

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 17g-8: Policies and Procedures
and
Rule 17g-9: Standards of training, experience, and competence for credit analysts

A. JUSTIFICATION

1. Necessity of Information Collection

Rule 17g-8

Title IX, Subtitle C of the Dodd-Frank Wall-Street Reform and Consumer Protection Act (the “Dodd-Frank Act”),¹ “Improvements to the Regulation of Credit Rating Agencies,” among other things, establishes new self-executing requirements applicable to nationally recognized statistical rating organizations (“NRSROs”), requires certain studies,² and requires that the Securities and Exchange Commission (“Commission”) adopt rules applicable to NRSROs in a number of areas.³ The NRSRO provisions in the Dodd-Frank Act augment the Credit Rating Agency Reform Act of 2006 (the “Rating Agency Act”),⁴ which established a registration and Commission oversight program for NRSROs through self-executing provisions added to the Securities Exchange Act of 1934 (the “Exchange Act”)⁵ and corresponding rules adopted by the Commission under the Exchange Act.

On May 18, 2011, the Commission proposed new Rule 17g-8 that would require nationally recognized statistical rating organizations (“NRSROs”) to establish, maintain and enforce certain policies and procedures. The Commission’s authority to propose the policies and procedures that would be required under proposed Rule 17g-8 arises from certain provisions of the Dodd-Frank Act.

Proposed Rule 17g-8 contains recordkeeping requirements. The collection of information obligations imposed by Rule 17g-8 is mandatory. Rule 17g-8, however, applies only to credit rating agencies that are registered with the Commission as NRSROs, and registration is voluntary.

A. Credit Rating Methodologies and Procedures

Proposed paragraph (a) of new Rule 17g-8 would implement rulemaking mandated in Section 15E(r) of the Exchange Act by requiring an NRSRO to have policies and procedures with respect to the procedures and methodologies the NRSRO uses to determine credit ratings.⁶

¹ Pub. L. No. 111-203, 124 Stat. 1376, H.R. 4173 (July 21, 2010).

² See Pub. L. No. 111-203 §§ 939, 939D - 939F.

³ See Pub. L. No. 111-203 §§ 931-939H; see also Pub. L. No. 111-203 § 943.

⁴ See Pub. L. No. 109-291 (2006).

⁵ See Pub. L. No. 73-291 (1934).

⁶ See 15 U.S.C. 78o-7(r) and proposed new paragraph (a) of Rule 17g-8. See also Section 932(a)(8) of the

In particular, proposed paragraph (a)(1) would require the NRSRO to have policies and procedures that are reasonably designed to ensure that the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are approved by its board of directors or, if the NRSRO does not have a board of directors, a body performing a function similar to that of a board of directors.⁷ Proposed paragraph (a)(2) would require an NRSRO to have policies and procedures that are reasonably designed to ensure that the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are developed and modified in accordance with the policies and procedures of the NRSRO.⁸ Proposed paragraph (a)(3)(i) would require an NRSRO to have policies and procedures that are reasonably designed to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are applied consistently to all credit ratings to which the changed procedures or methodologies apply.⁹ Proposed paragraph (a)(3)(ii) would require the NRSRO to have policies and procedures that are reasonably designed to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are, to the extent that the changes are to surveillance or monitoring procedures and methodologies, applied to then-current credit ratings within a reasonable period of time taking into consideration the number of ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated.¹⁰ Proposed paragraph (a)(4)(i) would require the NRSRO to have policies and procedures that are reasonably designed to ensure that the NRSRO promptly publishes on an easily accessible portion of its corporate Internet website material changes to the procedures and methodologies, including to qualitative models or quantitative inputs, the NRSRO uses to determine credit ratings, the reason for the changes, and the likelihood the changes will result in changes to any current ratings.¹¹ Proposed paragraph (a)(4)(ii) would require the NRSRO to have policies and procedures that are reasonably designed to ensure the NRSRO promptly publishes on an easily accessible portion of its corporate Internet website significant errors identified in a procedure or methodology, including a qualitative or quantitative model, the NRSRO uses to determine credit ratings that may result in a change in current credit ratings.¹² Finally, proposed paragraph (a)(5) would require the NRSRO to have policies and procedures that are reasonably designed to ensure that it discloses the version of a credit rating procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.¹³

B. Credit Rating Symbols

Dodd-Frank Act. Pub. L. No. 111-203 § 932(a)(8).

⁷ See proposed paragraph (a)(1) of new Rule 17g-8.

⁸ See proposed paragraph (a)(2) of new Rule 17g-8.

⁹ See proposed paragraph (a)(3)(i) of new Rule 17g-8.

¹⁰ See proposed paragraph (a)(3)(ii) of new Rule 17g-8.

¹¹ See proposed paragraph (a)(4)(i) of new Rule 17g-8.

¹² See proposed paragraph (a)(4)(ii) of new Rule 17g-8.

¹³ See proposed paragraph (a)(5) of new Rule 17g-8.

Proposed paragraph (b) of new Rule 17g-8 would implement rulemaking mandated in Section 938(a) of the Dodd-Frank Act by requiring an NRSRO to have policies and procedures with respect to the symbols, numbers, or scores it uses to denote credit ratings.¹⁴ In particular, proposed paragraph (b)(1) of new Rule 17g-8 would require the NRSRO to have policies and procedures reasonably designed to assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument.¹⁵ Proposed paragraph (b)(2) of new Rule 17g-8 would require the NRSRO to have policies and procedures reasonably designed to clearly define the meaning of each symbol, number, or score in the rating scale used by the NRSRO to denote a credit rating category and notches within a category for each class and subclass of credit ratings for which the NRSRO is registered and to include such definitions in Exhibit 1 to Form NRSRO.¹⁶ Proposed paragraph (b)(3) of new Rule 17g-8 would require the NRSRO to have policies and procedures reasonably designed to apply any symbol, number, or score defined pursuant to paragraph (b)(2) of new Rule 17g-8 in a manner that is consistent for all types of obligors, securities and money market instruments for which the symbol, number, or score is used.¹⁷

C. Look-back Review

Proposed paragraph (c) of new Rule 17g-8 would implement rulemaking mandated in Section 15E(h)(4)(A)(ii) of the Exchange Act by requiring the NRSRO to include certain policies and procedures in the policies and procedures the NRSRO is required to establish, maintain, and enforce pursuant to Section 15E(h)(4)(A) of the Exchange Act.¹⁸ Specifically, proposed paragraph (c) would require the NRSRO to have policies and procedures to address instances in which a look-back review determines that a conflict of interest influenced a credit rating assigned to an obligor, security, or money market instrument by including, at a minimum, procedures that are reasonably designed to ensure that the NRSRO will: (1) immediately place the credit rating on credit watch and disclose certain information about the reason for the rating action; (2) promptly evaluate whether the credit rating must be revised to conform it to the NRSRO's documented procedures and methodologies for determining credit ratings (*i.e.*, remove the influence of the conflict); and (3) promptly publish a revised credit rating, if appropriate, or affirm the credit rating, if appropriate, and, in either case, disclose certain information about the reason for the rating action.¹⁹

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¹⁴ See Pub. L. No. 111-203 § 938(a) and proposed paragraph (b) of new Rule 17g-8.

¹⁵ See proposed paragraph (b)(1) of new Rule 17g-8.

¹⁶ See proposed paragraph (b)(2) of new Rule 17g-8.

¹⁷ See proposed paragraph (b)(1) of new Rule 17g-8.

¹⁸ See 15 U.S.C. 78o-7(h)(4)(A)(ii) and proposed new paragraph (c) of Rule 17g-8; see also Section 932(a)(4)(A)(ii) of the Dodd-Frank Act. Pub. L. No. 111-203 § 932(a)(4)(A)(ii).

¹⁹ See proposed paragraphs (c)(1), (2) and (3) of new Rule 17g-8.

The Rating Agency Act²⁰ defined the term “nationally recognized statistical rating organization” and provided authority for the 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,”²¹ to the 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.²²

The Dodd-Frank Act²³ was enacted on July 21, 2010. Title IX, Subtitle C of the Dodd-Frank, “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 rules and rule amendments to implement certain of these provisions, including proposed new Rule 17g-9.²⁴

Proposed Rule 17g-9 would implement Section 936 of the Dodd-Frank Act, which requires the Commission to issue rules reasonably designed to ensure that any person employed by an NRSRO to determine credit ratings meets standards of training, experience, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates and is tested for knowledge of the credit rating process. Proposed Rule 17g-9 would require an NRSRO to establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to determine credit ratings that are reasonably designed to achieve the objective that such individuals produce accurate credit ratings in the classes and subclasses of credit ratings for which the NRSRO is registered. The proposed rule would require that the NRSRO consider certain factors when establishing the standards, including the knowledge and technical expertise required of the individual and the classes and complexity of credit ratings being rated by the individual. The standards must include a requirement for periodic testing of the individuals on their knowledge of the procedures and methodologies used by the NRSRO to determine credit ratings in the classes of credit ratings for which the individual participates in determining credit ratings; and a requirement that at least one individual with three years or more experience in performing credit analysis participates in the determination of a credit rating.

2. Purpose and Use of the Information Collection

Rule 17g-8

²⁰ Pub. L. No. 109-291.

²¹ 15 U.S.C. 78o-7.

²² Exchange Act Release No. 55857 (June 5, 2007), 72 FR 33564 (June 18, 2007).

²³ Pub. L. No. 111-203, 124 Stat. 1376, H.R. 4173.

²⁴ Exchange Act Release No. 64514 (May 18, 2011), 76 FR 33420 (June 8, 2011).

The Commission is proposing new Rule 17g-8 that would have paragraphs (a), (b), and (c) (each paragraph would have sub-paragraphs). Paragraph (a) of new Rule 17g-8 would implement Section 15E(r) of the Exchange Act by requiring an NRSRO to have policies and procedures with respect to the procedures and methodologies the NRSRO uses to determine credit ratings.²⁵ These policies and procedures would be used by the NRSRO to achieve the objectives identified in Section 15E(r) of the Exchange Act,²⁶ namely, that the NRSRO:

- determines credit ratings using procedures and methodologies, including qualitative and quantitative data and models, that are approved by the board of the NRSRO, or a body performing a function similar to that of a board;²⁷
- determines credit ratings using procedures and methodologies, including qualitative and quantitative data and models, that are in accordance with the policies and procedures of the NRSRO for the development and modification of credit rating procedures and methodologies;²⁸
- when material changes are made to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models), applies the changes consistently to all credit ratings to which the changed procedures and methodologies apply;²⁹
- when material changes are made to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models), to the extent that changes are made to credit rating surveillance procedures and methodologies, applies the changes to then-current credit ratings within a reasonable time period determined by the Commission, by rule;³⁰
- when material changes are made to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models), the NRSRO publicly discloses the reason for the change;³¹
- notifies users of credit ratings of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.³²

²⁵ See 15 U.S.C. 78o-7(r) and proposed new paragraph (a) of Rule 17g-8; see also Section II.F.1 of this release for a more detailed discussion of this proposal.

²⁶ See 15 U.S.C. 78o-7(r)(1)-(3).

²⁷ See 15 U.S.C. 78o-7(r)(1)(A).

²⁸ See 15 U.S.C. 78o-7(r)(1)(B).

²⁹ See 15 U.S.C. 78o-7(r)(2)(A).

³⁰ See 15 U.S.C. 78o-7(r)(2)(B).

³¹ See 15 U.S.C. 78o-7(r)(2)(C).

³² See 15 U.S.C. 78o-7(r)(3)(A).

- notifies users of credit ratings when a material change is made to a procedure or methodology, including to a qualitative model or quantitative input;³³
- notifies users of credit ratings when a significant error is identified in a procedure or methodology, including a qualitative or quantitative model, that may result in credit rating actions;³⁴ and
- notifies users of credit ratings when a material change is made to a procedure or methodology, including to a qualitative model or quantitative input, of the likelihood the change will result in a change in current credit ratings.³⁵

Proposed paragraph (b) of new Rule 17g-8 would implement Section 938(a) of the Dodd-Frank Act by requiring an NRSRO to have policies and procedures with respect to the symbols, numbers, or scores it uses to denote credit ratings.³⁶ These policies and procedures would be used by the NRSRO to achieve the objectives mandated in Sections 938(a)(1) through (3) of the Dodd-Frank Act.³⁷ Namely, that the NRSRO establishes, maintains, and enforces written policies and procedures to: (1) assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument;³⁸ (2) clearly define and disclose the meaning of any symbol used by the NRSRO to denote a credit rating;³⁹ and (3) apply any symbol described in item (2) in a manner that is consistent for all types of securities and money market instruments for which the symbol is used.⁴⁰

Proposed paragraph (c) of new Rule 17g-8 would implement Section 15E(h)(4)(A)(ii) of the Exchange Act by requiring the NRSRO to include certain policies and procedures in the policies and procedures the NRSRO is required to establish, maintain, and enforce under Section 15E(h)(4)(A) of the Exchange Act.⁴¹ These policies and procedures would be used by the NRSRO: (1) to achieve the objective specified in Section 15E(h)(4)(A)(ii) of the Exchange Act to revise a credit rating, if appropriate, when a look-back review determines the credit rating was influenced by the conflict of interest of the credit analyst seeking employment with the person subject to the credit rating or the issuer, underwriter, or sponsor of a security or money market

³³ See 15 U.S.C. 78o-7(r)(3)(B).

³⁴ See 15 U.S. C. 78o-7(r)(3)(C).

³⁵ See 15 U.S.C. 78o-7(r)(3)(D).

³⁶ See Pub. L. No. 111-203 § 938(a) and proposed paragraph (b) of new Rule 17g-8..

³⁷ See Pub. L. No. 111-203 §§ 938(a)(1)-(3).

³⁸ See Pub. L. No. 111-203 § 938(a)(1).

³⁹ See Pub. L. No. 111-203 § 938(a)(2).

⁴⁰ See Pub. L. No. 111-203 § 938(a)(3).

⁴¹ See 15 U.S.C. 78o-7(h)(4)(A)(ii) and proposed new paragraph (c) of Rule 17g-8.

instrument subject to the credit rating;⁴² and (2) to make the disclosures that would be required in proposed new paragraph (a)(1)(ii)(J)(3) of Rule 17g-7.⁴³

Rule 17g-9

The collection of information included in Rule 17g-9 is necessary for Commission oversight of NRSROs registered with the Commission.

3. Consideration Given to Information Technology

Rule 17g-8

With respect to Rule 17g-8, the Commission does not believe that the policies and procedures related to credit rating methodologies, the use of credit rating symbols, and “look-backs” to credit ratings that may have been influenced by conflicts of interest materially implicate the use of information technology. However, the Commission requested comment on ways in which the proposed rules, including proposed Rule 17g-8, could be tailored in a way to minimize the burden of the collection of information requirements on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Rule 17g-9

The records that proposed new Rule 17g-9 require NRSROs to make could be made electronically. NRSROs are not prevented by proposed Rule 17g-9 from using computers or other mechanical devices to generate the records required under the rule.

4. Duplication

No duplication is apparent.

5. Effect on Small Entities

Rule 17g-8

The Commission solicited comment on whether small entities would be affected by proposed Rule 17g-8. The Commission staff preliminarily believes that there could be as many as seven NRSROs that are considered small entities. The Commission notes that Section 15E(t)(5) of the Exchange Act provides that the Commission may permit an NRSRO to delegate

⁴² See 15 U.S.C. 78o-7(h)(4)(A)(ii).

⁴³ See proposed paragraph (a)(1)(ii)(J)(3) of Rule 17g-7. See also The Dodd-Frank NRSRO Proposing Release, 76 FR 33420 at 33497.

responsibilities required in Section 15E(t) to a committee if the Commission finds that compliance with the provisions of that section present an unreasonable burden on a small NRSRO.⁴⁴ Consequently, the Commission preliminarily believes that the policies and procedures proposed to be required pursuant to paragraph (a)(1) of Rule 17g-8 would need to be designed to assist the NRSRO's committee in carrying out the responsibility to oversee the "establishment, maintenance, and enforcement of the policies and procedures for determining credit ratings mandated by Section 15E(t)(3)(A) of the Exchange Act" if the committee (rather than the board) carries out this responsibilities.⁴⁵

Rule 17g-9

Small entities may be affected by proposed Rule 17g-9 because all NRSROs, regardless of size, will be required to comply with the rule. The Commission solicited comment on whether small entities would be affected by the proposal.

6. Consequences of Not Conducting Collection

Rule 17g-8

With respect to Rule 17g-8, if the Commission does not adopt the proposal, it could be in violation of Section 15E(r) and Section 15E(h)(4)(A)(ii) of the Exchange Act which require the Commission to adopt rules that require NRSROs to adopt policies and procedures relating to credit rating methodologies and "look-backs" to credit ratings possibly influenced by conflicts of interest. The Commission could also be in violation of Section 938(a) of the Dodd-Frank Act, which requires the Commission to adopt rules relating to NRSROs' use of credit rating symbols.

Rule 17g-9

If the information required to be collected under Rule 17g-9 were not collected, the Commission would be unable to ascertain, on an ongoing basis, whether any person employed by an NRSRO to determine credit ratings meets standards of training, experience, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates and is tested for knowledge of the credit rating process.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2).

The Commission has reviewed its collection responsibilities and does not believe there are any inconsistencies with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

⁴⁴ See 15 U.S.C. 78o-7(t)(5).

⁴⁵ See 15 U.S.C. 78o-7(t)(3)(A).

All Commission rule proposals are published in the Federal Register for public comment. The comment period for the proposing release is 60 days. This comment period will afford the public an opportunity to respond to the proposal. The proposing release solicits 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 rulemakings.

10. Confidentiality

The confidentiality of the information submitted to the Commission in the reports required under the proposed Rule 17g-8 will be protected only to the extent permitted by FOIA.

With respect to Rule 17g-9, an NRSRO would not be required to publicly disclose the standards of training, experience, and competence for the individuals it employs to determine credit ratings that it would be required to establish, maintain, enforce, and document under proposed Rule 17g-9.

11. Sensitive Questions

To the extent that the Commission receives information that is sensitive to an NRSRO, and is made aware of and requested as such by the NRSRO, the Commission will keep the information confidential upon request to the extent permitted by law.

12. Burden of Information Collection

Rule 17g-8

As discussed below, the Commission preliminarily estimates that proposed Rule 17g-8 would result in initial and ongoing hour burdens for NRSROs. There are currently nine NRSROs registered with the Commission. Based on staff experience, the Commission believes that there will likely be at least one additional credit rating agency that successfully registers as

an NRSRO during the collection period. Therefore, the Commission estimates that there are ten NRSROs that would be impacted by this information collection.

Proposed paragraph (a) of new Rule 17g-8 would implement Section 15E(r) of the Exchange Act by requiring an NRSRO to have policies and procedures with respect to the procedures and methodologies the NRSRO uses to determine credit ratings.⁴⁶ The Commission preliminarily estimates that the proposed requirement in paragraph (a) of new Rule 17g-8 would result in initial and ongoing hour burdens for NRSROs. In this regard, the Commission notes that Section 15E(g)(1) of the Exchange Act requires an NRSRO to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of the NRSRO, to prevent the misuse of material, nonpublic information by the NRSRO or any person associated with the NRSRO.⁴⁷ The Commission supplemented this statutory requirement by adopting Rule 17g-4, which provides that the policies and procedures under Section 15E(g) of the Exchange Act must include policies and procedures reasonably designed to prevent: (1) the inappropriate dissemination within and outside the NRSRO of material nonpublic information obtained in connection with the performance of credit rating services; (2) a person within the NRSRO from purchasing, selling, or otherwise benefiting from any transaction in securities or money market instruments when the person is aware of material nonpublic information obtained in connection with the performance of credit rating services that affects the securities or money market instruments; and (3) the inappropriate dissemination within and outside the NRSRO of a pending credit rating action before issuing the credit rating on the Internet or through another readily accessible means.⁴⁸

When adopting Rule 17g-4, the Commission assumed NRSROs already had procedures in place to address the specific misuses of material nonpublic information identified in Rule 17g-4.⁴⁹ Nonetheless, the Commission expected that some NRSROs might need to modify their procedures to comply with the rule.⁵⁰ Based on staff experience, the Commission estimated that it would take approximately 50 hours for an NRSRO to establish procedures in conformance with the rule.⁵¹ Given the specificity of paragraph (a) proposed Rule 17g-8 as well as the fact that unlike the policies and procedures required under Rule 17g-4, the policies and procedures that would be required under paragraph (a) of proposed Rule 17g-8 would not be supplementing policies and procedures that are required under a separate self-executing statutory provision (*i.e.*, the requirement would be based solely on the Commission's rule), the Commission preliminarily believes that paragraph (a) of proposed Rule 17g-8 would result in a greater hour burden for an NRSRO. For these reasons, the Commission preliminarily estimates that an NRSRO would spend an average of approximately 200 hours establishing the policies and procedures, resulting

⁴⁶ See 15 U.S.C. 78o-7(r) and proposed new paragraph (a) of Rule 17g-8; see also Section II.F.1 of this release for a more detailed discussion of this proposal.

⁴⁷ See 15 U.S.C. 78o-7(g).

⁴⁸ See 17 CFR 240.17g-4; see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations, 72 FR at 33593-33595 (June 18, 2007).

⁴⁹ See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations, 72 FR at 33610-33611 (June 18, 2007).

⁵⁰ Id.

⁵¹ Id.

in an industry-wide initial hour burden of approximately 2,000 hours.⁵² In addition, the Commission preliminarily estimates an NRSRO would spend an average of approximately 50 hours per year reviewing the policies and procedures and updating them (if necessary), resulting in an industry-wide ongoing hour burden of approximately 500 hours.⁵³

Proposed paragraph (b) of new Rule 17g-8 would implement Section 938(a) of the Dodd-Frank Act by requiring an NRSRO to have policies and procedures with respect to the symbols, numbers, or scores it uses to denote credit ratings.⁵⁴ These policies and procedures would be used by the NRSRO to achieve the objectives specified in Sections 938(a)(1) through (3) of the Dodd-Frank Act.⁵⁵ For the reasons stated above with respect to proposed paragraph (a) of new Rule 17g-8, the Commission estimates that an NRSRO would spend an average of approximately 200 hours establishing the policies and procedures, resulting in an industry-wide initial hour burden of approximately 2,000 hours.⁵⁶ In addition, the Commission preliminarily estimates an NRSRO would spend an average of approximately 50 hours per year reviewing the policies and procedures and updating them (if necessary), resulting in an industry-wide ongoing hour burden of approximately 500 hours.⁵⁷

Proposed paragraph (c) of new Rule 17g-8 would implement Section 15E(h)(4)(A)(ii) of the Exchange Act by requiring the NRSRO to establish, maintain, and enforce certain policies and procedures pursuant to Section 15E(h)(4)(A) of the Exchange Act.⁵⁸ The Commission preliminarily believes that the hour burdens resulting from this proposal would be closer to the initial hour burden estimate for Rule 17g-4 because these policies and procedures would supplement policies and procedures that are required under a separate self-executing statutory provision. However, the Commission also believes there would be new policies and procedures and, therefore, as with the proposed requirements in paragraphs (a) and (b) of new Rule 17g-8, the NRSRO would need to establish new policies and procedures. For these reasons, the Commission preliminarily estimates an NRSRO would spend an average of approximately 100 hours establishing the policies and procedures, resulting in an industry-wide initial hour burden of approximately 1,000 hours.⁵⁹ In addition, the Commission preliminarily estimates an NRSRO would spend an average of approximately 25 hours per year reviewing the policies and procedures and updating them (if necessary), resulting in an average industry-wide ongoing hour burden of approximately 250 hours.⁶⁰

For the foregoing reasons, the Commission estimates that the total industry-wide initial hour burden to the NRSROs resulting from the proposed amendments to Rule 17g-8 would be

⁵² 10 NRSROs x 200 hours = 2,000 hours.

⁵³ 10 NRSROs x 50 hours = 500 hours.

⁵⁴ See Pub. L. No. 111-203 § 938(a) and proposed paragraph (b) of new Rule 17g-8.

⁵⁵ See Pub. L. No. 111-203 §§ 938(a)(1)-(3).

⁵⁶ 10 NRSROs x 200 hours = 2,000 hours.

⁵⁷ 10 NRSROs x 50 hours = 500 hours.

⁵⁸ See 15 U.S.C. 78o-7(h)(4)(A)(ii) and proposed new paragraph (c) of Rule 17g-8.

⁵⁹ 10 NRSROs x 100 hours = 1,000 hours.

⁶⁰ 10 NRSROs x 25 hours = 250 hours.

approximately 5,000 hours⁶¹ and the total industry-wide ongoing hour burden would be approximately 1,250 hours.⁶²

Rule 17g-9

The number of respondents subject to Rule 17g-9 depends, in part, on the number of entities that 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 choose to register with the Commission.

In adopting the first rules under the Rating Agency Act, the Commission estimated that approximately 30 credit rating agencies ultimately would be registered as NRSROs.⁶³ Since that time, 10 credit rating agencies have registered with the Commission as NRSROs.⁶⁴ This number has remained the same for several years. Consequently, while the Commission expects several more credit rating agencies will become registered as NRSROs over the next few years, the Commission believes the number of NRSROs now registered should be used for purposes of the PRA.

The Commission preliminarily believes that several of the NRSROs already have implemented standards of training, experience, and competence for the individuals they employ to determine credit ratings. For example, Section 1.4 of the Code of Conduct Fundamentals for Credit Rating Agencies of the International Organization of Securities Commissions (“IOSCO Code”) provides that credit rating agencies “should use people who, individually or collectively (particularly where rating committees are used) have appropriate knowledge and experience in developing a rating opinion for the type of credit being applied.”⁶⁵ A number of NRSROs disclose that they have implemented the IOSCO Code.⁶⁶ In addition, some NRSROs disclose in the Exhibits to their Form NRSROs that they have standards of training, experience, competence, continuing education, and testing programs for their credit analysts.⁶⁷ The size and complexity of the NRSROs varies greatly. The magnitude of this variance is reflected in the number of credit analysts and credit analyst supervisors each NRSRO employs. For example, three NRSROs

⁶¹ 2,000 hours + 2,000 + 1,000 hours = 5,000 hours.

⁶² 500 hours + 500 hours + 250 hours = 1,250 hours.

⁶³ See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations, 72 FR at 33607 (June 18, 2007).

⁶⁴ A.M. Best Company, Inc., DBRS Ltd., Egan-Jones Rating Company, Fitch, Inc., Japan Credit Rating Agency, Ltd., Kroll Bond Rating Agency, Inc. (formerly LACE Financial Corp.); Moody's Investors Service, Inc., Rating and Investment Information, Inc., Realpoint LLC, and Standard & Poor's Ratings Services.

⁶⁵ Code of Conduct Fundamentals for Credit Rating Agencies, Technical Committee of IOSCO (May 2008).

⁶⁶ The following NRSROs, for example, reported in Exhibit 5 to Form NRSRO that they comply with the IOSCO Code: A.M. Best Company, Inc., DBRS Ltd., Kroll Bond Rating Agency, Inc., Moody's Investors Service, Inc., Rating and Investment Information, Inc., Realpoint LLC, and Standard & Poor's Ratings Services.

⁶⁷ For example, Fitch, Inc., Moody's Investors Service, Inc., and Standard & Poor's Ratings Services reported in Exhibit 8 to Form NRSRO that they had standards of experience and competence for their credit analysts, and Moody's Investors Service, Inc. reported in Exhibit 5 to Form NRSRO that its analysts were required to complete 20 hours of coursework annually.

employed over 1,000 credit analysts as of calendar year-end 2009 and three NRSROs employed fewer than 30 credit analysts.

All of the burdens associated with proposed Rule 17g-9 are recordkeeping burdens. The Commission preliminarily estimates that the degree of the one-time and annual hour recordkeeping burdens resulting from proposed new Rule 17g-9 would depend on the number of credit analysts an NRSRO employs as well as the range and complexity of the obligors, securities, and money market instruments it rates. Consequently, the one-time and annual hour burdens per NRSRO would vary widely. In order to account for this variance, the Commission preliminarily believes that the onetime and annual hour burden estimates should be based on the number of credit rating analysts employed by the NRSROs. Based on the 2009 annual certifications, the Commission estimates that the NRSROs currently employ approximately 3,520 credit analysts.⁶⁸ In addition, as noted above, the Commission preliminarily believes some of the NRSROs have established standards of training, experience, and competence for their credit analysts. Consequently, for purposes of this estimate, the Commission preliminarily believes these firms would be required to augment or modify existing standards to comply with the proposed rule as opposed to developing a set of completely new standards.

For these reasons, the Commission preliminarily estimates that the one-time recordkeeping burden to establish the written standards required pursuant to proposed new Rule 17g-9 would be approximately 5 hours per credit analyst, resulting in an industry-wide one-time hour recordkeeping burden of approximately 17,600 hours. (3,520 credit analysts x 5 hours = 17,600 hours.) In addition, the Commission preliminarily allocates 75% of these burden hours (13,200 hours) to internal recordkeeping burden. Annualized over 3 years, the one-time internal recordkeeping burden would be 4,400 hours per year (13,200 / 3 = 4,400). Although larger NRSROs may realize economies of scale, the Commission preliminarily estimates that the industry-wide one-time hour burden would be allocated to each NRSRO based on the number of credit analysts the firm employs.

The Commission believes that the annual hour burden to comply with proposed new Rule 17g-9 would be less than the one-time hour burden since NRSROs would have established the standards of training, experience, and competence for the individuals they employ to determine credit ratings. The annual hour burden would arise from reviewing and updating the standards. Consequently, the Commission preliminarily estimates that the annual industry-wide hour burden to update the standards would be approximately 1 hour per credit analyst employed, resulting in an industry-wide annual hour burden of approximately 3,520 hours across all NRSROs (3,520 credit analysts x 1 hour = 3,520 hours). In addition, the Commission preliminarily allocates 75% of these burden hours (2,640 hours) to internal recordkeeping burden. Finally, although larger NRSROs may realize economies of scale, the Commission estimates that the industry-wide annual hour burden would be allocated to each NRSRO based on the number of credit analysts the firm employs.

⁶⁸ These figures are based on the annual certifications on Form NRSRO submitted to the Commission and publicly disclosed by the NRSROs for the calendar year-end 2009. See Annual Report on Nationally Recognized Statistical Rating Organizations, Commission (Jan. 2011), p. 5.

For the foregoing reasons, the Commission estimates that proposed new Rule 17g-9 would result in a total industry-wide annual internal recordkeeping burden of 7,040 hours per year (4,400 hours annualized one-time burden plus 2,640 hours annual burden).

The collection of information obligations imposed by proposed Rule 17g-9 are mandatory. The rule, however, applies only to credit rating agencies that are registered with the Commission as NRSROs, and registration is voluntary.

13. Costs to Respondents

Rule 17g-8

The Commission believes that there would be no additional reporting costs associated with the proposed Rule 17g-8.

Rule 17g-9

As stated above, the Commission preliminarily estimates that the one-time burden to establish the standards required pursuant to proposed new Rule 17g-9 would be approximately 5 hours per credit analyst, resulting in an industry-wide one-time hour burden of approximately 17,600 hours. (3,520 credit analysts x 5 hours = 17,600 hours.) In addition, the Commission preliminarily allocates 75% of these burden hours (13,200 hours) to internal burden and the remaining 25% (4,400 hours) to external burden for outside professionals to assist in setting up training programs. Based on industry sources, the Commission preliminarily estimates that external consultants would charge \$400 per hour, resulting in an industry-wide one-time external recordkeeping cost of approximately \$1,760,000.⁶⁹ Although larger NRSROs may realize economies of scale, the Commission preliminarily estimates that the industry-wide external costs would be allocated to each NRSRO based on the number of credit analysts the firm employs. Annualized over three years, the cost per year would be approximately \$587,000 per year in external recordkeeping costs.

The Commission believes that the annual hour burden to comply with proposed new Rule 17g-9 would be less than the one-time hour burden since NRSROs would have established the standards of training, experience, and competence for the individuals they employ to determine credit ratings. The annual hour burden would arise from reviewing and updating the standards. Consequently, as stated above, the Commission preliminarily estimates that the annual industry-wide hour burden to update the standards would be approximately 1 hour per credit analyst employed, resulting in an industry-wide annual hour burden of approximately 3,520 hours across all NRSROs. (3,520 credit analysts x 1 hour = 3,520 hours). In addition, the Commission preliminarily allocates 75% of these burden hours (2,640 hours) to internal burden and the

⁶⁹ 4,400 hours x \$400 = \$1,760,000. See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR at 4507-4506 (Jan. 26, 2011) (providing an estimate of \$400 an hour engage outside professionals) and Proposed Rules for Nationally Recognized Statistical Rating Organizations, 74 FR 63889 (Dec. 4, 2009) (providing an estimate of \$400 per hour to engage an outside attorney).

remaining 25% (880 hours) to external burden to hire outside professionals to assist in reviewing and updating training programs. As stated above, the Commission preliminarily estimates that outside consultants would charge \$400 per hour, resulting in an industry-wide annual recordkeeping cost of \$352,000. (\$400 per hour times 880 hours = \$352,000.) Finally, although larger NRSROs may realize economies of scale, the Commission estimates that the industry-wide annual cost would be allocated to each NRSRO based on the number of credit analysts the firm employs.

For purposes of this PRA submission, the Commission therefore estimates that the annual industry-wide external recordkeeping cost of compliance with proposed Rule 17g-9 would be \$939,000 per year (\$587,000 per year annualized initial cost plus \$352,000 per year annual cost).

14. Cost to Federal Government

The Commission does not anticipate any costs to the Federal Government that result from the proposed rules.

15. Changes in Burden

There are no changes to report, as both proposed Rule 17g-8 and proposed Rule 17g-9 are new rules.

16. Information Collection Planned for Statistical Purposes

The Commission does not anticipate any complex analytical techniques to be used in connection with the proposal.

17. Display of OMB Approval Date

The Commission is not seeking approval to not display the expiration date for OMB approval.

18. Exceptions to Certifications for Paperwork Reduction Act Submissions

Not applicable because no exceptions to certification are contained in the proposed rules.

B. Collections of Information Employing Statistical Methods

The collection of information does not employ statistical methods, nor does it analyze the information for the Commission.