

[DISCUSSION DRAFT]

117TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Exchange Act of 1934 to establish a Credit Rating Agency Assignment Board to assign qualified nationally recognized statistical rating organizations to issue credit ratings with respect to corporate issuers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to establish a Credit Rating Agency Assignment Board to assign qualified nationally recognized statistical rating organizations to issue credit ratings with respect to corporate issuers, and for other purposes.

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.**

4 This Act may be cited as the “NRSRO Reform Act”.

1 **SEC. 2. CREDIT RATING ASSIGNMENTS FOR CORPORATE**
2 **ISSUERS.**

3 (a) IN GENERAL.—Section 15E of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78o–7) is amended by add-
5 ing at the end the following:

6 “(w) CREDIT RATING ASSIGNMENTS FOR COR-
7 PORATE ISSUERS.—

8 “(1) DEFINITIONS.—In this subsection:

9 “(A) BOARD.—The term ‘Board’ means
10 the Credit Rating Agency Board established
11 under paragraph (2).

12 “(B) QUALIFIED NATIONALLY RECOG-
13 NIZED STATISTICAL RATING ORGANIZATION.—
14 The term ‘qualified nationally recognized statis-
15 tical rating organization’ means a nationally
16 recognized statistical rating organization that
17 the Board determines, under paragraph (3)(B),
18 to be qualified to issue credit ratings with re-
19 spect to corporate issuers.

20 “(2) CREDIT RATING AGENCY BOARD.—

21 “(A) IN GENERAL.—Not later than 180
22 days after the date of enactment of this sub-
23 section, the Commission shall—

24 “(i) establish the Credit Rating Agen-
25 cy Board, which shall be a self-regulatory
26 organization;

1 “(ii) subject to subparagraph (C), se-
2 lect the initial members of the Board; and

3 “(iii) establish a schedule to ensure
4 that the Board begins assigning qualified
5 nationally recognized statistical rating or-
6 ganizations to provide credit ratings not
7 later than 1 year after the selection of the
8 members of the Board.

9 “(B) SCHEDULE.—The schedule estab-
10 lished under subparagraph (A)(iii) shall pre-
11 scribe when—

12 “(i) the Board will conduct a study of
13 the securitization and ratings process and
14 provide recommendations to the Commis-
15 sion;

16 “(ii) the Commission will issue rules
17 and regulations under this section;

18 “(iii) the Board may issue rules under
19 this subsection; and

20 “(iv) the Board will—

21 “(I) begin accepting applications
22 to select qualified national recognized
23 statistical rating organizations; and

24 “(II) begin assigning qualified
25 national recognized statistical rating

1 organizations to provide credit rat-
2 ings.

3 “(C) MEMBERSHIP.—

4 “(i) IN GENERAL.—The Board shall
5 initially be composed of an odd number of
6 members selected from the industry, with
7 the total numerical membership of the
8 Board to be determined by the Commis-
9 sion.

10 “(ii) SPECIFICATIONS.—Of the mem-
11 bers initially selected to serve on the
12 Board—

13 “(I) not less than a majority of
14 the members shall be representatives
15 of the investor industry who do not
16 represent issuers;

17 “(II) not less than 1 member
18 should be a representative of the
19 issuer industry;

20 “(III) not less than 1 member
21 should be a representative of the cred-
22 it rating agency industry; and

23 “(IV) not less than 1 member
24 should be an independent member.

1 “(iii) TERMS.—Initial members shall
2 be appointed by the Commission for a term
3 of 4 years.

4 “(iv) NOMINATION AND ELECTION OF
5 MEMBERS.—

6 “(I) IN GENERAL.—Prior to the
7 expiration of the terms of office of the
8 initial members, the Commission shall
9 establish fair procedures for the nomi-
10 nation and election of future members
11 of the Board.

12 “(II) MODIFICATIONS OF THE
13 BOARD.—Prior to the expiration of
14 the terms of office of the initial mem-
15 bers, the Commission—

16 “(aa) may increase the size
17 of the board to a larger odd num-
18 ber and adjust the length of fu-
19 ture terms; and

20 “(bb) shall retain the com-
21 position of members described in
22 clause (ii).

23 “(v) RESPONSIBILITIES OF MEM-
24 BERS.—Members shall perform, at a min-

1 imum, the duties described in this sub-
2 section.

3 “(vi) RULEMAKING AUTHORITY.—The
4 Commission shall, if it determines nec-
5 essary and appropriate, issue further rules
6 and regulations on the composition of the
7 membership of the Board and the respon-
8 sibilities of the members.

9 “(D) OTHER AUTHORITIES OF THE
10 BOARD.—The Board shall have the authority to
11 levy fees from qualified nationally recognized
12 statistical rating organization applicants, and
13 periodically from qualified nationally recognized
14 statistical rating organizations as necessary to
15 fund expenses of the Board.

16 “(E) REGULATION.—The Commission has
17 the authority to regulate the activities of the
18 Board, and issue any further regulations of the
19 Board it deems necessary, not in contravention
20 with the intent of this section.

21 “(3) BOARD SELECTION OF QUALIFIED NATION-
22 ALLY RECOGNIZED STATISTICAL RATING ORGANIZA-
23 TION.—

24 “(A) APPLICATION.—

1 “(i) IN GENERAL.—A nationally rec-
2 cognized statistical rating organization may
3 submit an application to the Board, in
4 such form and manner as the Board may
5 require, to become a qualified nationally
6 recognized statistical rating organization
7 with respect to corporate issuers.

8 “(ii) CONTENTS.—An application sub-
9 mitted under clause (i) shall contain—

10 “(I) information regarding the
11 institutional and technical capacity of
12 the nationally recognized statistical
13 rating organization to issue credit rat-
14 ings;

15 “(II) information on whether the
16 nationally recognized statistical rating
17 organization has been exempted by
18 the Commission from any require-
19 ments under any other provision of
20 this section; and

21 “(III) any additional information
22 the Board may require.

23 “(iii) REJECTION OF APPLICATIONS.—
24 The Board may reject an application sub-
25 mitted under this paragraph if the nation-

1 ally recognized statistical rating organiza-
2 tion has been exempted by the Commission
3 from any requirements under any other
4 provision of this section.

5 “(B) SELECTION.—The Board shall select
6 qualified national recognized statistical rating
7 organizations from among the nationally recog-
8 nized statistical rating organizations that sub-
9 mit applications under subparagraph (A).

10 “(C) RETENTION OF STATUS AND OBLIGA-
11 TIONS AFTER SELECTION.—An entity selected
12 as a qualified nationally recognized statistical
13 rating organization shall retain its status and
14 obligations under the law as a nationally recog-
15 nized statistical rating organization, and noth-
16 ing in this subsection grants authority to the
17 Commission or the Board to exempt qualified
18 nationally recognized statistical rating organiza-
19 tions from obligations or requirements other-
20 wise imposed by Federal law on nationally rec-
21 ognized statistical rating organizations.

22 “(4) REQUESTING A CREDIT RATING.—A cor-
23 porate issuer which seeks a credit rating—

1 “(A) may not request a credit rating from
2 a nationally recognized statistical rating organi-
3 zation; and

4 “(B) shall submit a request for a credit
5 rating to the Board, in such form and manner
6 as the Board may prescribe.

7 “(5) ASSIGNMENT OF RATING DUTIES.—

8 “(A) IN GENERAL.—For each request re-
9 ceived by the Board under paragraph (4)(B),
10 the Board shall select a qualified nationally rec-
11 ognized statistical rating organization to pro-
12 vide the credit rating to the corporate issuer.

13 “(B) METHOD OF SELECTION.—

14 “(i) IN GENERAL.—The Board shall—

15 “(I) evaluate the selection meth-
16 ods of either a lottery or blind rotat-
17 ing assignment system, incorporating
18 the factors described in clause (ii), to
19 reduce the conflicts of interest that
20 exist under the issuer-pays model; and

21 “(II) prescribe and publish the
22 selection method to be used under
23 subparagraph (A).

1 “(ii) CONSIDERATION.—In evaluating
2 a selection method described in clause
3 (i)(I), the Board shall consider—

4 “(I) the information submitted
5 by the qualified nationally recognized
6 statistical rating organization under
7 paragraph (3)(A)(ii) regarding the in-
8 stitutional and technical capacity of
9 the qualified nationally recognized sta-
10 tistical rating organization to issue
11 credit ratings;

12 “(II) evaluations conducted
13 under paragraph (7);

14 “(III) formal feedback from insti-
15 tutional investors; and

16 “(IV) information from sub-
17 clauses (I) and (II) to implement a
18 mechanism which increases or de-
19 creases assignments based on past
20 performance.

21 “(iii) PROHIBITION.—The Board, in
22 choosing a selection method, may not use
23 a method that would allow for the sollicita-
24 tion or consideration of the preferred na-

1 tional recognized statistical rating organi-
2 zations of the corporate issuer.

3 “(iv) ADJUSTMENT OF PROCESS.—
4 The Board shall issue rules describing the
5 process by which it can modify the assign-
6 ment process described in clause (i).

7 “(C) RIGHT OF REFUSAL.—

8 “(i) REFUSAL.—A qualified nationally
9 recognized statistical rating organization
10 selected under subparagraph (A) may
11 refuse to accept a selection for a particular
12 request by—

13 “(I) notifying the Board of such
14 refusal; and

15 “(II) submitting to the Board a
16 written explanation of the refusal.

17 “(ii) SELECTION.—Upon receipt of a
18 notification under clause (i), the Board
19 shall make an additional selection under
20 subparagraph (A).

21 “(iii) INSPECTION REPORTS.—The
22 Board shall annually submit any expla-
23 nations of refusals received under clause
24 (i)(II) to the Commission, and such ex-
25 planatory submissions shall be published in

1 the annual inspection reports required
2 under subsection (p)(3)(C).

3 “(6) DISCLAIMER REQUIRED.—Each credit rat-
4 ing issued under this subsection shall include, in
5 writing, the following disclaimer: ‘This credit rating
6 has not been evaluated, approved, or certified by the
7 Government of the United States or by a Federal
8 agency.’.

9 “(7) EVALUATION OF PERFORMANCE.—

10 “(A) IN GENERAL.—The Board shall pre-
11 scribe rules by which the Board will evaluate
12 the performance of each qualified nationally
13 recognized statistical rating organization, in-
14 cluding rules that require, at a minimum, an
15 annual evaluation of each qualified nationally
16 recognized statistical rating organization.

17 “(B) CONSIDERATIONS.—The Board, in
18 conducting an evaluation under subparagraph
19 (A), shall consider—

20 “(i) the results of the annual exam-
21 ination conducted under subsection (p)(3);

22 “(ii) surveillance of credit ratings con-
23 ducted by the qualified nationally recog-
24 nized statistical rating organization after
25 the credit ratings are issued, including—

1 “(I) how the rated instruments
2 perform;

3 “(II) the accuracy of the ratings
4 provided by the qualified nationally
5 recognized statistical rating organiza-
6 tion as compared to the other nation-
7 ally recognized statistical rating orga-
8 nizations; and

9 “(III) the effectiveness of the
10 methodologies used by the qualified
11 nationally recognized statistical rating
12 organization; and

13 “(iii) any additional factors the Board
14 determines to be relevant.

15 “(C) REQUEST FOR REEVALUATION.—Sub-
16 ject to rules prescribed by the Board, and not
17 less frequently than once a year, a qualified na-
18 tionally recognized statistical rating organiza-
19 tion may request that the Board conduct an
20 evaluation under this paragraph.

21 “(D) DISCLOSURE.—The Board shall
22 make the evaluations conducted under this
23 paragraph available to Congress.

24 “(8) RATING FEES CHARGED TO ISSUERS.—

1 “(A) LIMITED TO REASONABLE FEES.—A
2 qualified nationally recognized statistical rating
3 organization shall charge a corporate issuer a
4 reasonable fee, as determined by the Commis-
5 sion, for a credit rating provided under this sec-
6 tion.

7 “(B) FEES.—Fees may be determined by
8 the qualified national recognized statistical rat-
9 ing organizations unless the Board determines
10 it is necessary to issue rules on fees.

11 “(C) REASONABLE FEE.—The Board shall
12 issue regulations to define the term ‘reasonable
13 fee’ for purposes of subparagraph (A).

14 “(9) MATERIAL CHANGE IN CIRCUMSTANCES.—
15 If the Board determines that it is necessary or ap-
16 propriate in the public interest or for the protection
17 of investors, the Board may issue regulations requir-
18 ing that a corporate issuer that has received a credit
19 rating under this subsection request a revised credit
20 rating each time the corporate issuer experiences a
21 material change in circumstances, as defined by the
22 Board.

23 “(10) CONFLICTS.—

24 “(A) MEMBERS OR EMPLOYEES OF THE
25 BOARD.—

1 “(i) LOAN OF MONEY OR SECURITIES
2 PROHIBITED.—

3 “(I) IN GENERAL.—A member or
4 employee of the Board shall not ac-
5 cept any loan of money or securities,
6 or anything above nominal value, from
7 any nationally recognized statistical
8 rating organization, issuer, or inves-
9 tor.

10 “(II) EXCEPTION.—The prohibi-
11 tion in subclause (I) does not apply to
12 a loan made in the context of dis-
13 closed, routine banking and brokerage
14 agreements, or a loan that is clearly
15 motivated by a personal or family re-
16 lationship.

17 “(ii) EMPLOYMENT NEGOTIATIONS
18 PROHIBITION.—A member or employee of
19 the Board shall not engage in employment
20 negotiations with any nationally recognized
21 statistical rating organization, issuer, or
22 investor, unless the member or employee—

23 “(I) discloses the negotiations
24 immediately upon initiation of the ne-
25 gotiations; and

1 “(II) recuses himself from all
2 proceedings concerning the entity in-
3 volved in the negotiations until termi-
4 nation of negotiations or until termi-
5 nation of his employment by the
6 Board, if an offer of employment is
7 accepted.

8 “(B) CREDIT ANALYSTS.—

9 “(i) IN GENERAL.—A credit analyst of
10 a qualified nationally recognized statistical
11 rating organization shall not accept any
12 loan of money or securities, or anything
13 above nominal value, from any issuer or in-
14 vestor.

15 “(ii) EXCEPTION.—The prohibition
16 described in clause (i) does not apply to a
17 loan made in the context of disclosed, rou-
18 tine banking and brokerage agreements, or
19 a loan that is clearly motivated by a per-
20 sonal or family relationship.

21 “(11) EVALUATION OF CREDIT RATING AGENCY
22 BOARD.—Not later than 5 years after the date that
23 the Board begins assigning qualified nationally re-
24 cognized statistical rating organizations to provide

1 credit ratings, the Commission shall submit to Con-
2 gress a report that provides recommendations of—

3 “(A) the continuation of the Board;

4 “(B) any modification to the procedures of
5 the Board; and

6 “(C) modifications to the provisions in this
7 subsection.”.

8 (b) CONFORMING AMENDMENT.—Section
9 3(a)(62)(A)(iii) of the Securities Exchange Act of 1934
10 (15 U.S.C. 78c(a)(62)(A)(iii)) is amended by inserting
11 “subject to subsection (w) of section 15E,” before “cor-
12 porate”.