determined whether products fall within the definition of "structured finance product"?

l. Provide any other comments, proposals, data, or analysis that could assist in assessing Constitutional or other issues concerning the establishment of such a system.

8. *Range of metrics that could be used to determine the accuracy of credit ratings.* Section 939F(b)(3) requires that the Commission's study address the range of metrics that could be used to determine the accuracy of credit

ratings.[38] Consequently, to the extent not addressed in responses to the questions above with respect to the GAO Framework, the Commission requests comment, proposals, data, and analysis on the following:

a. How should the performance of credit ratings be measured in terms of accuracy?

b. Section 3(a)(60) of the Exchange Act defines the term "credit rating" to mean "an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments."[39] How should the term "accuracy" as applied to credit ratings be defined? For example, could there be a standard definition of "accuracy" that could be applied across all credit rating agencies that determine credit ratings for structured finance products? How feasible is such a definition given the differences in the procedures and methodologies NRSROs use to determine credit ratings and the ratings scales they use to denote relative creditworthiness? For example, some NRSROs may employ highly quantitative models under which the credit ratings are particularly sensitive to real-time information and, therefore, adjust frequently. Other NRSROs may employ qualitative approaches that result in credit ratings that remain more stable.

c. Could the definition of "accuracy" be based on whether the structured finance product goes into default? For example, defaults may be very rare for some classes of structured finance products. For these classes, how would a definition of "accuracy" based on default work?

d. Depending on how an interested party defines "accuracy," what metrics could be used to measure accuracy? For example, could transition and default rates be used to measure accuracy? With respect to transition and default rates, how would their effectiveness in measuring the "accuracy" of the credit ratings be impacted by favorable or benign economic conditions? For example, in favorable economic conditions the ratings for structured finance products may remain stable and the number of defaults may be statistically insignificant.

e. Over what time horizons should the accuracy of credit ratings be measured? For example, should it be measured over a period of years, or the life of the securities? Should ratings be evaluated for accuracy at specific points in time? If accuracy should be evaluated at specific points in time, should those times relate to events experienced by the security, or be unrelated to the security (*e.g.,* calendar-related only)? Could using a specific time horizon distort how Qualified NRSROs determine credit ratings? For example, if the time horizon is longer, could Qualified NRSROs determine credit ratings at lower levels in the their rating scales in order to lessen the chance that the credit rating would be downgraded during the period? Alternatively, if the time horizon is short, could Qualified NRSROs be more prone to determine credit ratings at higher levels in their rating scales?

f. Could the method of measuring accuracy create disincentives for Qualified NRSROs to determine credit ratings for certain types of products? For example, could Qualified NRSROs refuse to rate structured finance products that are inherently more volatile in terms of potential credit risk? If so, how could this impact capital formation?

g. Provide any other comments, proposals, data, or analysis that could assist in assessing the range of metrics that could be used to determine the accuracy of credit ratings.

C. Alternative Means for Compensating NRSROs That Would Create Incentives for Accurate Credit Ratings

Section 939F(b)(4) requires the Commission's study to address alternative means for compensating NRSROs that would create incentives for accurate credit ratings. Consequently, the Commission requests interested parties to provide comments, proposals, data, and analysis on any potential alternatives to the Section 15E(w) System. In this regard, several models that would establish alternative means for compensating NRSROs are identified below.[40] The Commission requests comment on these models. In addition, the Commission requests comment on models not identified below that an interested party believes would achieve the objective of creating incentives for accurate credit ratings. Any such model should be described and analyzed using the GAO Framework.

1. The Rule 17g–5 Program

The Commission has adopted requirements codified in Rule 17g–5 designed to create a mechanism for an NRSRO that is not hired to determine a credit rating for a structured finance product to nonetheless obtain the same information the hired NRSRO receives from the arranger to determine the initial credit rating and at the same time such information is provided to the hired NRSRO (the "Rule 17g–5 Program").[41] The goal is to create a means for an NRSRO not hired to rate the structured finance product to nonetheless determine an initial credit rating at the same time the hired NRSRO determines an initial credit rating and conduct surveillance on that credit rating along with the hired NRSRO.[42] In other words, similar to the goal of Section 939F, the Rule 17g–5 Program is intended to prevent the arranger of the structured finance product from selecting the NRSRO or NRSROs that *exclusively* can determine the initial credit rating for the structured finance product.[43] When adopting the Rule 17g–

[38] As noted above the CRA Board would be required to evaluate "the accuracy of the ratings provided by the qualified [NRSRO] as compared to other [NRSROs]." *See* subparagraph (7)(B)(ii)(II) of Section 15E(w) Provisions.

[39] *See* 15 U.S.C. 78c(a)(60).

[40] Aside from the Rule 17g–5 Program, the alternatives identified below are drawn from GAO Report 10–782 at pp. 79–84. The first alternative in the GAO Report (the "Random Selection Model") is not identified below because it is similar to the Section 15E(w) System. Commenters are encouraged to read the relevant sections of GAO Report 10–782 for more details about these proposed alternative payment models and their goals and objectives.

[41] 17 CFR 240.17g–5(a)(3) and (b)(9). The Commission notes that it granted a conditional exemption to NRSROs from Rule 17g–5(a)(3) with respect to credit ratings where: (1) The issuer of the structured finance product is a non-U.S. person; and (2) the NRSRO has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions in the structured finance product after issuance, only in transactions that occur outside the U.S. These conditions are designed to confine the exemption's application to credit ratings of structured finance products issued in, and linked to, financial markets outside the U.S. See Exchange Act Release 62120 (May 19, 2010) 75 FR 28825 (May 24, 2010); *see also* Exchange Act Release 63363 (Nov. 23, 2010) 75 FR 73137 (Nov. 29, 2010).

[42] The Commission noted when adopting the Rule 17g–5 Program that "when an NRSRO is hired to rate a structured finance product, some of the information it relies on to determine the rating is generally not made public. As a result, structured finance products frequently are issued with ratings from only one or two NRSROs that have been hired by the arranger, with the attendant conflict of interest. The [Rule 17g–5 Program is] designed to increase the number of credit ratings extant for a given structured finance product and, in particular, to promote the issuance of credit ratings by NRSROs that are not hired by the arranger." *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63844 (Dec. 4, 2009).

[43] *See* Public Law 111–203 § 939F(d) ("After submission of the report under subsection (c), the Commission shall, by rule, as the Commission determines is necessary or appropriate in the public interest or for the protection of investors, establish a system for the assignment of [NRSROs] to determine the initial credit ratings of structured finance products, in a manner that prevents the issuer, sponsor, or underwriter of the structured

Continued

5 Program, the Commission stated that it was designed to make it more difficult for arrangers to exert influence over the NRSROs they hire because any inappropriate rating could be exposed to the market through the unsolicited ratings issued by NRSROs not hired to rate the structured finance product.[44] The Commission also notes that investors seeking a credit rating from an NRSRO not hired to rate the structured finance product can pay an NRSRO of their choosing to rate the structured finance product using the Rule 17g–5 Program. Thus, it provides a mechanism for investors to select an NRSRO to rate a structured finance product they are considering purchasing or have purchased.

The Rule 17g–5 Program operates by requiring an NRSRO hired to determine initial credit ratings for structured finance products to maintain a password-protected Internet Web site containing a list of each such structured finance product for which it currently is in the process of determining an initial credit rating.[45] The list must be in chronological order and identify the type of security or money market instrument, the name of the issuer of the structured finance product, the date the rating process was initiated, and the Internet Web site address where the arranger of the structured finance product represents that information provided to the hired NRSRO can be accessed by other NRSROs.[46] The hired NRSRO must provide free and unlimited access to the Web site to any other NRSRO that provides it with a copy of a certification stating, among other things, that it is accessing the Web site solely for the purpose of determining or monitoring credit ratings.[47]

In addition, the hired NRSRO must obtain a written representation from the arranger of the structured finance product that the NRSRO can reasonably rely on.[48] The arranger must represent, among other things, that it will maintain a password-protected Internet Web site that other NRSROs can access.[49] Further, the arranger must represent that it will post on this Web site all information the arranger provides to the hired NRSRO, or contracts with a third party to provide to the hired NRSRO, for the purpose of determining the initial credit rating and undertaking credit rating surveillance.[50] The arranger also must represent that this information will be posted to the Internet Web site at the same time such information is provided to the hired NRSRO.[51]

The Commission notes that the Rule 17g–5 Program is but one aspect of the current registration and oversight program for NRSROs designed to address conflicts of interest, including provisions designed to promote transparency and competition. Among other things, NRSROs currently are required to establish, maintain, and enforce written policies and procedures reasonably designed to address conflicts of interest that can arise from their business.[52] In addition, NRSROs are required to disclose the types of potential conflicts of interest relating to the issuance of credit ratings and the policies and procedures they have established to address those conflicts of interest.[53] Moreover, NRSROs are prohibited from having conflicts of interest unless they have disclosed them and established policies and procedures reasonably designed to address them and, with respect to some conflicts, are prohibited from having the conflict in all circumstances.[54] Furthermore, NRSROs are required to disclose information about the performance of their credit ratings and about their procedures and methodologies for determining credit ratings.[55] These requirements are designed to mitigate potential conflicts of interest, and allow market participants to assess the quality of an NRSRO's ratings process and the ability of the NRSRO to address potential conflicts. The goal is to improve ratings quality by fostering accountability, transparency, and competition.

Request for Comment

The Commission requests interested parties to provide comments, proposals, data, and analysis on whether the Rule 17g–5 Program provides a reasonable alternative to the Section 15E(w) System in terms of objectives and goals. In addition, the Commission requests comments, proposals, data, and analysis in response to the following questions:

1. Interested parties are asked to provide a comparative evaluation of the Section 15E(w) System with the Rule 17g–5 Program using the GAO Framework.

2. If an interested party believes the Rule 17g–5 Program would not be a reasonable alternative to the Section 15E(w) System in terms of objectives and goals, could the Rule 17g–5 Program be modified to bridge the gap? If so, describe how? In addition, identify any additional benefits and costs that would result from such modifications.

3. To the extent not addressed in responding to the questions above, describe how the Rule 17g–5 Program currently is being used to determine credit ratings for structured finance products. For example, is there sufficient time between when information about a pending transaction is posted on the arranger's Internet Web site and the transaction closes for an NRSRO not hired to rate the structured finance product to determine an initial credit rating? If not, how could this issue be addressed to provide a sufficient amount of time? For example, should there be a mandatory time period before a credit rating can be issued by the hired NRSRO? In addition, are NRSROs seeking to determine unsolicited credit ratings using the Rule 17g–5 Program being asked to agree to terms and conditions that are not required of the hired NRSROs? If so, what is the rationale for requiring such different terms and conditions?

2. Investor-Owned Credit Rating Agency Model

Under the Investor-Owned Credit Rating Agency Model, sophisticated investors would establish and operate an NRSRO that would produce credit ratings for structured finance products.[56] Issuers would be required to obtain two ratings: One from the investor-owned credit rating agency and the second from their choice of NRSRO.

Request for Comment

The Commission requests interested parties to provide comments, proposals, data, and analysis on whether the

finance product from selecting the [NRSRO] that will determine the initial credit ratings and monitor such credit ratings.").

[44] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63844 (Dec. 4, 2009).

[45] *See* 17 CFR 240.17g–5(a)(3)(i).

[46] *Id.*

[47] *See* 17 CFR 240.17g–5(a)(3)(ii).

[48] *See* 17 CFR 240.17g–5(a)(3)(iii). When adopting the Rule 17g–5 Program, the Commission stated that the "question of whether reliance was reasonable will depend on the facts and circumstances of a given situation. Factors relevant to this analysis would include, but not be limited to: (1) Ongoing or prior failures by the arranger to adhere to the representations; or (2) a pattern of conduct by the arranger where it fails to promptly correct breaches of its representations." *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63847 (December 4, 2009).

[49] *See* 17 CFR 240.17g–5(a)(3)(iii).

[50] *Id.*

[51] *Id.*

[52] *See* 15 U.S.C. 78o–7(h)(1).

[53] *See* Exhibits 6 and 7 to Form NRSRO and the Instructions for those Exhibits.

[54] *See* 17 CFR 240.17g–5.

[55] *See* Exhibits 1 and 2 to Form NRSRO and the Instructions for those Exhibits.

[56] *See* GAO Report 10–782 at p. 82 for a more detailed description of this model.

Investor-Owned Credit Rating Agency Model provides a reasonable alternative to the Section 15E(w) System in terms of objectives and goals. In addition, the Commission requests comments, proposals, data, and analysis in response to the following questions:

1. Interested parties are asked to provide a comparative evaluation of the Section 15E(w) System with the Investor-Owned Credit Rating Agency Model using the GAO Framework.

2. If an interested party believes the Investor-Owned Credit Rating Agency Model would be a reasonable alternative to the Section 15E(w) System in terms of objectives and goals, explain how such a program could be implemented by the Commission. Could investors be required to participate? Should they be required to participate? In addition, analyze whether the Commission could implement such a program using existing authority in the securities laws or whether statutory amendments would be necessary. Finally, identify the benefits and costs of implementing such a program.

3. Stand-Alone Model

Under the Stand-Alone Model, an NRSRO would be compensated through transaction fees imposed on original issuance and on secondary market transactions.[57] Part of the fee would be paid by the issuer or secondary-market seller and the other portion of the fee by the investors purchasing the security in either the primary or secondary markets. Further, the NRSRO would be compensated over the life of the security based on these transaction fees.

Request for Comment

The Commission requests interested parties to provide comments, proposals, data, and analysis on whether the Stand-Alone Model provides a reasonable alternative to the Section 15E(w) System in terms of objectives and goals. In addition, the Commission requests comments, proposals, data, and analysis in response to the following questions:

1. Interested parties are asked to provide a comparative evaluation of the Section 15E(w) System with the Stand-Alone Model using the GAO Framework.

2. If an interested party believes the Stand-Alone Model would be a reasonable alternative to the Section 15E(w) System in terms of objectives and goals, explain how such a program could be implemented by the Commission. In addition, analyze whether the Commission could implement such a program using existing authority in the securities laws or whether statutory amendments would be necessary. Finally, identify the benefits and costs of implementing such a program.

4. Designation Model

Under the designation model, all NRSROs would have the option of rating a new structured finance product issuance, and security holders would direct, or designate, fees to the NRSROs of their choice, based on the proportion of securities that they owned.[58] The issuer would be required to provide all interested NRSROs with the information to rate the structured finance product and pay the rating fees to a third-party administrator, which would manage the designation process. When the structured finance product was issued, the security holders would designate which of the NRSROs that rated the structured finance product should receive fees, based on their perception of research underlying the ratings. The security holders could designate one or several NRSROs. After the initial credit rating, the issuer would continue to pay maintenance rating fees to the third-party administrator, which bond holders also would allocate through the designation process every quarter over the life of the security. Additionally, under the Designation Model investors would review the quality of the work of the NRSROs and designate which firms should be compensated based on that review.[59]

Request for Comment

The Commission requests interested parties to provide comments, proposals, data, and analysis on whether the Designation Model provides a reasonable alternative to the Section 15E(w) System in terms of objectives and goals. In addition, the Commission requests comments, proposals, data, and analysis in response to the following questions:

1. Interested parties are asked to provide a comparative evaluation of the Section 15E(w) System with the Designation Model using the GAO Framework.

2. If an interested party believes the Designation Model would be a reasonable alternative to the Section 15E(w) System in terms of objectives and goals, explain how such a program could be implemented by the Commission. In addition, analyze whether the Commission could implement such a program using existing authority in the securities laws or whether statutory amendments would be necessary. Finally, identify the benefits and costs of implementing such a program.

5. User-Pay Model

Under the User-Pay Model, issuers would not pay for credit ratings of structured finance products.[60] Instead, all "users" of structured finance credit ratings would be required to enter into a contract with the NRSRO and pay for the rating service of an NRSRO. Users would be defined as "any entity that included a rated security, loan, or contract as an element of its assets or liabilities as recorded in an audited financial statement."[61] Users would also include holders of long or short positions in fixed-income instruments, as well as parties that refer to a credit rating in contractual commitments or that are parties to derivative products that rely on rated securities or entities.[62] The model would rely on third-party auditors to ensure that NRSROs receive payment from users of credit ratings.

Request for Comment

The Commission requests interested parties to provide comments, proposals, data, and analysis on whether the User-Pay Model provides a reasonable alternative to the Section 15E(w) System in terms of objectives and goals. In addition, the Commission requests comments, proposals, data, and analysis in response to the following questions:

1. Interested parties are asked to provide a comparative evaluation of the Section 15E(w) System with the User-Pay Model using the GAO Framework.

2. If an interested party believes the User-Pay Model would be a reasonable alternative to the Section 15E(w) System in terms of objectives and goals, explain how such a program could be implemented by the Commission. In addition, analyze whether the Commission could implement such a program using existing authority in the securities laws or whether statutory amendments would be necessary.

[57] *See* GAO Report 10–782 at pp. 82–83 for a more detailed description of this model.

[58] *See* GAO Report 10–782 at pp. 83–84 for a more detailed description of this model.

[59] *Id; see also* Clark, Mayree and Andrew Jones "A Free Approach to Rating Agency Function," *SEC Roundtable to Examine Oversight of Credit Rating Agencies* (April 15, 2009). A variation of the Designation Model would include imposing a moratorium between the issuance of a security and the publication of a rating by an NRSRO; *see* "Wait to Rate: How to Save the Rating Agencies (and the Capital Markets)" presentation by Pershing Square Capital Management, L.P. (May 26, 2010).

[60] *See* GAO Report 10–782 at p. 84 for a more detailed description of this model.

[61] *Id.*

[62] *Id.*

Finally, identify the benefits and costs of implementing such a program.

6. Other Alternative Models

Interested parties are encouraged to identify any other model that could serve as a reasonable alternative to the Section 15E(w) System in terms of objectives and goals.

Request for Comment

The Commission requests interested parties to provide comments, proposals, data, and analysis on any other model that they believe would provide a reasonable alternative to the Section 15E(w) System in terms of objectives and goals. In addition, the Commission requests comments, proposals, data, and analysis in response to the following questions:

1. Interested parties are asked to provide a comparative evaluation of the Section 15E(w) System with the other model.

2. If an interested party believes the other model would be a reasonable alternative to the Section 15E(w) System in terms of objectives and goals, explain how such a program could be implemented by the Commission. In addition, analyze whether the Commission could implement such a program using existing authority in the securities laws or whether statutory amendments would be necessary. Finally, identify the benefits and costs of implementing such a program.

III. Conclusion

All interested parties are invited to submit their views, in writing, on these questions.

By the Commission.

Dated: May 10, 2011.

Elizabeth M. Murphy,

Secretary.

APPENDIX—TEXT OF SECTION 15E(w) PROVISIONS [63]

BILLING CODE 8011–01–P

19 ***SEC. 939D. INITIAL CREDIT RATING ASSIGNMENTS.***

20 *Section 15E of the Securities Exchange Act of 1934*

21 *(15 U.S.C. 78o–7), as amended by this Act, is amended by*

22 *adding at the end the following:*

23 *"(w) INITIAL CREDIT RATING ASSIGNMENTS.—*

24 *"(1) DEFINITIONS.—In this subsection the fol-*

25 *lowing definitions shall apply:*

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[63] Section 15(w) of the Securities Exchange Act of 1934, as that provision would have been added by Section 939D of H.R. 4173 (111th Congress), as passed by the Senate on May 20, 2010.

1 *"(A) BOARD.—The term 'Board' means the*
2 *Credit Rating Agency Board established under*
3 *paragraph (2).*
4 *"(B) QUALIFIED NATIONALLY RECOGNIZED*
5 *STATISTICAL RATING ORGANIZATION.—The term*
6 *'qualified nationally recognized statistical rating*
7 *organization', with respect to a category of struc-*
8 *tured finance products, means a nationally rec-*
9 *ognized statistical rating organization that the*
10 *Board determines, under paragraph (3)(B), to be*
11 *qualified to issue initial credit ratings with re-*
12 *spect to such category.*
13 *"(C) REGULATIONS.—*
14 *"(i) CATEGORY OF STRUCTURED FI-*
15 *NANCE PRODUCTS.—*
16 *"(I) IN GENERAL.—The term 'cat-*
17 *egory of structured finance products'—*
18 *"(aa) shall include any asset*
19 *backed security and any struc-*
20 *tured product based on an asset-*
21 *backed security; and*
22 *"(bb) shall be further defined*
23 *and expanded by the Commission,*
24 *by rule, as necessary.*

1 *"(II) CONSIDERATIONS.—In*
2 *issuing the regulations required under*
3 *subclause (I), the Commission shall*
4 *consider—*
5 *"(aa) the types of issuers*
6 *that issue structured finance prod-*
7 *ucts;*
8 *"(bb) the types of investors*
9 *who purchase structured finance*
10 *products;*
11 *"(cc) the different categories*
12 *of structured finance products ac-*
13 *cording to—*
14 *"(AA) the types of cap-*
15 *ital flow and legal structure*
16 *used;*
17 *"(BB) the types of un-*
18 *derlying products used; and*
19 *"(CC) the types of terms*
20 *used in debt securities;*
21 *"(dd) the different values of*
22 *debt securities; and*
23 *"(ee) the different numbers of*
24 *units of debt securities that are*
25 *issued together.*

1 *"(ii) REASONABLE FEE.—The Board*
2 *shall issue regulations to define the term*
3 *'reasonable fee'.*
4 *"(2) CREDIT RATING AGENCY BOARD.—*
5 *"(A) IN GENERAL.—Not later than 180*
6 *days after the date of enactment of the Restoring*
7 *American Financial Stability Act of 2010, the*
8 *Commission shall—*
9 *"(i) establish the Credit Rating Agency*
10 *Board, which shall be a self-regulatory orga-*
11 *nization;*
12 *"(ii) subject to subparagraph (C), se-*
13 *lect the initial members of the Board; and*
14 *"(iii) establish a schedule to ensure*
15 *that the Board begins assigning qualified*
16 *nationally recognized statistical rating or-*
17 *ganizations to provide initial ratings not*
18 *later than 1 year after the selection of the*
19 *members of the Board.*
20 *"(B) SCHEDULE.—The schedule established*
21 *under subparagraph (A)(iii) shall prescribe*
22 *when—*
23 *"(i) the Board will conduct a study of*
24 *the securitization and ratings process and*

provide recommendations to the Commission;

"(ii) the Commission will issue rules and regulations under this section;

"(iii) the Board may issue rules under this subsection; and

"(iv) the Board will—

"(I) begin accepting applications to select qualified national recognized statistical rating organizations; and

"(II) begin assigning qualified national recognized statistical rating organizations to provide initial ratings.

"(C) MEMBERSHIP.—

"(i) IN GENERAL.—The Board shall initially be composed of an odd number of members selected from the industry, with the total numerical membership of the Board to be determined by the Commission.

"(ii) SPECIFICATIONS.—Of the members initially selected to serve on the Board—

"(I) not less than a majority of the members shall be representatives of

1 *the investor industry who do not rep-*
2 *resent issuers;*
3 *"(II) not less than 1 member*
4 *should be a representative of the issuer*
5 *industry;*
6 *"(III) not less than 1 member*
7 *should be a representative of the credit*
8 *rating agency industry; and*
9 *"(IV) not less than 1 member*
10 *should be an independent member.*
11 *"(iii) TERMS.—Initial members shall*
12 *be appointed by the Commission for a term*
13 *of 4 years.*
14 *"(iv) NOMINATION AND ELECTION OF*
15 *MEMBERS.—*
16 *"(I) IN GENERAL.—Prior to the*
17 *expiration of the terms of office of the*
18 *initial members, the Commission shall*
19 *establish fair procedures for the nomi-*
20 *nation and election of future members*
21 *of the Board.*
22 *"(II) MODIFICATIONS OF THE*
23 *BOARD.—Prior to the expiration of the*
24 *terms of office of the initial members,*
25 *the Commission—*

1 *"(aa) may increase the size*
2 *of the board to a larger odd num-*
3 *ber and adjust the length of future*
4 *terms; and*
5 *"(bb) shall retain the com-*
6 *position of members described in*
7 *clause (ii).*
8 *"(v) RESPONSIBILITIES OF MEM-*
9 *BERS.—Members shall perform, at a min-*
10 *imum, the duties described in this sub-*
11 *section.*
12 *"(vi) RULEMAKING AUTHORITY.—The*
13 *Commission shall, if it determines necessary*
14 *and appropriate, issue further rules and*
15 *regulations on the composition of the mem-*
16 *bership of the Board and the responsibilities*
17 *of the members.*
18 *"(D) OTHER AUTHORITIES OF THE*
19 *BOARD.—The Board shall have the authority to*
20 *levy fees from qualified nationally recognized*
21 *statistical rating organization applicants, and*
22 *periodically from qualified nationally recognized*
23 *statistical rating organizations as necessary to*
24 *fund expenses of the Board.*

1 *"(E) REGULATION.—The Commission has*
2 *the authority to regulate the activities of the*
3 *Board, and issue any further regulations of the*
4 *Board it deems necessary, not in contravention*
5 *with the intent of this section.*
6 *"(3) BOARD SELECTION OF QUALIFIED NATION-*
7 *ALLY RECOGNIZED STATISTICAL RATING ORGANIZA-*
8 *TION.—*
9 *"(A) APPLICATION.—*
10 *"(i) IN GENERAL.—A nationally recog-*
11 *nized statistical rating organization may*
12 *submit an application to the Board, in such*
13 *form and manner as the Board may re-*
14 *quire, to become a qualified nationally rec-*
15 *ognized statistical rating organization with*
16 *respect to a category of structured finance*
17 *products.*
18 *"(ii) CONTENTS.—An application sub-*
19 *mitted under clause (i) shall contain—*
20 *"(I) information regarding the in-*
21 *stitutional and technical capacity of*
22 *the nationally recognized statistical*
23 *rating organization to issue credit rat-*
24 *ings;*

1 *"(II) information on whether the*
2 *nationally recognized statistical rating*
3 *organization has been exempted by the*
4 *Commission from any requirements*
5 *under any other provision of this sec-*
6 *tion; and*
7 *"(III) any additional information*
8 *the Board may require.*
9 *"(iii) REJECTION OF APPLICATIONS.—*
10 *The Board may reject an application sub-*
11 *mitted under this paragraph if the nation-*
12 *ally recognized statistical rating organiza-*
13 *tion has been exempted by the Commission*
14 *from any requirements under any other*
15 *provision of this section.*
16 *"(B) SELECTION.—The Board shall select*
17 *qualified national recognized statistical rating*
18 *organizations with respect to each category of*
19 *structured finance products from among nation-*
20 *ally recognized statistical rating organizations*
21 *that submit applications under subparagraph*
22 *(A).*
23 *"(C) RETENTION OF STATUS AND OBLIGA-*
24 *TIONS AFTER SELECTION.—An entity selected as*
25 *a qualified nationally recognized statistical rat-*

1 *ing organization shall retain its status and obli-*
2 *gations under the law as a nationally recognized*
3 *statistical rating organization, and nothing in*
4 *this subsection grants authority to the Commis-*
5 *sion or the Board to exempt qualified nationally*
6 *recognized statistical rating organizations from*
7 *obligations or requirements otherwise imposed by*
8 *Federal law on nationally recognized statistical*
9 *rating organizations.*
10 *"(4) REQUESTING AN INITIAL CREDIT RATING.—*
11 *An issuer that seeks an initial credit rating for a*
12 *structured finance product—*
13 *"(A) may not request an initial credit rat-*
14 *ing from a nationally recognized statistical rat-*
15 *ing organization; and*
16 *"(B) shall submit a request for an initial*
17 *credit rating to the Board, in such form and*
18 *manner as the Board may prescribe.*
19 *"(5) ASSIGNMENT OF RATING DUTIES.—*
20 *"(A) IN GENERAL.—For each request re-*
21 *ceived by the Board under paragraph (4)(B), the*
22 *Board shall select a qualified nationally recog-*
23 *nized statistical rating organization to provide*
24 *the initial credit rating to the issuer.*
25 *"(B) METHOD OF SELECTION.—*

1 *"(i) IN GENERAL.—The Board shall—*
2 *"(I) evaluate a number of selec-*
3 *tion methods, including a lottery or ro-*
4 *tating assignment system, incor-*
5 *porating the factors described in clause*
6 *(ii), to reduce the conflicts of interest*
7 *that exist under the issuer-pays model;*
8 *and*
9 *"(II) prescribe and publish the se-*
10 *lection method to be used under sub-*
11 *paragraph (A).*
12 *"(ii) CONSIDERATION.—In evaluating*
13 *a selection method described in clause (i)(I),*
14 *the Board shall consider—*
15 *"(I) the information submitted by*
16 *the qualified nationally recognized sta-*
17 *tistical rating organization under*
18 *paragraph (3)(A)(ii) regarding the in-*
19 *stitutional and technical capacity of*
20 *the qualified nationally recognized sta-*
21 *tistical rating organization to issue*
22 *credit ratings;*
23 *"(II) evaluations conducted under*
24 *paragraph (7);*

1 *"(III) formal feedback from insti-*
2 *tutional investors; and*
3 *"(IV) information from subclauses*
4 *(I) and (II) to implement a mecha-*
5 *nism which increases or decreases as-*
6 *signments based on past performance.*
7 *"(iii) PROHIBITION.—The Board, in*
8 *choosing a selection method, may not use a*
9 *method that would allow for the solicitation*
10 *or consideration of the preferred national*
11 *recognized statistical rating organizations*
12 *of the issuer.*
13 *"(iv) ADJUSTMENT OF PROCESS.—The*
14 *Board shall issue rules describing the proc-*
15 *ess by which it can modify the assignment*
16 *process described in clause (i).*
17 *"(C) RIGHT OF REFUSAL.—*
18 *"(i) REFUSAL.—A qualified nationally*
19 *recognized statistical rating organization*
20 *selected under subparagraph (A) may refuse*
21 *to accept a selection for a particular request*
22 *by—*
23 *"(I) notifying the Board of such*
24 *refusal; and*

1 *"(II) submitting to the Board a*
2 *written explanation of the refusal.*
3 *"(ii) SELECTION.—Upon receipt of a*
4 *notification under clause (i), the Board*
5 *shall make an additional selection under*
6 *subparagraph (A).*
7 *"(iii) INSPECTION REPORTS.—The*
8 *Board shall annually submit any expla-*
9 *nations of refusals received under clause*
10 *(i)(II) to the Commission, and such explan-*
11 *atory submissions shall be published in the*
12 *annual inspection reports required under*
13 *subsection (p)(3)(C).*
14 *"(6) DISCLAIMER REQUIRED.—Each initial*
15 *credit rating issued under this subsection shall in-*
16 *clude, in writing, the following disclaimer: 'This ini-*
17 *tial rating has not been evaluated, approved, or cer-*
18 *tified by the Government of the United States or by*
19 *a Federal agency.'.*
20 *"(7) EVALUATION OF PERFORMANCE.—*
21 *"(A) IN GENERAL.—The Board shall pre-*
22 *scribe rules by which the Board will evaluate the*
23 *performance of each qualified nationally recog-*
24 *nized statistical rating organization, including*
25 *rules that require, at a minimum, an annual*

1 *evaluation of each qualified nationally recog-*
2 *nized statistical rating organization.*
3 *"(B) CONSIDERATIONS.—The Board, in*
4 *conducting an evaluation under subparagraph*
5 *(A), shall consider—*
6 *"(i) the results of the annual examina-*
7 *tion conducted under subsection (p)(3);*
8 *"(ii) surveillance of credit ratings con-*
9 *ducted by the qualified nationally recog-*
10 *nized statistical rating organization after*
11 *the credit ratings are issued, including—*
12 *"(I) how the rated instruments*
13 *perform;*
14 *"(II) the accuracy of the ratings*
15 *provided by the qualified nationally*
16 *recognized statistical rating organiza-*
17 *tion as compared to the other nation-*
18 *ally recognized statistical rating orga-*
19 *nizations; and*
20 *"(III) the effectiveness of the*
21 *methodologies used by the qualified na-*
22 *tionally recognized statistical rating*
23 *organization; and*
24 *"(iii) any additional factors the Board*
25 *determines to be relevant.*

1 *"(C) REQUEST FOR REEVALUATION.—Sub-*
2 *ject to rules prescribed by the Board, and not less*
3 *frequently than once a year, a qualified nation-*
4 *ally recognized statistical rating organization*
5 *may request that the Board conduct an evalua-*
6 *tion under this paragraph.*
7 *"(D) DISCLOSURE.—The Board shall make*
8 *the evaluations conducted under this paragraph*
9 *available to Congress.*
10 *"(8) RATING FEES CHARGED TO ISSUERS.—*
11 *"(A) LIMITED TO REASONABLE FEES.—A*
12 *qualified nationally recognized statistical rating*
13 *organization shall charge an issuer a reasonable*
14 *fee, as determined by the Commission, for an*
15 *initial credit rating provided under this section.*
16 *"(B) FEES.—Fees may be determined by*
17 *the qualified national recognized statistical rat-*
18 *ing organizations unless the Board determines it*
19 *is necessary to issue rules on fees.*
20 *"(9) NO PROHIBITION ON ADDITIONAL RAT-*
21 *INGS.—Nothing in this section shall prohibit an*
22 *issuer from requesting or receiving additional credit*
23 *ratings with respect to a debt security, if the initial*
24 *credit rating is provided in accordance with this sec-*
25 *tion.*

1 *"(10) NO PROHIBITION ON INDEPENDENT RAT-*
2 *INGS OFFERED BY NATIONALLY RECOGNIZED STATIS-*
3 *TICAL RATING ORGANIZATIONS.—*
4 *"(A) IN GENERAL.—Nothing in this section*
5 *shall prohibit a nationally recognized statistical*
6 *rating organization from independently pro-*
7 *viding a credit rating with respect to a debt se-*
8 *curity, if—*
9 *"(i) the nationally recognized statis-*
10 *tical rating organization does not enter into*
11 *a contract with the issuer of the debt secu-*
12 *rity to provide the initial credit rating; and*
13 *"(ii) the nationally recognized statis-*
14 *tical rating organization is not paid by the*
15 *issuer of the debt security to provide the ini-*
16 *tial credit rating.*
17 *"(B) RULE OF CONSTRUCTION.—For pur-*
18 *poses of this section, a credit rating described in*
19 *subparagraph (A) may not be construed to be an*
20 *initial credit rating.*
21 *"(11) PUBLIC COMMUNICATIONS.—Any commu-*
22 *nications made with the public by an issuer with re-*
23 *spect to the credit rating of a debt security shall*
24 *clearly specify whether the credit rating was made*
25 *by—*

1 *"(A) a qualified nationally recognized sta-*
2 *tistical rating organization selected under para-*
3 *graph (5)(A) to provide the initial credit rating*
4 *for such debt security; or*
5 *"(B) a nationally recognized statistical rat-*
6 *ing organization not selected under paragraph*
7 *(5)(A).*
8 *"(12) PROHIBITION ON MISREPRESENTATION.—*
9 *With respect to a debt security, it shall be unlawful*
10 *for any person to misrepresent any subsequent credit*
11 *rating provided for such debt security as an initial*
12 *credit rating provided for such debt security by a*
13 *qualified nationally recognized statistical rating orga-*
14 *nization selected under paragraph (5)(A).*
15 *"(13) INITIAL CREDIT RATING REVISION AFTER*
16 *MATERIAL CHANGE IN CIRCUMSTANCE.—If the Board*
17 *determines that it is necessary or appropriate in the*
18 *public interest or for the protection of investors, the*
19 *Board may issue regulations requiring that an issuer*
20 *that has received an initial credit rating under this*
21 *subsection request a revised initial credit rating,*
22 *using the same method as provided under paragraph*
23 *(4), each time the issuer experiences a material*
24 *change in circumstances, as defined by the Board.*
25 *"(14) CONFLICTS.—*

1 *"(A) MEMBERS OR EMPLOYEES OF THE*
2 *BOARD.—*
3 *"(i) LOAN OF MONEY OR SECURITIES*
4 *PROHIBITED.—*
5 *"(I) IN GENERAL.—A member or*
6 *employee of the Board shall not accept*
7 *any loan of money or securities, or*
8 *anything above nominal value, from*
9 *any nationally recognized statistical*
10 *rating organization, issuer, or investor.*
11 *"(II) EXCEPTION.—The prohibi-*
12 *tion in subclause (I) does not apply to*
13 *a loan made in the context of disclosed,*
14 *routine banking and brokerage agree-*
15 *ments, or a loan that is clearly moti-*
16 *vated by a personal or family relation-*
17 *ship.*
18 *"(ii) EMPLOYMENT NEGOTIATIONS*
19 *PROHIBITION.—A member or employee of*
20 *the Board shall not engage in employment*
21 *negotiations with any nationally recognized*
22 *statistical rating organization, issuer, or in-*
23 *vestor, unless the member or employee—*

1 *"(I) discloses the negotiations im-*
2 *mediately upon initiation of the nego-*
3 *tiations; and*
4 *"(II) recuses himself from all pro-*
5 *ceedings concerning the entity involved*
6 *in the negotiations until termination*
7 *of negotiations or until termination of*
8 *his employment by the Board, if an*
9 *offer of employment is accepted.*
10 *"(B) CREDIT ANALYSTS.—*
11 *"(i) IN GENERAL.—A credit analyst of*
12 *a qualified nationally recognized statistical*
13 *rating organization shall not accept any*
14 *loan of money or securities, or anything*
15 *above nominal value, from any issuer or in-*
16 *vestor.*
17 *"(ii) EXCEPTION.—The prohibition de-*
18 *scribed in clause (i) does not apply to a*
19 *loan made in the context of disclosed, rou-*
20 *tine banking and brokerage agreements, or*
21 *a loan that is clearly motivated by a per-*
22 *sonal or family relationship.*
23 *"(15) EVALUATION OF CREDIT RATING AGENCY*
24 *BOARD.—Not later than 5 years after the date that*
25 *the Board begins assigning qualified nationally recog-*

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1 *nized statistical rating organizations to provide ini-*
2 *tial ratings, the Commission shall submit to Congress*
3 *a report that provides recommendations of—*
4 *"(A) the continuation of the Board;*
5 *"(B) any modification to the procedures of*
6 *the Board; and*
7 *"(C) modifications to the provisions in this*
8 *subsection.".*

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SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than July 15, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. *Application for Supplemental Security Income (SSI)—20 CFR 416.207 and 416.305–416–335, Subpart C—0960–0229.* The SSI program provides aged, blind, and disabled individuals, who have little or no income, funds for food, clothing, and shelter. Individuals complete Form SSA–8000 to apply for SSI. SSA uses information from Form SSA–8000 and its electronic Intranet counterpart, the Modernized SSI Claims System (MSSICS), to determine: (1) Whether SSI claimants meet all statutory and regulatory eligibility requirements and (2) SSI payment amounts. The respondents are applicants for SSI.

Type of Request: Revision of an OMB-approved information collection.

Type of response	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Paper Form	26,548	1	36	15,929
MSSICS	143,095	1	34	81,087
MSSICS/w Signature Proxy	1,157,767	1	34	656,068
Totals	1,327,410			753,084

2. *Disability Update Report—20 CFR 404.1589–404.1595 and 416.988–416.996—0960–0511.* SSA periodically reviews current disability beneficiaries' cases to determine if they should continue to receive disability payments. SSA uses Form SSA–455 to determine if: (1) There is enough evidence to warrant referring the case for a full medical Continuing Disability Review (CDR); (2) the beneficiary's impairment is unchanged or only slightly changed, precluding the need for a CDR; or (3) there are unresolved work-related issues. The respondents are recipients of Social Security disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,100,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 275,000 hours.