

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for Rule 17g-2--**  
***Records to be Made and Retained by Nationally Recognized Statistical Rating Organizations***

**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, 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”),<sup>2</sup> “Improvements to the Regulation of Credit Rating Agencies,” among other things, establishes new self-executing requirements applicable to NRSROs, requires certain studies,<sup>3</sup> and requires that the Commission adopt rules applicable to NRSROs in a number of areas.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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<sup>1</sup> Pub. L. No. 109-291 (2006).

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

<sup>3</sup> See Pub. L. No. 111-203 §§ 939, 939D-939F.

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

<sup>5</sup> See Pub. L. No. 109-291.

<sup>6</sup> 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).

<sup>7</sup> 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.<sup>8</sup> 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.

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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.

The Commission previously repealed paragraph (d)(2) of Rule 17g-2 and re-codified and enhanced the requirements in paragraph (d)(3) of Rule 17g-2 in new Rule 17g-7. The Commission also added 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.<sup>12</sup> In addition, the Commission added paragraphs to Rule 17g-2 to identify records that must be retained.

In 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.<sup>13</sup>

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

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

<sup>10</sup> See 15 U.S.C. 78q(b)(1).

<sup>11</sup> 15 U.S.C. 78q.

<sup>12</sup> See 17 CFR 240.17g-2(a)(9).

<sup>13</sup> See 17 CFR 240.17g-2(c).

## **2. Purpose and Use of the Information Collection**

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,<sup>14</sup> and applicable Exchange Act rules under the Rating Agency Act.

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 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.

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<sup>14</sup> 15 U.S.C. 78o-7.

## **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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

## **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 required notice with a 60-day comment period soliciting comments on this collection of information was published in the Federal Register on July 22, 2020.<sup>18</sup> No comments were received.

## **9. Payment or Gift**

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

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<sup>15</sup> See Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 64514 (May 18, 2011), 76 FR 33511 (June 8, 2011).

<sup>16</sup> 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>.

<sup>17</sup> See 15 U.S.C. 78o-7(c)(3)(A).

<sup>18</sup> See 85 FR 44347 (July 22, 2020).

## 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 were 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 239 hours per year<sup>19</sup> to make and retain records under Rule 17g-2, for a total ongoing hour burden under Rule 17g-2 of 2,390 annual hours.<sup>20</sup> The Commission considers this burden to be a recordkeeping burden.

No changes have been made to the estimated burden, except that there are now nine registered entities, so the ongoing total industry hour burden under Rule 17g-2, is 2,151 hours.<sup>21</sup>

IC	IC Title	Annual No. of Responses			Annual Time Burden (Hrs.)			Burden Cost Burden (\$)		
		<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>
IC1	Ongoing Recordkeeping	10	9	-1	2340	2106	-234	0	0	0
IC2	Retaining Updated Records	10	9	-1	50	45	-5	0	0	0
<b>Total for all ICs</b>		20	18	-2	2390	2151	-239	0	0	0

<sup>19</sup> See Release No. 59342, *supra* note 25.

<sup>20</sup> 239 hours x 10 respondents = 2,790 hours.

<sup>21</sup> 239 hours x 9 respondents = 2,151 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 a decrease in the number of registered entities from 10 to nine.

**16. Information Collection Planned for Statistical Purposes**

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

**17. Display of OMB Approval Date**

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

**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.