TITLE IX—ADDITIONAL IMPROVEMENTS TO FINANCIAL MARKETS REGULATION

SEC. 901. SHORT TITLE.

This title may be cited as the "Investor Protection Act of 2009".

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Subtitle C—Improvements to the Regulation of Credit Rating Agencies

SEC. 931. MANDATORY REGISTRATION OF CREDIT RATING AGENCIES.

(a) Section 15E(a)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(a)(1)(A)) is amended to read as follows:

"(A) IN GENERAL.—Each credit rating agency shall register as a nationally recognized statistical rating organization for the purposes of this title (in this section referred to as the 'applicant'), and 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) Section 15E(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(e)) is amended by—

(1) striking paragraph (1);

(2) striking "(2)" from the existing paragraph (2); and

(3) moving the text of that paragraph to follow the caption for subsection (e).

1 **SEC. 932. ENHANCED REGULATION OF NATIONALLY RECOGNIZED**

2 **STATISTICAL RATING ORGANIZATIONS.**

3 Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7) is amended—

4 (1) in subsection (c)—

5 (A) in the second sentence of paragraph (2), by inserting "including the

6 requirements of this section," after "Notwithstanding any other provision of law,";

7 and

8 (B) by adding at the end the following new paragraph:

9 "(3) REVIEW OF INTERNAL PROCESSES FOR DETERMINING CREDIT RATINGS.—

10 "(A) IN GENERAL.—Credit ratings by, and the policies, procedures, and

11 methodologies employed by, each nationally recognized statistical rating

12 organization shall be reviewed by the Commission to ensure that—

13 "(i) the nationally recognized statistical rating organization has

14 established and documented a system of internal controls, due diligence,

15 and implementation of methodologies for determining credit ratings,

16 taking into consideration such factors as the Commission may prescribe by

17 rule;

18 "(ii) the nationally recognized statistical rating organization

19 adheres to such system; and

20 "(iii) the public disclosures of the nationally recognized statistical

21 rating organization required under this section about its ratings,

22 methodologies, and procedures are consistent with such system.

23 "(B) PURPOSE OF REVIEWS.—The purpose of the reviews shall be to ensure

that the nationally recognized statistical rating organization is conducting its business in accordance with its stated practices, including those practices that are certified as part of issuing a rating.

"(C) SCOPE OF REVIEWS.—The Commission shall conduct the reviews required by this paragraph—

"(i) for all types of credit ratings; and

"(ii) for new credit ratings, in a timely manner.

"(D) MANNER, FREQUENCY, AND PUBLIC DISCLOSURE.—The Commission shall conduct reviews required by this paragraph no less frequently than annually in a manner to be determined by the Commission. A report summarizing the key findings of the reviews shall be made available to the public in a widely discernable format, as deemed appropriate by the Commission.

"(E) DELEGATION OF REVIEWS.—The Commission may, as it deems necessary, delegate any review of a nationally recognized statistical rating organization under this paragraph to the Public Company Accounting Oversight Board.

"(4) PROVISION OF INFORMATION TO THE COMMISSION.—Each nationally recognized statistical rating organization shall make available and maintain such records and information, for such a period of time, as the Commission may prescribe, by rule, as necessary for the Commission to conduct the reviews under this subsection."

(2) in subsection (d)—

(A) in the heading, by inserting "Fine," after "Censure,";

(B) by inserting "fine," after "censure," each place it appears;

(C) in paragraph (4), by striking "or" at the end;

(D) in paragraph (5), by striking the period at the end and inserting "; or"; and

(E) by adding at the end the following new paragraph:

"(6) fails to conduct sufficient surveillance to ensure that credit ratings remain current, accurate, and reliable, as applicable.";

(3) by amending subsection (h) to read as follows:

"(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 the nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address, manage, and disclose any conflicts of interest that can arise from such business.

"(2) GOVERNANCE IMPROVEMENTS AT NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—Each nationally recognized statistical rating organization shall establish governance procedures to manage conflicts of interest, consistent with the protection of users of credit ratings, in accordance with rules issued by the Commission pursuant to paragraph (3).

"(3) COMMISSION AUTHORITY.—The Commission shall issue rules 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—

"(A) conflicts of interest relating to 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) disclosure of business relationships, ownership interests, affiliations of nationally recognized statistical rating organization board members with obligors, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with the nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

"(C) disclosure of any affiliation of a nationally recognized statistical rating organization, or any person associated with the nationally recognized statistical rating organization, with any person that underwrites securities, entities, or other instruments that are the subject of a credit rating; and

"(D) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of users of credit ratings.

"(4) COMMISSION RULES.—The rules issued by the Commission under paragraph (3) shall include—

"(A) the establishment of a system of payment for each nationally recognized statistical rating organization that requires that payments are structured to ensure that the nationally recognized statistical rating organization conducts accurate and reliable surveillance of ratings over time, as applicable, and that incentives for accurate ratings are in place;

1 "(B) requirements that a nationally recognized statistical rating
2 organization disclose any relationship or affiliation described in subparagraphs
3 (B) and (C) of paragraph (3);
4 "(C) a requirement that, in each credit rating report issued to the public, a
5 nationally recognized statistical rating organization disclose the type and number
6 of ratings it has provided to the obligor or affiliates of the obligor, including the
7 fees it has billed for the credit rating and aggregate amount of fees in the
8 preceding 2 years that it has billed to the particular obligor or its affiliates; and
9 "(D) any other requirement as the Commission deems necessary or
10 appropriate in the public interest, or for the protection of users of credit ratings.
11 "(5) LOOK-BACK REQUIREMENT.—
12 "(A) REVIEW BY NATIONALLY RECOGNIZED STATISTICAL RATING
13 ORGANIZATION.—In any case in which an employee of an obligor or an issuer or
14 underwriter of a security or money market instrument was employed by a
15 nationally recognized statistical rating organization and participated in any
16 capacity in determining credit ratings for the obligor or the securities or money
17 market instruments of the issuer during the 1-year period preceding the date of the
18 issuance of the credit rating, the nationally recognized statistical rating
19 organization shall—
20 "(i) conduct a review to determine whether any conflicts of interest
21 of the employee influenced the credit rating; and
22 "(ii) take action to revise the rating if appropriate, in accordance
23 with such rules as the Commission shall prescribe.

"(B) REVIEW BY COMMISSION.—The Commission shall conduct periodic reviews of the look-back policies described in subparagraph (A) and the implementation of the policies at each nationally recognized statistical rating organization to ensure they are appropriately designed and implemented to most effectively eliminate conflicts of interest in this area.

"(6) PERIODIC REVIEWS.—

"(A) REVIEWS REQUIRED.—The Commission shall conduct periodic reviews of governance and conflict of interest procedures established under this subsection to determine the effectiveness of such procedures.

"(B) TIMING OF REVIEWS.—The Commission shall review and make available to the public the code of ethics and conflict of interest policy of each nationally recognized statistical rating organization—

"(i) not less frequently than annually; and

"(ii) whenever such policies are materially modified or amended.";

(4) by amending subsection (j) to read as follows:

"(j) DESIGNATION OF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each nationally recognized statistical rating organization shall designate an individual to serve as a compliance officer.

"(2) DUTIES.—The compliance officer shall—

"(A) report directly to the board of the nationally recognized statistical rating organization (or the equivalent thereof) or to the senior officer of the nationally recognized statistical rating organization; and

"(B) shall—

"(i) review compliance with policies and procedures to manage conflicts of interest and assess the risk that the compliance (or lack of compliance) may compromise the integrity of the credit rating process;

"(ii) review compliance with internal controls with respect to the procedures and methodologies for determining credit ratings, including quantitative and qualitative models used in the rating process, and assess the risk that such compliance with the internal controls (or lack of such compliance) may compromise the integrity and quality of the credit rating process;

"(iii) in consultation with the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board, or the senior officer of the nationally recognized statistical rating organization, resolve any conflicts of interest that may arise;

"(C) be responsible for administering the policies and procedures required to be established pursuant to this section; and

"(D) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section.

"(E) The compliance officer shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

1 "(3) LIMITATIONS.—The compliance officer shall not, while serving in that
2 capacity—
3 "(A) perform credit ratings;
4 "(B) participate in the development of rating methodologies or models;
5 "(C) perform marketing or sales functions; or
6 "(D) participate in establishing compensation levels, other than for
7 employees working for the compliance officer.
8 "(4) OTHER DUTIES.—The compliance officer shall establish procedures for the
9 receipt, retention, and treatment of—
10 "(A) complaints regarding credit ratings, models, methodologies, and
11 compliance with the securities laws and the policies and procedures required
12 under this section; and
13 "(B) confidential, anonymous complaints by employees or users of credit
14 ratings.
15 "(5) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare
16 and sign a report on the compliance of the nationally recognized statistical rating
17 organization with the securities laws and its policies and procedures, including its code of
18 ethics and conflict of interest policies, in accordance with rules prescribed by the
19 Commission. Such compliance report shall accompany the financial reports of the
20 nationally recognized statistical rating organization that are required to be furnished to
21 the Commission pursuant to this section and shall include a certification that, under
22 penalty of law, the report is accurate and complete.";
23 (5) in subsection (k)—

(A) by striking ", on a confidential basis,";

(B) by striking "Each nationally" and inserting the following:

"(1) IN GENERAL.—Each nationally"; and

(C) by adding at the end the following new paragraph:

"(2) EXCEPTION.—The Commission may treat as confidential any item furnished to the Commission under paragraph (1), the publication of which the Commission determines may have a harmful effect on a nationally recognized statistical rating organization.";

(6) by amending subsection (p) to read as follows:

"(p) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION REGULATION.—

"(1) IN GENERAL.—The Commission shall establish an office that administers the rules of the Commission with respect to the practices of nationally recognized statistical rating organizations in determining ratings, for the protection of users of credit ratings and in the public interest, and to ensure that credit ratings issued by such registrants are accurate and not unduly influenced by conflicts of interest.

"(2) STAFFING.—The office of the Commission established under this subsection shall be staffed sufficiently to carry out fully the requirements of this section.

"(3) RULEMAKING AUTHORITY.—The Commission shall—

"(A) establish, by rule, fines and other penalties for any nationally recognized statistical rating organization that violates the applicable requirements of this title; and

"(B) issue such rules as may be necessary to carry out this section with respect to nationally recognized statistical rating organizations."; and

(7) by adding after subsection (p) the following new subsections:

"(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

"(1) RULEMAKING REQUIRED.—The Commission shall, by rule, require that each nationally recognized statistical rating organization shall disclose publicly information on initial ratings and subsequent changes to such ratings for the purpose of providing a gauge of the accuracy of ratings and allowing users of credit ratings to compare performance of ratings by different nationally recognized statistical rating organizations.

"(2) CONTENT.—The rules of the Commission under this subsection shall require, at a minimum, disclosures that—

"(A) are comparable among nationally recognized statistical rating organizations, so that users can compare rating performance across rating organizations;

"(B) are clear and informative for a wide range of investor sophistication;

"(C) include performance information over a range of years and for a variety of classes of credit ratings, as determined by the Commission; and

"(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website and in written form when requested by users.

"(r) CREDIT RATINGS METHODOLOGIES.—The Commission shall prescribe rules, for the protection of users of credit ratings and in the public interest, with respect to the procedures and methodologies, including qualitative and quantitative models, used by nationally recognized statistical rating organizations that require each nationally recognized statistical rating organization to—

1 "(1) ensure that credit ratings are determined using procedures and
2 methodologies, including qualitative and quantitative models, that are approved by the
3 board of the nationally recognized statistical rating organization, a body performing a
4 function similar to that of a board, or the senior officer of the nationally recognized
5 statistical rating organization, and in accordance with the policies and procedures of the
6 nationally recognized statistical rating organization for developing and modifying credit
7 rating procedures and methodologies;
8 "(2) ensure that when major changes to credit rating procedures and
9 methodologies, including to qualitative and quantitative models, are made, that the
10 changes are applied consistently to all credit ratings to which the changed procedures and
11 methodologies apply and, to the extent the changes are made to credit rating surveillance
12 procedures and methodologies, they are applied to current credit ratings within a time
13 period to be determined by the Commission by rule, and that the reason for the change is
14 disclosed publicly;
15 "(3) notify users of credit ratings of the version of a procedure or methodology,
16 including a qualitative or quantitative model, used with respect to a particular credit
17 rating;
18 "(4) notify users of credit ratings when a change is made to a procedure or
19 methodology, including to a qualitative or quantitative model, or an error is identified in a
20 procedure or methodology that may result in credit rating actions, and the likelihood of
21 the change resulting in current credit ratings being subject to rating actions; and
22 "(5) not later than 2 years after the date of enactment of the Investor Protection
23 Act of 2009, adopt and use rating symbols that distinguish between structured and non-

1 structured products, and such other rating symbols for products that the Commission
2 deems appropriate or necessary in the public interest and for the protection of users of
3 credit ratings.
4 "(s) TRANSPARENCY OF CREDIT RATING METHODOLOGIES AND INFORMATION
5 REVIEWED.—
6 "(1) IN GENERAL.—The Commission shall establish a form, to accompany each
7 rating issued by a nationally recognized statistical rating organization—
8 "(A) to disclose information about assumptions underlying credit rating
9 procedures and methodologies, the data that was relied on to determine the credit
10 rating and, where applicable, how the nationally recognized statistical rating
11 organization used servicer or remittance reports, and with what frequency, to
12 conduct surveillance of the credit rating; and
13 "(B) that can be made public and used by investors and other users to
14 better understand credit ratings issued in each class of credit rating issued by the
15 nationally recognized statistical rating organization.
16 "(2) FORMAT.—The Commission shall ensure that the form established under
17 paragraph (1)—
18 "(A) is designed in a user-friendly and helpful manner for users of credit
19 ratings to understand the information contained in the report; and
20 "(B) requires the nationally recognized statistical rating organization to
21 provide the appropriate content, as required by paragraph (4) in a manner that is
22 directly comparable across securities, for example, number, rating, or index, as
23 appropriate, and in distinct forms for structured and traditional corporate issues.

1 "(3) QUALITATIVE CONTENT.—Each nationally recognized statistical rating
2 organization shall include on the form established under this subsection, along with its
3 ratings—
4 "(A) the main assumptions included in constructing procedures and
5 methodologies, including qualitative and quantitative models and assumptions
6 about the correlation of defaults across obligors used in rating certain structured
7 products;
8 "(B) the potential shortcomings of the credit ratings, and the types of risks
9 excluded from the credit ratings that the registrant is not commenting on, such as
10 liquidity, market, and other risks;
11 "(C) information on the certainty of the rating, including information on
12 the reliability, accuracy, and quality of the data relied on in determining the
13 ultimate credit rating and a statement on the extent to which key data inputs for
14 the credit rating were reliable or limited, including any limits on the reach of
15 historical data, limits in accessibility to certain documents or other forms of
16 information that would have better informed the credit rating, and the
17 completeness of certain information considered;
18 "(D) whether and to what extent third party due diligence services have
19 been utilized, and a description of the information that such third party reviewed
20 in conducting due diligence services;
21 "(E) a description of relevant data about any obligor, issuer, security, or
22 money market instrument that was used and relied on for the purpose of
23 determining the credit rating;

"(F) a statement containing an overall assessment of the quality of information available and considered in producing a rating for a security in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar issuances; and

"(G) additional information, including conflict of interest information, as may be required by the Commission.

"(4) QUANTITATIVE CONTENT.—Each nationally recognized statistical rating organization shall include on the form established under this subsection, along with its ratings—

"(A) an explanation or measure of the potential volatility for the rating, including any factors that might lead to a change in the rating, and the extent of the change that might be anticipated under different conditions;

"(B) information on the content of the rating, including:

"(i) the expected default probability; and

"(ii) the loss given default;

"(C) information on the sensitivity of the rating to assumptions made by the nationally recognized statistical rating organization; and

"(D) additional information as may be required by the Commission.

"(5) DUE DILIGENCE SERVICES.—

"(A) CERTIFICATION REQUIRED.—In any case in which third-party due diligence services are employed by a nationally recognized statistical rating organization or an issuer or underwriter, the firm providing the due diligence services shall provide to the nationally recognized statistical rating organization

1 written certification of the due diligence, which shall be subject to review by the
2 Commission.
3 "(B) FORMAT AND CONTENT.—The nationally recognized statistical rating
4 organizations shall establish the appropriate format and content for written
5 certifications required under subparagraph (A) to ensure that providers of due
6 diligence services have conducted a thorough review of data, documentation, and
7 other relevant information necessary for the nationally recognized statistical
8 rating organization to provide an accurate rating.
9 "(C) DISCLOSURE OF CERTIFICATION.—The Commission shall adopt rules
10 requiring a nationally recognized statistical rating organization at the time it
11 produces a rating to disclose the certification described in subparagraph (A) to the
12 public in a manner that may permit the public to determine the adequacy and level
13 of due diligence services provided by a third party.".
14 **SEC. 933. STRENGTHENING CREDIT RATING AGENCY INDEPENDENCE.**
15 Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7) is amended by
16 adding at the end the following new subsections:
17 "(t) PROHIBITED ACTIVITIES.— Except as provided in subsection (u), beginning 180 days
18 from the date of enactment of the Investor Protection Act of 2009, it shall be unlawful for a
19 nationally recognized statistical rating organization, an affiliate of a nationally recognized
20 statistical rating organization, or any person associated with a nationally recognized statistical
21 rating organization, to the extent determined appropriate by the Commission, that provides a
22 rating for an issuer, underwriter, or placement agent of a security to provide to that issuer,
23 underwriter, or placement agent, any non-rating service that preceded the retention of the

1 nationally recognized statistical rating organization by the issuer, underwriter, or placement
2 agent to provide a rating for the security in question or any assistance provided after such point
3 for which additional compensation is paid directly or indirectly, including:
4 "(1) risk management advisory services;
5 "(2) ancillary assistance, advice, or consulting services unrelated to any specific
6 credit rating issuance; and
7 "(3) such further activities or services as the Commission may determine as
8 necessary or appropriate in the public interest or for the protection of users of credit
9 ratings.
10 "(u) EXEMPTION AUTHORITY.—The Commission may, on a case by case basis, exempt
11 any person, issuer, underwriter, placement agent or nationally recognized statistical rating
12 organization from the prohibition in subsection (t), to the extent that such exemption is necessary
13 or appropriate in the public interest and is consistent with the protection of users of credit ratings,
14 and subject to review by the Commission.".
15 **SEC. 934. ISSUER DISCLOSURE OF PRELIMINARY RATINGS.**
16 The Securities and Exchange Commission shall adopt rules under authority of the
17 Securities Act of 1933 (15 U.S.C. 77a, *et seq.*) to require issuers to disclose preliminary credit
18 ratings received from nationally recognized statistical rating agencies on structured products and
19 all forms of corporate debt.
20 **SEC. 935. REGULATIONS.**
21 The Securities and Exchange Commission shall adopt rules and regulations, as
22 required by the amendments made by the Investor Protection Act of 2009, not later than 365
23 days after the date of enactment of this Act.

1 **SEC. 936. STUDY AND REPORT.**

2 (a) STUDY.—The Comptroller General of the United States shall undertake a study of—

3 (1) the extent to which the rulemaking of the Securities and Exchange

4 Commission has carried out the provisions of this Act;

5 (2) the appropriateness of relying on ratings for use in Federal, State, and local

6 securities and banking regulations, including for determining capital requirements; and

7 (3) alternative means for compensating credit rating agencies that would create

8 incentives for accurate credit ratings and what, if any, statutory changes would be

9 required to permit or facilitate the use of such alternative means of compensation.

10 (b) REPORT.—Not later than 30 months after the date of enactment of this the Investor

11 Protection Act of 2009, the Comptroller General shall submit to Congress and the Securities

12 Exchange Commission, a report containing the findings under the study required by subsection

13 (a).