

SEC Amends Regulation FD to Remove the Credit Rating Agency Exemption

On October 4, 2010, the specific exemption from Regulation FD for issuer disclosures made to credit rating agencies for the purpose of developing credit ratings was removed,¹ as required by Section 939B of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.²

Regulation FD addresses the issue of selective disclosure by requiring an issuer, or any person acting on its behalf, who discloses material nonpublic information regarding the issuer or its securities to certain enumerated persons (including brokers, dealers, investment advisers, investment companies and the issuer's security holders) to make a public disclosure of that information simultaneously or, if the disclosure is made non-intentionally, promptly.

Prior to this amendment, Regulation FD explicitly exempted disclosures to entities whose "primary business is the issuance of credit ratings, provided the information is disclosed solely for the purpose of developing a credit rating and the entity's ratings are publicly available."³

The amendment is not likely to have a significant impact because issuers may rely on an exemption under Regulation FD for information provided to a person who expressly agrees to maintain the information in confidence.⁴

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Jon Mark at 212.701.3100 or jmark@cahill.com; Brian Markley at 212.701.3230 or bmarkley@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; or Elizabeth Loonam at 212.701.3583 or eloonam@cahill.com.

¹ Removal From Regulation FD of the Exemption for Credit Rating Agencies, 75 Fed. Reg. 61,050 (October 4, 2010) (to be codified at 17 C.F.R. pt. 243), available at <http://www.federalregister.gov/articles/2010/10/04/2010-24802/removal-from-regulation-fd-of-the-exemption-for-credit-rating-agencies>.

² The Dodd-Frank Act is available at <http://www.govtrack.us/congress/billtext.xpd?bill=h111-4173>.

³ 17 C.F.R. §243.100(b)(2)(iii) (*repealed* October 4, 2010).

⁴ Rule 100(b)(2)(ii) of Regulation FD, available at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=73766eab49822666fcc4b4f2cf17cd60&rgn=div8&view=text&node=17:3.0.1.1.4.0.105.1&idno=17>. Ratings and credit agencies typically have confidentiality provisions in their agreements with issuers.