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## House of Representatives

The House was not in session today. Its next meeting will be held on Monday, September 25, 2006, at 12:30 p.m.

## Senate

FRIDAY, SEPTEMBER 22, 2006

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

### PRAYER

The PRESIDENT pro tempore. The Senate will be led in prayer by the Chaplain of the House of Representatives, Rev. Daniel P. Coughlin.

The guest chaplain offered the following prayer:

Lord God Almighty, accept our prayer no matter our faith heritage. Today, we of Abrahamic faith join our Jewish brothers and sisters as they approach the celebration of Rosh Hashanah and Muslim brothers and sisters who begin Ramadan. The marking of a lunar new year can be both unnerving and heartening because it is a holiday about life and death.

Called to turn a new page, we see life and mercy win out over death and judgment. Seeking forgiveness of our sins, as God-fearing people, we find our true identity and are ready to begin anew.

Your biblical story of the birth of Abraham's son, Isaac, and Abraham's near sacrifice of Isaac, would have us face the fear and trembling story of fragile life and the sacrifice of faith.

Lord God of Abrahamic faith, unite us in being attentive to Your holy will and our ability to make the right choices of life for the future.

In Your holy Name we pray, and to Your holy Name be the glory both now and forever. Amen.

### PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

### ORDER OF PROCEDURE

Mr. McCONNELL. Mr. President, I ask unanimous consent that I be permitted to proceed notwithstanding the order of last night, as we have a few housekeeping items to complete this morning.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

### CREDIT RATING AGENCY REFORM ACT OF 2006

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 590, S. 3850.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 3850) to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating agency industry.

There being no objection, the Senate proceeded to consider the bill.

Mr. SARBANES. Mr. President, I support this important legislation to enhance competition and improve the Federal oversight of credit rating agencies—S. 3850, as amended, the Credit Rating Agency Reform Act of 2006.

I applaud Chairman SHELBY for his strong leadership on this issue and am pleased to have worked closely with him on this legislation. The bill also reflects important contributions from Senators MENENDEZ, SCHUMER, ENZI, and SUNUNU.

Credit rating agencies play an important and valuable role in the capital markets by providing opinions to investors on the ability and willingness of issuers to make timely payments on debt instruments. These ratings can have significant impact. The Washington Post of November 22, 2004 wrote: "they can, with the stroke of a pen, effectively add or subtract millions from a company's bottom line, rattle a city budget, shock the stock and bond markets and reroute international investment."

Investors trust the agencies' impartiality and rely on their ratings. The SEC created the designation of Nationally Recognized Statistical Rating Organization, NRSRO, which it currently applies to five agencies. Many institutional investors buy debt only if it has been rated by an NRSRO. A Reuters article dated February 1, 2006 stated:

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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"The SEC designation gives these firms a major advantage in competing for business against other firms."

Rating agencies earn their revenues pursuant to one of two business models: either by receiving a fee from an issuer to give a rating to that issuer or by charging investors to subscribe for access to the ratings of issuers who do not pay the rating agency. Some NRSROs or their affiliates offer other products and services to the companies, States or other issuers they rate.

In recent years, concerns have been raised about some aspects of the industry. In late 2001, the largest credit rating agencies maintained an investment grade rating on Enron debt after its major financial restatements and until 4 days before Enron's bankruptcy. As a result, as *Business Week* reported on November 29, 2004, there was a "barrage of criticism . . . that raters should have uncovered the problems sooner at Enron, WorldCom and other corporate disasters."

In 2002, concerns about credit rating agencies were raised by Senators BUNNING and ENZI and by Consumer Federation of America during the Senate Banking Committee hearings which led ultimately to the enactment of the Sarbanes-Oxley Act. Their concerns prompted the creation of Section 702 of that Act, which directed the SEC to conduct a study of credit rating agencies. The SEC issued a report and, subsequently, published a Concept Release and proposed a regulation to define the term "NRSRO."

Many observers feel that more competition would benefit the markets. Two NRSROs, Standard & Poor's and Moody's, control 8 percent of market share and a third, Fitch Ratings, controls an additional 15 percent. Some have also called for a more transparent and shorter application process for recognition to obtain the NRSRO designation. Others have raised concerns about conflicts of interest, including those involving issuers paying for their ratings, NRSROs having a director who holds an executive position in an issuer, and NRSROs that sell other products or services to issuers they rate. Some have raised questions about alleged abusive practices involving "tying arrangements, solicitation of payment for unsolicited ratings, and threats to modify ratings based on payment for related services." That is a letter from former SEC Chairman William Donaldson to Congressman PAUL E. KANJORSKI dated June 6, 2005.

Under Chairman SHELBY's leadership, the Banking Committee has held hearings on credit rating agencies and received testimony from witnesses representing the Securities and Exchange Commission, rating agencies, the bond markets, the mutual fund industry, labor, academics, and financial professionals. Witnesses testified about a number of issues including the NRSRO application process, conflicts of interest, business practices, the appropriate level of Federal regulation and commission authority.

The legislation before the Senate addresses these issues. Under it, a credit rating agency can obtain the NRSRO designation unless the SEC determines that it lacks adequate financial and managerial resources to consistently produce credit ratings with integrity and to comply with its stated methodologies and procedures. It creates a transparent application process for becoming a NRSRO which requires a decision within a time certain. The application must describe procedures and methodologies used to determine ratings, conflicts of interest, the types of ratings intended to be issued, organization structure, and other matters, and must include a code of ethics, certifications from qualified institutional buyers that have used the ratings for at least 3 years and other items. Most parts of the application must be certified annually and updated when there is a material change.

The legislation also requires the commission to adopt rules that prohibit unfair, coercive and abusive business practices; prohibit or require the management and disclosure of any conflicts of interest; and require NRSROs to establish policies and procedures designed to prevent the misuse of non-public information.

The bill does not favor a particular credit rating agency business model.

Prior to its mark-up, the bill received strong support from a number of market participants and interested parties. Let me quote from some of their letters: The Bond Market Association said the bill creates "a clear process using a credible standard for the designation of NRSRO's."

The Investment Company Institution said it "brings much needed sunlight to credit ratings by requiring disclosure of an NRSRO's rating criteria, its methodologies and policies, how an NRSRO addresses conflicts of interest (as well as the conflicts themselves), and the organizational structure of an NRSRO."

The AFL-CIO said it will "protect the investing public against conflicts of interest within the credit rating agencies . . . [and] encourages in a responsible manner greater competition."

The Association for Financial Professionals said the bill will "foster competition, impose accountability and provide the necessary SEC oversight to restore confidence in credit rating agencies and the ratings they issue."

Consumer Federation of America wrote that it will "help ensure that only high quality ratings will be used for economically important regulatory purposes" and praised the bill's requirements for "certifications by Qualified Institutional Buyers . . . and [for] giving the . . . SEC . . . authority to deny NRSRO status to rating agencies that lack the financial and managerial resources to produce ratings of integrity."

Financial Executives International said the bill "will greatly enhance the accountability of rating agencies."

Fitch said it "represents a significant step forward to prudently enhance competition in the rating agency industry."

Fidelity Investments said the bill "will improve ratings quality by fostering transparency and accountability."

The Banking Committee passed this legislation without objection on a voice vote on August 2.

The managers' amendment to this legislation exempts the five existing NRSROs from the requirement that they include certifications in the applications they must file to become NRSROs under the new regulatory framework. This amendment also clarifies the role of Federal regulation in the registration, licensing and qualification of NRSROs, and that the legislation would not regulate the substance of credit ratings or the procedures and methodologies that NRSROs use to determine them, subject to the Federal oversight required in various parts of the legislation.

Once again, I commend Chairman SHELBY on his leadership on this legislation. In doing so, I also want to acknowledge the outstanding work of Justin Daly on the Chairman's staff and Dean Shahinian on my staff.

I support this legislation and encourage my colleagues to do so as well.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the amendment at the desk be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment (No. 5035) was agreed to, as follows:

On page 8, line 23, insert before the semicolon ", except as provided in subparagraph (D)".

On page 10, line 3, strike "(D)" and insert "(E)".

On page 10, between lines 2 and 3, insert the following:

"(D) EXEMPTION FROM CERTIFICATION REQUIREMENT.—A written certification under subparagraph (B)(ix) is not required with respect to any credit rating agency which has received, or been the subject of, a no-action letter from the staff of the Commission prior to August 2, 2006, stating that such staff would not recommend enforcement action against any broker or dealer that considers credit ratings issued by such credit rating agency to be ratings from a nationally recognized statistical rating organization."

On page 14, line 15, strike "the authority" and insert "exclusive authority".

On page 15, line 11, strike "organizations," and all that follows through line 15 and insert the following: "organizations. Notwithstanding any other provision of law, neither the Commission nor any State (or political subdivision thereof) may regulate the substance of credit ratings or the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings."

On page 27, between lines 5 and 6, insert the following:

"(o) NRSROs SUBJECT TO COMMISSION AUTHORITY.—

“(1) IN GENERAL.—No provision of the laws of any State or political subdivision thereof requiring the registration, licensing, or qualification as a credit rating agency or a nationally recognized statistical rating organization shall apply to any nationally recognized statistical rating organization or person employed by or working under the control of a nationally recognized statistical rating organization.

“(2) LIMITATION.—Nothing in this subsection prohibits the securities commission (or any agency or office performing like functions) of any State from investigating and bringing an enforcement action with respect to fraud or deceit against any nationally recognized statistical rating organization or person associated with a nationally recognized statistical rating organization.”.

On page 27, line 6, strike “(o)” and insert “(p)”.

On page 27, strike lines 6 and 7, and insert the following:

“(p) APPLICABILITY.—This section, other than subsection (n), which shall apply on the date of enactment of this section, shall apply on the earlier of—”.

On page 28, line 25, strike “and” and all that follows through “(B) in” on page 29, line 1, and insert the following:

“(B) in section 202(a)(11) (15 U.S.C. 80b-2(a)(11)), by striking ‘or (F)’ and inserting the following: ‘(F) any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934, unless such organization engages in issuing recommendations as to purchasing, selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others; or (G)’; and

“(C) in”.

On page 33, strike lines 1 through 5.

The bill (S. 3850), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3850

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the “Credit Rating Agency Reform Act of 2006”.

## SEC. 2. FINDINGS.

Upon the basis of facts disclosed by the record and report of the Securities and Exchange Commission made pursuant to section 702 of the Sarbanes-Oxley Act of 2002 (116 Stat. 797), hearings before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives during the 108th and 109th Congresses, comment letters to the concept releases and proposed rules of the Commission, and facts otherwise disclosed and ascertained, Congress finds that credit rating agencies are of national importance, in that, among other things—

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

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

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

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

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

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

## SEC. 3. DEFINITIONS.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following new paragraphs:

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

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

“(A) engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;

“(B) employing either a quantitative or qualitative model, or both, to determine credit ratings; and

“(C) receiving fees from either issuers, investors, or other market participants, or a combination thereof.

“(62) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term ‘nationally recognized statistical rating organization’ means a credit rating agency that—

“(A) has been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration under section 15E;

“(B) issues credit ratings certified by qualified institutional buyers, in accordance with section 15E(a)(1)(B)(ix), with respect to—

“(i) financial institutions, brokers, or dealers;

“(ii) insurance companies;

“(iii) corporate issuers;

“(iv) 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);

“(v) issuers of government securities, municipal securities, or securities issued by a foreign government; or

“(vi) a combination of one or more categories of obligors described in any of clauses (i) through (v); and

“(C) is registered under section 15E.

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

“(64) QUALIFIED INSTITUTIONAL BUYER.—The term ‘qualified institutional buyer’ has the meaning given such term in section 230.144A(a) of title 17, Code of Federal Regulations, or any successor thereto.”.

(b) APPLICABLE DEFINITIONS.—As used in this Act—

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

(2) the term “nationally recognized statistical rating organization” has the same meaning as in section 3(a)(62) of the Securities Exchange Act of 1934, as added by this Act.

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

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

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

“(a) REGISTRATION PROCEDURES.—

“(1) APPLICATION FOR REGISTRATION.—

“(A) IN GENERAL.—A credit rating agency that elects to be treated as a nationally recognized statistical rating organization for purposes of this title (in this section referred to as the ‘applicant’), shall furnish to the Commission an application for registration, in such form as the Commission shall require, by rule or regulation issued in accordance with subsection (n), and containing the information described in subparagraph (B).

“(B) REQUIRED INFORMATION.—An application for registration under this section shall contain information regarding—

“(i) credit ratings performance measurement statistics over short-term, mid-term, and long-term periods (as applicable) of the applicant;

“(ii) the procedures and methodologies that the applicant uses in determining credit ratings;

“(iii) policies or procedures adopted and implemented by the applicant to prevent the misuse, in violation of this title (or the rules and regulations hereunder), of material, non-public information;

“(iv) the organizational structure of the applicant;

“(v) whether or not the applicant has in effect a code of ethics, and if not, the reasons therefor;

“(vi) any conflict of interest relating to the issuance of credit ratings by the applicant;

“(vii) the categories described in any of clauses (i) through (v) of section 3(a)(62)(B) with respect to which the applicant intends to apply for registration under this section;

“(viii) on a confidential basis, a list of the 20 largest issuers and subscribers that use the credit rating services of the applicant, by amount of net revenues received therefrom in the fiscal year immediately preceding the date of submission of the application;

“(ix) on a confidential basis, as to each applicable category of obligor described in any of clauses (i) through (v) of section 3(a)(62)(B), written certifications described in subparagraph (C), except as provided in subparagraph (D); and

“(x) any other information and documents concerning the applicant and any person associated with such applicant as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

“(C) WRITTEN CERTIFICATIONS.—Written certifications required by subparagraph (B)(ix)—

“(i) shall be provided from not fewer than 10 qualified institutional buyers, none of which is affiliated with the applicant;

“(ii) may address more than one category of obligors described in any of clauses (i) through (v) of section 3(a)(62)(B);

“(iii) shall include not fewer than 2 certifications for each such category of obligor; and

“(iv) shall state that the qualified institutional buyer—

“(I) meets the definition of a qualified institutional buyer under section 3(a)(64); and

“(II) has used the credit ratings of the applicant for at least the 3 years immediately preceding the date of the certification in the subject category or categories of obligors.

“(D) EXEMPTION FROM CERTIFICATION REQUIREMENT.—A written certification under subparagraph (B)(ix) is not required with respect to any credit rating agency which has received, or been the subject of, a no-action letter from the staff of the Commission prior to August 2, 2006, stating that such staff would not recommend enforcement action against any broker or dealer that considers credit ratings issued by such credit rating agency to be ratings from a nationally recognized statistical rating organization.

“(E) LIMITATION ON LIABILITY OF QUALIFIED INSTITUTIONAL BUYERS.—No qualified institutional buyer shall be liable in any private right of action for any opinion or statement expressed in a certification made pursuant to subparagraph (B)(ix).

“(2) REVIEW OF APPLICATION.—

“(A) INITIAL DETERMINATION.—Not later than 90 days after the date on which the application for registration is furnished to the Commission under paragraph (1) (or within such longer period as to which the applicant consents) the Commission shall—

“(i) by order, grant such registration for ratings in the subject category or categories of obligors, as described in clauses (i) through (v) of section 3(a)(62)(B); or

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

“(B) CONDUCT OF PROCEEDINGS.—

“(i) CONTENT.—Proceedings referred to in subparagraph (A)(ii) shall—

“(I) include notice of the grounds for denial under consideration and an opportunity for hearing; and

“(II) be concluded not later than 120 days after the date on which the application for registration is furnished to the Commission under paragraph (1).

“(ii) DETERMINATION.—At the conclusion of such proceedings, the Commission, by order, shall grant or deny such application for registration.

“(iii) EXTENSION AUTHORIZED.—The Commission may extend the time for conclusion of such proceedings for not longer than 90 days, if it finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which the applicant consents.

“(C) GROUNDS FOR DECISION.—The Commission shall grant registration under this subsection—

“(i) if the Commission finds that the requirements of this section are satisfied; and

“(ii) unless the Commission finds (in which case the Commission shall deny such registration) that—

“(I) the applicant does not have adequate financial and managerial resources to consistently produce credit ratings with integrity and to materially comply with the procedures and methodologies disclosed under paragraph (1)(B) and with subsections (g), (h), (i), and (j); or

“(II) if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (d).

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

provided in clauses (viii) and (ix) of paragraph (1)(B).

“(b) UPDATE OF REGISTRATION.—

“(1) UPDATE.—Each nationally recognized statistical rating organization shall promptly amend its application for registration under this section if any information or document provided therein becomes materially inaccurate, except that a nationally recognized statistical rating organization is not required to amend—

“(A) the information required to be furnished under subsection (a)(1)(B)(i) by furnishing information under this paragraph, but shall amend such information in the annual submission of the organization under paragraph (2) of this subsection; or

“(B) the certifications required to be provided under subsection (a)(1)(B)(ix) by furnishing information under this paragraph.

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

“(A) certifying that the information and documents in the application for registration of such nationally recognized statistical rating organization (other than the certifications required under subsection (a)(1)(B)(ix)) continue to be accurate; and

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

“(c) ACCOUNTABILITY FOR RATINGS PROCEDURES.—

“(1) AUTHORITY.—The Commission shall have exclusive authority to enforce the provisions of this section in accordance with this title with respect to any nationally recognized statistical rating organization, if such nationally recognized statistical rating organization issues credit ratings in material contravention of those procedures relating to such nationally recognized statistical rating organization, including procedures relating to the prevention of misuse of non-public information and conflicts of interest, that such nationally recognized statistical rating organization—

“(A) includes in its application for registration under subsection (a)(1)(B)(ii); or

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

“(2) LIMITATION.—The rules and regulations that the Commission may prescribe pursuant to this title, as they apply to nationally recognized statistical rating organizations, shall be narrowly tailored to meet the requirements of this title applicable to nationally recognized statistical rating organizations. Notwithstanding any other provision of law, neither the Commission nor any State (or political subdivision thereof) may regulate the substance of credit ratings or the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings.

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

tion, whether prior to or subsequent to becoming so associated—

“(1) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of section 15(b)(4), has been convicted of any offense specified in section 15(b)(4)(B), or is enjoined from any action, conduct, or practice specified in subparagraph (C) of section 15(b)(4), during the 10-year period preceding the date of commencement of the proceedings under this subsection, or at any time thereafter;

“(2) has been convicted during the 10-year period preceding the date on which an application for registration is furnished to the Commission under this section, or at any time thereafter, of—

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

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

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

“(4) fails to furnish the certifications required under subsection (b)(2); or

“(5) fails to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity.

“(e) TERMINATION OF REGISTRATION.—

“(1) VOLUNTARY WITHDRAWAL.—A nationally recognized statistical rating organization may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, withdraw from registration by furnishing a written notice of withdrawal to the Commission.

“(2) COMMISSION AUTHORITY.—In addition to any other authority of the Commission under this title, if the Commission finds that a nationally recognized statistical rating organization is no longer in existence or has ceased to do business as a credit rating agency, the Commission, by order, shall cancel the registration under this section of such nationally recognized statistical rating organization.

“(f) REPRESENTATIONS.—

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

“(2) BAN ON REPRESENTATION AS NRSRO OF UNREGISTERED CREDIT RATING AGENCIES.—It shall be unlawful for any credit rating agency that is not registered under this section as a nationally recognized statistical rating organization to state that such credit rating agency is a nationally recognized statistical rating organization registered under this title.

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

“(g) PREVENTION OF MISUSE OF NONPUBLIC INFORMATION.—

“(1) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and

procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization, to prevent the misuse in violation of this title, or the rules or regulations hereunder, of material, nonpublic information by such nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization.

“(2) COMMISSION AUTHORITY.—The Commission shall issue final rules in accordance with subsection (n) to require specific policies or procedures that are reasonably designed to prevent misuse in violation of this title (or the rules or regulations hereunder) of material, nonpublic information.

“(h) MANAGEMENT OF CONFLICTS OF INTEREST.—

“(1) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address and manage any conflicts of interest that can arise from such business.

“(2) COMMISSION AUTHORITY.—The Commission shall issue final rules in accordance with subsection (n) to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including, without limitation, conflicts of interest relating to—

“(A) the manner in which a nationally recognized statistical rating organization is compensated by the obligor, or any affiliate of the obligor, for issuing credit ratings or providing related services;

“(B) the provision of consulting, advisory, or other services by a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, to the obligor, or any affiliate of the obligor;

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

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

“(E) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

“(i) PROHIBITED CONDUCT.—

“(1) PROHIBITED ACTS AND PRACTICES.—The Commission shall issue final rules in accordance with subsection (n) to prohibit any act or practice relating to the issuance of credit ratings by a nationally recognized statistical rating organization that the Commission determines to be unfair, coercive, or abusive, including any act or practice relating to—

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

“(B) lowering or threatening to lower a credit rating on, or refusing to rate, securi-

ties or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless a portion of the assets within such pool or part of such transaction, as applicable, also is rated by the nationally recognized statistical rating organization; or

“(C) modifying or threatening to modify a credit rating or otherwise departing from its adopted systematic procedures and methodologies in determining credit ratings, based on whether the obligor, or an affiliate of the obligor, purchases or will purchase the credit rating or any other service or product of the nationally recognized statistical rating organization or any person associated with such organization.

“(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1), or in any rules or regulations adopted thereunder, may be construed to modify, impair, or supersede the operation of any of the antitrust laws (as defined in the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act, to the extent that such section 5 applies to unfair methods of competition).

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

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

“(1) SOLE METHOD OF REGISTRATION.—

“(1) IN GENERAL.—On and after the effective date of this section, a credit rating agency may only be registered as a nationally recognized statistical rating organization for any purpose in accordance with this section.

“(2) PROHIBITION ON RELIANCE ON NO-ACTION RELIEF.—On and after the effective date of this section—

“(A) an entity that, before that date, received advice, approval, or a no-action letter from the Commission or staff thereof to be treated as a nationally recognized statistical rating organization pursuant to the Commission rule at section 240.15c3-1 of title 17, Code of Federal Regulations, may represent itself or act as a nationally recognized statistical rating organization only—

“(i) during Commission consideration of the application, if such entity has furnished an application for registration under this section; and

“(ii) on and after the date of approval of its application for registration under this section; and

“(B) the advice, approval, or no-action letter described in subparagraph (A) shall be void.

“(3) NOTICE TO OTHER AGENCIES.—Not later than 30 days after the date of enactment of this section, the Commission shall give notice of the actions undertaken pursuant to this section to each Federal agency which employs in its rules and regulations the term ‘nationally recognized statistical rating organization’ (as that term is used under Commission rule 15c3-1 (17 C.F.R. 240.15c3-1), as

in effect on the date of enactment of this section).

“(m) RULES OF CONSTRUCTION.—

“(1) NO WAIVER OF RIGHTS, PRIVILEGES, OR DEFENSES.—Registration under and compliance with this section does not constitute a waiver of, or otherwise diminish, any right, privilege, or defense that a nationally recognized statistical rating organization may otherwise have under any provision of State or Federal law, including any rule, regulation, or order thereunder.

“(2) NO PRIVATE RIGHT OF ACTION.—Nothing in this section may be construed as creating any private right of action, and no report furnished by a nationally recognized statistical rating organization in accordance with this section or section 17 shall create a private right of action under section 18 or any other provision of law.

“(n) REGULATIONS.—

“(1) NEW PROVISIONS.—Such rules and regulations as are required by this section or are otherwise necessary to carry out this section, including the application form required under subsection (a)—

“(A) shall be issued by the Commission in final form, not later than 270 days after the date of enactment of this section; and

“(B) shall become effective not later than 270 days after the date of enactment of this section.

“(2) REVIEW OF EXISTING REGULATIONS.—Not later than 270 days after the date of enactment of this section, the Commission shall—

“(A) review its existing rules and regulations which employ the term ‘nationally recognized statistical rating organization’ or ‘NRSRO’; and

“(B) amend or revise such rules and regulations in accordance with the purposes of this section, as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

“(o) NRSROS SUBJECT TO COMMISSION AUTHORITY.—

“(1) IN GENERAL.—No provision of the laws of any State or political subdivision thereof requiring the registration, licensing, or qualification as a credit rating agency or a nationally recognized statistical rating organization shall apply to any nationally recognized statistical rating organization or person employed by or working under the control of a nationally recognized statistical rating organization.

“(2) LIMITATION.—Nothing in this subsection prohibits the securities commission (or any agency or office performing like functions) of any State from investigating and bringing an enforcement action with respect to fraud or deceit against any nationally recognized statistical rating organization or person associated with a nationally recognized statistical rating organization.

“(p) APPLICABILITY.—This section, other than subsection (n), which shall apply on the date of enactment of this section, shall apply on the earlier of—

“(1) the date on which regulations are issued in final form under subsection (n)(1); or

“(2) 270 days after the date of enactment of this section.”

(b) CONFORMING AMENDMENTS.—

(1) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

(A) in section 15(b)(4) (15 U.S.C. 78o(b)(4))—

(i) in subparagraph (B)(ii), by inserting “nationally recognized statistical rating organization,” after “transfer agent,”; and

(ii) in subparagraph (C), by inserting “nationally recognized statistical rating organization,” after “transfer agent,”; and

(B) in section 21B(a) (15 U.S.C. 78u-2(a)), by inserting “15E,” after “15C,”.

(2) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a et seq.) is amended—

(A) in section 2(a) (15 U.S.C. 80a-2(a)), by adding at the end the following new paragraph:

“(53) The term ‘credit rating agency’ has the same meaning as in section 3 of the Securities Exchange Act of 1934.”; and

(B) in section 9(a) (15 U.S.C. 80a-9(a))—

(i) in paragraph (1), by inserting “credit rating agency,” after “transfer agent,”; and

(ii) in paragraph (2), by inserting “credit rating agency,” after “transfer agent,”.

(3) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.) is amended—

(A) in section 202(a) (15 U.S.C. 80b-2(a)), by adding at the end the following new paragraph:

“(28) The term ‘credit rating agency’ has the same meaning as in section 3 of the Securities Exchange Act of 1934.”;

(B) in section 202(a)(11) (15 U.S.C. 80b-2(a)(11)), by striking “or (F)” and inserting the following: “(F) any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934, unless such organization engages in issuing recommendations as to purchasing, selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others; or (G)”;

(C) in section 203(e) (15 U.S.C. 80b-3(e))—

(i) in paragraph (2)(B), by inserting “credit rating agency,” after “transfer agent,”; and

(ii) in paragraph (4), by inserting “credit rating agency,” after “transfer agent,”.

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

(5) HIGHER EDUCATION ACT OF 1965.—Section 439(r)(15)(A) of the Higher Education Act of 1965 (20 U.S.C. 1087-2(r)(15)(A)) is amended by striking “means any entity recognized as such by the Securities and Exchange Commission” and inserting “means any nationally recognized statistical rating organization, as that term is defined in section 3(a) of the Securities Exchange Act of 1934”.

(6) TITLE 23.—Section 181(11) of title 23, United States Code, is amended by striking “identified by the Securities and Exchange Commission as a nationally recognized statistical rating organization” and inserting “registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization, as that term is defined in section 3(a) of the Securities Exchange Act of 1934”.

#### SEC. 5. ANNUAL AND OTHER REPORTS.

Section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)) is amended—

(1) by inserting “nationally recognized statistical rating organization,” after “registered transfer agent,”; and

(2) by adding at the end the following: “Any report that a nationally recognized statistical rating organization is required by Commission rules under this paragraph to make and disseminate to the Commission shall be deemed furnished to the Commission.”.

#### SEC. 6. COMMISSION ANNUAL REPORT.

The Commission shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that, with respect to the year to which the report relates—

(1) identifies applicants for registration under section 15E of the Securities Exchange Act of 1934, as added by this Act;

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

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

#### SEC. 7. GAO STUDY AND REPORT REGARDING NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

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

(1) to determine the impact of this Act and the amendments made by this Act on—

(A) the quality of credit ratings issued by nationally recognized statistical ratings organizations;

(B) the financial markets;

(C) competition among credit rating agencies;

(D) the incidence of inappropriate conflicts of interest and sales practices by nationally recognized statistical rating organizations;

(E) the process for registering as a nationally recognized statistical rating organization; and

(F) such other matters relevant to the implementation of this Act and the amendments made by this Act, as the Comptroller General deems necessary to bring to the attention of the Congress;

(2) to identify problems, if any, that have resulted from the implementation of this Act and the amendments made by this Act; and

(3) to recommend solutions, including any legislative or regulatory solutions, to any problems identified under paragraphs (1) and (2).

(B) REPORT REQUIRED.—Not earlier than 3 years nor later than 4 years after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

Mr. MCCONNELL. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

#### ORDER OF PROCEDURE

Mr. MCCONNELL. Mr. President, I ask unanimous consent, notwithstanding the order of last night, that it be reflected that the leader or his designee may offer 3 bills under the provisions of rule XIV, and that all other provisions under the order be in effect; further, that the RECORD remain open until 11 a.m. for submitted statements.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

#### JEWISH HOLIDAY SEASON

Mr. FRIST. Tomorrow, Saturday September 23—the first day of the month of Tishri on the Hebrew Calendar—Jewish people all over the world

will celebrate the holiday of Rosh Hashana. On the 10th of Tishri, October 2 on the Gregorian calendar, will mark the holiday of Yom Kippur—The Day of Atonement. These two days: one a spiritually important New Years celebration, the other an opportunity for solemn reflection coupled with a recognition of God's mercy, rank alongside the weekly Sabbath as the most important holidays in Judaism.

The coming weeks bring two other important, joyous holidays: Sukkot—a commemoration of the mercy of God that allowed the Israelites to survive while wandering in the desert and Simchat Torah, a celebration of the completion of the annual cycle of readings from the scriptures most sacred to Jews.

In their observances, these holidays run the gamut. Jewish law requires fasting on Yom Kippur while the celebration of Sukkot focuses on festive meals eaten in a temporary shelter. All of them, however, have a common thread: a focus on justice, on the Eternal, and upon improving—healing—the world. On ethical monotheism. All these are important traditions that Judaism transmitted to Christianity and Islam.

As we enter the Jewish holiday season, I urge all Americans to reflect on the need to heal the world, to work for peace, and to do justice.

And, on this, the day before Rosh Hashana. I wish all of my Jewish friends and colleagues a Happy New Year. L'Shana Tova.

#### MESSAGE FROM THE HOUSE

#### ENROLLED BILLS SIGNED

At 9:38 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 260. An act to authorize the Secretary of the Interior to provide technical and financial assistance to private landowners to restore, enhance, and manage private land to improve fish and wildlife habitats through the Partners for Fish and Wildlife Program.

S. 418. An act to protect members of the Armed Forces from unscrupulous practices regarding sales of insurance, financial, and investment products.

S. 1025. An act to amend the Act entitled “An Act to provide for the construction of the Cheney division, Wichita Federal reclamation project, Kansas, and for other purposes” to authorize the Equus Beds Division of the Wichita Project.

H.R. 3408. An act to reauthorize the Livestock Mandatory Reporting Act of 1999 and to amend the swine reporting provisions of that Act.

H.R. 3858. An act to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to ensure that State and local emergency preparedness operational plans address the needs of individuals with household pets and service animals following a major disaster or emergency+.

#### MEASURES READ THE FIRST TIME

The following bills were read the first time: