



# Overview of Dodd-Frank Rating Agency Regulations

Last Updated: April 2013

**Chapman and Cutler LLP**

Attorneys at Law • Focused on Finance®

# Changes in Regulation of Rating Agencies

---

## Changes in Regulation of Rating Agencies under Dodd-Frank

- Authorizes SEC to impose **new penalties** on NRSROs for specified misconduct or to **revoke NRSRO's registration** if NRSRO's ratings lack reliability (Section 932).
- **Nullifies SEC Rule 436(g)**, which had exempted NRSRO credit ratings from being considered part of a registration statement prepared or certified by an expert. As a result, an ABS issuer must not obtain and file the NRSRO's consent in order to include an NRSRO credit rating in a registration statement. This consent, in turn, **exposes the NRSRO to liability as an expert** under Securities Act Section 11 for material misstatements/omissions relating to its rating (Section 939G).
  - SEC has issued a “no-action letter” relieving ABS issuers from any requirement to disclose ratings in a registration statement (See November 2010 Ford Motor Credit no-action letter).
- Provides investors with a **private right of action under the federal securities laws** for statements made by credit rating agencies in the same manner and to the same extent as statements made by registered public accounting firms or securities analysts (Section 933).

# Section 939A

---

## Replace or Remove References to Credit Ratings

Dodd-Frank also directs regulators, whenever possible, to replace or remove references to credit ratings in regulations (Section 939A).

SEC (and other regulators) are in the process of doing so.

Examples include:

- **Shelf Registration:** Proposals to replace credit ratings as shelf registration eligibility criteria.
- **Rule 134 Tombstone Ads:** Can no longer include credit ratings in tombstone ads/other offering materials without treating the communication as a “prospectus” (which carries with it certain use, content and filing requirements).
- **ICA; Rule 3a-7:** Similar proposals under Investment Company Act, including Rule 3a-7.

# Franken Amendment

---

- Dodd-Frank also requires SEC to carry out a study of –
  - (1) the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and subscriber-pay models; and
  - (2) the feasibility of establishing a system in which a public or private utility or a self-regulatory organization assigns NRSROs to determine the credit ratings of structured finance products (Section 939A).
- SEC is required to implement the system described in paragraph (2) above unless SEC “determines an alternative system would better serve the public interest and protection of investors.”
- Dodd-Frank required SEC to submit the findings of the study to Congress, along with any recommendations for regulatory or statutory changes. Although the deadline was July 21, 2012, SEC submitted its report to Congress on December 18, 2012. The key recommendation in the SEC’s report is that the SEC convene a roundtable to discuss the study and its findings. That roundtable occurred on May 14, 2013.

# Rule 17g-7

---

## Rating Agency Reports – Rule 17g-7

- Must include a description of:
  - All representations, warranties and enforcement mechanisms available to investors;
  - How they compare with those in issuances of similar securities.
- Applies to:
  - Any report accompanying a credit rating (including a preliminary credit rating);
  - Issued on or after September 26, 2011;
  - In respect of *any* ABS (*i.e.*, registered, exempt, domestic, foreign).

---

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

© 2013 Chapman and Cutler LLP