

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 17g-10 - “Certification of providers of third-party due diligence services in
connection with asset-backed securities” 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.⁵

Section 932 of the Dodd-Frank Act amended Section 15E of the Exchange Act to add paragraph (s).⁶ Section 15E(s)(4)(B) of the Exchange Act 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,

¹ Pub. L. No. 109-291 (Sept. 29, 2006).

² 15 U.S.C. 78o-7.

³ Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations, 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 (July 21, 2010).

⁵ See Pub. L. No. 111-203 §§ 931-939H; see also Pub. L. No. 111-203 § 943.

⁶ Pub. L. No. 111-203 § 932.

documentation, and other relevant information necessary for an NRSRO to provide an accurate rating.

In May 2011, the Commission proposed new rules and rule amendments, including proposed new Rule 17g-10 (17 CFR 240.17g-10) and new Form ABS Due Diligence-15E (17 CFR 249b.500) to implement certain provisions of the Dodd Frank Act and improve oversight of NRSROs.⁷ On August 27, 2014, the Commission adopted new Rule 17g-10 and new Form ABS Due Diligence-15E, in part to implement rulemaking mandated in Sections 15E(s)(4)(B) and (C) of the Exchange Act.⁸

Rule 17g-10 and Form ABS Due Diligence-15E contain disclosure requirements for providers of third-party due diligence services.⁹ These disclosure requirements involve a collection of information within the meaning of the Paperwork Reduction Act of 1995 (“PRA”). The collection of information obligations imposed by the rule are mandatory.

Paragraph (a) of Rule 17g-10 provides that the written certification providers of third-party due diligence services must provide to NRSROs pursuant to Section 15E(s)(4)(B) of the Exchange Act must be made on Form ABS Due Diligence-15E.¹⁰ Paragraph (b) of Rule 17g-10 provides 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.¹¹ Paragraph (c) of Rule 17g-10 provides a “safe harbor” for a provider of third-party due diligence services to meet its obligation under Section 15E(s)(4)(B).¹² Paragraph (d) of Rule 17g-10 contains four definitions to be used for the purposes of Section 15E(s)(4)(B) and Rule 17g-10; namely, definitions of due diligence services,¹³ issuer,¹⁴ originator,¹⁵ and securitizer.¹⁶

⁷ Proposed Rules for Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 64514 (May 18, 2011), 76 FR 33420 (June 8, 2011) (“Proposing Release”).

⁸ Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 72936 (August 27, 2014), 79 FR 55078 (Sept. 15, 2014) (“Adopting Release”).

⁹ The Office of Management and Budget (“OMB”) Control Number for Rule 17g-10 is 3235-0694.

¹⁰ See 17 CFR 240.17g-10(a).

¹¹ See 17 CFR 240.17g-10(b).

¹² See 17 CFR 240.17g-10(c).

¹³ See 17 CFR 240.17g-10(d)(1).

¹⁴ See 17 CFR 240.17g-10(d)(2).

¹⁵ See 17 CFR 240.17g-10(d)(3).

¹⁶ See 17 CFR 240.17g-10(d)(4).

Form ABS Due Diligence-15E contains five line items identifying information the provider of third-party due diligence services must provide.¹⁷ The form also contains a signature line with a corresponding representation.¹⁸ Item 1 elicits the identity and address of the provider of third-party due diligence services.¹⁹ Item 2 elicits the identity and address of the issuer, underwriter, or NRSRO that paid the provider to provide the services.²⁰ Item 3 requires the provider of the due diligence services to identify each NRSRO whose published criteria for performing due diligence the third party intended to satisfy in performing the due diligence review.²¹ Item 4 requires the provider of third-party due diligence services to describe the scope and manner of the due diligence performed.²² Item 5 requires the provider of third-party due diligence services to describe the findings and conclusions resulting from the review.²³

2. Purpose and Use of the Information Collection

The purpose of Rule 17g-10 and Form ABS Due Diligence-15E is 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. The disclosure of information about third-party due diligence services on Form ABS Due Diligence-15E pursuant to Rule 17g-10 will be used by NRSROs, investors, and other market participants to evaluate the adequacy and level of the reviews of the assets underlying an asset-backed security²⁴ (“Exchange Act-ABS”) performed by the third party.²⁵

¹⁷ See 17 CFR 249b.500 (Form ABS Due Diligence-15E).

¹⁸ See *id.*

¹⁹ See 17 CFR 249b.500, Item 1.

²⁰ See 17 CFR 249b.500, Item 2.

²¹ See 17 CFR 249b.500, Item 3.

²² See 17 CFR 249b.500, Item 4.

²³ See 17 CFR 249b.500, Item 5.

²⁴ The term “asset-backed security”, as defined in Section 3(a)(79) of the Exchange Act, (A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including (i) a collateralized mortgage obligation; (ii) a collateralized debt obligation; (iii) a collateralized bond obligation; (iv) a collateralized debt obligation of asset-backed securities; (v) a collateralized debt obligation of collateralized debt obligations; and (vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and (B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company. See 15 U.S.C. §78c(a)(79).

²⁵ See Nationally Recognized Statistical Rating Organizations, 79 FR at 55188, 55194 (providing a more detailed discussion of Rule 17g-10 and Form ABS Due Diligence-15E).

3. **Consideration Given to Information Technology**

Rule 17g-10 requires 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 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 form could be performed electronically.

4. **Duplication**

The Commission has not identified any duplication with respect to the information required by Rule 17g-10 and Form ABS Due Diligence-15E.

5. **Effect on Small Entities**

Small entities may be affected by Rule 17g-10 and Form ABS Due Diligence-15E because all third-party due diligence providers, regardless of size, will be required to comply with the rule. The Commission stated in the Adopting Release that it estimates that there are approximately fifteen providers of third-party due diligence services and that it believes that all of these firms will be small entities.²⁶

The Commission solicited comment in the Proposing Release regarding the rule's burden on small entities and considered potential alternatives to minimize the burden of the collection of information requirements on small entities.²⁷ In the Adopting Release, the Commission modified proposed Rule 17g-10 and Form ABS Due Diligence-15E in ways that it believes will reduce the burden on small entities.²⁸ In particular, Rule 17g-10, established a "safe harbor" to provide certainty to providers of third-party due diligence services with respect to how they can meet their obligation under Section 15E(s)(4)(B) of the Exchange Act to provide Form ABS Due Diligence-15E to any NRSRO that produces a credit rating to which the due diligence services relate. Under the safe harbor, a provider of third-party due diligence services will be deemed to have satisfied its obligations under Section 15E(s)(4)(B) if the due diligence provider promptly delivers an executed Form ABS Due Diligence-15E after completion of the due diligence services to: (1) an NRSRO that provided a written request for the Form ABS Due Diligence-15E prior to the completion of the due diligence services stating that the services relate to a credit rating the NRSRO is producing; (2) an NRSRO that provides a written request for the Form ABS Due Diligence-15E after the completion of the due diligence services stating that the services relate to a credit rating the NRSRO is producing; and (3) the issuer or underwriter of the Exchange Act-ABS for which the due diligence services relate that maintains the Internet

²⁶ See Nationally Recognized Statistical Rating Organizations, 79 FR at 55257.

²⁷ See Proposed Rules for Nationally Recognized Statistical Rating Organizations, 76 FR 33420.

²⁸ See Nationally Recognized Statistical Rating Organizations, 79 FR at 55256.

website with respect to the asset-backed security pursuant to Rule 17g-5(a)(3).²⁹ Consequently, small third-party due diligence providers will not be required to identify every NRSRO that is producing a credit rating. The Commission believes that these modifications will reduce the burden on all providers of third-party due diligence services, including small entities.

6. Consequences of Not Conducting Collection

If the information required under Rule 17g-10 and Form ABS Due Diligence-15E were not collected, the objectives of Section 15E(s)(4) of the Exchange Act would not be achieved and the public would have less information to determine the adequacy and level of services from providers of third-party due diligence services. Further, if the information required were not collected, the Commission would be less able to ensure that providers of third-party due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate rating.

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 Commission solicited comment on the estimated PRA burden associated with the proposed collection of information requirements in the Proposing Release.³⁰ Comments on the Proposing Release were 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 during the rulemaking are posted on the Commission's public website, and are available through <http://www.sec.gov/comments/s7-18-11/s71811.shtml>. The Commission received a number of comments relating to Rule 17g-10 and Form ABS Due Diligence-15E and considered all comments received prior to publishing the adopted rule, and explained in the Adopting Release how the adopted rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).³¹ However, the Commission did not receive comments on its estimates of the PRA burdens associated with Rule 17g-10 and Form ABS Due Diligence-15E.

9. Payment or Gift

The Commission did not provide any payment or gift to respondents in connection with Rule 17g-10 and Form ABS Due Diligence-15E.

²⁹ See 17 CFR 240.17g-10(c).

³⁰ See Proposed Rules for Nationally Recognized Statistical Rating Organizations, 76 FR at 33511.

³¹ See Nationally Recognized Statistical Rating Organizations, 79 FR at 55078.

10. Confidentiality

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

11. Sensitive Questions

Not applicable. No inquiries of a sensitive nature were made. The information collection does not collect any personally identifiable information.

12. Burden of Information Collection

The Commission adopted Rule 17g-10 and Form ABS Due Diligence-15E on August 27, 2014.³² Rule 17g-10 requires a provider of third-party due diligence services to provide a written certification to an NRSRO on Form ABS Due Diligence-15E.³³

In the Proposing Release, the Commission estimated that there would be ten providers of third-party due diligence services and each would spend an average of approximately 300 hours per firm developing certain processes and protocols to provide the required information and submit the certifications, and that 75% of these burden hours (225 hours) would be internal burden and 25% of these burden hours (75 hours) would be external burden to hire outside counsel to provide legal advice on the requirements of the new rule and form.³⁴ The Commission did not receive comment on these estimates. Further, the modifications to Rule 17g-10 and Form ABS Due Diligence-15E in the Adopting Release do not impact the one-time hour burden or allocation of that burden to internal and external burdens because the modifications – which create a “safe harbor” from the requirement to provide the forms to NRSROs – do not require the third party due diligence provider to expend more effort to meet the statutory requirement because they will make the process more certain and efficient. Consequently, the processes and protocols to meet the safe harbor are no more complex than would have been the case if the provider of third-party due diligence services had to determine each NRSRO that was producing a credit rating in order to provide the NRSRO with the certification as required by Section 15E(s)(4)(B) of the Exchange Act. For these reasons, the Commission is not revising the estimated one-time and annual hour burdens for providers of third-party due diligence services.

However, the Commission now estimates that there are approximately fifteen providers of third-party due diligence services.³⁵ Accordingly, the Commission estimates an industry-wide one-time disclosure burden for providers of third-party due diligence services of approximately 4,500 hours (based on the Commission’s burden estimate of 300 hours per firm to develop

³² See Nationally Recognized Statistical Rating Organizations, 79 FR at 55078.

³³ See 17 CFR 240.17g-10(a).

³⁴ See Proposed Rules for Nationally Recognized Statistical Rating Organizations, 76 FR at 33509.

³⁵ See Nationally Recognized Statistical Rating Organizations, 79 FR at 55088.

processes and protocols to provide the required information and submit the certifications).³⁶ In addition, the Commission allocated 75% of these burden hours (3,375 hours) to internal burden and 25% of these burden hours (1,125 hours) to external burden to hire outside counsel to provide legal advice on the requirements of Rule 17g-10 and Form ABS Due Diligence-15E.³⁷

With respect to the annual burden, the Commission stated in the Proposing Release 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 and issuers or underwriters will be triggered when an issuer, underwriter, or NRSRO hires a provider of third-party due diligence services. The Commission estimated in the Proposing Release that a provider of third-party due diligence services would spend approximately thirty minutes to complete and transmit Form ABS Due Diligence-15E and that there would be an average of 2,067 Exchange Act-ABS offerings per year, for an industry-wide annual burden of approximately 1,034 hours.³⁸ The Commission did not receive comments on this estimate. The Commission believed that the modification to the proposal creating the “safe harbor” will decrease the annual burden as compared to the burden estimated in the Proposing Release. In particular, the provider of third-party due diligence services in many cases may need to submit only one certification to another party; namely, to the issuer or underwriter that maintains the Rule 17g-5 website. Without a safe harbor, the provider of third-party due diligence services would have needed to submit the certification to each NRSRO producing a credit rating for the Exchange Act-ABS, which frequently would include two or more hired NRSROs and possibly additional non-hired NRSROs. Moreover, the certainty of meeting the “safe harbor” provisions eliminates the additional time a third party may have spent seeking to determine whether it has identified all NRSROs producing a credit rating and provided them with the certification in accordance with its statutory obligation to provide the certification to every NRSRO rating the applicable Exchange Act-ABS. For these reasons, the Commission estimates that the modifications to the rule in the Adopting Release will reduce the burden attributable to Form ABS Due Diligence-15E from thirty minutes to twenty minutes to complete and transmit Form ABS Due Diligence-15E.

³⁶ 15 providers of third-party due diligence services x 300 hours = 4,500 hours. The estimate of 300 hours remains unchanged from the Commission’s preliminary estimate in the Proposing Release. See Proposed Rules for Nationally Recognized Statistical Rating Organizations, 76 FR at 33509. This estimate is based on the Commission’s estimate for the amount of time it would take a securitizer to set-up a system to make the disclosures required by Form ABS-15G. 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. The Commission, however, has reduced the hour estimate of 850 hours used for Form ABS-15G by approximately two-thirds because information required to be provided in proposed Form ABS Due Diligence-15E is substantially less detailed and complex than the information required in Form ABS-15G.

³⁷ 4,500 hours x 0.75 = 3,375 hours; 4,500 hours x 0.25 = 1,125 hours. This allocation remains unchanged from the Commission’s preliminary allocation in the Proposing Release. For the purposes of Form 83-I, the industry-wide one-time internal hourly burden has been annualized over the three year approval period to an hourly burden of 1,125 hours per year (3,375 hours/3 years). This equates to an annual burden of 75 hours per provider of due diligence services (1,125 hours/15 providers of due diligence services) during the three year approval period.

³⁸ See Proposed Rules for Nationally Recognized Statistical Rating Organizations, 76 FR at 33509 (2,067 offerings x 30 minutes = 1,034 hours).

The Commission estimates that there will be 715 Exchange Act-ABS offerings per year.³⁹ For these reasons, the Commission estimates that the industry-wide annual hour disclosure burden for providers of third-party due diligence services resulting from Rule 17g-10 and Form ABS Due Diligence-15E is approximately 238 hours.⁴⁰

In summary, the Commission estimates that Rule 17g-10 and Form ABS Due Diligence-15E will result in a total industry-wide one-time disclosure burden for providers of third-party due diligence services to develop processes and protocols to provide the required information and submit the certifications of approximately 3,375 hours,⁴¹ and a total industry-wide one-time cost for providers of third-party due diligence services to develop processes and protocols to provide the required information and submit the certifications of \$955,125.⁴² The total industry-wide annual hour disclosure burden to provide the required information and submit the certifications is approximately 238 hours, and the total industry-wide annual costs for providers of third-party due diligence services to provide the required information and submit the certifications is approximately \$67,000.⁴³

13. Costs to Respondents

As discussed above, the Commission estimates that providers of third-party due diligence services would spend an average of approximately 300 hours per firm developing the processes and protocols required to provide the information and submit the certification required by Rule 17g-10, resulting in a one-time industry-wide hour burden of 4,500 hours. In addition, the Commission allocated 75% of these burden hours (3,375 hours) to internal burden and the remaining 25% (1,125 hours) to external burden for outside professionals. The Commission

³⁹ See Nationally Recognized Statistical Rating Organizations, 79 FR at 55088, Table 6.

⁴⁰ 715 Exchange Act-ABS offerings x 20 minutes = 238.33 hours, rounded to 238 hours.

⁴¹ For the purposes of Form 83-I, the industry-wide one-time hourly burden has been annualized over the three year approval period to an hourly burden of 1,125 hours per year (3,375 hours/3 years). This equates to an annual burden of 75 hours per provider of due diligence services (1,125 hours/15 providers of due diligence services) during the three year approval period.

⁴² 3,375 hours x \$283 per hour for a compliance manager = \$955,125. The salary figures provided in this Supporting Statement are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for a 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. See Nationally Recognized Statistical Rating Organizations, 79 FR at 55245 (PRA analysis providing cost and hour burden estimates). For the purposes of this PRA submission, the industry-wide one-time cost has been annualized over the three year approval period to a cost of \$318,375 per year (\$955,125/3 years). This equates to an annual cost of \$21,225 per provider of due diligence services (\$318,375/15 providers of due diligence services) during the three year approval period.

⁴³ 238 hours x \$283 per hour for a compliance manager = \$67,354, rounded to \$67,000. See id.

estimates that the hourly cost of such outside professionals would be \$400, resulting in a one-time cost burden of \$450,000 (1,125 hours x \$400).⁴⁴

14. Costs to Federal Government

The Commission does not anticipate that Rule 17g-10 and Form ABS Due Diligence-15E will result in any costs to the federal government beyond normal full-time employee labor costs, nor does the Commission anticipate that the rule and form will require the Commission to hire any new employees or reallocate existing employees to ensure compliance with the rule.

15. Changes in Burden

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

16. Information Collection Planned for Statistical Purposes

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

17. Approval to Omit OMB Expiration Date

The Commission is not requesting authorization to omit the OMB expiration date.

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

The collection of information does not employ statistical methods, or analyze the information for the Commission.

⁴⁴ For the purposes of Form 83-I, the industry-wide one-time cost has been annualized over the three year approval period to an annual cost of \$150,000 per year (\$450,000/3 years). This equates to an annual cost of \$10,000 per provider of due diligence services (\$150,000/15 providers of due diligence services) during the three year approval period.