

**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 2006<sup>1</sup> (“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 15E<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> The Commission adopted, and subsequently amended, Rule 17g-5<sup>5</sup> pursuant, in part, to section 15E(h)(2) of the Exchange Act.<sup>6</sup>

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.

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<sup>1</sup> Pub. L. No. 109-291.

<sup>2</sup> 15 U.S.C. 78o-7.

<sup>3</sup> 15 U.S.C. 78o-7(h)(1).

<sup>4</sup> 15 U.S.C. 78o-7(h)(2).

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

<sup>6</sup> 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”),<sup>7</sup> “Improvements to the Regulation of Credit Rating Agencies,” among other things, established new self-executing requirements applicable to NRSROs, requires certain studies,<sup>8</sup> and required that the Commission adopt rules applicable to NRSROs in a number of areas.<sup>9</sup>

Section 932(a)(4) of the Dodd-Frank Act added paragraph (3) to section 15E(h) of the Exchange Act.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

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”).<sup>16</sup> These

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

<sup>8</sup> See Pub. L. No. 111-203, 939, 939D - 939F.

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

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

<sup>11</sup> 15 U.S.C. 78o-7(h)(3)(A).

<sup>12</sup> 15 U.S.C. 78o-7(h)(3)(B)(i).

<sup>13</sup> 15 U.S.C. 78o-7(h)(3)(B)(ii).

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

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

<sup>16</sup> 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.<sup>17</sup> The Commission extended the conditional exemption several times, most recently until December 2, 2019.<sup>18</sup> On September 26, 2018, the Commission proposed a rule amendment to codify the existing temporary exemption to Rule 17g-5(a)(3)(“Proposed Release”).<sup>19</sup>

The proposed amendment would add a new paragraph to provide that Rule 17g-5(a)(3) will not apply to an NRSRO when issuing or maintaining a credit rating for a security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction if it the issuer of the security or money market instrument is not a U.S. person; and the NRSRO has a reasonable basis to conclude that all offers and sales of the security or money market instrument by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the U.S.

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.

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

<sup>17</sup> See id.

<sup>18</sup> 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)

<sup>19</sup> See Proposed Release: Amendments to Rules for Nationally Recognized Statistical Rating Organizations, 83 FR 50297 (Oct. 5, 2018).

The proposed amendment to Rule 17g-5(a)(3) requires a collection of information from the arranger so that an NRSRO can form a reasonable basis to conclude that all offers and sales of the structured finance product will occur outside the United States and therefore the exemption to certain disclosure requirements applies.

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.

### **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."<sup>20</sup>

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<sup>20</sup> 15 U.S.C. 15E(d).

**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 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.<sup>21</sup> The Commission did not receive any comments on the estimate burden, although the Commission revised its estimated on the basis of new market data available.

**9. Payment or Gift**

No payment or gift is provided to respondents.

**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

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<sup>21</sup> See Proposed Release: Amendments to Rules for Nationally Recognized Statistical Rating Organizations; Comment Request, 83 FR 50297 (Oct. 5, 2018).

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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup>

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 publicly available. Therefore, the Commission estimated that it would take a respondent approximately 20 hours<sup>25</sup> 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.<sup>26</sup>

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 hours<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup>

Based on the Commission's previous estimate that there will be 715 offerings of Exchange Act-ABS per year,<sup>30</sup> the Commission estimates that issuers, sponsors, and

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<sup>22</sup> See Adopting Release, 79 FR at 55234.

<sup>23</sup>  $715 \times .9 = 643.5$ , rounded to 644.  $644 \times 3 = 1,932$ .  $715 \times .1 = 71.5$ , rounded to 72.  $72 \times 7 = 504$ .  $1,932 + 504 = 2,436$ .

<sup>24</sup>  $2,436 \text{ transactions} \times 1 \text{ hour} = 2,436 \text{ hours}$ .

<sup>25</sup>  $20 \text{ transactions} \times 1 \text{ hour} = 20 \text{ hours}$ .

<sup>26</sup>  $336 \text{ respondents} \times 20 \text{ hours} = 6,720 \text{ hours}$ .

<sup>27</sup>  $125 \text{ transactions} \times 30 \text{ minutes} \times 12 \text{ months} = 45,000 \text{ minutes} / 60 \text{ minutes} = 750 \text{ hours}$ .

<sup>28</sup>  $750 \text{ hours} \times 336 \text{ respondents} = 252,000 \text{ hours}$ .

<sup>29</sup>  $10 \text{ NRSROs} \times 2 \text{ hours} = 20 \text{ hours}$ .

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.<sup>31</sup>

Accordingly, the total estimated annual burden associated with Rule 17g-5 prior to the amendments is 261,295 hours.<sup>32</sup>

### ***Proposed Amendment***

The Commission is adopting amendments to Rule 17g-5(a)(3) that would provide an exemption to the rule with respect to ratings of certain structured finance products if, among other things, the NRSRO has a reasonable basis to conclude that all offers and sales of the structured finance product by any arranger linked to the structured finance product will occur outside the United States. The amendment codifies the existing Rule 17g5(a)(3) exemption, with certain clarifying changes.

The Commission preliminarily believes that NRSROs will modify their processes to reflect the clarifying changes being proposed to the exemption. For instance, an NRSRO that currently seeks written representations from an arranger to support the reasonable belief required under the existing Rule 17g-5(a)(3) exemption may modify the form of the representation to conform to the language of the condition as proposed. In the Proposing Release, the Commission estimated that it would take an NRSRO approximately five hours to update its process for obtaining a reasonable basis to reflect the clarifying language in the exemption, for an industry-wide one-time burden of approximately 35 hours.<sup>33</sup> The Commission received no comments on this estimate and continues to estimate an industry-wide one-time burden of approximately 35 hours.

In order to have a reasonable basis to conclude that all offers and sales of the structured finance product by any arranger linked to the structured finance product will occur outside the United States, the Commission preliminarily believes that NRSROs will likely seek information from arrangers, thereby resulting in associated burdens. In the Proposing Release, the Commission estimated that an NRSRO would spend approximately two hours per transaction gathering and reviewing information received from arrangers to determine if the exemption applies. The Commission also estimated in the Proposing Release that approximately 267 rated transactions would be eligible for the exemption in a given year and that each transaction would be rated by approximately two NRSROs, resulting in a total aggregate annual hour burden of

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<sup>30</sup> See Adopting Release 79 FR at 55239.

<sup>31</sup> 715 Forms ABS Due Diligence-15E per year x 10 minutes = 119.17 hours, rounded to 119 hours.

<sup>32</sup> 2,436 + 6,720 + 20 + 119 = 261,295 hours.

<sup>33</sup> 5 hours x 7 NRSROs registered to rate asset-backed securities = 35 hours.

1,068 hours.<sup>34</sup> The Commission received no comments on these estimates. The Commission continues to estimate that an NRSRO would spend approximately two hours per transaction gathering and reviewing information received from arrangers to determine if the exemption applies and that each transaction would be rated by approximately two NRSROs. However, the Commission is updating its estimate of the number of rated transactions that would be eligible for the exemption in a given year to reflect more current data. The Commission currently estimates that approximately 284 rated transactions would be eligible for the exemption annually,<sup>35</sup> resulting in a total aggregate annual hour burden of 1,136 hours, see chart below.<sup>36</sup>

Accordingly, the total estimated annual burdens associated with Rule 17g-5 including the amendments are an ongoing annual burden of 262,431 hours plus a one-time burden of 35 hours, for a total of 262,466 hours.<sup>37</sup>

*Ongoing Burden per Response for Amendment to Rule 17g-5:*

|                        | <b>Time Per Response</b> | <b>Cost Per Response</b> |
|------------------------|--------------------------|--------------------------|
| Reporting              | 2 hours per transaction  | \$0                      |
| Record Keeping         |                          |                          |
| Third Party Disclosure |                          |                          |
| <b>Total</b>           | <b>2 hours</b>           | <b>-</b>                 |

*Ongoing Annual Burden for Amendment to Rule 17g-5:*

|           | <b>Annual Number of Responses</b> | <b>Annual Time Burden (Hours)</b> | <b>Annual Cost Burden (Dollars)</b> |
|-----------|-----------------------------------|-----------------------------------|-------------------------------------|
| Reporting | 284 transactions * 2              | 2 hours                           | \$0                                 |

<sup>34</sup> 2 hours x 267 transactions x 2 NRSROs per transaction = 1,068 hours. The estimates of the number of annual transactions and the number of NRSROs per transaction in the Proposing Release were calculated using information from the databases maintained by Asset-Backed Alert and Commercial Mortgage Alert and represented the average number of transactions and NRSROs per transaction for the years ended December 31, 2015, 2016, and 2017. See Proposing Release, supra note 2, 83 FR at 50303 n. 63.

<sup>35</sup> This estimate was calculated using information, as of March 25, 2019, from the databases maintained by Asset-Backed Alert and Commercial Mortgage Alert. Isolating the transactions coded in the databases as “Non-U.S.” offerings provided an estimate of the number of transactions that would have been eligible for the exemption. The databases also specify the number of NRSROs rating each transaction, which was used to calculate the average number of NRSROs per transaction (1.88). For purposes of the Commission’s estimates, the number of NRSROs per transaction was rounded to the nearest whole number, resulting in no change from the estimate used in the Proposing Release. The estimates represent the average number of transactions and NRSROs per transaction for the years ended December 31, 2016, 2017, and 2018.

<sup>36</sup> 2 hours x 284 transactions x 2NRSROs per transaction = 1,136 hours.

<sup>37</sup> 261,295 + 1,136 = 262,431 ongoing annual hours.



|                        |            |                    |            |
|------------------------|------------|--------------------|------------|
|                        | NRSROs     |                    |            |
| Record Keeping         |            |                    |            |
| Third Party Disclosure |            |                    |            |
| <b>Total</b>           | <b>568</b> | <b>1,136 hours</b> | <b>\$0</b> |

**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 amendment.

**14. Federal Government Cost**

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

**15. Changes in Burden**

The changes in burden for Rule 17g-5 are the result of a proposed change to Rule 17g-5(a)(3) that codifies an existing temporary exemption from certain disclosure requirements and a change in the estimated rated transactions from the proposing to adopting release.

**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.