

109TH CONGRESS
1ST SESSION

H. R. 2990

To improve ratings quality by fostering competition, transparency, and
accountability in the credit rating agency industry.

IN THE HOUSE OF REPRESENTATIVES

JUNE 20, 2005

Mr. FITZPATRICK of Pennsylvania introduced the following bill; which was
referred to the Committee on Financial Services

A BILL

To improve ratings quality by fostering competition, trans-
parency, and accountability in the credit rating agency
industry.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Credit Rating Agency Duopoly Relief Act of 2005”.

6 (b) REFERENCES.—Except as otherwise expressly
7 provided, whenever in this Act an amendment or repeal
8 is expressed in terms of an amendment to, or repeal of,
9 a section or other provision, the reference shall be consid-

1 ered to be made to a section or other provision of the Secu-
2 rities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

3 **SEC. 2. FINDINGS.**

4 Upon the basis of facts disclosed by the record and
5 report of the Securities and Exchange Commission made
6 pursuant to section 702 of the Sarbanes-Oxley Act of
7 2002 (116 Stat. 797), hearings before the House Com-
8 mittee on Financial Services during the 108th and 109th
9 Congresses, comment letters to the concept releases and
10 proposed rules of the Securities and Exchange Commis-
11 sion, and facts otherwise disclosed and ascertained, the
12 Congress finds that—

13 (1) credit rating agencies are of national con-
14 cern, in that, among other things—

15 (A) their ratings, publications, writings,
16 analyses, and reports are furnished and distrib-
17 uted, and their contracts, subscription agree-
18 ments, and other arrangements with clients are
19 negotiated and performed, by the use of the
20 mails and means and instrumentalities of inter-
21 state commerce;

22 (B) their ratings, publications, writings,
23 analyses, and reports customarily relate to the
24 purchase and sale of securities traded on securi-
25 ties exchanges and in interstate over-the-

1 counter markets, securities issued by companies
2 engaged in business in interstate commerce,
3 and securities issued by national banks and
4 member banks of the Federal Reserve System;

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

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

11 (2) the Securities and Exchange Commission—

12 (A) has, through its designation of certain
13 credit rating agencies as nationally recognized
14 statistical rating organizations, created an arti-
15 ficial barrier to entry for new participants; and

16 (B) will, in its latest proposed rule defining
17 nationally recognized statistical rating organiza-
18 tions, codify and strengthen this barrier.

19 **SEC. 3. DEFINITIONS.**

20 Section 3(a) (15 U.S.C. 78c(a)) is amended by add-
21 ing at the end the following new paragraphs:

22 “(60) STATISTICAL RATING ORGANIZATION.—

23 “(A) DEFINITION.—The term ‘statistical
24 rating organization’ means an entity—

1 “(i) the primary business of which, for
2 at least the most recent three consecutive
3 years, has been the issuance of publicly
4 available ratings; and

5 “(ii) that employs either a quan-
6 titative or qualitative model, or both, to de-
7 termine its publicly available ratings.

8 “(B) PUBLICLY AVAILABLE RATINGS.—
9 For purposes of subparagraph (A), the term
10 ‘publicly available ratings’ means ratings on
11 public companies or specific debt securities or
12 both disseminated on the Internet for free or a
13 fee.

14 “(61) NATIONALLY REGISTERED STATISTICAL
15 RATING ORGANIZATION; NRSRO.—The term ‘nation-
16 ally registered statistical rating organization’ or
17 ‘NRSRO’ means a statistical rating organization
18 registered or required to register pursuant to section
19 15E of this title.”.

20 **SEC. 4. REGISTRATION OF STATISTICAL RATING ORGANI-**
21 **ZATIONS.**

22 (a) AMENDMENT.—The Securities Exchange Act of
23 1934 is amended by inserting after section 15D (15
24 U.S.C. 78o–6) the following new section:

1 **“SEC. 15E. REGISTRATION OF STATISTICAL RATING ORGA-**
2 **NIZATIONS.**

3 “(a) REGISTRATION REQUIRED.—Except as provided
4 in subsection (b), it shall be unlawful for any statistical
5 rating organization, unless registered under this section,
6 to make use of the mails or any means or instrumentality
7 of interstate commerce in connection with its business as
8 a statistical rating organization.

9 “(b) EXCEPTIONS.—The Commission, by rule or
10 order, as it deems consistent with the public interest and
11 the protection of investors, may conditionally or uncondi-
12 tionally exempt from subsection (a) of this section any sta-
13 tistical rating organization specified in such rule or order.

14 “(c) REGISTRATION PROCEDURES.—

15 “(1) FILING OF APPLICATION FORM.—A statis-
16 tical rating organization may be registered by filing
17 with the Commission an application for registration
18 in such form and containing such of the following
19 and any other information and documents con-
20 cerning such statistical rating organization and any
21 persons associated with such statistical rating orga-
22 nization as the Commission, by rule, may prescribe
23 as necessary or appropriate in the public interest or
24 for the protection of investors:

25 “(A) conflicts of interest faced by such sta-
26 tistical rating organization and the management

1 of those conflicts by such statistical rating orga-
2 nization;

3 “(B) the procedures and methodologies
4 such statistical rating organization uses in de-
5 termining ratings;

6 “(C) ratings performance measurement
7 statistics over short-term and long-term periods
8 of such statistical rating organization; and

9 “(D) procedures put in place by such sta-
10 tistical rating organization to prevent the mis-
11 use of non-public information.

12 “(2) REVIEW OF APPLICATION.—

13 “(A) INITIAL DETERMINATION.—Within
14 90 days of the date of the filing of such applica-
15 tion (or within such longer period as to which
16 the applicant consents) the Commission shall—

17 “(i) by order grant such registration;

18 or

19 “(ii) institute proceedings to deter-
20 mine whether registration should be de-
21 nied.

22 “(B) CONDUCT OF PROCEEDINGS.—Such
23 proceedings shall include notice of the grounds
24 for denial under consideration and opportunity
25 for hearing and shall be concluded within 90

1 days of the date of the filing of the application
2 for registration. At the conclusion of such pro-
3 ceedings the Commission, by order, shall grant
4 or deny such registration. The Commission may
5 extend the time for conclusion of such pro-
6 ceedings for up to 90 days if it finds good cause
7 for such extension and publishes its reasons for
8 so finding or for such longer period as to which
9 the applicant consents.

10 “(C) GROUNDS FOR DECISION.—The Com-
11 mission shall grant such registration if the
12 Commission finds that the requirements of this
13 section are satisfied. The Commission shall
14 deny such registration if it does not make such
15 a finding or if it finds that if the applicant were
16 so registered, its registration would be subject
17 to suspension or revocation under subsection
18 (d) of this section.

19 “(d) CENSURE, DENIAL, OR SUSPENSION OF REG-
20 ISTRATION; NOTICE AND HEARING.—The Commission, by
21 order, shall censure, place limitations on the activities,
22 functions, or operations of, suspend for a period not ex-
23 ceeding 12 months, or revoke the registration of any sta-
24 tistical rating organization if the Commission finds, on the
25 record after notice and opportunity for hearing, that such

1 censure, placing of limitations, suspension, or revocation
2 is in the public interest and that such statistical rating
3 organization, or any person associated with such statis-
4 tical rating organization, whether prior to or subsequent
5 to becoming so associated—

6 “(1) has committed or omitted any act, or is
7 subject to an order or finding, enumerated in sub-
8 paragraph (A), (D), (E), (H), or (G) of paragraph
9 (4) of section 15(b), has been convicted of any of-
10 fense specified in subparagraph (B) of such para-
11 graph (4) within 10 years of the commencement of
12 the proceedings under this subsection, or is enjoined
13 from any action, conduct, or practice specified in
14 subparagraph (C) of such paragraph (4);

15 “(2) has been convicted during the 10-year pe-
16 riod preceding the date of filing of any application
17 for registration, or at any time thereafter, of—

18 “(A) any crime that is punishable by im-
19 prisonment for 1 or more years, and that is not
20 described in section 15(b)(4)(B); or

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

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

1 “(e) WITHDRAWAL OF ADVISERS REGISTRATION.—
2 Each statistical rating organization registered under sec-
3 tion 203 of the Investment Advisers Act of 1940 shall
4 withdraw from registration under such section by filing
5 a written notice of withdrawal with the Commission pursu-
6 ant to section 203(h) of the Investment Advisers Act, upon
7 the granting of registration of such organization by the
8 Commission pursuant to subsection (e) of this section.

9 “(f) REPRESENTATIONS.—

10 “(1) REPRESENTATIONS OF SPONSORSHIP BY
11 UNITED STATES OR AGENCY THEREOF.—It shall be
12 unlawful for any statistical rating organization reg-
13 istered under this section to represent or imply in
14 any manner whatsoever that such statistical rating
15 organization has been sponsored, recommended, or
16 approved, or that such statistical rating organiza-
17 tion’s abilities or qualifications have in any respect
18 been passed upon, by the United States or any agen-
19 cy or any officer thereof.

20 “(2) STATEMENT OF REGISTRATION UNDER SE-
21 CURITIES EXCHANGE ACT OF 1934 PROVISIONS.—No
22 provision of paragraph (1) shall be construed to pro-
23 hibit a statement that a statistical rating organiza-
24 tion is a nationally registered statistical rating orga-
25 nization under the Securities Exchange Act of 1934,

1 if such statement is true in fact and if the effect of
2 such registration is not misrepresented.

3 “(g) PREVENTION OF MISUSE OF NONPUBLIC IN-
4 FORMATION.—Each statistical rating organization subject
5 to this section shall establish, maintain, and enforce writ-
6 ten policies and procedures reasonably designed, taking
7 into consideration the nature of such statistical rating or-
8 ganization’s business, to prevent the misuse in violation
9 of this title, or the rules or regulations thereunder, of ma-
10 terial, nonpublic information by such statistical rating or-
11 ganization or any person associated with such statistical
12 rating organization. The Commission, as it deems nec-
13 essary or appropriate in the public interest or for the pro-
14 tection of investors, shall adopt rules or regulations to re-
15 quire specific policies or procedures reasonably designed
16 to prevent misuse in violation of this title (or the rules
17 or regulations thereunder) of material, nonpublic informa-
18 tion.

19 “(h) MANAGEMENT OF CONFLICTS OF INTEREST.—
20 Each statistical rating organization subject to this section
21 shall establish, maintain, and enforce written policies and
22 procedures reasonably designed, taking into consideration
23 the nature of the business of such statistical rating organi-
24 zation and affiliated persons and affiliated companies of
25 such statistical rating organization, to address and man-

1 age the conflicts of interest that can arise from such busi-
2 ness. The Commission, as it deems necessary or appro-
3 priate in the public interest or for the protection of inves-
4 tors, shall adopt rules or regulations to require specific
5 policies or procedures reasonably designed to address and
6 manage such conflicts of interest.

7 “(i) PROHIBITION ON ANTI-COMPETITIVE PRAC-
8 TICES.—The Commission shall adopt rules or regulations
9 to prohibit specific anti-competitive practices common to
10 the statistical rating organization industry.

11 “(j) ELIMINATION OF COMMISSION DESIGNATION
12 PROCESS FOR NATIONALLY RECOGNIZED STATISTICAL
13 RATING ORGANIZATIONS.—

14 “(1) CESSATION OF DESIGNATION.—Within 30
15 days after the enactment of the Credit Rating Agen-
16 cy Duopoly Relief Act of 2005, the Commission shall
17 cease to designate persons and companies as nation-
18 ally recognized statistical rating organizations, as
19 that term is used under rule 15c3–1 of the Commis-
20 sion’s rules (17 C.F.R. 240.15c3–1).

21 “(2) PROHIBITION ON RELIANCE ON NO-ACTION
22 RELIEF.—The no-action relief that the Commission
23 has granted with respect to the designation of na-
24 tionally recognized statistical rating organizations,
25 as that term is used under rule 15c3–1 of the Com-

1 mission’s rules (17 C.F.R. 240.15c3–1), shall be
2 void and of no force or effect.

3 “(3) NOTICE TO OTHER AGENCIES.—Within 30
4 days after the date of enactment of the Credit Rat-
5 ing Agency Duopoly Relief Act of 2005, the Com-
6 mission shall give notice to the Federal agencies
7 which employ the term ‘nationally recognized statis-
8 tical rating organization’ (as that term is used under
9 rule 15c3–1 of the Commission’s rules (17 C.F.R.
10 240.15c3–1)) in their rules and regulations regard-
11 ing the actions undertaken pursuant to paragraphs
12 (1) and (2).”.

13 (b) CONFORMING AMENDMENTS TO THE 1934
14 ACT.—

15 (1) Section 3(a)(41) of the Securities Exchange
16 Act of 1934 (15 U.S.C. 78c(a)(41)) is amended by
17 striking “recognized” and inserting “registered”.

18 (2) Section 3(a)(53)(A) of such Act is amended
19 by striking “recognized” and inserting “registered”.

20 (3) Section 15(b)(4)(B)(ii) of such Act (15
21 U.S.C. 78o(b)(4)(B)(ii)) is amended by inserting
22 “statistical rating organization,” after “transfer
23 agent,”.

1 (4) Section 15(b)(4)(C) of such Act is amended
2 by inserting “statistical rating organization,” after
3 “transfer agent,”.

4 (5) Section 21B(a) of such Act (15 U.S.C. 78u-
5 2(a)) is amended by inserting “15E,” after “15C,”.

6 (c) OTHER CONFORMING AMENDMENTS.—

7 (1) Section 5136A(a)(3)(A)(i) of the Revised
8 Statutes of the United States (12 U.S.C.
9 24a(a)(3)(A)(i)) is amended by striking “recog-
10 nized” and inserting “registered”.

11 (2) Section 28(d)(4)(A) of the Federal Deposit
12 Insurance Act (12 U.S.C. 1831e(d)(4)(A)) is amend-
13 ed by striking “recognized” and inserting “reg-
14 istered”.

15 (3) Section 1319 of the Housing and Commu-
16 nity Development Act of 1992 (12 U.S.C. 4519) is
17 amended by striking “effectively” and all that fol-
18 lows through “broker-dealers” and inserting “that is
19 a nationally registered statistical rating organiza-
20 tion, as such term is defined in section 3(a) of the
21 Securities Exchange Act of 1934”.

22 (4) Section 6(a)(5)(A)(iv)(I) of the Investment
23 Company Act of 1940 (15 U.S.C. 80a-
24 6(a)(5)(A)(iv)(I)) is amended by striking “recog-
25 nized” and inserting “registered”.

1 (5) Section 439 of the Higher Education Act of
2 1965 (20 U.S.C. 1087–2) is amended—

3 (A) in each of the following provisions, by
4 striking “nationally recognized” and inserting
5 “nationally registered”: subsections
6 (d)(5),(r)(1)(B), (r)(11), and (r)(15)(A); and

7 (B) in subsection (r)(15)(A) by striking
8 “means any entity recognized as such by the
9 Securities and Exchange Commission” and in-
10 serting “means any nationally registered statis-
11 tical rating organization as that term is defined
12 under the Securities Exchange Act of 1934”.

13 (6) Section 181(11) of title 23, United States
14 Code, is amended by striking “identified by the Se-
15 curities and Exchange Commission as a Nationally
16 Recognized Statistical Rating Organization” and in-
17 serting “registered with the Securities and Exchange
18 Commission as a statistical rating organization as
19 that term is defined under the Securities Exchange
20 Act of 1934 (15 U.S.C. 78 et seq.)”.

21 (7) Section 1004(d)(2)(D)(i)(II) of the LOCAL
22 TV Act (47 U.S.C 1103(d)(2)(D)(i)(II)) is amended
23 by striking “recognized” and inserting “registered”.

1 **SEC. 5. ANNUAL AND OTHER REPORTS.**

2 Section 17(a) (15 U.S.C. 78q(a)) is amended by add-
3 ing at the end the following new paragraph:

4 “(4) Every nationally registered statistical rating or-
5 ganization shall also make and keep for described periods
6 such records, furnish such copies thereof, and make and
7 disseminate such reports as the Commission, by rule, pre-
8 scribes as necessary or appropriate in the public interest,
9 for the protection of investors, or otherwise in furtherance
10 of the purposes of this title.”.

11 **SEC. 6. GAO STUDY AND REPORT REGARDING CONSOLIDA-**
12 **TION OF CREDIT RATING AGENCIES.**

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

15 (1) to identify—

16 (A) the factors that have led to the consoli-
17 dation of credit rating agencies;

18 (B) the present and future impact of the
19 condition described in subparagraph (A) on the
20 securities markets, both domestic and inter-
21 national; and

22 (C) solutions to any problems identified
23 under subparagraph (B), including ways to in-
24 crease competition and the number of firms ca-
25 pable of providing credit rating services to large

1 national and multinational business organiza-
2 tions that are subject to the securities laws;

3 (2) of the problems, if any, faced by business
4 organizations that have resulted from limited com-
5 petition among credit rating agencies, including—

6 (A) higher costs;

7 (B) lower quality of services;

8 (C) anti-competitive practices;

9 (D) impairment of independence; and

10 (E) lack of choice; and

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

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

17 (1) the Securities and Exchange Commission;

18 (2) the Department of Justice; and

19 (3) any other public or private sector organiza-
20 tion that the Comptroller General considers appro-
21 priate.

22 (c) REPORT REQUIRED.—Not later than 180 days
23 after the date of enactment of this Act, the Comptroller
24 General shall submit a report on the results of the study
25 required by this section to the Committee on Banking,

1 Housing, and Urban Affairs of the Senate and the Com-
2 mittee on Financial Services of the House of Representa-
3 tives.

4 **SEC. 7. EFFECTIVE DATE.**

5 The amendments made by section 4 and 5 shall take
6 effect on January 1, 2007, except as otherwise provided
7 in subsections (e), (j)(1), and (j)(3) of section 15E of the
8 Securities Exchange Act of 1934 (as added by such
9 amendments), and except that the Securities and Ex-
10 change Commission is authorized to prescribe rules and
11 regulations to carry out such amendments beginning on
12 the date of enactment of this Act.

○