

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
“Rule 17g-7”

A. Justification

1. Necessity of Information Collection

Rule 17g-7 of the Securities Exchange Act of 1934 (“Exchange Act”) requires nationally recognized statistical rating organizations (“NRSROs”) to include in any report accompanying a credit rating with respect to an asset-backed security (“ABS”) (as that term is defined in Section 3(a)(77) of the Exchange Act) a description of the representations, warranties, and enforcement mechanisms available to investors and a description of how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities.

Rule 17g-7 was adopted by the Securities and Exchange Commission (the “Commission”) in 2011 as part of a set of rules designed to implement Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) relating to asset-backed securities. Specifically, Rule 17g-7 is designed to implement the requirements of Section 943 of the Dodd-Frank Act by providing investors with information regarding the use of representations and warranties in the ABS markets.

2. Purpose and use of the Information Collection

As noted in the response to Item 1, the Commission adopted Rule 17g-7 to implement Section 943 of the Dodd-Frank Act which, among other things, requires NRSROs to provide investors with certain information regarding the representations, warranties, and enforcement mechanisms available to investors in an ABS offering. Such disclosure would not be made directly with, or used by, the Commission. Rather, the information regarding the representations, warranties, and enforcement mechanisms with respect to an ABS transaction would be provided in any report accompanying a credit rating by an NRSRO in connection with an ABS transaction. The information is intended to help ensure that investors in ABS transactions are provided with important information about such transactions prior to the point at which they make an investment decision.

3. Consideration Given to Information Technology

Not applicable. Rule 17g-7 disclosure is not required to be filed with the Commission.

4. Duplication

Commission staff is not aware of any rules that conflict with or substantially duplicate Rule 17g-7.

5. Effect on Small Entities

Rule 17g-7 would not impact a significant number of small entities. Rules in the

Securities Act of 1933 (“Securities Act”) and Exchange Act define an issuer, other than an investment company, to be a “small business” or a “small organization” if it had total assets of \$5 million or less on the last day of its most recent fiscal year. Currently, there are 10 NRSROs and, based on their most recently filed annual reports pursuant to Rule 17g-3 of the Exchange Act, only two NRSROs are small entities under the above definition. In addition, Rule 17g-7 does not prescribe how an NRSRO must fulfill its responsibility to compare the terms of a deal to those of similar securities, thereby providing additional flexibility in the case of an NRSRO that may be subject to a more limited application of the rule due to a smaller volume of credit ratings issued in connection with ABS transactions.

6. Consequences of Not Conducting Collection

The objectives of offering disclosure requirements under the Securities Act and the ongoing disclosure requirements under the Exchange Act could not be met with less frequent collection of this information for asset-backed securities.

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 § 1320.5(d)(2).

8. Consultations outside the Agency

The required Federal Register notice with a 60-day comment period soliciting comments on the collection of information was published. Three comment letters were received in response to this submission.

One commenter focused on the overall utility of Rule 17g-7, noting that the burdens of complying with the rule are “substantial” and not justified by the rule’s benefits.¹ In particular, this commenter provided the Commission with quantitative information demonstrating what it perceived to be evidence of a lack of demand for the information required to be provided under Rule 17g-7 among the rule’s intended beneficiaries (*i.e.*, investors) – namely statistics reflecting the “hit rate” for users of its website as it relates to accessing Rule 17g-7 information. This commenter did not offer suggestions for reducing the paperwork burdens under the existing collection of information, other than to submit that “OMB should not extend Rule 17g-7.” Further, this commenter did not provide a detailed analysis of the burden estimates provided in the Federal Register notice, other than to suggest that: (i) the burden should contain estimates of ancillary compliance costs, such as the creation and maintenance of policies and procedures to ensure compliance with Rule 17g-7 and the time, effort, and financial resources to train personnel on the applicable requirements, and (ii) the number of estimated respondents should be lowered from ten to seven to reflect the actual number of NRSROs currently registered with respect to the rating of ABS transactions.

The second commenter submitted a report analyzing the reporting burden created by the

¹ Comment letter of DBRS (Apr. 15, 2014) (“DBRS Comment Letter”).

collection of information requirements contained in Rule 17g-7.² This analysis focused on the time and costs (both internal and external) the commenter incurred in the implementation of the rule, based on figures calculated during the first full year of the rule's effectiveness. The report also contained an analysis intended to demonstrate whether the information required to be disclosed under Rule 17g-7 is "necessary" and has "practical utility," which, similar to the other commenter, involved a calculation of the "hit rate" for users of its website. The report concluded that the cost of implementing Rule 17g-7 greatly exceeded the estimates proffered at the time the rule was adopted and that the information disclosed pursuant to the rule appears to be of limited use to investors.³

The third commenter questioned the accuracy of the burden estimates contained in the Federal Register notice, asserting that such estimates understated the amount of time required to comply with the rule on an ongoing basis.⁴ Specifically, the commenter believes that the Commission staff's estimate of the time it would take to review and update benchmarks (*i.e.*, 100 hours per NRSRO per year, for an industry-wide burden of 1,000 hours per year) was significantly lower than the actual burden incurred by this particular commenter (estimated by the commenter to be 568 hours per NRSRO per year, for an industry-wide burden of 5,680 hours per year). In addition, this commenter – based on its anecdotal observation of the industry – believes that the Commission staff's estimate of the average number of NRSROs preparing reports for each ABS transaction is low (2.5 NRSROs per ABS transaction versus a Commission staff estimate of two NRSROs per ABS transaction), which difference would be magnified when incorporated into the overall industry-wide estimate. The commenter also believes that Commission staff failed to account for certain audit activities that flow from compliance with Rule 17g-7. Finally, the commenter expressed concern as to the necessity of the rule and the role that it serves in the capital markets, and, based on its own readership data, questioned the utility of the rule as it relates to its usefulness to investors. Like the other two comment letters, however, the commenter did not offer suggestions for reducing the paperwork burdens under the existing collection of information.

While Commission staff appreciates the information received from all three commenters, we ultimately believe that the estimates contained in the Federal Register notice remain valid, particularly since they reflect the average burden incurred by all respondents, as opposed to the particular experience of individual entities.⁵ Specifically, NRSROs may vary in terms of their

² Comment letter of Kroll Bond Rating Agency, Inc. (Apr. 17, 2014). Notably, the analysis contained in this report was based entirely on the PRA estimates contained in the 2011 Commission release adopting Rule 17g-7. The report did not refer to any of the burden estimates provided in the Federal Register notice, nor did it provide any suggestions for reducing the current burden.

³ The report also requests that "SEC staff engage in a rigorous analysis of the benefit and cost of pending rules – which are proposed to be finalized in fiscal 2014 – before final rules are adopted." Commission staff notes that this comment, which focuses on a pending Commission rulemaking to modify Rule 17g-7, is outside the scope of the submission to extend OMB approval of the existing collection of information requirements. See infra footnote 6.

⁴ Comment letter of Moody's Investor Services (Apr. 28, 2014) ("Moody's Comment Letter").

⁵ The Commission also notes that points raised by one commenter regarding lowering the number of

overall activity in the ABS markets – both the number or different types of asset classes rated and the number of actual transactions rated per year – and in terms of their level of experience in and exposure to the creation of benchmarks. Moreover, Commission staff would expect there to be some variation from NRSRO to NRSRO in terms of the amount of time it takes to create new benchmarks, as compared to the amount of time devoted to reviewing and updating existing benchmarks. Furthermore, Commission staff believes that the figure used for the number of respondents (*i.e.*, ten) is the appropriate number to be used for these purposes because it is intended to represent an estimate as to the number of parties that could potentially be subject to the rule over the course of the requested approval period (*i.e.*, the next three years), as opposed to the actual number of respondents subject to the rule at a moment in time. Finally, Commission staff notes that any suggested changes to the rule itself (including any requests for the rule to be eliminated in its entirety) would need to be effected pursuant to a Commission rulemaking.⁶

9. Payment or Gift

Not applicable.

10. Confidentiality

Rule 17g-7 disclosure is not filed with the Commission; such disclosure would be provided in any report accompanying a credit rating by an NRSRO in connection with an ABS transaction.

11. Sensitive Questions

Not applicable. No questions of a sensitive nature are asked. The information collection does not collect any personally identifiable information.

12. Burden of Information Collection

Commission staff estimates that the 10 currently-registered NRSROs would each spend an average of approximately 100 hours per year reviewing and updating benchmarks for various types of securities for purposes of comparing representations, warranties, and enforcement mechanisms, resulting in an annual industry-wide reporting burden of 1,000 hours (10 respondents X 100 hours/respondent). On a deal-by-deal basis, Commission staff estimates that

NRSROs (from ten to seven) would have the effect of lowering the overall PRA burdens (see DBRS Comment Letter at note 5) and that the points raised by another commenter to increase the number of burden hours per NRSRO would have the opposite effect (see Moody's comment Letter at 2-3). While the Commission believes the estimates it provided for each of these factors are appropriate for the reasons cited above, the Commission notes that the net effect of these comments, taken together, would not result in a significant change in the overall PRA burdens estimate.

⁶ The Commission is considering rules that it proposed in 2011 that would, among other things, amend Rule 17g-7. See Proposed Rules for Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 64514 (May 18, 2011), 76 FR 33420 (Jun. 8, 2011). All three comment letters are being placed in the comment file for this pending rulemaking.

it would take each NRSRO an average of approximately: (i) one hour to review each ABS transaction to review the relevant disclosures prepared by an issuer, which an NRSRO would review as part of the rating process, and convert those disclosures into a format suitable for inclusion in any report to be issued by an NRSRO, and (ii) 10 hours per ABS transaction to compare the terms of the current deal to those of similar securities. When the Commission adopted Rule 17g-7, it estimated the average annual number of ABS offerings to be 2,067 and the average number of credit ratings per issuance of ABS to be four, resulting in 8,268 annual responses.⁷ Commission staff believes that these estimates continue to be valid and, accordingly, estimates that the total industry-wide annual reporting burden of complying with the disclosure requirements under Rule 17g-7 is 90,948 hours (8,268 responses X 11 hours/response). As a result, Commission staff estimates a total aggregate burden of 91,948 hours per year for complying with the rule (1,000 hours for reviewing and updating benchmarks + 90,948 hours for complying with disclosure requirements).

13. Costs to Respondents

Not applicable. It is not anticipated that respondents will have to incur any capital and start-up costs, nor any additional operational or maintenance costs (other than as provided in Item 12), to comply with the collection of information.

14. Costs to Federal Government

Not applicable. Rule 17g-7 would not result in any costs to the federal government beyond normal full-time employee labor costs, nor does the rule require the Commission to hire any new employees or reallocate existing employees to ensure compliance with the rule.

15. Explanation of Changes in Burden

When the Commission first adopted rules under the Credit Rating Agency Reform Act of 2006, it estimated that approximately 30 credit rating agencies ultimately would be registered as NRSROs.⁸ Accordingly, the Commission used 30 respondents for purposes of calculating its PRA burden estimates when it adopted Rule 17g-7.⁹ Since that time, 10 credit rating agencies have registered with the Commission as NRSROs. This number has remained constant for several years. Consequently, when the Commission last proposed rules regarding the oversight of NRSROs, it stated that it believed it to be more appropriate to use the actual number of NRSROs for purposes of the PRA.¹⁰

⁷ See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Release No. 33-9175; 34-63741 (Jan. 20, 2011), 76 FR 4489, 4508 (Jan. 26, 2011) (“Rule 17g-7 Adopting Release”).

⁸ See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations, Release No. 34-5587 (Jun. 5, 2007), 72 FR 33564, 33607 (Jun. 18, 2007).

⁹ See Rule 17g-7 Adopting Release, 76 FR at 4506.

¹⁰ See Proposed Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-64514 (May 18, 2011), 76 FR 33420, 33499 (Jun. 8, 2011) (stating that “while the Commission expects several

The decrease in the total aggregate annual burden from 96,948 hours to 91,948 hours is attributable to: (i) the change in calculating the number of respondents as described above (which resulted in a reduction of 2,000 hours annually) and (ii) the elimination of 3,000 initial hours (100 hours per NRSRO) to conduct an initial review and setup.

16. Information Collections Planned for Statistical Purposes

Not applicable because the information is not used for statistical purposes.

17. Approval to Omit OMB Expiration Date

Not applicable. The Commission is not seeking approval to omit the expiration date.

18. Exceptions to Certification

Not applicable. This collection complies with the requirements in 5 CFR 1320.9.

B. Collections of Information Employing Statistical Methods

Not applicable because the collection of information does not employ statistical methods.

more credit rating agencies may become registered as NRSROs over the next few years, the Commission preliminarily believes that the actual number of NRSROs should be used for purposes of the PRA.”). As previously noted, however, only seven NRSROs are currently registered with respect to the rating of ABS transactions. Nevertheless, the Commission believes that the figure used for the number of respondents (*i.e.*, ten) is the appropriate number to be used for these purposes because it is intended to represent an estimate as to the number of parties that could potentially be subject to the rule over the course of the requested approval period (*i.e.*, the next three years).