

SUPPORTING STATEMENT

A. Justification

1. Need For Information Collection

The Credit Rating Agency Reform Act of 2006¹ (“Rating Agency Act”), enacted on September 29, 2006, defines the term “nationally recognized statistical rating organization,” or “NRSRO,” provides authority for the Securities and Exchange Commission (“Commission”) to implement registration, recordkeeping, financial reporting, and oversight rules with respect to registered credit rating agencies, and directs the Commission to issue implementing rules no later than 270 days after its enactment.

The rules adopted under the Rating Agency Act contain recordkeeping and disclosure requirements. The collection of information obligations imposed by the rules is mandatory. The rules, however, apply only to credit rating agencies that are applying to register or are registered with the Commission as NRSROs, and registration is voluntary.

The Rating Agency Act added a new Section 15E, “Registration of Nationally Recognized Statistical Rating Organizations,”² to the Securities Exchange Act of 1934 (“Exchange Act”). Exchange Act Section 15E(g)(1)³ requires an NRSRO to establish, maintain, and enforce written policies and procedures to prevent the misuse of material nonpublic information in violation of the Exchange Act. Section 15E(g)(2) of the Exchange Act provides that the Commission must adopt rules requiring an NRSRO to establish specific policies and procedures to prevent the misuse of material non-public information.⁴ Rule 17g-4 implements this statutory provision by requiring that an NRSRO’s written policies and procedures to prevent the misuse of material nonpublic information include three specific types of procedures: procedures designed to prevent the inappropriate dissemination of material nonpublic information obtained in connection with the performance of credit rating services; procedures designed to prevent a person associated with the rating organization from trading on material nonpublic information; and procedures designed to prevent the inappropriate dissemination of a pending credit rating.⁵

¹ Pub. L. No. 109-291.

² 15 U.S.C. 78o-7.

³ 15 U.S.C. 78o-7(g)(1).

⁴ 15 U.S.C. 78o-7(g)(2).

⁵ See Rule 17g-4. Release No. 34-55231 (Feb. 2, 2007), 72 FR 6378 (Feb. 9, 2007); and Release No. 34-55857 (June 5, 2007), 72 FR 33564 (June 18, 2007).

2. Purpose of, and Consequences of Not Requiring, the Information Collection

The collection of information included in Rule 17g-4 is necessary for Commission oversight of NRSROs registered with the Commission. Specifically, the procedures required by Rule 17g-4 are designed to ensure that an NRSRO establishes adequate procedures and controls to protect material nonpublic information and prevent its misuse.

3. Role of Improved Information Technology and Obstacles to Reducing Burden

Rule 17g-4 requires NRSROs to have written policies and procedures to prevent the misuse of material nonpublic information. This record could be made and retained electronically. The Commission believes that improvements in telecommunications and data processing technology may reduce any burdens associated with Rule 17g-4. NRSROs are not prevented by Rule 17g-4 from using computers or other mechanical devices to generate the records required under the Rule.

4. Efforts To Identify Duplication

No duplication is apparent.

5. Effects on Small Entities

Small entities may be affected by the rule because all NRSROs, regardless of size, will be required to have written policies and procedures to prevent the misuse of material nonpublic information.

6. Consequences of Less Frequent Collection

If this information were not collected as frequently, the Commission will be unable to ascertain, on an ongoing basis, whether a credit rating agency registered as an NRSRO had written policies and procedures to prevent the misuse of material non-public information.

7. Inconsistencies With Guidelines In 5 CFR 1320.5(d)(2)

The collection of information will not be inconsistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

All Commission rule proposals are published in the Federal Register for public comment. The comment period for the release that discusses proposed Rule 17g-4⁶ was 30 days. This comment period afforded the public an opportunity to respond to the

⁶ Release No. 34-55231 (Feb. 2, 2007), 72 FR 6378 (Feb. 9, 2007).

proposal. The Commission received one comment supporting the Commission’s rule. The commenter stated that the financial systems require transparency in order for the individual investor to feel confident that he has the necessary information to make well-informed investment choices, and that this is especially critical if an investor is looking to the NRSROs for impartial rating information. The commenter expressed support for the Commission operating under Section 15E and stated that the Commission should ensure that NRSROs are held to the highest standards in protecting non-public information.

The commenter stated that holding NRSROs to high standards requires written procedures for preventing the inappropriate dissemination of nonpublic information, for preventing the inappropriate use by an employee of nonpublic information, and for preventing the inappropriate dissemination of a forthcoming credit rating. The commenter stated that Rule 17g-4 addresses all three of these goals.

The commenter also stated that the collection of this data furthers the Commission’s purpose of ensuring that legally required information is made available to investors and that nonpublic information is not being used for insider trades—something that the commenter would expect of companies and investment firms should likewise apply to NRSROs. Moreover, the commenter noted that the Rule fosters trust in the performance of the NRSROs, especially crucial after the recent economic crisis, which demonstrated the spectrum of behaviors across NRSROs and that many of the protocols of the ratings agencies were not clearly explained to nor understood by investors.

The commenter also stated that the Commission’s estimated time burden of 50 hours per NRSRO for the establishment of the required protocols is reasonable.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

The information collection under Rule 17g-4 will not be confidential.

11. Sensitive Questions

Not applicable. Questions of a sensitive nature are not asked.

12. Estimate of Respondent Reporting Burden

The number of respondents that will be subject to the rule will depend, in part, on the number of entities that will meet the statutory requirements for eligibility for registration. Further, registration is voluntary, and, consequently, the number of respondents will also depend on the number of entities that will choose to register with the Commission. The Commission estimates that approximately 30 credit rating agencies will register with the Commission as NRSROs under Section 15E of the Exchange Act.

The Commission expects that most credit rating agencies already have procedures in place to address the specific misuses of material nonpublic information identified in Rule 17g-4.⁷ Nonetheless, the Commission anticipates that some NRSROs may need to modify their procedures to comply with the specific procedures required by the rule. Based on staff experience, the Commission estimates that it will take approximately 50 hours for an NRSRO to establish procedures in conformance with the rule for a total one-time burden for the 30 credit rating agencies the Commission estimates will register as NRSROs of 1,500 hours.⁸

13. Estimate of Total Annualized Cost Burden

The Commission believes that there will be no additional reporting costs associated with the rule, other than the costs described in Item 12 above.

14. Estimate of Cost to Federal Government

There will be no additional costs to the Federal Government.

15. Explanation of Changes in Burden

Not applicable. Rule 17g-4 is a new rule.

16. Information Collection Planned for Statistical Purposes

Not applicable. There is no intention to publish the information for any purpose.

17. Explanation as to Why Expiration Date Will Not Be Displayed

Not applicable.

18. Exceptions to Certification

Not applicable.

B. Collection of Information Employing Statistical Methods

The collection of information does not employ statistical methods, nor will the implementation of such methods reduce the burden or improve the accuracy of results.

⁷ For example, the IOSCO Code requires credit rating agencies to develop such procedures.

⁸ 50 hours x 30 NRSROs = 1,500 hours.