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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34- 82144; File No. S7-04-09]

Order Extending Conditional Temporary Exemption for Nationally Recognized Statistical Rating Organizations from Requirements of Rule 17g-5(A)(3) under the Securities Exchange Act of 1934

November 22, 2017

I. Introduction

On May 19, 2010, the Securities and Exchange Commission (“Commission”) conditionally exempted, with respect to certain credit ratings and until December 2, 2010, nationally recognized statistical rating organizations (“NRSROs”) from certain requirements in Rule 17g-5(a)(3)¹ under the Securities Exchange Act of 1934 (“Exchange Act”), which had a compliance date of June 2, 2010.² Pursuant to the Order, an NRSRO is not required to comply with Rule 17g-5(a)(3) until December 2, 2010 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 of the structured finance product after issuance, only in transactions that occur outside the U.S. (“covered transactions”).³ The conditional temporary exemption was extended until December 2, 2011, and subsequently further extended until December 2, 2017.⁴ The Commission is extending the

¹ See 17 CFR 240.17g-5(a)(3).

² See Exchange Act Release No. 62120 (May 19, 2010), 75 FR 28825 (May 24, 2010) (“Order”).

³ See *id.* at 28827-28 (setting forth conditions of relief).

⁴ See Exchange Act Release No. 34-76183 (Oct. 16, 2015), 80 FR 64031 (Oct. 22, 2015); *see also* Exchange Act Release No. 34-73649 (Nov. 19, 2014), 79 FR 70261 (Nov. 25, 2014), Exchange Act Release No. 34-70919 (Nov. 22, 2013), 78 FR 70984 (Nov. 27, 2013), Exchange Act Release No. 34-68286 (Nov. 26, 2012), 77 FR 71201 (Nov. 29, 2012), Exchange Act Release No. 65765 (Nov. 16, 2011), 76 FR 72227 (Nov. 22, 2011), and Exchange Act Release No. 63363 (Nov. 23, 2010), 75 FR 73137 (Nov. 29, 2010) (collectively, the “Extension Orders”).

conditional temporary exemption exempting NRSROs from complying with Rule 17g-5(a)(3) with respect to rating covered transactions until the earlier of (i) December 2, 2019, or (ii) the compliance date set forth in any final rule that may be adopted by the Commission that provides for a similar exemption.

II. Background

Rule 17g-5 identifies, in paragraphs (b) and (c) of the rule, a series of conflicts of interest arising from the business of determining credit ratings.⁵ Paragraph (a) of Rule 17g-5⁶ prohibits an NRSRO from issuing or maintaining a credit rating if it is subject to the conflicts of interest identified in paragraph (b) of Rule 17g-5 unless the NRSRO has taken the steps prescribed in paragraph (a)(1) (i.e., disclosed the type of conflict of interest in Exhibit 6 to Form NRSRO in accordance with Section 15E(a)(1)(B)(vi) of the Exchange Act⁷ and Rule 17g-1⁸) and paragraph (a)(2) (i.e., established and is maintaining and enforcing written policies and procedures to address and manage conflicts of interest in accordance with Section 15E(h) of the Exchange Act⁹). Paragraph (c) of Rule 17g-5 specifically prohibits eight types of conflicts of interest. Consequently, an NRSRO is prohibited from issuing or maintaining a credit rating when it is subject to these conflicts regardless of whether it had disclosed them and established procedures reasonably designed to address them.

In November 2009, the Commission adopted paragraph (a)(3) of Rule 17g-5. This provision requires an NRSRO that is hired by an arranger to determine an initial credit rating for

⁵ 17 CFR 240.17g-5(b) and (c).

⁶ 17 CFR 240.17g-5(a).

⁷ 15 U.S.C. 78o-7(a)(1)(B)(vi).

⁸ 17 CFR 240.17g-1.

⁹ 15 U.S.C. 78o-7(h).

a structured finance product to take certain steps designed to allow an NRSRO that is not hired by the arranger to nonetheless determine an initial credit rating – and subsequently monitor that credit rating – for the structured finance product.¹⁰ In particular, under Rule 17g-5(a)(3), an NRSRO is prohibited from issuing or maintaining a credit rating when it is subject to the conflict of interest identified in paragraph (b)(9) of Rule 17g-5 (i.e., being hired by an arranger to determine a credit rating for a structured finance product)¹¹ unless it has taken the steps prescribed in paragraphs (a)(1) and (2) of Rule 17g-5 (discussed above) and the steps prescribed in paragraph (a)(3) of Rule 17g-5.¹² Rule 17g-5(a)(3), among other things, requires that the NRSRO must:

- Maintain on a password-protected Internet Web site a list of each structured finance product for which it currently is in the process of determining an initial credit rating in chronological order and identifying the type of structured finance product, the name of the issuer, the date the rating process was initiated, and the Internet Web site address where the arranger represents the information provided to the hired NRSRO can be accessed by other NRSROs;
- Provide free and unlimited access to such password-protected Internet Web site during the applicable calendar year to any NRSRO that provides it with a copy of the

¹⁰ See 17 CFR 240.17g-5(a)(3); see also Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832 (Dec. 4, 2009) (“Adopting Release”) at 63844-45.

¹¹ Paragraph (b)(9) of Rule 17g-5 identifies the following conflict of interest: 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 that was paid for by the issuer, sponsor, or underwriter of the security or money market instrument. 17 CFR 240.17g-5(b)(9).

¹² 17 CFR 240.17g-5(a)(3).

certification described in paragraph (e) of Rule 17g-5 that covers that calendar year;¹³
and

- Obtain from the arranger a written representation that can reasonably be relied upon that the arranger will, among other things, disclose on a password-protected Internet Web site the information it provides to the hired NRSRO to determine the initial credit rating (and monitor that credit rating) and provide access to the Web site to an

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Paragraph (e) of Rule 17g-5 requires that an NRSRO seeking to access the hired NRSRO's Internet Web site during the applicable calendar year must furnish the Commission with the following certification:

The undersigned hereby certifies that it will access the Internet Web sites described in 17 CFR §240.17g-5(a)(3) solely for the purpose of determining or monitoring credit ratings. Further, the undersigned certifies that it will keep the information it accesses pursuant to 17 CFR §240.17g-5(a)(3) confidential and treat it as material nonpublic information subject to its written policies and procedures established, maintained, and enforced pursuant to Section 15E(g)(1) of the Act (15 U.S.C. 78o-7(g)(1)) and 17 CFR §240.17g-4. Further, the undersigned certifies that it will determine and maintain credit ratings for at least 10% of the issued securities and money market instruments for which it accesses information pursuant to 17 CFR §240.17g-5(a)(3)(iii), if it accesses such information for 10 or more issued securities or money market instruments in the calendar year covered by the certification. Further, the undersigned certifies one of the following as applicable: (1) In the most recent calendar year during which it accessed information pursuant to §17 CFR 240.17g-5(a)(3), the undersigned accessed information for [Insert Number] issued securities and money market instruments through Internet Web sites described in 17 CFR §240.17g-5(a)(3) and determined and maintained credit ratings for [Insert Number] of such securities and money market instruments; or (2) The undersigned previously has not accessed information pursuant to 17 CFR §240.17g-5(a)(3) 10 or more times during the most recently ended calendar year.

NRSRO that provides it with a copy of the certification described in paragraph (e) of Rule 17g-5.¹⁴

The Commission stated in the Adopting Release that Rule 17g-5(a)(3) is designed to address conflicts of interest and improve the quality of credit ratings for structured finance products by making it possible for more NRSROs to rate structured finance products.¹⁵ For example, the Commission noted that when an NRSRO is hired to rate a structured finance product, some of the information it relies on to determine the rating is generally not made public.¹⁶ As a result, structured finance products frequently are issued with ratings from only the one or two NRSROs that have been hired by the arranger, with the attendant conflict of interest

¹⁴ In particular, under paragraph (a)(3)(iii) of Rule 17g-5, the arranger must represent to the hired NRSRO that it will:

(1) maintain the information described in paragraphs (a)(3)(iii)(C), (a)(3)(iii)(D), and (a)(3)(iii)(E) of Rule 17g-5 available at an identified password-protected Internet Web site that presents the information in a manner indicating which information currently should be relied on to determine or monitor the credit rating; (2) provide access to such password-protected Internet Web site during the applicable calendar year to any NRSRO that provides it with a copy of the certification described in paragraph (e) of Rule 17g-5 that covers that calendar year, provided that such certification indicates that the nationally recognized statistical rating organization providing the certification either: (i) determined and maintained credit ratings for at least 10% of the issued securities and money market instruments for which it accessed information pursuant to paragraph (a)(3)(iii) of Rule 17g-5 in the calendar year prior to the year covered by the certification, if it accessed such information for 10 or more issued securities or money market instruments; or (ii) has not accessed information pursuant to paragraph (a)(3) of Rule 17g-5 10 or more times during the most recently ended calendar year; (3) post on such password-protected Internet Web site all information the arranger provides to the NRSRO, or contracts with a third party to provide to the NRSRO, for the purpose of determining the initial credit rating for the security or money market instrument, including information about the characteristics of the assets underlying or referenced by the security or money market instrument, and the legal structure of the security or money market instrument, at the same time such information is provided to the NRSRO; (4) post on such password-protected Internet Web site all information the arranger provides to the NRSRO, or contracts with a third party to provide to the NRSRO, for the purpose of undertaking credit rating surveillance on the security or money market instrument, including information about the characteristics and performance of the assets underlying or referenced by the security or money market instrument at the same time such information is provided to the NRSRO; and (5) post on such password-protected Internet Web site, promptly after receipt, any executed Form ABS Due Diligence-15E containing information about the security or money market instrument delivered by a person employed to provide third-party due diligence services with respect to the security or money market instrument.

¹⁵ Adopting Release at 63844.

¹⁶ Id.

that creates.¹⁷ The Commission stated that Rule 17g-5(a)(3) was designed to increase the number of credit ratings extant for a given structured finance product and, in particular, to promote the issuance of credit ratings by NRSROs that are not hired by arrangers.¹⁸ The Commission's goal in adopting the rule was to provide users of credit ratings with more views on the creditworthiness of structured finance products.¹⁹ In addition, the Commission stated that Rule 17g-5(a)(3) was designed to reduce the ability of arrangers to obtain better than warranted ratings by exerting influence over NRSROs hired to determine credit ratings for structured finance products.²⁰ Specifically, by opening up the rating process to more NRSROs, the Commission intended to make it easier for the hired NRSRO to resist such pressure by increasing the likelihood that any steps taken to inappropriately favor the arranger could be exposed to the market through the credit ratings issued by other NRSROs.²¹

Rule 17g-5(a)(3) became effective on February 2, 2010, and the compliance date for Rule 17g-5(a)(3) was June 2, 2010.

III. Extension of Conditional Temporary Exemption

In the Order, the Commission requested comment generally, but also on a number of specific issues.²² The Commission received seven comment letters in response to this

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² See Order at 28828.

solicitation of comment.²³ The commenters expressed concern that the application of Rule 17g-5(a)(3) to transactions outside the United States could, in the commenters' view, among other things, disrupt local securitization markets,²⁴ inhibit the ability of local firms to raise capital,²⁵ and conflict with local laws.²⁶ Several commenters also requested that the conditional temporary exemption be extended or made permanent.²⁷ The Commission's Extension Orders again solicited public comment on issues raised in connection with the application of Rule 17g-5(a)(3) outside the United States. Commenters generally supported the exemption regarding such application of the rule, with some commenters requesting that the exemption be made permanent.²⁸

Given the continued concerns about potential disruptions of local securitization markets, the staff of the Commission is considering recommending that the Commission propose an amendment to Rule 17g-5(a)(3) that would provide for a permanent exemption with respect to credit ratings satisfying the conditions of the exemption. In order to provide time for the

²³ Letter from Masamichi Kono, Vice Commissioner for International Affairs, Financial Services Agency, Japan, dated Nov. 12, 2010 ("[Japan FSA Letter](#)"); Letter from Masaru Ono, Executive Director, Securitization Forum of Japan, dated Nov. 12, 2010 ("[SFJ Letter](#)"); Letter from Rick Watson, Managing Director, Association for Financial Markets in Europe / European Securitisation Forum, dated Nov. 11, 2010 ("[AFME Letter](#)"); Letter from Tom Deutsch, Executive Director, American Securitization Forum, and Chris Dalton, Chief Executive Officer, Australian Securitisation Forum, dated Oct. 27, 2010 ("[ASF/AuSF Letter](#)"); Letter from Jack Rando, Director, Capital Markets, Investment Industry Association of Canada, dated Sep. 22, 2010 ("[IIAC Letter](#)"); Letter from Chris Dalton, Chief Executive Officer, Australian Securitisation Forum, dated Jun. 27, 2010 ("[AuSF Letter](#)"); Letter from Takefumi Emori, Managing Director, Japan Credit Rating Agency, Ltd. ("JCR"), dated Jun. 25, 2010 ("[JCR Letter](#)").

²⁴ See [Japan FSA Letter](#); [SFJ Letter](#); [AFME Letter](#); [JCR Letter](#); [AuSF Letter](#).

²⁵ See [AFME Letter](#); [JCR Letter](#); [AuSF Letter](#).

²⁶ See [Japan FSA Letter](#); [AFME Letter](#); [JCR Letter](#); [AuSF Letter](#); [IIAC Letter](#).

²⁷ See [Japan FSA Letter](#); [SFJ Letter](#); [AFME Letter](#); [JCR Letter](#); [ASF/AuSF Letter](#).

²⁸ Comment letters received in response to the requests for comment regarding the application of Rule 17g-5(a)(3) to transactions outside the United States are available at <https://www.sec.gov/comments/s7-04-09/s70409.shtml>. See, e.g., Letter from Richard Hopkin, Managing Director & Head of Fixed Income, Association for Financial Markets in Europe, dated Nov. 1, 2017; Letter from Richard Johns, Executive Director, Structured Finance Industry Group, and Chris Dalton, Chief Executive Officer, Australian Securitisation Forum, dated Jul. 19, 2017.

Commission to consider any such a recommendation and to avoid any disruption if the exemption were allowed to expire, the Commission believes that it is necessary and appropriate in the public interest, and consistent with the protection of investors, to extend the conditional temporary exemption until the earlier of (i) December 2, 2019, or (ii) the compliance date set forth in any final rule that may be adopted by the Commission that provides for a similar exemption.

IV. Conclusion

ACCORDINGLY,

IT IS HEREBY ORDERED, pursuant to Section 36 of the Exchange Act, that a nationally recognized statistical rating organization is exempt from the requirements in Rule 17g-5(a)(3) (17 CFR 240.17g-5(a)(3)) for credit ratings where:

(1) The issuer of the security or money market instrument is not a U.S. person (as defined under Securities Act Rule 902(k)); and

(2) The nationally recognized statistical rating organization 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 of the structured finance product after issuance, only in transactions that occur outside the U.S.,

Until the earlier of (i) December 2, 2019, or (ii) the compliance date set forth in any final rule that may be adopted by the Commission that provides for a similar exemption.

By the Commission.

Brent J. Fields
Secretary

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