**Credit Rating Agency Regulation: Has the “Rule 17g-5 Program” Worked?**

*As the formal regulation of the Credit Rating Industry only began in 2005/6, the aftermath of the Financial Crisis was identified as fertile ground for the effective and widespread regulation of an industry that is wedded to a number of important financial interactions. In that post-Crisis era, the sweeping regulations that were aimed at the financial sector included the Credit Rating Industry in its scope and, as such, aimed to establish a number of key principles within the sector. Whilst there were a number of aims, this article focuses upon the aim of increasing the level of competition within the Industry, and to that end focuses upon one Rule in particular. However, the question remains as to how effective this push to increase competition has been, and also as to how effective the regulation can be in light of the particular dynamics that essentially define the Credit Rating Industry.*

**Introduction**

Whilst the leading credit rating agencies can trace their roots back almost 120 years, and even further still when we group together Credit *Reporting* Agencies and Credit *Rating* Agencies, the first pieces of formal legislation in the United States only appeared in 2005[[1]](#footnote-1) and 2006[[2]](#footnote-2). Yet, as a result of the agencies’ involvement in the Financial Crisis, after which a U.S. Senate Subcommittee identified a ‘host of factors’ that attributed to their poor performance[[3]](#footnote-3), the U.S. enacted the *Dodd-Frank Act of 2010*, which dedicated an entire subtitle to the regulation of the rating industry[[4]](#footnote-4). Therefore, the scope of the legislation’s aim was wide, and it included the aims of fundamentally altering the way in which the industry operates, taking specific aim at a number of identified issues. It is beyond the scope of this article to cover them all, and the literature is broad enough in this area to provide a comprehensive understanding of how the legislation actually aimed at the differing elements, but for this article the focus will be on the aim to *increase competition* within the rating industry.

The need to increase competition within the industry was identified as one of the priorities for the legislature, perhaps only falling behind attempting to negate the negative externalities and conflicts-of-interest that result from the infamous ‘issuer-pays’ remuneration system – where the issuers of debt are the ones who commission the agencies to produce the ratings on their products, as opposed to the ‘subscriber’ (the investors). We will see in the first section of the article that this aim to increase competition is a much needed one, in theory, because of the intense concentration at the top of the industry, which has the potential to lead to a number of issues; when one considers that, in the securitised finance field, there exists a similar level of concentration amongst issuers, it will be clear as to why the legislation takes such a focused aim towards this issue of competition. However, as we examine the particular ‘Rule’ that was developed in order to increase competition, there will be important excursions made into the composition of the rating industry, because it contains a number of unique elements that the legislation had to address and, arguably, define its chances of success in this area. Examining the ‘Rule’ will allow us to chart its potential benefits and drawbacks, which will provide for the foundation to assess what has actually happened since it was adopted; in understanding how the Rule has actually been a. implemented and b. received by the agencies, we will be able to use the last decade since it was first adopted to ask *has the Rule worked?* On that basis we may be able to foresee ways in which the Rule can be extended or amended to further increase its effectiveness.

**‘The Rule 17g-5 Program’**

Whilst the Dodd-Frank Act was the central focus of the post-Crisis legislative era in the United States, the Act dictated that a number of associated Acts needed to be amended to implement the many changes that it dictated. For the regulation of the rating agencies, it was the *Securities Exchange Act of 1934*[[5]](#footnote-5) that was amended specifically, with a number of amendments made to represent the changes that the legislature wanted to enact. Many of its components where the rating agencies are concerned were altered, but for our purposes it is section 17g that is of interest. The section takes aim at a number of elements within the industry of ‘Nationally Recognised Statistical Rating Organisations’ (NRSROs) – the term given to qualified agencies in the mid-1970s by the Securities and Exchange Commission (SEC) – including: registration; record-keeping; prevention of misuse of non-public information; internal policies; and many more. For us the focus will be on section 17g-5, which is entitled ‘Conflicts of Interest’. Within the section, there are a number of elements addressed ranging from agencies producing ratings for issuers who use that particular agency over a certain limit, the independence of analysts, and the relationship between the rating and commercial departments within NRSROs. Yet, in what has come to be termed the ‘17g-5 Program’, subsection 3 details an initiative where, to combat the concentrated nature of the leading rating agencies’ relationship with issuers of securitised products, the information made available to the commissioned NRSRO must also be made simultaneously available to other NRSROs, including those that have had no contact with the issuer; the sentiment is that other NRSROs will produce *unsolicited* credit ratings that can act as a ‘check’ on the ratings of the commissioned rating agency, which would theoretically restrain the commissioned agency from taking advantage of their advantageous position within that particular dynamic.

The amended Act makes clear how this particular system works, with a format prescribed that technically allows for these ‘checks’ to be produced. The commissioned NRSRO must ‘maintain a password-protected Internet website [that contains] a list of each security or money market instrument for which is it currently in the process of determining an initial credit rating’, to which ‘free and unlimited access… during the applicable calendar year [must be given] to any nationally recognised statistical rating organisation that provides it with a copy of the certification described’[[6]](#footnote-6). For the non-commissioned NRSRO, it must adhere to the rules that, in order to access the information, it must determine and maintain ‘credit ratings for at least 10% of the issued securities and money market instruments for which it accessed information’, and cannot access the information ’10 or more time during the most recently ended calendar year’[[7]](#footnote-7). The sentiment of these rulings is twofold; they serve as an incentive for non-commissioned NRSROs to engage with the process, and also dissuade those same NRSROs from ‘snooping’ into what is, essentially, confidential and potentially commercially-sensitive information. In terms of the certification the non-commissioned NRSRO must produce, the most important element concerns their agreement that they will not share confidential information and ‘treat it as material non-public information’[[8]](#footnote-8).

To facilitate this initiative, the legislature had to amend a number of associated laws, with *Regulation FD* (Fair Disclosure)[[9]](#footnote-9) being chief amongst them. As *Regulation FD* aims to prohibit the selective disclosure of material information by public companies, there was clearly an issue that needed to be addressed in terms of the issuers (and commissioned agencies) sharing material information. Kotz notes how the SEC were forced to amend ‘Rule 100(b)(2)(iii) of Regulation FD to permit the disclosure of material non-public information to NRSROs irrespective of whether they make their ratings publicly available’[[10]](#footnote-10). Again, the sentiment behind this move was two-fold, as the move allowed those NRSROs that do not make their ratings publicly available access to the information, and also for those agencies that may access the information but, ultimately, not produce a rating. For the sake of clarity, an agency is not forced to adopt the ‘issuer-pays’ model, with some notable agencies persisting with the traditional ‘subscriber-pays’ remuneration system, like Egan-Jones for example; Egan-Jones has had its issues with SEC-inspired regulation[[11]](#footnote-11) on account of its model which, in order to make money, inhibits making their ratings publicly available, so this adoption hints at the SEC recognising this dynamic with this particular initiative in mind.

Additionally, where an issuer does not provide the relevant or adequate information for the Rule 17g-5 Program websites to be maintained properly, ratings can be then made ‘subject to withdrawal or suspension’[[12]](#footnote-12). Kravitt uses the helpful example of servicers or trustees ceasing the delivery of their monthly reports on particular ratings, in which case the NRSRO must declare that it has insufficient information with which to continue to monitor the rating (as it must), and therefore must withdraw its rating. The website therefore now acts as a ‘record’ for which other NRSROs, and also regulators, can monitor the information-flows between the issuers and the agencies much more closely – this was also identified as a key problem within the post-Crisis investigations.

The Rule 17g-5 Program is designed to be clear, but also detailed, for the purposes of foreseeing issues that may arise. What is clear from examining the Rule is that there are a number of *aims* which have been incorporated into the design of the program, and we will now assess what those aims where. Yet, whilst there are a number of theoretical positives emanating from the program, the literature is clear in its understanding that there are also a number of associated drawbacks, particularly when one envisions how the Rule will actually be *applied* by the regulators and subsequently *received* by the industry and the associated parties. Whilst we will look at what has happened since the Rule was adopted shortly, we need to understand more the theorised benefits (and subsequent drawbacks) that were the foundation for the program’s development.

**Benefits and Drawbacks of the Rule 17g-5 Program**

There are a number of benefits to be derived from the Program, at least in theory. Some of the benefits are more obvious than others, but in sum the Program acts as a facilitator for a number of barriers that exist within the credit rating industry to be overcome. In the post-Crisis investigations, the concentration that exists within the relationship between rating agencies and securitised product issuers was, perhaps, one of the most clearly identified issues, although one element does need to be addressed. This 17g-5 Program only applies to the issuers of securitised products and not, for example, the issuers of corporate bonds, and this is purely to account for the identified concentration and associated externalities that result; it would be difficult for corporate bond issuers to influence the rating agencies as effectively as securitised product issuers did in the run-up to the Crisis, simply because there are many more corporate bond issuers than securitised product issuers. The post-Crisis investigations identified that securitised product issuers would use this concentrated nature of their industry to, essentially, leverage rating agencies to perform as they required, or else they would take their lucrative business to the 3rd member of the oligopoly; whilst it is beyond the scope of this article to examine the oligopoly in great detail (as has been done elsewhere[[13]](#footnote-13)), it is worth noting that because the rating industry is primarily dominated by two agencies, with the third representing somewhat of an outlier (Fitch), there always exists the existential threat of an issuer taking their business to the outlier – the effect would be two-fold; one of the Big Two would lose a lucrative revenue stream, whilst one of their smaller rivals would be emboldened, potentially revolutionising the construct of the ‘rating oligopoly’. This was, therefore, identified as one of the major causes of the degeneration in rating standards before the Crisis, and as a result became the target for post-Crisis legislation and regulation.

In light of that aim, the SEC makes clear its intention for the 17g-5 Program when it says that ‘transparency may be increased if NRSROs that are not hired to rate a security published their views on the credit quality of such a security, such as by issuing an unsolicited rating or published unsolicited commentaries’[[14]](#footnote-14). The SEC attach to this aim the understanding that, ‘for structured finance transactions, however, much of the information on the underlying assets necessary to produce a rating is not publicly available’[[15]](#footnote-15), which confirms the reasoning for the development of the program. They continue by stating that the Program ‘is intended to prevent the arranger of the structured finance product from selecting the NRSRO or NRSROs that *exclusively* can determine initial credit ratings for the structured finance product’[[16]](#footnote-16), which alludes to the existence of aspects such as ‘ratings shopping’, where the arrangers essentially ‘shop around’ and choose agencies that offer the highest rating for their product (again, using the leverage that comes by way of the outlier)[[17]](#footnote-17). The SEC’s aim is recognised within its wording, but it can be seen that the dynamic that exists within the rating oligopoly, to this extent at least, has been recognised and somewhat factored into the regulation, which is a positive development.

As part of the SEC’s tendering for views on its plans, one commenter noted that the Program allows for the injection of accountability into the rating process, on behalf of the agencies themselves[[18]](#footnote-18). Yet, another commenter raises an important point, and that is that the Program also has the aim of revolutionising the *effect* of the business models employed by the leading agencies. The commenter states that the Program ‘allows investors who are not comfortable with an issuer-selected NRSRO to hire an NRSRO of their choice to provide additional ratings since the investor-hired NRSRO can now obtain the requisite information to produce the rating’[[19]](#footnote-19). This is an important point, because it technically alleviates one of the largest issues with the ‘issuer-pays’ business model. The agencies’ rationale for switching to the issuer-pays model has never been definitively determined, but there have been many suggestions as to why the switch was made, ranging from the threat of technological advancements (the public availability of Xerox photocopiers in the late 1960s) to the taking advantage of their position on the back of the Penn Central Railroad Company crash in 1970[[20]](#footnote-20); however, the effect of the switch was that investors were, essentially, forced to use the ratings of who the issuers selected i.e. the decision was largely taken out of their hands. What the 17g-5 program does, technically speaking, is redress that imbalance and allow investors to not only use the ratings of The Big Three (who are usually selected by issuers), but now they can effectively remove the issuer-pays conflict from the situation, as far as their own investment practices are concerned, by hiring another NRSRO.

Another benefit is that the Program allows for a level of standardisation to be introduced to the Industry. The Commission noted that because investors would now be able to see information from a certain product across a number of agencies, and not just the two (it is usually two) selected agencies, ‘the enhanced standardisation of the information content may facilitate comparing performance statistics and rating histories across NRSROs. Clients of NRSROs may use the performance statistics to inform their hiring or subscribing decisions, increasingly promoting competition among NRSROs on the basis of quality of their credit ratings and the procedures and methodologies used to determine credit ratings’[[21]](#footnote-21). Whilst this process admittedly aims to, potentially, reorganise the structure of the industry over a long period of time, and based on certain metrics like accuracy etc., it is the correct approach in a technical sense; the sentiment behind the move is that *reputation* is one of the key determinants in this marketplace, and smaller NRSROs can increase their reputation by being more accurate on a consistent basis than the leading agencies. However, remaining in the theoretical realm, there are also a number of identified drawbacks to the Program that must be addressed.

One of the identified advantages to the Program identified by the SEC is the concept that ratings can become standardised, for the benefit of the investors and their investment decisions, as well as for the issuers in terms of who they select to validate their creditworthiness. Yet, one NRSRO published a report into its own, and another NRSRO’s ratings of insurance companies and found that ‘due to differences in methodologies among the NRSROs, the ratings were not comparable’[[22]](#footnote-22). This raises an important point about the dynamics within the rating industry, and that is that the methodologies – whilst more transparent now since the Crisis and post-Crisis regulations – are still closely guarded as they, essentially, provide each agency with its value-creating identity; it is well known that the agencies differ in their methodologies (with Moody’s, for example, favouring a more formulaic approach as opposed to, say, S&P[[23]](#footnote-23)) and, seemingly, the Program is unable to counter that particular issue.

There is one more theoretical drawback emanating from the program, and that is in relation to timeliness. The ethos of the program is that the non-commissioned NRSRO(s) will rate an entity’s structured finance offerings at the same time as the commissioned NRSRO, but the literature has uncovered a problem with the actual implementation of the program that effects this aim. Whilst the information required to rate an issuance will be made available to both NRSROs, the non-commissioned NRSRO has to be at a disadvantage because, without the arranger contacting all NRSROs simultaneously, only the commissioned NRSRO will know what the issuance is at first instance. A commenter for the SEC noted that non-commissioned NRSROs ‘do not receive information under the Rule 17g-5 program in time to market unsolicited ratings to investors’[[24]](#footnote-24), and this is because of the dynamics of modern finance; whilst the delay in receiving the required information may only be small, it will still be too long for the non-commissioned NRSRO to both conduct the rating in a vigorous-enough manner and also to market the rating to prospective receivers. The position of the non-commissioned NRSRO under the program is, theoretically, always constrained by the flow of information and the certifying measures that must take place; the NRSRO has to first have the issuance brought to its attention (or to be constantly scanning the marketplace, which is inefficient on the grounds that it does not get paid for unsolicited ratings), and then file the required certification *and* have that certification verified and access granted – in this time the relevancy of the non-commissioned NRSRO’s rating is rapidly decreasing.

There are, therefore, a number of theoretical advantages and disadvantages to the Rule 17g-5 Program. One commenter for the SEC stated that ‘the Program’s efficacy needs to be tested over a longer period of time before looking for other ways to reduce conflicts of interest and improve the integrity and quality of credit ratings’[[25]](#footnote-25), which is perhaps true. Yet, it has been almost a decade since the Program was designed, which provides us with a decent (although not complete) timeframe with which to arrive at some conclusions as to the efficacy of the Program, and on that basis we shall now review what has actually happened in that decade to draw some conclusions as to whether the Program can achieve successes in its current form.

**The Reality**

There are, as we have seen, a number of objectives identified by the SEC in regards to the Program. However, one of the greatest tests to determine whether or not the Program has, or at least may be a success, is whether the Program has actually been used by the NRSROs. Unfortunately, despite the theoretical advantages identified by some in the literature and the SEC, the reality may be rather different. The SEC itself reports that ‘no unsolicited initial ratings of structured finance transactions have apparently been produced’[[26]](#footnote-26) under the format of the Program, which was stated in 2016 and continues to be the case at the time of writing. There have been ‘commentaries’ produced, despite the SEC confirming in 2016 that ‘the rule contemplates that such information be used only for credit ratings (and not for other types of publications, such as rating commentaries)’[[27]](#footnote-27), but it appears that this rule has been relaxed in order to provide some justification for the Program’s continuance; the SEC go on in the same breath to champion the commentaries, stating that they ‘can serve to enhance investors’ understanding of the differences in ratings approaches used by the NRSROs’[[28]](#footnote-28). The SEC is likely in a difficult position in this regard, because they a. must be seen to be championing the Program, and b. know that the likelihood that NRSROs will make their methodologies *absolutely* available is extraordinarily slight, so it may be arguable that the SEC has been forced to champion the middle-ground.

That no NRSROs have utilised the Program will be a disappointment for the SEC, but it is difficult to say confidently that it was not to be expected. This is because there are a number of important aspects of the Program which perhaps do not translate into the realities of the rating industry. For example, whilst the issue of non-commissioned NRSROs not being paid for their work is offset, according to the SEC, by the reputational capital that a lesser-known NRSRO can accumulate through the program, one scholar quite rightly notes that there really should not be such a thing as a ‘lesser known’ NRSRO[[29]](#footnote-29) – the ‘Nationally Recognised’ element of that moniker dictates that they already have the necessary reputational capital to compete and, in truth, whilst the NRSRO designation has rarely been definitively defined, perhaps one can say that a rating organisation *must* have that level of reputational capital to be designated an NRSRO in the first place. This is a massive problem that stands in the way of the Program’s success, and is perhaps one of the biggest reasons as to why no NRSRO has engaged with the program as the SEC envisaged. However, there have been other points made in the literature that suggest the Program may have more long-term effects upon the Industry.

There are a large number of rating agencies that exist outside of the NRSRO sphere in the United States alone, and it has been suggested that this Program creates yet another barrier to that designated group and, ultimately, a barrier to an agency achieving the recognition that will allow for the hegemony within the rating industry to be challenged. Kotz states that whilst the program may inspire competition amongst NRSROs, it ‘might also adversely impact a CRA that is seeking to become an NRSRO. Under existing proposals [since confirmed], only existing NRSROs will have access to the material non-public information’[[30]](#footnote-30). The result, arguably, is the solidification of the NRSRO group, which as a designation has never been fully articulated, and nor has the requirements for how an agency becomes an NRSRO. A suggestion by Moody’s on another point, namely that they believe that ‘a lack of publicly available information regarding securitisations is the main cause of conflicts of interest in this market, and that issuers still retain a large amount of control over the dissemination of information under Rule 17g-5’[[31]](#footnote-31), perhaps offers the solution to this problem; if all of the data regarding the securitised offering was made public, then non-NRSROs could stand a chance of accruing the necessary reputation via accurate ratings that would allow them to enter the NRSRO marketplace (if the SEC removed the NRSRO requirement, that is). Yet, this issue of revealing data is another reality that goes against the Program’s chances of success.

In reality, the issuers of these products want to retain their positional advantage over the rating agencies, and have taken steps to ensure that remains the case. As the data is potentially commercially sensitive, the issuers have made full use of their power to designate elements of the information provided as ‘confidential’, with it being suggested in the literature, by way of declarations by CRAs themselves, that issuers have been ‘deeming all information provided to NRSROs [as] confidential in order to comply with Rule 17g-5’[[32]](#footnote-32); furthermore, the agencies have noted that issuers have been instructing trustees not to respond to rating agency queries on certain pieces of information, in order to hinder the process further[[33]](#footnote-33).

The issue with the Program is that it appears to have been designed in a theoretical vacuum, without the appropriate foresight required to actually implement the Program and have it received in the correct manner by the affected parties. The program intrinsically affects the position of the issuer, who are in a powerful position on account of the dynamics of the environment; the aim is to bring these products to market and produce substantial profits, which naturally puts the issuers in a powerful position. In addition, the Program seeks to encourage competition, but only amongst a select group of companies, which is arguably a paradoxical objective. This concept of applying theory to the applied world of credit ratings, and the associated difficulties that result, have been covered in depth elsewhere within the literature[[34]](#footnote-34), but what it does do is raise the question of whether the program can ever be successful?

Arguably, the Program *is* a vehicle for success, but currently does not allow for the ethos of the Program to be realised. The fact that the Program encourages for-profit *nationally recognised* rating agencies to produce work for free on account of the theorised spike in reputational capital is, perhaps, a fundamental error. However, it has been discussed elsewhere that this Program has the potential to be a vehicle of massive change in the sector, but only if a number of aspects come to reality. It has been argued that this Program actually creates the fertile ground for *non-profit* credit rating agencies to become an important part of the credit rating framework, with one Scholar suggesting that two non-profit rating agencies in particular – The International Non-Profit Credit Rating Agency developed by the Bertelsmann Foundation, and the Credit Rating Initiative developed by the University of Singapore’s Risk Management Institute – should come together, on account of their differing skillsets (one specialised in sovereign bond ratings and the other in corporate and structured finance issuances) to take advantage of the program[[35]](#footnote-35). For this to take place, leaving aside the complexities of the two initiatives coming together for one moment, the SEC would have to either a. make the combined entity an NRSRO, b. remove the requirement that only NRSROs can gain access to the non-public information, or c. do away with the NRSRO designation altogether. It is acknowledged that this is a hypothetical scenario with a lot of moving parts, but it is difficult to see how the Program can overcome the difficulties it has faced, in reality, since it was adopted almost a decade ago.

**Conclusion**

It is difficult to definitively prescribe how the Rule 17g-5 Program may develop from this point. This is because the Program offers many benefits in theory, but in reality is simply not being utilised by market participants, with the reason for that being many. The Program has the distinct advantage of potentially negating the negative effects of the issuer-pays remuneration system by providing an increased capability to investors to invest on their own terms, whilst it also has the *potential* of allowing for lesser-used CRAs to gain an increased reputation which may positively affect the current oligopolistic structure within the rating industry. Yet, in reality, the Program’s development has been limited by some of the dynamics that exist within the rating industry, and within the financial sector moreover. With lesser rating agencies unwilling, or perhaps even unable to take advantage of the potential of the Program, and larger agencies using the Program to fortify their position against their competitors (via commentaries), there seems to be a stalemate that is difficult to imagine being broken. However, the Program’s stunted development also alludes to an issue that is seemingly inherent within the financial arena, and that is the dynamic between the largest investors and the issuing companies; it is perhaps surprising that large investors have not made use of the Program more and commissioned smaller rating agencies to act as a check on the ratings of the more established agencies. It may be surprising that an opportunity has not been taken, but the situation does suggest that large issuing companies simply do not need these checks and balances performed by the rating agencies, and what they actually need is *validation* for their issuances; if they receive this validation, then why would they seek extra validation from a less reputable (in terms of size and experience alone) source?

The Program offers many benefits, but these benefits may only ever be derived if the framework is altered. It is argued in this article, and in a previous work, that the answer would be to allow non-profit rating agencies to take advantage of the Program and develop a manufactured reputation from within the confines of the Rule 17g-5 Program; the non-profit rating agencies would be able to conduct such ratings, not be bound by profit-related pressures, and be able to represent what an *independent* rating would like for any given issuance. However, to do that, the SEC would need to either expand their NRSRO status to the non-profit agencies, or do away with the NRSRO status altogether; either of these actions require a lot of movement on behalf of the SEC, and it is questionable whether they would be willing and able to do so. Yet, the *sentiment* offered by the Dodd-Frank Act and the SEC with this Program falls directly in line with the sentiment offered by the leading non-profit agencies being developed at the moment; on that basis, some reform to aid in their development would be particularly welcome in an industry that really ought to have checks and balances fundamentally inserted within it. The issue of profit, and the issues that are associated with that when one considers an industry that is depended upon to provide independent valuations, can be lessened to a great extent if such reforms were considered and ultimately enacted.

1. *The Credit Rating Agency Duopoly Relief Act of 2005* H.R. 2990. [↑](#footnote-ref-1)
2. *The Credit Rating Agency Reform Act of 2006* Pub. L. 109-291, 120 Stat. 1327. [↑](#footnote-ref-2)
3. United States Senate Permanent Subcommittee on Investigations, *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse* (GPO 2011) 244. [↑](#footnote-ref-3)
4. *The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* 124 Stat. 1376, Title IX Subtitle C. [↑](#footnote-ref-4)
5. *The Securities Exchange Act of 1934* 17 CFR 240. [↑](#footnote-ref-5)
6. ibid 17g-5 (3)(i-ii). [↑](#footnote-ref-6)
7. ibid (A). [↑](#footnote-ref-7)
8. ibid (e). [↑](#footnote-ref-8)
9. 17 CFR 243. 100-243. [↑](#footnote-ref-9)
10. H. David Kotz, *SEC’s Role Regarding and Oversight of Nationally Recognised Statistical Rating Organisations (NRSRO)* (DIANE Publishing 2010) 53. [↑](#footnote-ref-10)
11. Jonathan R Macey, *The Death of Corporate Reputation: How Integrity Has Been Destroyed on Wall Street* (FT Press 2013) 232-5. [↑](#footnote-ref-11)
12. Jason H. P. Kravitt, *Securitisation of Financial Assets* (Aspen Publishers 2012) 7-8. [↑](#footnote-ref-12)
13. Daniel Cash, *Regulation and the Credit Rating Agencies: Restraining Ancillary Services* (Routledge 2018). [↑](#footnote-ref-13)
14. Securities and Exchange Commission, *Annual Report on Nationally Recognised Statistical Rating Organisations* (2016) 32. [↑](#footnote-ref-14)
15. ibid 33. [↑](#footnote-ref-15)
16. Securities and Exchange Commission, *Report to Congress on Assigned Credit Ratings* (2012) 54. [↑](#footnote-ref-16)
17. United States Senate (n 3) 287. [↑](#footnote-ref-17)
18. SEC (n 16) 57. [↑](#footnote-ref-18)
19. ibid. [↑](#footnote-ref-19)
20. The range of potential reasons are discussed in Daniel Cash, ‘Sustainable Finance Ratings as the Latest Symptom of “rating addiction”’ [2018] 3 Journal of Sustainable Finance & Investment. [↑](#footnote-ref-20)
21. Securities and Exchange Commission, *Final Rule: Nationally Recognised Statistical Rating Organisations* (2014). [↑](#footnote-ref-21)
22. SEC (n 14) 33. [↑](#footnote-ref-22)
23. Rasha Alsakka and Owain A Gwilym ‘Rating Agencies’ Credit Signals: An Analysis of Sovereign Watch and Outlook’ [2012] 21 International Review of Financial Analysis 46. [↑](#footnote-ref-23)
24. SEC (n 16) 58. [↑](#footnote-ref-24)
25. ibid. [↑](#footnote-ref-25)
26. SEC (n 14) 33. [↑](#footnote-ref-26)
27. ibid. [↑](#footnote-ref-27)
28. ibid 34. [↑](#footnote-ref-28)
29. Emil Nästegård, The Regulation of Conflicts of Interest in the Credit Rating Industry’ [2017] Nordic and European Company Law Working Paper, No. 16-18, 17. [↑](#footnote-ref-29)
30. Kotz (n 10) 54. [↑](#footnote-ref-30)
31. James Weston, ‘An Improved Regulatory Framework for Credit Rating Agencies?’ [2013] 2 Global Credit Review: Risk Management Institute 21. [↑](#footnote-ref-31)
32. ibid. [↑](#footnote-ref-32)
33. ibid. [↑](#footnote-ref-33)
34. For a discussion on this ‘divergence’ see Cash (n 13). [↑](#footnote-ref-34)
35. Daniel Cash, ‘The International Non-Profit Credit Rating Agency: The Viability of a Response’ [2016] 37 The Company Lawyer 6. [↑](#footnote-ref-35)