

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 17g-5

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq. (“PRA”).

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,” or “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 a new Section 15E² to the Securities Exchange Act of 1934 (“Exchange Act”).

Section 15E(h)(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 and affiliated persons and affiliated companies, to address and manage any conflicts of interest that can arise from such business.³ Section 15E(h)(2) of the Exchange Act provides the Commission with authority to prohibit, or require the management and disclosure of, any potential conflict of interest relating to the issuance of credit ratings by an NRSRO.⁴ The Commission adopted, and subsequently amended, Rule 17g-5⁵ pursuant, in part, to section 15E(h)(2) of the Exchange Act.⁶

Rule 17g-5 requires the disclosure of and establishment of procedures to manage certain NRSRO conflicts of interest, prohibits certain other NRSRO conflicts of interest, and contains requirements regarding the disclosure of information in the case of the conflict of interest of an NRSRO issuing or maintaining a credit rating on an asset-backed security that was paid for by the issuer, sponsor, or underwriter of the security.

¹ Pub. L. No. 109-291.

² 15 U.S.C. 78o-7.

³ 15 U.S.C. 78o-7(h)(1).

⁴ 15 U.S.C. 78o-7(h)(2).

⁵ 17 CFR 240.17g-5. The OMB Control Number for Rule 17g-5 is 3235-0649.

⁶ See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 55857 (June 5, 2007), 72 FR 33564, 33595-33599 (June 18, 2007); Amendments to Rules for Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 59342 (Feb. 2, 2009) 74 FR 6456, 6465-6469 (Feb. 9, 2009); Amendments to Rules for Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832, 63842-63850 (Dec. 4, 2009).

Title IX, Subtitle C of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),⁷ “Improvements to the Regulation of Credit Rating Agencies,” among other things, established new self-executing requirements applicable to NRSROs, requires certain studies,⁸ and required that the Commission adopt rules applicable to NRSROs in a number of areas.⁹

Section 932(a)(4) of the Dodd-Frank Act added paragraph (3) to section 15E(h) of the Exchange Act.¹⁰ Section 15E(h)(3)(A) of the Exchange Act provided that the Commission shall issue rules to prevent the sales and marketing considerations of an NRSRO from influencing the production of credit ratings by the NRSRO.¹¹ Section 15E(h)(3)(B)(i) of the Exchange Act required that the Commission’s rules shall provide for exceptions for small NRSROs with respect to which the Commission determines that the separation of the production of credit ratings and sales and marketing activities is not appropriate.¹² Section 15E(h)(3)(B)(ii) of the Exchange Act required that the Commission’s rules shall provide for the suspension or revocation of the registration of an NRSRO if the Commission finds, on the record, after notice and opportunity for a hearing, that: (1) the NRSRO has committed a violation of a rule issued under section 15E(h) of the Exchange Act; and (2) the violation affected a rating.¹³

On May 18, 2011, the Commission proposed for comment amendments to existing rules, including Rule 17g-5, and new rules in accordance with Title IX, Subtitle C of the Dodd-Frank Act and to enhance oversight of NRSROs.¹⁴ On August 27, 2014, the Commission adopted amendments to Rule 17g-5, in part to implement sections 15E(h)(3)(A), 15E(h)(3)(B)(i), and 15E(h)(3)(B)(ii) of the Exchange Act.¹⁵

Prior to the June 2, 2010 compliance date for the amendments to Rule 17g-5, the Commission by order granted a conditional temporary exemption to NRSROs from paragraph (a)(3) of Rule 17g-5 with respect to credit ratings where: (1) the issuer of the structured finance product is a non-U.S. person; and (2) the NRSRO has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions in the structured finance product after issuance, only in transactions that occur outside the United States (“Exemptive Order”).¹⁶ These

⁷ Pub. L. No. 111-203, 124 Stat. 1376, H.R. 4173 (July 21, 2010).

⁸ See Pub. L. No. 111-203, 939, 939D - 939F.

⁹ See Pub. L. No. 111-203, 931-939H; see also Pub. L. No. 111-203 § 943.

¹⁰ See Pub. L. No. 111-203, 932(a)(4); 15 U.S.C. 78o-7(h)(3).

¹¹ 15 U.S.C. 78o-7(h)(3)(A).

¹² 15 U.S.C. 78o-7(h)(3)(B)(i).

¹³ 15 U.S.C. 78o-7(h)(3)(B)(ii).

¹⁴ See Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 64514 (May 18, 2011), 76 FR 33420 (June 8, 2011) (“Proposing Release”).

¹⁵ See Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 72936 (Aug. 27, 2014), 79 FR 55077 (Sep. 15, 2014) (“Adopting Release”).

¹⁶ See Order Granting Temporary Conditional Exemption for Nationally Recognized Statistical Rating Organizations from Requirements of Rule 17g-5 Under the Securities

conditions were designed to confine the exemption's application to credit ratings of structured finance products issued in, and linked to, financial markets outside of the United States. The Commission granted this relief in light of concerns raised by various foreign securities regulators and market participants that local securitization markets may be disrupted if the rule was applied to transactions outside the United States.¹⁷ The Commission extended the conditional exemption several times, most recently until December 2, 2019.¹⁸

The collection of information obligation imposed by Rule 17g-5 is mandatory for credit rating agencies that are applying to register or are registered with the Commission as NRSROs. Registration with the Commission as an NRSRO is voluntary.

2. Purpose and Use of the Information Collection

The collection of information included in Rule 17g-5 is necessary for Commission oversight of registered NRSROs. Specifically, this collection of information aids the Commission by addressing potential practices that could impair the objectivity and the quality of a credit rating.

The collection required under paragraph (a)(3)(iii)(E) to Rule 17g-5 will be used by the providers of third-party due diligence services to meet their statutory obligation to deliver Form ABS Due Diligence-15E to any NRSRO that produces a credit rating to which the services relate. Furthermore, disclosing these certifications on the Rule 17g-5 websites will make them available to NRSROs that may not otherwise be aware that third-party due diligence services are being employed with respect to an Exchange Act-ABS because, for example, they are not hired to rate the Exchange Act-ABS.

Exhibit 7 to Form NRSRO requires an applicant for registration as an NRSRO or an NRSRO to provide a copy in the exhibit of the written policies and procedures an applicant or NRSRO must establish, maintain, and enforce to address and manage conflicts of interest pursuant to section 15E(h) of the Exchange Act. This disclosure by an NRSRO can be reviewed by investors and other users of credit ratings to evaluate the NRSRO's policies and procedures (including those addressing the new absolutely prohibited conflict) and to compare them with the policies and procedures of other NRSROs.

Exchange Act of 1934 and Request for Comment, Exchange Act Release No. 62120 (May 19, 2010), 75 FR 28825 (May 24, 2010).

¹⁷ See *id.*

¹⁸ See Order Extending Conditional Temporary Exemption for Nationally Recognized Statistical Rating Organizations from Requirements of Rule 17g-5(a)(3), Exchange Act Release No. 34-82144 (Nov. 22, 2017)

3. Consideration Given to Information Technology

Rule 17g-5 allows NRSROs to disclose certain information in an electronic format. The Commission believes that improvements in telecommunications and data processing technology may reduce any burdens associated with Rule 17g-5.

4. Duplication

No duplication is apparent.

5. Effect on Small Entities

Small entities may be affected by the Rule because all NRSROs, regardless of size, are subject to the additional requirements in the amendments to Rule 17g-5. However, paragraph (f) of Rule 17g-5 provides that upon written application by an NRSRO the Commission may exempt, either conditionally or unconditionally, the NRSRO from paragraph (c)(8) of Rule 17g-5 if the Commission finds that due to the small size of the NRSRO it is not appropriate to require the separation within the NRSRO of the production of credit ratings from sales and marketing activities and such exemption is in the public interest.

6. Consequences of Not Conducting Collection

If this information were not collected as frequently, the Commission would be unable to ascertain, on an ongoing basis, whether a credit rating agency registered as an NRSRO “fails to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity.”¹⁹

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 this collection of information was published on June 18, 2018, SEC File. No. 270-581, OMB Control No. 3235-0649. No public comments were received.²⁰

9. Payment or Gift

No payment or gift is provided to respondents.

¹⁹ 15 U.S.C. 15E(d).

²⁰ See Proposed Collection; Comment Request, 83 FR 28274 (Jun. 18, 2018).

10. Confidentiality

No assurance of confidentiality is provided.

11. Sensitive Questions

Not applicable; no information of a sensitive nature is required. The information collection does not collect any Personally Identifiable Information (PII).

12. Burden of Information Collection

Under paragraph (a)(3) of Rule 17g-5, an NRSRO is prohibited from issuing a credit rating for a structured finance product unless certain information about the transaction and the assets underlying the structured finance product are disclosed or arranged to be disclosed by the NRSRO. Specifically, the rule requires that an NRSRO that is hired by arrangers to perform credit ratings for structured finance products to disclose to other NRSROs the deals for which it is in the process of determining such credit ratings and to obtain written representations from arrangers that the arrangers will provide the same information given to the hired NRSRO to other NRSROs. An NRSRO rating such products will need to disclose to other NRSROs the following information on a password protected Internet website: a list of each such security or money market instrument for which it is currently in the process of determining an initial credit rating in chronological order and identifying the type of security or money market instrument, the name of the issuer, the date the rating process was initiated, and the Internet website address where the issuer, sponsor, or underwriter of the security or money market instrument represents that the information described in paragraphs (a)(3)(iii)(C) and (D) of Rule 17g-5 can be accessed. Under paragraph (e) of Rule 17g-5, an NRSRO that wishes to access information on another NRSRO's Internet website or on an arranger's Internet website pursuant to Rule 17g-5(a)(3) is required to provide the Commission with an annual certification.

The Commission previously estimated that the three largest NRSROs account for 90% of the structured finance market and that there were approximately 715 offerings of asset-backed securities a year.²¹ Therefore, the Commission estimates that the total number of structured finance ratings issued by all 10 NRSROs in a given year is approximately 2,436.²² The Commission previously estimated that it would take one hour per transaction to make the required information under paragraph (a)(3) of Rule 17g-5 publicly available. The Commission therefore estimates that the corresponding annual disclosure burden for NRSROs is approximately 2,436 hours industry-wide.²³

Disclosures are also required for arrangers on a transaction by transaction basis. The Commission previously estimated that each respondent would arrange approximately 20 new transactions per year and that it would take one hour per transaction to make the information

²¹ See Adopting Release, 79 FR at 55234.

²² $715 \times .9 = 643.5$, rounded to 644. $644 \times 3 = 1,932$. $715 \times .1 = 71.5$, rounded to 72. $72 \times 7 = 504$. $1,932 + 504 = 2,436$.

²³ $2,436 \text{ transactions} \times 1 \text{ hour} = 2,436 \text{ hours}$.

publicly available. Therefore, the Commission estimated that it would take a respondent approximately 20 hours²⁴ to disclose this information under Rule 17g-5. Previously, the Commission estimated that there are approximately 336 issuers, sponsors, or underwriters of asset-backed securities, for a total annual disclosure burden of approximately 6,720 hours.²⁵

Paragraph (a)(3) of Rule 17g-5 also requires disclosure of information by arrangers on an ongoing basis that is used by an NRSRO to undertake credit rating surveillance on the structured finance product. The Commission previously estimated that this disclosure would be required with respect to approximately 125 transactions per month, and that it would take each respondent approximately 0.5 hours per transaction to disclose the information. Therefore, the Commission estimated that it would take each respondent approximately 750 hours²⁶ on an annual basis to disclose such information. Previously, the Commission estimated that there are approximately 336 issuers, sponsors, or underwriters of asset-backed securities, for a total annual disclosure burden of approximately 252,000 hours.²⁷

Regarding paragraph (e) of Rule 17g-5, the Commission estimated that it would take each NRSRO approximately 2 hours to complete the certification, resulting in a total industry-wide annual reporting burden for 10 NRSROs of 20 hours.²⁸

Based on the Commission's previous estimate that there will be 715 offerings of Exchange Act-ABS per year,²⁹ the Commission estimates that issuers, sponsors, and underwriters will need to post approximately 715 Forms ABS Due Diligence-15E on Rule 17g-5 websites per year (in addition to the information that is already posted to the websites). Based on staff experience, the Commission estimates that it will take the issuer, sponsor, or underwriter approximately ten minutes to upload each form and post it to the website, for a total industry-wide annual disclosure burden of approximately 119 hours.³⁰

Accordingly, the total estimated annual burden associated with Rule 17g-5 is 261,295 hours.³¹

13. Costs to Respondents

The Commission does not anticipate that respondents would have to incur any additional operational or maintenance costs to comply with the collection of information.

²⁴ 20 transactions x 1 hour = 20 hours.

²⁵ 336 respondents x 20 hours = 6,720 hours.

²⁶ 125 transactions x 30 minutes x 12 months = 45,000 minutes/60 minutes = 750 hours.

²⁷ 750 hours x 336 respondents = 252,000 hours.

²⁸ 10 NRSROs x 2 hours = 20 hours.

²⁹ See Adopting Release 79 FR at 55239.

³⁰ 715 Forms ABS Due Diligence-15E per year x 10 minutes = 119.17 hours, rounded to 119 hours.

³¹ 2,436 + 6,720 + 20 + 119 = 261,295 hours.

14. Federal Government Cost

The Commission does not anticipate any costs to the Federal Government associated with the information collections related to the Rule.

15. Changes in Burden

There are no changes in burden for Rule 17g-5.

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 seeking approval to omit the expiration date.

18. Exceptions to Certification

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.