

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 17g-10 and Form ABS Due Diligence-15E

A. Justification

1. Necessity of Information Collection

The Credit Rating Agency Reform Act of 2006¹ (“Rating Agency Act”), enacted on September 29, 2006, defined the term “nationally recognized statistical rating organization” (“NRSRO”) and provided authority for the Securities and Exchange Commission (“Commission”) to implement registration, recordkeeping, financial reporting, and oversight rules with respect to credit rating agencies registered with the Commission as NRSROs. The Rating Agency Act added new Section 15E, “Registration of Nationally Recognized Statistical Rating Organizations,”² to the Securities Exchange Act of 1934 (“Exchange Act”). In 2007, the Commission adopted rules to implement specific provisions of the Rating Agency Act, as well as other registration, recordkeeping, financial reporting and oversight rules.³

The Dodd-Frank Wall Street Reform and Consumer Protection Act⁴ (“Dodd-Frank Act”) was enacted on July 21, 2010. Title IX, Subtitle C of the Dodd-Frank Act, “Improvements to the Regulation of Credit Rating Agencies,” among other things, established new self-executing requirements applicable to NRSROs, required certain studies, and required that the Commission adopt rules applicable to NRSROs, providers of due diligence services, and issuers and underwriters of asset-backed securities in a number of areas. The Commission proposed new rules and rule amendments to implement certain of these provisions, including proposed new Rule 17g-10 and new Form ABS Due Diligence-15E.⁵

Proposed new Rule 17g-10 and new Form ABS Due Diligence-15E would implement rulemaking mandated in Sections 15E(s)(4)(B) and (C) of the Exchange Act as added by the Dodd-Frank Act. Section 15E(s)(4)(B) requires that in any case in which third-party due diligence services are employed by an NRSRO, an issuer, or an underwriter, the person providing the due diligence services shall provide to any NRSRO that produces a rating to which such services relate written certification in a format as provided in Exchange Act Section 15E(s)(4)(C) which, in turn, provides that the Commission shall establish the appropriate format and content for the written certifications required under Section 15E(s)(4)(B) to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate rating.

¹ Pub. L. No. 109-291.

² 15 U.S.C. 78o-7.

³ Exchange Act Release No. 55857 (June 5, 2007), 72 FR 33564 (June 18, 2007).

⁴ Pub. L. No. 111-203, 124 Stat. 1376, H.R. 4173.

⁵ Exchange Act Release No. 64514 (May 18, 2011), 76 FR 33420 (June 8, 2011).

Proposed paragraph (a) of new Rule 17g-10 would provide that the written certifications of providers of third-party due diligence services required pursuant to Section 15E(s)(4)(B) of the Exchange Act must be made on Form ABS Due Diligence-15E. Proposed paragraph (b) of new Rule 17g-10 would provide that the written certification must be signed by an individual who is duly authorized by the person providing the third-party due diligence services to make such a certification. Proposed paragraph (c) of new Rule 17g-10 would contain four definitions to be used for the purposes of Section 15E(s)(4)(B) and Rule 17g-10; namely, a definition of “due diligence services,” “issuer,” “originator,” and “securitizer.”

Proposed Form ABS Due Diligence-15E would contain five line items identifying information the provider of third-party due diligence services would need to provide in the form. It also would contain a signature line with a corresponding representation. Item 1 would elicit the identity and address of the provider of third-party due diligence services. Item 2 would elicit the identity and address of the issuer, underwriter, or NRSRO that employed the provider of third-party due diligence services. Item 3 would instruct the provider of third-party due diligence services to identify each NRSRO whose published criteria for performing due diligence the provider of third-party due diligence services satisfied in performing the due diligence review. Item 4 would require the provider of third-party due diligence services to describe the scope and manner of the due diligence performed. Item 5 would require the provider of third-party due diligence services to describe the findings and conclusions resulting from the review.

2. Purpose and Use of the Information Collection

The purpose of proposed new Rule 17g-10 and proposed new Form ABS Due Diligence-15E would be to achieve the objective stated in Section 15E(s)(4)(B) of the Exchange Act; namely, that a provider of third-party due diligence services conducts a thorough review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate credit rating. They also are designed to contribute to achieving the objective stated in Section 15E(s)(4)(D) of the Exchange Act; namely, to allow the public to determine the adequacy and level of due diligence services provided by a third party.

3. Consideration Given to Information Technology

Proposed new Rule 17g-10 would require a third-party due diligence provider to submit a written certification on Form ABS Due Diligence-15E signed by an individual who is duly authorized by the person providing the third-party due diligence services to make such a certification. The Commission anticipates, however, that much of the material required in Form ABS Due Diligence-15E, however, could be drawn directly from the due diligence reports the Commission expects that providers of third-party due diligence services generate with respect to their performance of due diligence services. As such, the Commission anticipates that much of the work necessary to complete the proposed form could be performed electronically.

4. Duplication

No duplication is apparent.

5. Effect on Small Entities

Small entities may be affected by the proposed new rule and form because all third-party due diligence providers, regardless of size, will be required to complete Form ABS Due Diligence-15E pursuant to Rule 17g-10 and provide it to any NRSRO providing a rating for the relevant instrument. The Commission preliminarily estimates that there will be 10 providers of third-party due diligence services subject to the proposed new requirements and that all 10 respondents would be “small” entities. The Commission solicited comment on how small entities would be affected by the proposal.

6. Consequences of Not Conducting Collection

If the information to be required under proposed new Rule 17g-10 and proposed new Form ABS Due Diligence-15E were not collected, the Commission would be less able to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate rating and the public would have less information to determine the adequacy and level of due diligence services provided by a third party.

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

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.8(d).

8. Consultations Outside the Agency

The Commission has issued a release soliciting comment on the new “collection of information” requirements and associated paperwork burdens. A copy of the release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission’s public website, and made available through <http://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

9. Payment or Gift

The Commission did not provide any payment or gift to respondents in connection with the proposed rulemaking.

10. Confidentiality

The information collections under proposed new rule Rule 17g-10 and new Form ABS Due Diligence-15E will not be confidential.

11. Sensitive Questions

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

12. Burden of Information Collection

The Commission preliminarily estimates that there will be 10 providers of third-party due diligence services subject to the proposed new requirements, which would entail an initial and ongoing third party disclosure burden. The Commission preliminarily estimates that providers of third-party due diligence services would need to develop processes and protocols to provide the required information in new Form ABS Due Diligence-15E and submit the certifications to NRSROs. The Commission preliminarily estimates that providers of third-party due diligence services would spend an average of approximately 300 hours per firm developing these processes and protocols, resulting in a one-time industry-wide hour burden of 3,000 hours. In addition, the Commission preliminarily allocates 75% of these burden hours (2,250 hours) to internal burden and the remaining 25% (750 hours) to external burden to hire outside attorneys to provide legal advice on the requirements of new Rule 17g-10 and Form ABS Due Diligence-15E.

With respect to the ongoing burden, the Commission preliminarily believes that the estimate should be based on the number of issuances per year of Exchange Act-ABS because the requirement to produce the certification and provide it to NRSROs would be triggered when an issuer, underwriter, or NRSRO hires a provider of third-party due diligence services for transactions. In the PRA for the adoption of Rule 17g-7, the Commission estimated, on average, there would be approximately 2,067 Exchange Act-ABS offerings per year. In addition, the Commission preliminarily estimates that a provider of third-party due diligence services would spend approximately 30 minutes completing and submitting Form ABS Due Diligence-15E. The Commission bases this preliminary estimate on the fact that the first three Items in the form require basic information and the fourth Item (the due diligence performed) and the fifth Item (the findings and conclusions of the review) could be drawn directly from the due diligence reports the Commission expects that providers of third-party due diligence services generate with respect to their performance of due diligence services. Therefore, the Commission preliminarily estimates that the industry-wide ongoing hour burden resulting from proposed new Rule 17g-10 and Form ABS Due Diligence-15E would be

approximately 1,034 hours per year, or approximately 103.4 hours per respondent per year.

13. Costs to Respondents

As discussed above, the Commission preliminarily estimates that providers of third-party due diligence services would spend an average of approximately 300 hours per firm developing these processes and protocols, resulting in a one-time industry-wide hour burden of 3,000 hours. In addition, the Commission preliminarily allocates 75% of these burden hours to internal burden and the remaining 25% to external burden to hire outside attorneys to provide legal advice on the requirements of new Rule 17g-10 and Form ABS Due Diligence-15E. The Commission estimates that the hourly cost of such outside professionals would be \$400, resulting in a one-time cost burden of \$300,000 (750 hours x \$400).

14. Costs to Federal Government

There would be no additional costs to the Federal Government.

15. Changes in Burden

Rule 17g-10 and new Form ABS Due Diligence-15E would be a new rule and form.

16. Information Collection Planned for Statistical Purposes

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

17. Display of OMB Approval Date

We request authorization to omit the expiration date on the electronic version of the form, although the OMB control number will be displayed. Including the expiration date on the electronic version of this form will result in increased costs, because the need to make changes to the form may not follow the application's scheduled version release dates.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. Collection of Information Employing Statistical Methods

This collection does not involve statistical methods.