

Dodd-Frank Act Rescinds Exemptions Under Rule 436(g)

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Effective July 22, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) rescinded the exemption afforded under Rule 436(g) to credit rating agencies with respect to expert liability for purposes of Section 11 of the Securities Act. A consequence of the rescission of Rule 436(g) is that, subject to certain exceptions, the SEC will require issuers to file the consent of a rating agency named in a registration statement that includes credit rating information. Rating agencies have thus far indicated they will be unwilling to provide these consents.

On July 21, 2010, Skadden, Arps, Slate, Meagher & Flom LLP and a group of other law firms agreed, after conversations with representatives of the Staff of the SEC, to publish a joint interpretative summary of the new consent requirements. A copy of the law firm guidance can be found [here](#). On July 22, 2010, the SEC published a series of Compliance and Disclosure Interpretations (“C&DIs”) that are substantially consistent with the law firm guidance. The SEC C&DIs can be found [here](#).

Notably, the SEC has indicated that so-called “issuer disclosure-related ratings information” will not trigger a consent filing requirement. Issuer disclosure-related ratings information includes disclosure related only to: changes to a credit rating, risk factors, the cost of funds for an issuer, the terms of agreements that refer to credit ratings and a description of ratings in the context of an issuer’s liquidity discussion.

Clients are advised to review any disclosure of credit ratings information that may be included or incorporated by reference into existing or future registration statements in light of the rescission of Rule 436(g) and the guidance linked to this memorandum.