

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

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. 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.²

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) was enacted on July 21, 2010.³ Title IX, Subtitle C of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), “Improvements to the Regulation of Credit Rating Agencies,” among other things, establishes new self-executing requirements applicable to NRSROs, requires certain studies,⁴ and required that the Commission adopt rules applicable to NRSROs in a number of areas.⁵

Rule 17g-7 was adopted by the Commission in 2011 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 asset-backed securities offering.⁶ On August 27, 2014, the Commission adopted amendments to Rule 17g-7 (the “Amendments”).⁷

First, the Commission incorporated the disclosure requirements in Rule 17g-7 regarding representations, warranties, and enforcement mechanisms available to investors in asset-backed securities and added significant disclosure provisions that require an NRSRO, when taking

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

² 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).

³ Pub. L. No. 111-203, 124 Stat. 1376, H.R. 4173 (July 21, 2010).

⁴ See Pub. L. No. 111-203 §§ 939, 939D-939F.

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

⁶ See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR at 4503.

certain rating actions, to publish a form containing information about the credit rating resulting from or subject to the rating action as well as any certification of a provider of third-party due diligence services received by the NRSRO that relates to the credit rating.⁸

Second, the Commission re-codified in paragraph (b) of Rule 17g-7 the requirements to disclose rating histories that were previously contained in paragraph (d)(3) of Rule 17g-2 (the “100% Rule”).⁹ The rule requires an NRSRO to make available on its corporate Web site in XBRL format the rating action history of each outstanding credit rating that it determined on or after June 26, 2007, including all rating actions (initial rating, upgrades, downgrades, placements on watch for upgrade or downgrade, and withdrawals) and the date of such actions identified by the name of the security or obligor rated and, if applicable, the CUSIP for the rated security or the Central Index Key (CIK) number for the rated obligor.

The Commission closely modeled the language of an exemption in Rule 17g-7(a) to the existing Rule 17g-5(a)(3) exemption. On September 26, 2018, the Commission proposed a rule amendment to codify the existing temporary exemption to Rule 17g-5(a)(3) and as part of the release to promote clarity and consistency, the Commission proposes to amend Rule 17g-7(a) to align the exemptions to such rules with the proposed exemption to Rule 17g-5(a)(3). (“Proposed Release”)¹⁰

The Commission proposes to amend the second condition of the Rule 17g-7(a) exemption to clarify that the exemption is available only if an NRSRO has a reasonable basis to conclude that: (A) with respect to any security or money market instrument issued by a rated obligor, all offers and sales by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the United States; or (B) with respect to a rated security or money market instrument, all offers and sales by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the United States.

The collection of information obligations imposed by the rule are mandatory. The requirements of Rule 17g-7, however, apply only to credit rating agencies that are applying to register or are registered with the Commission as NRSROs, and registration is voluntary.

2. Purpose and Use of the Information Collection

As noted in the response to Item 1, the Commission amended Rule 17g-7 to implement Sections 15E(q) and 15E(s) of the Exchange Act which, among other things, mandate that the Commission adopt rulemaking requiring NRSROs to provide an attestation and disclosures with the publication of a credit rating. The attestation and disclosures are not made directly with, or used by, the Commission. Rather, they are provided in a form published by the NRSRO

⁸ See *id.*

⁹ See 17 CFR 240.17g-7(b).

¹⁰ See Proposed Release: Amendments to Rules for Nationally Recognized Statistical Rating Organizations, 83 FR 50297 (Oct. 5, 2018).

that accompanies a credit rating. The rule is intended to help ensure that investors are provided with important disclosures about the rating.

Paragraph (a) of Rule 17g-7 requires an NRSRO, when taking certain rating actions, to publish a form containing information about the credit rating resulting from or subject to the rating action as well as any certification of a provider of third-party due diligence services received by the NRSRO that relates to the credit rating is used by investors and other users of credit ratings to better understand the credit ratings issued by the NRSRO.¹¹ In addition, the disclosure of the certification allows investors and other users of credit ratings to determine the adequacy and level of due diligence services provided by the third party executing the certification.

The requirements of Rule 17g-7 (codified in paragraph (b) of the rule) that an NRSRO discloses rating histories may be used by investors and other users of credit ratings to evaluate the performance of the NRSRO's credit ratings.¹² As the Commission stated when adopting the original rating history disclosure requirement, the "intent of the rule is to facilitate comparisons of credit rating accuracy across all NRSROs – including direct comparisons of different NRSROs' treatment of the same obligor or instrument – in order to enhance NRSRO accountability, transparency, and competition."¹³ The rule is also designed to provide persons (such as market participants and academics and other market observers) with the "raw data" necessary to generate statistical information about the performance of each NRSRO's credit ratings.¹⁴ The information disclosed pursuant to the rule also may be used by economists to study the performance of NRSRO credit ratings. The Commission also may use the information as part of its oversight function.

3. Consideration Given to Information Technology

NRSROs are not prevented by Rule 17g-7 from using computers or other mechanical devices to generate the disclosures required under the rule. The Commission believes that

¹¹ See Nationally Recognized Statistical Rating Organizations, 79 FR at 55163.

¹² See id.

¹³ See Amendments to Rules for Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR at 63838 (Dec. 4, 2009) ("Ratings history information for outstanding credit ratings is the most direct means of comparing the performance of two or more NRSROs. It allows an investor or other user of credit ratings to compare how all NRSROs that maintain a credit rating for a particular obligor or instrument initially rated that obligor or instrument and, thereafter, how and when they adjusted their credit rating over time.").

¹⁴ See Amendments to Rules for Nationally Recognized Statistical Rating Organizations, 74 FR at 63837-63838 ("The raw data to be provided by NRSROs pursuant to the new ratings history disclosure requirements...will enable market participants to develop performance measurement statistics that would supplement those required to be published by NRSROs themselves in Exhibit 1, tapping into the expertise of credit market observers and participants in order to create better and more useful means to compare the credit ratings performance of NRSROs.").

improvements in data processing technology could reduce the burdens associated with the amendments to Rule 17g-7.

4. Duplication

The Commission has not identified any duplication with respect to the information required by Rule 17g-7.

5. Effect on Small Entities

Small entities will be affected by Rule 17g-7 because all NRSROs, regardless of size are required to comply with the rule. The Commission staff believes that there are currently two NRSROs that are considered small entities. The Commission previously solicited comment regarding the rule's burden on small entities and considered potential alternatives to minimize the burden of the collection of information requirements on those who are required to respond.¹⁵

6. Consequences of Not Conducting Collection

Sections 15E(q) and 15E(s) of the Exchange Act require the attestation and disclosure form to be provided along with any credit rating published by an NRSRO. Consequently, the objectives of the ratings disclosure requirements for NRSROs under the Exchange Act could not be met with less frequent collection of this information.

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).

8. Consultations Outside the Agency

The Proposed Release was published in the Federal Register notice with a 30-day comment period soliciting comments on this collection of information on October 5, 2018, SEC File. No. S7-22-18, OMB Control No. 3235-0649.¹⁶

9. Payment or Gift

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

10. Confidentiality

¹⁵ See Proposed Rules for Nationally Recognized Statistical Rating Organizations, 76 FR at 33457; See also Nationally Recognized Statistical Rating Organizations, 79 FR at 55151.

¹⁶ See Proposed Release: Amendments to Rules for Nationally Recognized Statistical Rating Organizations; Comment Request, 83 FR 50297 (Oct. 5, 2018).

The form and attestation an NRSRO must publish when taking certain rating actions under paragraph (a) of Rule 17g-7 must be published in the same manner as the credit rating that is the result or subject of the rating action and made available to the same persons who can receive or access the credit rating. An NRSRO must publicly disclose credit rating histories under paragraph (b) of Rule 17g-7 for free on an easily accessible portion of its Internet website.

11. Sensitive Questions

Not applicable. No inquiries of a sensitive nature are made under the rule. The information collection does not collect any personally identifiable information.

12. Burden of Information Collection

With respect to the annual hour disclosure burden for paragraph (a) of Rule 17g-7, the Commission stated in the proposing release that it believed that the estimate should be divided into two components: the amount of time an NRSRO would spend to update its standardized disclosures and to tailor disclosures to particular rating actions and asset classes; and the amount of time the NRSRO would spend generating and publishing each form and attaching the required certifications to the form.¹⁷

With regard to the first component, the Commission previously estimated that an NRSRO would spend an average of approximately 500 hours per year updating the standardized disclosures, for an industry-wide annual hour disclosure burden of 5,000 hours.¹⁸

The Commission stated that it believed that the burden attributable to the second component should be based on the number of rating actions taken per year by the NRSROs because the requirement to generate and publish the form and attach the certifications will be triggered by a rating action.¹⁹ The Commission estimated that the ten NRSROs take an aggregate of approximately 2,071,040 credit rating actions per year, according to the definition of rating action in paragraph (a) of Rule 17g-7, as adopted²⁰ and based on staff experience and in light of previously received comments, an NRSRO would spend twenty minutes on average for each rating action, resulting in an industry-wide annual hour disclosure burden of approximately 690,347 hours.²¹

¹⁷ See Proposed Rules for Nationally Recognized Statistical Rating Organizations, 76 FR at 33505.

¹⁸ 500 hours x 10 NRSROs = 5,000 hours.

¹⁹ See Proposed Rules for Nationally Recognized Statistical Rating Organizations, 76 FR at 33505.

²⁰ 236,521 upgrades and downgrades + 1,484,940 affirmations + 348,149 initial credit ratings + 1,430 preliminary or expected credit ratings = 2,071,040 rating actions per year. For purposes of paragraph (a) of Rule 17g-7, credit ratings placed on credit watch and withdrawn credit ratings are not included in this calculation due to the definition of rating action.

²¹ 2,071,040 rating actions x 1/3 hour = 690,346.67 hours, rounded to 690,347 hours.

The Commission previously estimated that the average annual burden per NRSRO to comply with the 100% Rule related to the disclosure of credit rating histories, including updating and administering the database, would be approximately forty-five hours per year, for an industry-wide annual disclosure burden of approximately 450 hours.²²

The Commission estimates that the burden associated with paragraph (a) of Rule 17g-7 would result in a total industry-wide annual hour disclosure burden to update standardized disclosures, to tailor disclosures to particular rating actions and asset classes, and to generate and publish each form and attach the required certifications to the form is approximately 695,347 hours.²³ With respect to paragraph (b) of Rule 17g-7, the Commission estimated that the burden associated with the 100% Rule is approximately 450 hours. Therefore, the total industry-wide annual hour burden to comply with Rule 17g-7 is 695,797 hours.

Proposed Amendment

With respect to the proposed clarifying amendment, the Commission preliminarily believes that NRSROs will modify their processes to reflect the proposed amendments to the Rule 17g-7(a) exemption. For instance, an NRSRO that currently seeks written representations from an obligor or arranger to support the reasonable belief required under the Rule 17g-7(a) exemption, as currently in effect, may modify the form of the representation to conform to the language of the condition as proposed to be amended. The Commission estimates that it would take an NRSRO approximately five hours to update its process for obtaining a reasonable basis to reflect the proposed amendment to the Rule 17g-7(a) exemption, for an industry-wide one-time burden of approximately 50 hours.²⁴

With the addition of the one-time burden of 50 hours related to the proposed amendment, the total aggregate industry-wide burden to comply with Rule 17g-7 is 695,847 hours,

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 or the proposed rule.

14. Costs to Federal Government

The Commission does not anticipate that Rule 17g-7 will not result in any costs to the federal government beyond normal full-time employee labor costs, nor does the rule require

²² As stated in the Nationally Recognized Statistical Rating Organizations, 79 FR at 55237, the re-codification of paragraph (d)(3) of Rule 17g-2 (the 100% Rule) in paragraph (b) of Rule 17g-7 will subtract 450 hours from the industry-wide annual hour burden for Rule 17g-2. This burden will be attributed to the industry-wide annual hour burden for Rule 17g-7.

²³ 5,000 hours + 690,347 hours = 695,347 hours.

²⁴ 5 hours x 10 NRSROs = 50 hours.

the Commission to hire any new employees or reallocate existing employees to ensure compliance with the rule.

15. Changes in Burden

The changes in the ongoing annual hour burdens for Rule 17g-7 were the result of the completion of previously estimated one-time burdens (leading to a reduction of 105,048 hours of burden associated with one-time adjustments). Registrants made the appropriate changes and adjustments to their policies and procedures to be in compliance with Rule 17g-7 that were associated with the previous 2014 amendments, therefore, eliminating the previously estimated one-time burdens that were allocated for implementing such changes and updates.

There is now an additional one-time burden of 50 hours for registrants to modify their processes to comply with the clarifying language in the proposed rule release related to the exemption in Rule 17g-7(a).

16. Information Collection Planned for Statistical Purposes

Not applicable. The information collection is not 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 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 employ statistical methods, or analyze the information for the Commission.