

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 17g-2

A. JUSTIFICATION

1. Necessity of 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,” and 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.

Title IX, Subtitle C of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),² “Improvements to the Regulation of Credit Rating Agencies,” among other things, establishes new self-executing requirements applicable to NRSROs, requires certain studies,³ and requires that the Commission adopt rules applicable to NRSROs in a number of areas.⁴ The NRSRO provisions in the Dodd-Frank Act augment the Rating Agency Act, which established a registration and oversight program for NRSROs through self-executing provisions added to the Securities Exchange Act of 1934 (“Exchange Act”) and implementing rules adopted by the Commission under the Exchange Act as amended by the Rating Agency Act.⁵ Title IX, Subtitle C of the Dodd-Frank Act also provides that the Commission shall prescribe the format of a certification that providers of third-party due diligence services would need to provide to each NRSRO producing a credit rating for an asset-backed security to which the due diligence services relate.⁶ Finally, Title IX, Subtitle C of the Dodd-Frank Act establishes a new requirement for issuers and underwriters of asset-backed securities to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.⁷

¹ Pub. L. No. 109-291 (2006).

² Pub. L. No. 111-203, 124 Stat. 1376, H.R. 4173 (July 21, 2010).

³ See Pub. L. No. 111-203 §§ 939, 939D-939F.

⁴ See Pub. L. No. 111-203 §§ 931-939H; see also Pub. L. No. 111-203 § 943.

⁵ See Pub. L. No. 109-291.

⁶ See Pub. L. No. 111-203 § 932(a)(8) adding new paragraph (s)(4)(C) to section 15E of the Exchange Act. 15 U.S.C. 78o-7(s)(4)(C).

⁷ See Pub. L. No. 111-203 § 932(a)(8) adding new paragraph (s)(4)(A) to section 15E of the Exchange Act. 15 U.S.C. 78o-7(s)(4)(A).

Rule 17g-2 contains recordkeeping and disclosure requirements.⁸ The collection of information obligations imposed by the rule are mandatory. The requirements of Rule 17g-2, however, apply only to credit rating agencies that are applying to register or are registered with the Commission as NRSROs, and registration is voluntary. On August 27, 2014, the Commission adopted amendments to Rule 17g-2, discussed in greater detail below.

The Rating Agency Act amended section 17(a)(1) of the Exchange Act to add NRSROs to the list of entities required to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act.⁹ The inclusion of NRSROs on the list also provides the Commission with authority under section 17(b)(1) of the Exchange Act to examine all the records of an NRSRO.¹⁰

Rule 17g-2, “Records to be made and retained by nationally recognized statistical rating organizations,” implements the Commission’s recordkeeping rulemaking authority under section 17(a) of the Exchange Act.¹¹ The rule requires an NRSRO to make and retain certain records relating to its business and to retain certain other business records, if such records are made. The rule also prescribes the time periods and manner in which all these records must be retained.

The requirements of Rule 17g-2 are designed to ensure that an NRSRO makes and retains records that assist the Commission in monitoring, through its examination authority, whether an NRSRO continues to meet the requirements for registration as an NRSRO and whether the NRSRO is complying with applicable laws and regulations.

Amendments to Rule 17g-2

The Commission is repealing paragraph (d)(2) of Rule 17g-2 and re-codifying and enhancing the requirements in paragraph (d)(3) of Rule 17g-2 in new Rule 17g-7. The Commission estimates that these changes will result in a reduction of the PRA burden associated with Rule 17g-2, as is discussed more fully below in section A.12.

The Commission is adding paragraph (a)(9) to Rule 17g-2 to identify the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to section 15E(h)(4)(A) of the Exchange Act and paragraph (c) of new Rule 17g-8 as a record that must be made and retained.¹² In addition, the Commission is adding the following new paragraphs to Rule 17g-2 to identify records that must be retained:

⁸ The Office of Management and Budget (“OMB”) Control Number for Rule 17g-2 is 3235-0628.

⁹ See section 5 of the Exchange Act and 15 U.S.C. 78q(a)(1).

¹⁰ See 15 U.S.C. 78q(b)(1).

¹¹ 15 U.S.C. 78q.

¹² See 17 CFR 240.17g-2(a)(9).

(1) paragraph (b)(12) identifies the internal control structure an NRSRO must establish, maintain, enforce, and document pursuant to Exchange Act section 15E(c)(3)(A);¹³

(2) paragraph (b)(13) identifies the policies and procedures an NRSRO is required to establish, maintain, enforce, and document pursuant to paragraph (a) of new Rule 17g-8;¹⁴

(3) paragraph (b)(14) identifies the policies and procedures an NRSRO must establish, maintain, enforce, and document pursuant to paragraph (b) of new Rule 17g-8;¹⁵ and

(4) paragraph (b)(15) identifies the standards of training, experience, and competence for credit analysts an NRSRO must establish, maintain, enforce, and document pursuant to new Rule 17g-9.¹⁶

The Commission is also amending paragraph (c) of Rule 17g-2 to provide that records identified in paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g-2 must be retained until three years after the date the record is replaced with an updated record, instead of three years after the record is made or received, which is the retention period for other records identified in paragraphs (a) and (b) of Rule 17g-2.¹⁷ The reason for this clarifying amendment is that the text of paragraph (c) of Rule 17g-2 prior to the amendment was intended to address records that generally contain historical information.

2. Purpose and Use of the Information Collection

Rule 17g-2 in general

The collections of information in Rule 17g-2 are designed to allow the Commission to determine whether an NRSRO continues to meet the requirements for registration and is complying with applicable laws and regulations. In particular, the collections of information in Rule 17g-2 will assist the Commission in effectively monitoring, through its examination function, whether an NRSRO is conducting its activities in accordance with section 15E of the Exchange Act,¹⁸ and applicable Exchange Act rules under the Rating Agency Act.

Amendments to Rule 17g-2

The requirement to make and retain a record of the policies and procedures identified in paragraph (a)(9) of Rule 17g-2 will promote better understanding of the policies and procedures among individuals within the NRSRO and, therefore, promote compliance with such policies and

¹³ See 17 CFR 240.17g-2(b)(12).

¹⁴ See 17 CFR 240.17g-2(b)(13).

¹⁵ See 17 CFR 240.17g-2(b)(14).

¹⁶ See 17 CFR 240.17g-2(b)(15).

¹⁷ See 17 CFR 240.17g-2(c).

¹⁸ 15 U.S.C. 78o-7.

procedures. The requirement that the internal control structure, policies and procedures, and standards identified in paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15), respectively, be retained will subject these records to the various retention and production requirements of paragraphs (c), (d), (e), and (f) of Rule 17g-2. The Commission staff will use these records to examine an NRSRO's compliance with the provisions of the securities laws requiring the NRSRO to establish, maintain, enforce, and document these controls, policies, procedures, and standards. The amendment to paragraph (c) of Rule 17g-2 requiring that these records must be retained until three years after the date the record is replaced with an updated record, rather than three years after the record is made or received, will help the Commission better perform its oversight function. For example, if the three-year retention period in Rule 17g-2 began to run when the record is made, an NRSRO could discard the record that is replaced with an updated record if that update occurred more than three years after the replaced record was made. This could prevent the Commission from reviewing whether the NRSRO adhered to its previous internal control structure, policies and procedures, or standards.

3. Consideration Given to Information Technology

The records that the amendments to Rule 17g-2 require NRSROs to make and retain could be made and retained electronically. The Commission believes that improvements in telecommunications and data processing technology may reduce any burdens associated with the amendments to Rule 17g-2. NRSROs are not prevented by Rule 17g-2 from using computers or other mechanical devices to generate the records required under the rule.

4. Duplication

The Commission has not identified any duplication with respect to the information required by Rule 17g-2.

5. Effect on Small Entities

Small entities may be affected by the rule amendments because all credit rating agencies, regardless of size, that are registered as NRSROs will be required to make and retain records in accordance with Rule 17g-2. The Commission solicited comment in the proposing release on whether there are ways to minimize the burden of the collection of information requirements on those who are to respond.¹⁹ With respect to paragraph (b)(12) of Rule 17g-2, one commenter stated that the requirement to document internal controls is burdensome, particularly for smaller NRSROs, and argued that an NRSRO should be allowed to establish its own documentation policies and procedures.²⁰ However, the Commission is not imposing documentation

¹⁹ See Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 64514 (May 18, 2011), 76 FR 33511 (June 8, 2011).

²⁰ See letter from Larry G. Mayewski, Executive Vice President, A.M. Best Company, to the Securities and Exchange Comm'n (Aug. 8, 2011) ("A.M. Best Letter"), available at <http://www.sec.gov/comments/s7-18-11/s71811-39.pdf>.

requirements. Rather, section 15E(c)(3)(A) of the Exchange Act requires an NRSRO, among other things, to document its internal control structure.²¹

6. Consequences of Not Conducting Collection

Up-to-date records are essential for the Commission to monitor whether an NRSRO continues to meet the requirements for registration as an NRSRO. If an NRSRO did not make these records, or if it made these records less frequently, the goals of the Rating Agency Act--including enhancing the information used by investors to make investment decisions--will be diminished.

7. Inconsistencies with Guidelines in 5 CFR 1320.8(d)

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

8. Consultations Outside the Agency

The Commission issued a proposing release soliciting comment on the new “collection of information” requirements and associated paperwork burdens.²² Comments on Commission releases were generally received from registrants, investors, and other market participants. In addition, the Commission and staff participated in ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges. The comments received on this rulemaking are posted on the Commission’s public website, and are available through <http://www.sec.gov/rules/proposed.shtml>. The Commission considered all comments received prior to publishing the final rule, and explained in the adopting release how the final rule responds to such comments, in accordance with 5 CFR 1320.11(f). As discussed above, with respect to paragraph (b)(12) of Rule 17g-2, one commenter stated that the requirement to document internal controls is burdensome, particularly for smaller NRSROs.²³ However, the Commission is not imposing documentation requirements; rather, section 15E(c)(3)(A) of the Exchange Act requires an NRSRO, among other things, to document its internal control structure.²⁴

9. Payment or Gift

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

²¹ See 15 U.S.C. 78o-7(c)(3)(A).

²² See Nationally Recognized Statistical Rating Organizations, 76 FR at 33511.

²³ See A.M. Best Letter.

²⁴ See 15 U.S.C. 78o-7(c)(3)(A).

10. Confidentiality

The records that an NRSRO must make and retain under the amendments to Rule 17g-2 will be made available to the Commission and its representatives as required in connection with examinations, investigations, and enforcement proceedings. The confidentiality of the information submitted to the Commission under the rule will be protected only to the extent permitted by FOIA.

11. Sensitive Questions

No inquiries of a sensitive nature are made. This information collection does not collect any personal identifiable information.

12. Burden of Information Collection

The Commission previously estimated that an NRSRO will spend an average of 279 hours per year²⁵ to make and retain records under Rule 17g-2, for a total ongoing hour burden under Rule 17g-2 of 2,790 annual hours.²⁶ The Commission considers this burden to be a recordkeeping burden.

The Commission previously estimated that an NRSRO subject to the requirements in paragraphs (d)(2) and (d)(3) of Rule 17g-2 would spend approximately 10 hours per year to update the required information in an XBRL format.²⁷ Further, the Commission estimated that seven of the ten currently registered NRSROs issue 500 or more issuer-paid credit ratings in at least one of the classes of credit ratings for which they are registered, and that even if the number of NRSROs were to expand, the number of NRSROs (seven) that issue 500 or more issuer-paid credit ratings in at least one of the classes of credit ratings for which they are registered would remain relatively constant.²⁸ Accordingly, the Commission estimated that the total aggregate ongoing disclosure burden to the industry to make the history of rating actions publicly available in an XBRL format is 100 annual hours.²⁹

Amendments to Rule 17g-2

The Commission is adding paragraph (a)(9) to Rule 17g-2 to require NRSROs to make and retain a record documenting the policies and procedures with respect to look-back reviews an NRSRO is required to establish, maintain, and enforce under section 15E(h)(4)(A) of the Exchange Act and paragraph (c) of Rule 17g-8. The Commission will provide estimates in the

²⁵ See Release No. 59342, supra note 25.

²⁶ 279 hours x 10 respondents = 2,790 hours.

²⁷ The Commission also bases this estimate on the current one-time and ongoing burden hours for an NRSRO to publicly disclose its Form NRSRO. No alternatives to these estimates as proposed were suggested by commenters. See June 5, 2007 Adopting Release, 72 FR at 33609.

²⁸ See Release No. 59342, supra note 25.

²⁹ 10 hours x 10 NRSROs = 100 hours.

Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17g-8 to address the burdens associated with Rule 17g-8, including the one-time and annual hour burdens that will result from establishing, maintaining, enforcing, and documenting the policies and procedures with respect to look-back reviews required by section 15E(h)(4)(A) of the Exchange Act and paragraph (c) of Rule 17g-8.

Consequently, for purposes of Rule 17g-2, the Commission is providing estimates of the one-time and annual hour burdens resulting from the requirement to retain the records that are identified in paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g-2. The Commission believes that the one-time hour burden will result from the NRSRO needing to update its record retention policies and procedures to incorporate these new records that will need to be retained. NRSROs already have a recordkeeping system in place to comply with the retention requirements of Rule 17g-2 before today's amendments. The Commission estimated in the proposing release that each NRSRO would spend an average of approximately twenty hours updating its record retention policies and procedures, resulting in an industry-wide one-time recordkeeping burden of approximately 200 hours.³⁰ The Commission did not receive comment on this estimate.

The Commission estimated in the proposing release that it would take approximately one hour per record each year to retain updated versions of these records,³¹ for an annual hour burden for each NRSRO attributable to these proposals of approximately five hours,³² and an industry-wide annual hour burden of approximately fifty hours.³³ The Commission did not receive comment on this estimate and, except for the amendment to paragraph (c) requiring that the record be retained until three years after the date the record is replaced with an updated record, is adopting the amendments to Rule 17g-2 as proposed. The Commission believes that the amendment to paragraph (c) of Rule 17g-2 will not affect the burdens estimated for Rule 17g-2 in the proposing release because the amendment removes an ambiguity in the proposal that could be read to make the retention period shorter than the Commission intended and shorter than the retention period upon which the Commission's estimate in the proposing release was based. Therefore, the Commission is retaining the one-hour per record estimate in the proposing release without revision.

The Commission is repealing paragraph (d)(2) of Rule 17g-2 (the 10% Rule) and re-codifying, with substantial amendments, the requirements in former paragraph (d)(3) of Rule 17g-2 in paragraph (b) of Rule 17g-7 (the 100% Rule). The one-time and annual hour burdens resulting from the enhancements to the 100% Rule will be discussed in the Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17g-7.

³⁰ 10 NRSROs x 20 hours = 200 hours. For purposes of the PRA submission, the one-time hour burden is annualized over the three-year approval period. This produces an ongoing burden of 67 hours (200 hours / 3).

³¹ See Nationally Recognized Statistical Rating Organizations, 76 FR at 33503.

³² 5 records x 1 hour = 5 hours.

³³ 10 NRSROs x 5 hours = 50 hours.

Consequently, the Commission estimates that the total industry-wide one-time hour burden for NRSROs resulting from the amendments to Rule 17g-2 to update their record retention policies and procedures to incorporate these new records that will need to be retained is approximately 200 hours and the annual hour burden to retain the records is approximately fifty hours.

The Commission previously estimated that an NRSRO will spend an average of 279 hours per year³⁴ to make and retain records under Rule 17g-2, for a total ongoing hour recordkeeping burden under Rule 17g-2 of 2,790 annual hours.³⁵ The adjusted industry-wide annual hour burden for Rule 17g-2 before the amendments was 2,890 hours.³⁶ The elimination of the requirements in paragraph (d)(2) of Rule 17g-2 will subtract 100 hours from that amount. In addition, the re-codification of paragraph (d)(3) of Rule 17g-2 in paragraph (b) of Rule 17g-7 will subtract an additional 450 hours from the adjusted industry-wide annual hour burden for Rule 17g-2 and that burden will be attributed to the industry-wide annual hour burden for Rule 17g-7.³⁷ Consequently, after these subtractions, the adjusted industry-wide annual hour burden for Rule 17g-2 will be 2,340 hours (2,890 hours - 100 hours - 450 hours = 2,340 hours). The amendments to add paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) to Rule 17g-2 will add approximately fifty hours to the adjusted industry-wide annual hour burden and approximately 67 annualized one-time burden hours, resulting in a total adjusted industry-wide annual hour burden of 2,457 hours (2,340 hours + 50 hours + 67 = 2,457 hours).

13. Costs to Respondents

The Commission does not anticipate any additional costs to respondents that result from the rule.

14. Costs to Federal Government

The Commission does not anticipate any additional costs to the Federal Government that result from the rule.

15. Changes in Burden

The change in burden is the result of the amendments to Rule 17g-2.

16. Information Collection Planned for Statistical Purposes

Not applicable. The information collected is not used for statistical purposes.

³⁴ See Release No. 59342, *supra* note 25.

³⁵ 279 hours x 10 respondents = 2,790 hours.

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³⁷ See Amendments to Rules for Nationally Recognized Statistical Rating Organizations, 74 FR at 63853.

17. Approval to Omit OMB Expiration Date

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

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information does not involve statistical methods or analyze the information for the agency.