

CREDIT RATING AGENCIES: REFORM, DON'T ELIMINATE

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Introduction

The massive downgrades of securitized assets among other alleged failings during the financial crisis called into question the credit rating agency business model, and in particular, the “issuer-pay” compensation scheme. As a result, the Dodd-Frank Wall Street Reform and Consumer Protection Act (known as “Dodd-Frank”) enacted multiple reforms for credit rating agencies. In particular, Section 939F—more commonly known as the “Franken Amendment”—addressed credit rating agency compensation by directing the Securities and Exchange Commission (SEC) to study the feasibility of implementing a system whereby a board assigns credit rating agencies to rate structured finance securities. Dodd-Frank requires the SEC to implement this system unless it finds a more suitable alternative.

Today, the SEC’s work related to the Franken Amendment is underway and has sparked significant debate among market participants, policymakers, and other interested parties. Many different views exist and multiple misconceptions abound. The key to moving forward is to develop a clear understanding of how investors use ratings and to establish agreement on the objectives of reform.

In this *ViewPoint* we explain how investors use credit ratings, we suggest several reform objectives that policymakers should consider, and we review the reforms contemplated in the Franken Amendment of Dodd-Frank in the context of these objectives. In addition, we address other regulatory initiatives, including those designed to reduce reliance on credit ratings.

BLACKROCK RECOMMENDATIONS

1. Acknowledge that credit ratings have value for investors – punitive measures or those that attack the fundamental business of credit rating agencies are detrimental to investors.
2. Recognize that credit ratings are one input to the investment process; ratings are not a substitute for an asset managers’ diligent credit analysis.
3. Clearly define the objectives of reform:
 - ▶ Reduce issuers’ ability to solicit feedback from rating agencies prior to engaging the agency to rate the issue, commonly referred to as “ratings shopping”
 - ▶ Enhance transparency and disclosure to investors of data underlying ratings decisions; and
 - ▶ Ensure that conflicts of interest are identified, mitigated and managed.
4. Increased regulatory oversight, including the SEC’s annual review of credit rating agencies, is effective and should be continued.
5. With respect to the Franken Amendment:
 - ▶ The credit rating assignment system has the potential to cause negative unintended consequences and adds an unnecessary level of regulatory complexity. “Ratings shopping” can be minimized by requiring credit rating agencies to be engaged to rate a deal prior to engaging in a detailed collateral review.
 - ▶ Increased transparency and disclosure of underlying data to investors via the Rule 17g-5 system could incentivize quality ratings and discourage over-reliance on ratings

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Credit Ratings are Important to Investors

“Investor” is a term that can be used to describe many different entities and individuals who participate in the capital markets. For the purposes of this discussion, it is helpful to break “investors” into “asset managers” and “end investors” as these two types of investors may utilize credit ratings in different ways. We define “asset managers” as entities who buy and sell individual securities on behalf of their clients, whereas we define “end investors” as the clients of asset managers. This can get somewhat confusing since the “asset manager” is sometimes an investment management firm, like BlackRock, and sometimes an insurance company or a plan sponsor that manages its own assets.

Asset managers are responsible for making investment decisions regarding individual securities. Ratings are one of many inputs in this process. Third party credit ratings provide a benchmark or a reference point and should represent independent and standardized opinions of credit across asset classes. Importantly, credit ratings serve as a preliminary screen and do not replace the responsibility of an asset manager to conduct its own credit analysis both prior to a security’s inclusion in an end investor’s portfolio and throughout the holding period.

End investors use credit ratings (i) to compare portfolios, and (ii) to define minimum investment criteria. As such, many end investors have investment guidelines that limit their holdings to instruments that carry third party ratings or funds that invest primarily in such instruments. Minimum investment criteria that reference third party ratings provide direction to asset managers as to what securities the end investor considers appropriate for inclusion in a portfolio. Average credit ratings or similar calculations, using independent ratings, facilitate the comparison of portfolios.

“credit ratings serve as a preliminary screen and do not replace the responsibility of an asset manager to conduct its own credit analysis”

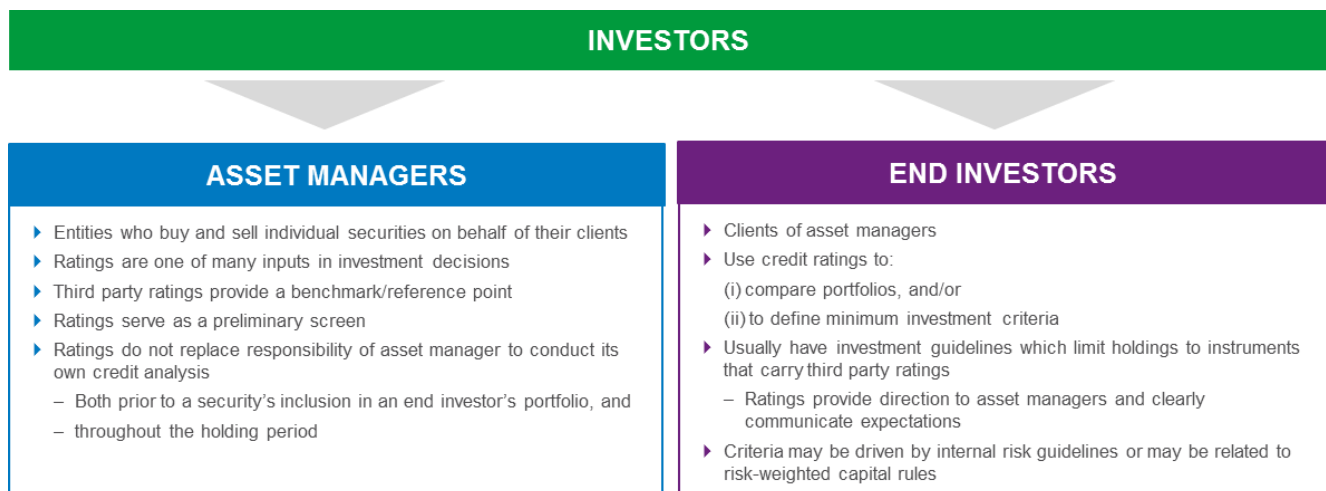
The absence of independent ratings would leave end investors exposed solely to the manager’s assessment; for example, of whether a security is “investment grade” or “high yield”. As such, references to third party credit ratings are beneficial protections for end investors and their use in investment guidelines should be preserved.

Investment Guidelines

Investment guidelines are part of the investment management agreements between investment managers and their clients (end investors). Investment guidelines describe the permissible securities an asset manager is allowed to purchase for inclusion in the client’s portfolio. As contractual agreements, investment managers must adhere to the client’s investment guidelines or potentially be subject to significant legal ramifications.

Investment guidelines often reference third party ratings in order to describe the permissible credit quality of securities. End investors determine the appropriate credit quality criteria for the management of their assets based on a variety of factors, including internal risk guidelines and risk-weighted capital rules. References to ratings in investment guidelines play an important role in ensuring that end investors’ expectations with respect to how their assets should be managed are clearly communicated.

Figure 1: ASSET MANAGERS AND END INVESTORS



References to Credit Ratings in Investment Guidelines

The following is an example of BlackRock’s recommended language for use in investment guidelines that are part of the investment management agreement between BlackRock as the investment manager and our client.

“Securities must be rated investment grade or better by a nationally recognized credit rating agency at the time of purchase.”

By comparison, clients often propose more tailored language. The following are excerpts taken from the investment guidelines of a large pension plan.

“Fixed income securities shall not be rated less than Baa3 or its equivalent.”

“All securities must be rated by either Moody’s or Standard & Poors.”

Objectives for Credit Rating Agency Reform

As the title of this *ViewPoint* states, we believe that credit rating agencies should be reformed, not eliminated. Credit ratings are important for investors. Punitive measures or those that attack the fundamental business of credit rating agencies are detrimental to investors.

Multiple reforms have been enacted, proposed, and implemented over the past few years. We are concerned that the objectives of these reforms are not always clear. Credit rating agency reform should focus on preserving the utility of credit ratings and the efficient functioning of capital markets, while enhancing protections and transparency for investors. The following key principles must be addressed in order to achieve this goal:

- ▶ Reduce issuers’ ability to solicit feedback from rating agencies prior to engaging the agency to rate the issue, commonly referred to as “ratings shopping”;
- ▶ Enhance transparency and disclosure to investors of data underlying ratings decisions; and
- ▶ Ensure that conflicts of interest are identified, mitigated and managed.

Only with clearly defined objectives can we successfully move forward with appropriate reforms that do not cause unintended consequences for investors. The following discussion considers the Franken Amendment in the context of these objectives.

Analysis of the “Franken Amendment”

Section 939F of Dodd-Frank, or the “Franken Amendment”—named for the champion of the provision, Senator Al Franken—directed the SEC to conduct a study of “(1) the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models”; and “(2) the feasibility of establishing a system whereby a public or private utility or self-regulatory organization assigns [Nationally Recognized Statistical Rating Organizations] NRSROs to determine the credit ratings for structured finance products.” The SEC is required to implement this “credit rating agency assignment system” for structured finance securities unless it finds a more suitable alternative. In addition to considering the feasibility and advisability of a credit rating agency assignment system, the SEC was required to consider “potential mechanisms for determining fees”, ways to evaluate the performance of credit ratings, and alternative compensation models¹.

In December 2012, the SEC issued the required study which considered reforms and concluded that the SEC should hold a public roundtable to gather additional public feedback. The roundtable held on May 14, 2013 focused on the following three alternatives:

1. Implement the credit rating agency assignment system² for structured finance securities;
2. Enhance Rule 17g-5 to encourage more unsolicited ratings; or
3. Alternative compensation schemes

1. Implement the credit rating agency assignment system for structured finance securities.

The credit rating assignment system would require the SEC to create a Credit Rating Agency Board (“CRA Board”), which would be responsible for assigning NRSROs to provide initial ratings for structured finance transactions. The issuer of the security would no longer be able to solicit a rating directly from a credit rating agency, as is the practice today. Instead, the CRA Board would assign a “Qualified NRSRO” to rate the security.

Proponents of this approach believe that a credit rating assignment system will eliminate “ratings shopping”. “Ratings shopping” may incentivize credit rating agencies to be more liberal in their rating because they know that the issuer will ultimately hire the agency that is willing to give the best rating or require the fewest credit enhancements to provide a certain rating. Additionally, they believe that the credit rating assignment system would reduce barriers to entry into the credit rating agency business by allowing smaller agencies to obtain ratings business, thereby increasing competition in the credit rating industry.

1 “Report to Congress on Assigned Credit Ratings”. Securities and Exchange Commission. December 2012.

2 The “credit rating assignment system” is referred to as the “Section 15(E) System” in the SEC’s “Report to Congress on Assigned Credit Ratings”.

We agree that “ratings shopping” is a practice that leads to both real and perceived conflicts of interest and should be minimized. Although the credit rating assignment system would certainly end ratings shopping, it could also have serious unintended negative consequences for the structured finance market. In particular, we are concerned about the quality of ratings that would result from a board assigning NRSROs to rate structured finance products.

Structured finance products encompass a wide array of securities from pools of residential mortgages, commercial mortgages, home equity loans, auto loans, credit card receivables, student loans, and equipment loans, among others. Analysis of the different types of structured finance products is complex and requires a high level of expertise in each type of collateral. As such, we are concerned that a credit rating assignment system could potentially result in the assignment of an NRSRO that does not have the necessary level of expertise in a particular collateral type to rate a security. Moreover, the system could potentially foster a misalignment of incentives, which could interfere with the efficient issuance of structured products.

As an alternative to assigning transactions to NRSRO’s, we recommend requiring an NRSRO be engaged by the issuer to rate a structured finance security prior to conducting a detailed review of collateral pool information. This approach would minimize “ratings shopping”. In addition to eliminating the potential unintended negative consequences of the credit rating assignment system, this approach would require far fewer resources to implement. Compliance with this rule could be reviewed as part of each NRSRO’s annual SEC examination.

2. Enhance Rule 17g-5 to encourage more unsolicited ratings.

Rule 17g-5 requires the disclosure of all information provided to an NRSRO hired by an issuer to rate a structured finance security on a password-protected website that can be accessed by NRSROs that were not hired. Non-hired NRSROs are required to rate at least 10% of the deals they review via the Rule 17g-5 websites. The purpose of this system is to encourage NRSROs who were not hired to rate the security to provide an “unsolicited” rating. This could potentially expose an inappropriate rating. To date, few NRSROs have utilized the Rule 17g-5 system to produce unsolicited ratings and, therefore, the SEC is seeking feedback on ways to make the system more effective. There are many theories as to why this is the case including a lack of financial incentive for an NRSRO to produce a credit rating without being paid.

We believe that information on underlying collateral for securitized transactions should be disclosed to investors, subject to appropriate protection of proprietary and confidential information. While of course, proprietary information relating to corporate ratings must be kept confidential, there is extensive collateral data that could be made available for securitized assets and we recommend such information received by the rating agency during the rating process be disclosed to investors. Ideally, the industry would move to standardized disclosure for each type of collateral for the initial pool of assets, and issuers and/or servicers would update information regarding the performance of the assets in the pool over the life of the transaction to facilitate ongoing surveillance of the securities. Disclosure of this information to investors could be accomplished through the websites required by the Rule 17g-5 system.

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This enhanced transparency would allow investors to review the data underlying ratings opinions, allowing better insight into a rating agency’s process and the accuracy of its data analysis. This provision will also facilitate regulatory oversight of NRSROs and incentivize a more robust and objective credit rating process. This approach would likely put more eyes on the analysis.

3. Alternative compensation schemes

The study also addresses potential alternative compensation models for credit rating agencies. As discussed previously, we believe that credit rating agency reform should aim to preserve the utility of credit ratings for investors and efficient functioning of the capital markets. The current compensation scheme and credit rating agency business models have supported a functioning market over time and regulatory intervention—particularly via overly complicated changes to compensation methods—could cause significant disruption.

Figure 2: ALTERNATIVE COMPENSATION MODELS

MODEL	DESCRIPTION	OBSERVATIONS
Investor Owned Credit Rating Agency Model	NRSROs would be owned by investors and operated for profit of the owners.	<ul style="list-style-type: none"> ▶ May conflict with EU's CRA3 credit rating agency ownership limits. ▶ Potentially introduces new conflicts – investors also have interest in securities' ratings.
Stand-Alone Model	NRSROs would be compensated via transaction fees for both initial issuance and secondary market purchases. The fees would be paid by the issuer, investors, and participants in secondary market and NRSRO would receive compensation over the life of the transaction.	<ul style="list-style-type: none"> ▶ NRSROs engaged over life of transaction ▶ Partial cost of rating passed off to investors ▶ For structured finance securities that are thinly traded in secondary market, compensation would be negligible or fees prohibitively high
Designation Model	Issuers would make information available to all NRSROs who could decide whether they want to rate the security. Issuers would also pay fee to an administrator. Upon issuance, investors (based on their proportionate ownership of issue) would designate which NRSRO(s) should receive compensation.	<ul style="list-style-type: none"> ▶ May reduce profitability of NRSRO business model because NRSROs would have to spend money to rate securities without knowing whether they will be paid or how much. ▶ Greater information transparency
User-Pay Model	NRSRO fees would be paid by the “users” of credit ratings. “Users” would be defined as any entity that included a rated security, loan or contract as an element of assets or liabilities in an audited financial statement. Users’ auditors would not be allowed to issue an audit opinion unless it determined NRSRO had been compensated	<ul style="list-style-type: none"> ▶ Costs passed off to investors
Alternative User-Pay Model	User-fee system financed by debt purchasers would fund a competitive bidding process for selection of NRSROs. NRSROs would bid for the right to issue ratings. Board would determine how to judge bids and award ratings engagements.	<ul style="list-style-type: none"> ▶ Costs passed off to investors ▶ Bidding could lower fees, increase competition.
Issuer and Investor-Pays Model	2-3 NRSROs assigned through performance based system. Fees paid by issuers of new debt and investors in secondary market trades. Fees paid to a fund that distributes compensation to hired NRSROs.	<ul style="list-style-type: none"> ▶ Difficult to define performance metrics ▶ Partial cost of rating passed off to investors

Additionally, alternative compensation schemes that result in additional costs for investors are detrimental to investors. Figure 2 summarizes several models discussed in the SEC’s study and provides our observations on each..

Credit Rating Agency Reforms Proliferate

Efforts to reform credit rating agencies are not limited to the Franken Amendment, nor are they a US-only phenomenon. Multiple provisions in Dodd-Frank impact credit rating agencies and the European Commission recently finalized CRA3, which includes a series of new rules for credit rating agencies doing business in Europe. As the rules and reform initiatives proliferate, it is important that US regulators evaluate the existing regulatory framework for credit rating agencies and consider compatibility with European rules.

Credit Rating Agency Reform Act of 2006

The 2007-2008 financial crisis was not the first time that policymakers considered reforms for credit rating agencies. The Credit Rating Agency Reform Act of 2006 (CRA Reform

Act) enacted sweeping changes that formalized SEC oversight and examination of credit rating agencies. In particular, the CRA Reform Act required the registration of credit rating agencies with the SEC as NRSROs. It also called for enhanced disclosure and transparency. This was implemented by an SEC rule that requires annual filing of Form NRSRO to disclose, among other items, “credit ratings performance measurement statistics”. The SEC also established minimum requirements for recordkeeping and protection of material non-public information and required NRSROs to put in place procedures to manage potential conflicts of interest. Additionally, the SEC implemented Rule 17g-5 which requires issuers to post all information shared with a hired rating agency on a password protected website that can be accessed by NRSROs that were not hired. Rule 17g-5 was created to encourage NRSROs to produce unsolicited ratings. As discussed in the previous section, enhancements to Rule 17g-5 are being considered as part of the discussion on the Franken Amendment.

Dodd-Frank Removal of Statutory References to Ratings

Another key provision of Dodd-Frank appears in Section 939A, which directs the SEC, along with other federal agencies, to review regulations that rely on credit ratings as a standard of measurement and eliminate references to ratings as a standard of creditworthiness.

On March 3, 2011, the SEC proposed amendments to two rules (Rule 2a-7 and 5b-3) and four forms (N-MFP, N-1A, N-2, and N-3) related to money market fund regulation that contain references to credit ratings. The SEC also proposed a new rule, Rule 6a-5, to establish a standard of creditworthiness to replace the NRSRO references that would be eliminated by the other changes. As an asset manager, we see value in independent credit ratings and our clients, the end-investors, value these ratings. We have stated that Rule 2a-7 should continue to permit money market fund Boards or their delegates to consider NRSRO ratings along with other factors as a minimum credit quality standard. We address this SEC proposal in more detail in [ViewPoint - Money Market Funds: The Importance of Both Credit Research and NRSRO Ratings](#) and the [comment letter](#) we submitted to the SEC on April 25, 2011. The SEC has not yet issued a final rule after the proposal was released and this remains an open item on the list of Dodd-Frank rulemakings.

On June 21, 2013, the Department of Labor (DoL) proposed amendments to a number of class exemptions from the Employee Retirement Income Security Act (ERISA) prohibited transaction rules intended to address the requirement in Section 939A of Dodd-Frank. The DoL's proposal closely follows the SEC's approach and would change the conditions of these class exemptions to refer to an assessment of credit risk and liquidity, rather than a minimum credit rating. The comment period closes August 20, 2013.

“CRA3” - Credit Rating Agency Reform in Europe

Regulators in Europe have also focused on reforming credit rating agencies. Specifically, there have been three waves of regulatory reform impacting credit rating agencies in Europe in recent years. The European Securities and Markets Authority (ESMA) directly supervises credit rating agencies and in June 2013 additional rules become effective across the EU. These new rules—often referred to as the “CRA3” regulation—impact the governance and ownership of credit rating agencies as well as reliance on credit ratings.

There is a good deal of overlap in terms of policy objectives of the credit rating agency reforms in Europe and those in the US. However, CRA3 is a far reaching and controversial piece

of legislation requiring amongst other things:

- ▶ Mandatory rotation of credit rating agencies for new re-securitization³;
- ▶ Pan-EU civil liability regime for credit rating agencies; and
- ▶ Several restrictions on credit rating agency ownership.

With respect to ownership, CRA3 states that if an entity owns 5% or more of one credit rating agency, it cannot also own 5% or more of another credit rating agency. CRA3 also prohibits an entity that owns more than 10% of a credit rating agency or has a seat on the agency's board from being rated by that agency. However, there is an exemption for ownership due to holdings of collective investment schemes.

CRA3 also brings specific requirements for rating of sovereigns and their debt. In particular, CRA3 will establish an annual calendar on which credit rating agencies will be required to disclose the dates they will make rating announcements regarding EU sovereigns.

CRA3 also aims to address reliance on credit ratings by requiring financial institutions to perform their own credit analysis (and not rely solely on credit ratings) and requiring the removal of references to credit ratings from EU law by 2020.

Despite the passing of CRA3, European reform of credit rating agencies is expected to continue. CRA3 contains a number of potentially wide ranging review clauses that consider extending the provisions on mandatory rotation to other asset classes, and developing alternatives to ratings and the current issuer-pays model of compensation. Some EU policymakers have also called for a publicly owned EU Credit Rating Agency for sovereign ratings as well as further measures to promote competition in the ratings industry.

Conclusion

The Franken Amendment of Dodd-Frank has successfully sparked a conversation about the potential weaknesses of the issuer-pay compensation scheme and ways to improve the credit rating process. Today, nearly three years after Dodd-Frank was signed into law, it is up to regulators, particularly the SEC, to implement prudent reforms. We commend the SEC and other regulators for soliciting extensive feedback from market participants before taking action. Ultimately, any reforms that are implemented must be in the best interests of investors. Investors need functioning capital markets and information to help them make investment decisions. We believe that the principles for credit rating agency reform described in this *ViewPoint* will preserve the utility of credit ratings for investors and the efficient functioning of capital markets, while enhancing protections and transparency for investors.

³ Re-securitization is defined in EU law as “a securitization where the risk associated with the underlying pool of exposures is tranching and at least one of the underlying exposures is a securitization position.”

RELATED CONTENT

- ▶ [Credit Ratings Roundtable - SEC - June 3, 2013](#)
- ▶ [ViewPoint - Reform of Credit Rating Agency Regulation in Europe: An End-Investor Perspective - April 2012](#)
- ▶ [ViewPoint - Money Market Funds: The Importance of Credit Research and NRSRO Ratings - May 2011](#)
- ▶ [References to Credit Ratings Letter - SEC - April 25, 2011](#)
- ▶ [Consultation on Credit Rating Agencies - European Commission - January 7, 2011](#)

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