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REPORT
110–835

MUNICIPAL BOND FAIRNESS ACT

SEPTEMBER 9, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

R E P O R T

[To accompany H.R. 6308]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 6308) to ensure uniform and accurate credit rating of municipal bonds and provide for a review of the municipal bond insurance industry, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Municipal Bond Fairness Act".

TITLE I—DISCRIMINATORY RATINGS TREATMENT OF STATE AND MUNICIPAL SECURITIES

SEC. 101. PRESERVATION OF AUTHORITY TO PREVENT DISCRIMINATION.

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

(1) by redesignating subsection (p) as subsection (q); and

(2) by inserting after subsection (o) the following new subsection:

"(p) RATINGS CLARITY AND CONSISTENCY.—

"(1) COMMISSION OBLIGATION.—Subject to paragraphs (2) and (3), the Commission shall require each nationally recognized statistical rating organization that is registered under this section to establish, maintain, and enforce written policies and procedures reasonably designed—

"(A) to establish and maintain credit ratings with respect to securities and money market instruments designed to assess the risk that investors in securities and money market instruments may not receive payment in accordance with the terms of issuance of such securities and instruments;

"(B) to define clearly any rating symbol used by that organization; and

"(C) to apply such rating symbol in a consistent manner for all types of securities and money market instruments.

"(2) ADDITIONAL CREDIT FACTORS.—Nothing in paragraph (1)(A), (B), or (C)—

"(A) prohibits a nationally recognized statistical rating organization from using additional credit factors that are documented and disclosed by the organization and that have a demonstrated impact on the risk an investor in a security or money market instrument will not receive repayment in accordance with the terms of issuance; or

"(B) prohibits a nationally recognized statistical rating organization from considering credit factors that are unique to municipal securities that are not backed by the issuer's full faith and credit in its assessment of the risk an investor in a security or money market instrument will not receive repayment in accordance with the terms of issuance.

"(3) COMPLEMENTARY RATINGS.—The Commission shall not impose any requirement under paragraph (1) that prevents nationally recognized statistical rating organizations from establishing ratings that are complementary to the ratings described in paragraph (1)(A) and that are created to measure a discrete aspect of the security's or instrument's risk.

"(4) REVIEW.—

"(A) PERFORMANCE MEASURES.—The Commission shall, by rule, establish performance measures that the Commission shall consider when deciding whether to initiate a review concerning whether a nationally recognized statistical rating organization has failed to adhere to such organization's stated procedures and methodologies for issuing ratings on securities or money market instruments.

"(B) CONSIDERATION OF EVIDENCE.—Performance measures the Commission may consider in initiating a review of an organization's ratings in each of the categories described in clauses (i) through (v) of section 3(a)(62)(B) during an appropriate interval (as determined by the Commission) include the transition and default rates of its in discrete asset classes.".

SEC. 102. GENERAL ACCOUNTABILITY OFFICE STUDY OF CREDIT RATINGS.

(a) STUDY REQUIRED.—The Comptroller General shall conduct a study of the treatment of different classes of bonds (municipal versus corporate) by the nationally recognized statistical rating organizations. Such study shall examine—

(1) whether there are fundamental differences in the treatment of different classes of bonds by such rating organizations that cause some classes of bonds to suffer from undue discrimination;

(2) if there are such differences, what are the causes of such differences and how can they be alleviated;

(3) whether there are factors other than risk of loss that are appropriate for the credit ratings agencies to consider when rating bonds, and do those factors vary across different sectors;

(4) the types of financing arrangement used by municipal issuers;

(5) the differing legal and regulatory regimes governing disclosures for corporate bonds and municipal bonds;

(6) the extent to which retail investors could be disadvantaged by a single ratings scale; and

(7) practices, policies, and methodologies by the nationally recognized statistical rating organizations with respect to rating municipal bonds.

(b) REPORT REQUIRED.—Within 6 months after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study required by subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Development of the Senate. Such report shall include an assessment of each of the issues and subjects described in paragraphs (1) through (7) of subsection (a).

SEC. 103. IMPLEMENTATION.

The Securities and Exchange Commission shall prescribe rules to implement the amendments made by section 101 within 270 days after the date of enactment of this Act.

TITLE II—REVIEW OF MUNICIPAL BOND INSURANCE INDUSTRY

SEC. 201. AUTHORITY OF SECRETARY.

(a) AUTHORITY TO RECEIVE AND COLLECT INFORMATION.—Subject to subsection (b), the Secretary of the Treasury shall have the authority to receive and collect (directly from the States and other sources), and to analyze and disseminate, data and information, and to issue reports, regarding entities that insure or guarantee the payment of any portion of the principal and interest of any municipal obligation, including information, data and material regarding—

(1) financial safety and soundness of such entities;

(2) concentration of insurance liabilities of such entities;

(3) performance of such entities under various scenarios of macro- and micro-economic stress;

(4) underwriting standards for such entities; and

(5) risk management of such entities.

(b) LIMITATIONS.—With respect to the authority under subsection (a)—

(1) the submission of any non-publicly available data and information to the Secretary shall be voluntary and such submission shall not constitute a waiver of, or otherwise affect, any privilege or confidentiality protection to which the data or information is otherwise subject;

(2) to the extent that any such data and information has already been received or collected by, or can efficiently be received or collected by, the States (including the insurance commissioners of the States), the National Association of Insurance Commissioners, or any other appropriate source, the Secretary may enter into an information-sharing agreement with such source to provide for the receipt of such data by the Secretary;

(3) any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the Secretary, regarding the privacy or confidentiality of any data or information in the possession of the source to the Secretary, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such data or information, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Secretary;

(4) the Secretary shall treat as confidential and privileged any data or information obtained from any source that is entitled to confidential treatment under applicable State or Federal law or regulations, or under any agreement to which the source is a party and shall take all reasonable steps to oppose any effort to secure disclosure of the data or information by the Secretary;

(5) the Secretary may not in any case disclose to any party any personally identifiable information received or collected by the Secretary pursuant to this subsection; and

(6) any non-publicly available data and information received or collected by the Secretary pursuant to this subsection shall be considered trade secrets and commercial or financial information that is privileged and confidential pursuant to section 552(b)(4) of title 5, United States Code.

SEC. 202. REPORTS TO CONGRESS.

The Secretary shall submit a report annually to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the financial state of the industry for insurance and guarantee of municipal bonds, meaningful trends in such industry, and the potential impacts on the overall financial system in the United States that entities providing such insurance and guarantees could have under various scenarios of macro- and micro-economic stress.

SEC. 203. RETENTION OF EXISTING REGULATORY AUTHORITY.

This title may not be construed to establish any supervisory or regulatory authority of the Secretary over any entity that insures or guarantees the payment of any portion of the principal and interest of any municipal obligation.

SEC. 204. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) MUNICIPAL OBLIGATION.—The term "municipal obligation" means any bond, note, security, or other debt obligation issued by any State, any political subdivision of a State, one or more political subdivisions of a State, or a State and one or more of its political subdivisions, by any agency, department, office, authority, or other instrumentality of a State, any political subdivision of a State, one or more political subdivisions of a State, or a State and one or more of its political subdivisions, or by any other entity eligible to issue bonds the interest on which is excludable from gross income under section 103 of the Internal Revenue Code of 1986.

(2) POLITICAL SUBDIVISION.—The term "political subdivision" includes any city, county, town, township, parish, village, or other general purpose political subdivision of a State and any school, utility, fire, or tax district, or other special purpose political subdivision of a State.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(4) STATE.—The term "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

SEC. 205. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary for carrying out this title such sums as may be necessary for each fiscal year.

PURPOSE AND SUMMARY

H.R. 6308, the Municipal Bond Fairness Act, is intended to address issues that prevent the efficient functioning of the municipal securities market. The bill would do this by improving the consistency and comparability of credit ratings for all securities and money market instruments and by directing the Treasury Department to collect information on the municipal bond insurance industry and report its findings to Congress.

Title I requires that ratings issued by agencies designated as Nationally Recognized Statistical Rating Organization (NRSRO) by the Securities and Exchange Commission (SEC) reflect the risk an investor will not receive repayment according to the terms of a security. The bill also requires that NRSROs use rating symbols consistently for every security. NRSROs are permitted to use additional credit factors in their analysis, including factors such as the priority of a security's repayment and the recovery rate in the event of default. The Title also clarifies that NRSROs may provide complementary ratings intended to measure a discreet aspect of risk such as a security's expected price volatility.

Title II of the bill addresses municipal bond insurers by directing the Secretary of the Treasury to collect information on the financial stability of that industry and provide a regular report to Congress on its findings.

BACKGROUND AND NEED FOR LEGISLATION

There are about 55,000 issuers of tax-exempt municipal bonds including state and local governments as well as various non-profit organizations such as hospitals and universities. These issuers range from the large and well known such as the state of California to the small and obscure school districts in rural areas. A 2004 study by the SEC found that about 74 percent of municipal bond issues are for $1 million or less.

Municipal bonds can generally be categorized as either general obligation (GO) or revenue bonds. GO bonds are backed by the taxing power of the issuing government and generally viewed as the safest of municipal bonds along with those revenue bonds backed by the ratepayers of public water and sewer utilities. A 2007 study by Moody's Investor Services found that only one Moody's-rated investment-grade bond in this category defaulted between 1970 and 2006.

The chart below describes the low default history of municipal bonds rated by Moody's and Standard & Poor's as compared to corporate bonds.

CUMULATIVE HISTORIC DEFAULT RATES

[In percent]

Rating categories	Moody's		S&P	
	Muni	Corp	Muni	Corp
Aaa/AAA	0.00	0.52	0.00	0.60
Aa/AA	0.06	0.52	0.00	1.50
A/A	0.03	1.29	0.23	2.91
Baa/BBB	0.13	4.64	0.32	10.29
Ba/BB	2.65	19.12	1.74	29.93
B/B	11.86	43.34	8.48	53.72
Caa–C/CCC–C	16.58	69.18	44.81	69.19
Investment Grade	0.07	2.09	0.20	4.14
Non-Invest Grade	4.29	31.37	7.37	42.35
All	0.10	9.70	0.29	12.98

Source. Moody's, S&P.

Despite the lack of defaults of municipal bonds, issuers of these securities have historically earned a lower rating than comparable corporate bonds when viewed in terms of likelihood of default. Moody's Investor Services, for example, has employed a distinctly separate method of evaluating municipal bonds for 70 years. In general, Moody's bases its municipal bond ratings on the fiscal strength of the municipality that issues the bonds. For corporate bonds and structured, or asset-backed bonds, on the other hand, Moody's bases its rating on risk of loss. The effect on ratings is illustrated by the table below which shows how the rating on a municipal bond would translate if the issuer was judged on a scale used to evaluate corporate bonds (what Moody's calls the global scale). Most single A-rated municipal bonds would merit AA or higher if they were rated as corporate bonds.

MAPPING MUNI TO GLOBAL SCALE RATINGS

Muni scale ratings	Corporate scale equivalents, by sector				
	State GO	Local GO, State, lease, wtr/swr	COPs; sp tax; pub. higher ed; airports	Hospitals and universities	Start-up TIFs and toll roads, CCRC, multifam
Aaa	Aaa	Aaa	Aaa	Aaa	Aaa
Aa	Aaa	Aaa	Aa-Aaa	Aa-Aaa	Aa
A	Aa-Aaa	Aa	A	A-Aa	A-Aa
Baa	As	A-Aa	A	A	Baa-A
Ba	A-Aa	A	Baa-A	Baa	Ba-Baa
B	Baa-A	Baa	Ba-Baa	B-Ba	B-Ba
Caa	Baa	Ba-Baa	B-Ba	Caa-B	Caa-B

Source Moody's.

This ratings disparity can also have the effect of driving demand for bond insurance. Bond insurers, or monolines, guarantee repayment of securities for a fee. Many issuers will choose to insure A-rated bonds to the AAA level in order to pay lower interest rates over the life of the security.

Monolines can only insure to the AAA level if they, in turn, are rated as AAA insurance companies. In the fall of 2007, monoline exposure to structured mortgage securities began to cause some of the firms to lose their AAA ratings. The ratings on the bonds they insured consequently dropped at the same time. This created uncertainty in the municipal bond market for which investors demanded a higher risk premium—which raised borrowing costs for states, cities and other municipal bond issuers.

HEARINGS

The Committee on Financial Services held a hearing on March 12, 2008, entitled "Municipal Bond Turmoil: Impact on Cities, Towns and States." The following witnesses testified:

Panel One

- Mr. Erik R. Sirri, Director, Division of Trading and Markets, U.S. Securities and Exchange Commission
- The Honorable Eric R. Dinallo, Superintendent of Insurance, Department of Insurance, State of New York
- The Honorable Richard Blumenthal, Attorney General of Connecticut

Panel Two

- The Honorable Bill Lockyer, Treasurer, State of California
- The Honorable Robin L. Wiessmann, Treasurer, State of Pennsylvania
- The Honorable Tate Reeves, Treasurer, State of Mississippi
- Mr. Mark Newton, President and Chief Executive Officer, Swedish Covenant Hospital
- Mr. Terry Dillon, Chief Executive Officer, Atlas Excavating on behalf of the National Utility Contractors Association

Panel Three

- Mr. Ajit Jain, Chairman, Berkshire Hathaway Assurance Corporation
- Mr. Séan W. McCarthy, President and Chief Operating Officer, Financial Security Assurance on behalf of the Association of Financial Guaranty Insurers

- Ms. Laura Levenstein, Senior Managing Director, Global Public, Project & Infrastructure Finance Group, Moody's Investors Service
- Mr. Martin Vogtsberger, Managing Director and Head of Institutional Brokerage, Fifth Third Securities, Inc. on behalf of the Regional Bond Dealers Association

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 30, 2008, and ordered H.R. 6308, the "Municipal Bond Fairness Act", as amended, favorably reported by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken with in conjunction with the consideration of this legislation. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a voice vote. During the consideration of the bill, the following amendments were considered:

An amendment in the nature of a substitute by Mr. Frank, No. 1, was agreed to, as amended, by voice vote.

An amendment by Mr. Roskam, No. 1a, requiring a GAO study of credit ratings, was agreed to by voice vote.

An amendment by Mr. Capuano, No. 1b, requiring documentation and disclosure, was agreed to by voice vote.

An amendment by Mr. Capuano, No. 1c, preventing conflicts of interest, was offered and withdrawn.

An amendment by Mr. Campbell, No. 1d, dealing with municipal securities disclosures, was offered and withdrawn.

An amendment by Mr. McHenry, No. 1e, regarding structured securities, was offered and withdrawn.

An amendment by Mr. Capuano, No. 1f, on separate reserves, was offered and withdrawn.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 6308 is intended to address issues that prevent the efficient functioning of the municipal securities market. The bill would do this by improving the consistency and comparability of credit ratings for all securities and money market instruments and by directing the Treasury Department to collect information on the municipal bond insurance industry and report its findings to Congress.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

AUGUST 29, 2008.

Hon. BARNEY FRANK,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6308, the Municipal Bond Fairness Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 6308—Municipal Bond Fairness Act

H.R. 6308 would amend the Securities Exchange Act of 1934 to direct the Securities and Exchange Commission (SEC) to require bond rating agencies to rate municipal bonds using the same rating scale as corporate bonds. The legislation also would authorize the Department of the Treasury to collect and analyze information on municipal bond insurers. In addition, the legislation would require a study by the Government Accountability Office (GAO) regarding the rating of municipal and corporate bonds.

CBO estimates that implementing H.R. 6308 would cost about $1 million in 2009 and less than $1 million annually in subsequent years, assuming the availability of appropriated funds. Enacting the legislation would not affect direct spending or revenues.

Bond rating agencies have maintained different rating systems for municipal and corporate bonds. Under those rating scales, many of the characteristics of municipal bonds and corporate bonds with the same ratings are not comparable. (Some rating agencies are moving to using the same rating systems for both types of securities, and other agencies are expected to follow.)

The legislation also would authorize the Treasury to collect data on municipal bond insurers from insurance firms, the National Association of Insurance Commissioners (NAIC), and state insurance regulators. According to the Association of Financial Guaranty Insurers, there are about 12 firms that offer such insurance. The Treasury would analyze the data on the insurers and report annually on the financial state of that industry.

CBO expects that implementing H.R. 6308 would increase the administrative costs of the SEC and the Treasury. Based on information provided by the Treasury and the SEC about the costs of similar programs and reports, we estimate that implementing those provisions would cost less than $1 million annually, assuming appropriation of the necessary amounts.

The legislation also would require GAO to prepare a study within six months of its enactment explaining how the bond rating agencies rate municipal and corporate bonds. Based on the costs of similar reports, CBO estimates that preparing the report would cost less than $500,000 in fiscal year 2009, assuming the availability of appropriated funds.

H.R. 6308 would impose a private-sector mandate, as defined in the Unfunded Mandates Reform Act (UMRA), by requiring bond rating agencies to establish and maintain a standardized rating scale. According to industry experts, the costs of complying would likely be small because those agencies already have the ability to rate all securities by the same scale and some are already moving in this direction. Therefore, CBO estimates that the cost for the mandate would fall below the annual threshold established in UMRA for private-sector mandates ($136 million in 2008, adjusted annually for inflation). H.R. 6308 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Jacob Kuipers (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 6308 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section designates the short title of the bill as the Municipal Bond Fairness Act.

TITLE I—DISCRIMINATORY RATINGS TREATMENT OF STATE AND MUNICIPAL SECURITIES

Sec. 101. Preservation of Authority to Prevent Discrimination

This section amends Section 15E(c) of the Securities Exchange Act of 1934 (the Ratings Agency Reform Act of 2006) adding a new paragraph (p) that creates an SEC obligation to require NRSROs to create new policies and procedures with respect to credit ratings for securities and money market instruments. The policies and procedures would guide the process of producing credit ratings that reflect the risk that an investor will not receive payment according to the terms of the securities. The policies and procedures must also provide a clear definition of any rating symbol the organization uses and set out a way to apply the rating symbol consistently for all types of securities.

This section also clarifies that in developing credit ratings that reflect the risk of non-repayment on a security or money-market instrument, the NRSROs can consider factors other than the risk of default, such as but not limited to, priority of repayment, preferences and expected loss in the event of a default. During the markup, Ranking Member Bachus asked Chairman Frank for clarification that these factors could be used by NRSROs in developing a credit rating that reflects the risk of non-repayment on a security or money-market instrument. Chairman Frank agreed with the Ranking Member that priority of repayment and losses realized in the event of a default are the type of factors that NRSROs should consider in the development of a credit rating. These additional credit factors must be documented and disclosed and have a demonstrated effect on the risk of non-payment.

This section also clarifies that NRSROs may consider unique factors when assessing the risk of non-repayment of municipal revenue bonds. Unlike the issuers of municipal general obligation bonds who typically can levy new taxes as a source of repayment on their securities, the source or repayment for a revenue bond is typically limited to a single revenue stream. Given these different circumstances, NRSROs may consider credit factors in the analysis of the likelihood investors will not receive repayment on a revenue

bond that may not be considered in the analysis of whether an investor may not receive repayment on a general obligation bond.

The section also clarifies that rating organizations may establish ratings to measure a separate aspect of risk that is complementary to the credit rating that reflects the risk an investor will not be repaid.

The SEC must establish performance measures it must consider when deciding whether to initiate a review of a rating organization for compliance with the Credit Rating Agency Reform Act. The performance measures are intended to be a factor in the SEC's decision whether to conduct a review of an NRSRO. The performance measures are not intended to serve as a quantitatively driven trigger that indicates when a review of an NRSRO must take place by the SEC. The evidence of performance the SEC is to consider must include, but is not limited to aggregate ratings transitions in discrete asset classes.

Sec. 102. General Accountability Office Study of Credit Ratings

This section requires the Comptroller General to study the treatment of municipal and corporate bonds by NRSROs to determine (1) whether the NRSROs treat the bonds differently; (2) what the differences are; (3) whether factors other that risk of loss are appropriate for credit ratings; (4) what types of financing municipalities use; (5) what legal and regulatory regimes govern municipal bond disclosures; (6) the effect on retail investors of a single credit rating scale; and (7) what practices, policies and procedures NRSROs use with respect to rating municipal bonds. The Comptroller must submit the report to Congress within six months of the date of enactment.

Sec. 103. Implementation

This section requires the SEC to prescribe rules to implement the amendments made by Section 101 within 270 days of the date of enactment.

TITLE II—REVIEW OF MUNICIPAL BOND INSURANCE INDUSTRY

Sec. 201. Authority of Secretary

This section authorizes the Secretary of the Treasury to receive and collect information (both public and private) on entities that guarantee municipal obligations. The information will be analyzed and used to issue reports concerning the entities safety and soundness, concentration of liabilities, performance under scenarios of financial stress, underwriting standards and risk management practices.

Clauses (A) through (F) provide strong confidentiality and privacy protections to data in the Secretary's hands as follows: data submission is voluntary and submission will not be viewed as a waiver of any privilege with regard to the data; the Secretary can receive data from the States, the NAIC and other sources, and to the extent that the data has already been, or can efficiently, be collected by a source, the Secretary can enter into an information-sharing agreement with that source to prevent incurring new costs

for previously collected data; any privilege or written agreement between the owner of the data and the source to the Secretary, including any applicable State or Federal law will continue to apply to the data after it is provided to the Secretary; the Secretary will treat as privileged and confidential any data it receives; the Secretary will not disclose personally identifiable information; and information in the Secretary's hands will be protected by the Freedom of Information Act exemption regarding trade secrets, proprietary information and financial data.

Sec. 202. Reports to Congress

The Secretary will report each Congress to the House Committee on Financial Services and the Senate Committee on Banking, Housing and Urban Affairs.

Sec. 203. Retention of Existing Regulatory Authority

This section affirmatively states that the legislation does not establish general supervisory or regulatory authority in the Department of the Treasury over any insurer.

Sec. 204. Definitions

Definitions for certain terms used in the legislation are provided.

Sec. 205. Authorization of Appropriations

The section authorizes the appropriation of such sums as may be necessary for each fiscal year for the Secretary to perform the functions described.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * * * *

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

(a) * * *

* * * * * * *

(p) RATINGS CLARITY AND CONSISTENCY.—

(1) COMMISSION OBLIGATION.—Subject to paragraphs (2) and (3), the Commission shall require each nationally recognized statistical rating organization that is registered under this section to establish, maintain, and enforce written policies and procedures reasonably designed—

(A) to establish and maintain credit ratings with respect to securities and money market instruments designed to assess the risk that investors in securities and money market

instruments may not receive payment in accordance with the terms of issuance of such securities and instruments;

(B) to define clearly any rating symbol used by that organization; and

(C) to apply such rating symbol in a consistent manner for all types of securities and money market instruments.

(2) ADDITIONAL CREDIT FACTORS.—Nothing in paragraph (1)(A), (B), or (C)—

(A) prohibits a nationally recognized statistical rating organization from using additional credit factors that are documented and disclosed by the organization and that have a demonstrated impact on the risk an investor in a security or money market instrument will not receive repayment in accordance with the terms of issuance; or

(B) prohibits a nationally recognized statistical rating organization from considering credit factors that are unique to municipal securities that are not backed by the issuer's full faith and credit in its assessment of the risk an investor in a security or money market instrument will not receive repayment in accordance with the terms of issuance.

(3) COMPLEMENTARY RATINGS.—The Commission shall not impose any requirement under paragraph (1) that prevents nationally recognized statistical rating organizations from establishing ratings that are complementary to the ratings described in paragraph (1)(A) and that are created to measure a discrete aspect of the security's or instrument's risk.

(4) REVIEW.—

(A) PERFORMANCE MEASURES.—The Commission shall, by rule, establish performance measures that the Commission shall consider when deciding whether to initiate a review concerning whether a nationally recognized statistical rating organization has failed to adhere to such organization's stated procedures and methodologies for issuing ratings on securities or money market instruments.

(B) CONSIDERATION OF EVIDENCE.—Performance measures the Commission may consider in initiating a review of an organization's ratings in each of the categories described in clauses (i) through (v) of section 3(a)(62)(B) during an appropriate interval (as determined by the Commission) include the transition and default rates of its in discrete asset classes.

[(p)**]** *(q)* 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) * * *

* * * * * * *

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