

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100902 / September 3, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22050

In the Matter of

**A.M. Best Rating Services,
Inc.**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15E(d) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate, in the public interest and for the protection of investors that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15E(d) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against A.M. Best Rating Services, Inc. (“A.M. Best Rating Services” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Respondent admits the facts set forth in Section III below, acknowledges that its conduct violated the federal securities laws, admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15E(d) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. Nationally recognized statistical rating organizations (“NRSROs”) and the credit ratings they issue play a unique and important role in our financial markets. The federal securities laws impose recordkeeping requirements on NRSROs to establish a framework of oversight to ensure that NRSROs responsibly discharge their role. The Commission has long said that recordkeeping requirements have proven integral to the Commission’s investor protection function because preserved records are the primary means of monitoring compliance with applicable federal securities laws.

2. These proceedings arise out of failures by A.M. Best Rating Services, an NRSRO, to adhere to certain NRSRO recordkeeping requirements. A.M. Best Rating Services employees, including those at senior levels, have communicated using personal mobile devices, by text messages or other text messaging platforms, since at least January 2020, both internally and externally (“off-channel communications”). The messages included discussions of initiating, determining, maintaining, monitoring, changing, or withdrawing a credit rating (“Credit Rating Activities”).

3. A.M. Best Rating Services failed to maintain or preserve messages concerning Credit Rating Activities as required by NRSRO recordkeeping rules. Respondent’s failure involved employees in various departments and at various levels of seniority. As a result, A.M. Best Rating Services violated Section 17(a) of the Exchange Act and Rule 17g-2(b)(7) thereunder.

4. Prior to being approached by the Commission staff, A.M. Best Rating Services undertook efforts designed to ensure the maintenance and preservation of communications relating to Credit Rating Activities, such as by issuing corporate mobile devices to employees with software that allowed electronic communications on such devices to be monitored and retained. A.M. Best Rating Services has initiated a review of its recordkeeping failures and begun a program of remediation to address the failures identified by the Commission staff.

Respondent

5. A.M. Best Rating Services is a Delaware corporation with its principal office in Oldwick, New Jersey. A.M. Best Rating Services is registered with the Commission as an NRSRO.

NRSRO Recordkeeping Requirements

6. Section 17(a)(1) of the Exchange Act authorizes the Commission to issue rules requiring NRSROs to make and keep for prescribed periods, and furnish copies of, such records as necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Exchange Act.

7. Pursuant to this provision, the Commission adopted recordkeeping requirements specific to NRSROs. Those requirements include, among other provisions, Exchange Act Rule 17g-2(b)(7), which requires an NRSRO to retain internal and external communications, including

electronic communications, received and sent by the NRSRO and its employees that relate to Credit Rating Activities. Rule 17g-2(c) specifies that this recordkeeping requirement applies for a period of three years.

8. In adopting Rule 17g-2 in 2007, the Commission emphasized the importance of analogous recordkeeping requirements, stating, “the retention of written communications has played an important role in assisting the Commission in identifying legal violations and compliance issues with respect to other regulated entities.” *Final Rule, Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations*, 72 Fed. Reg. 33563, 33588 (June 18, 2007). The Commission also specifically emphasized the evidentiary relevance of internal NRSRO records, stating that “internal communications will play an important role in assisting the Commission in identifying legal violations and compliance issues in its oversight of NRSROs.” *Id.*

A.M. Best Rating Services’ Electronic Communications Policies and Procedures

9. Since at least 2020, A.M. Best Rating Services maintained certain policies and procedures designed to ensure the retention of business-related records, including electronic communications, pursuant to the relevant recordkeeping provisions.

10. Since before its registration as an NRSRO in 2007, A.M. Best Rating Services has issued employees corporate mobile devices over which they could send or receive electronic communications, including text messages. Starting in April 2014, A.M. Best Rating Services introduced mobile device management technology designed to ensure the maintenance and preservation of all electronic communications, including text messages, sent or received over firm-issued devices. Firm-issued devices also restricted users’ ability to download non-approved software, including other communications and social media software. A.M. Best Rating Services employees were advised that they were required to use firm-approved methods, including firm-issued devices, for business related communications and that the use of unapproved electronic communications methods, including on personal devices, was not permitted.

11. Messages sent through A.M. Best Rating Services’ approved communication methods were monitored, subject to review, and, when appropriate, archived. Messages sent through unapproved communication methods, such as on personal devices, were not monitored, subject to review, or archived.

A.M. Best Rating Services’ Recordkeeping Failures

12. Since at least January 2020, A.M. Best Rating Services employees involved in determining credit ratings, including those at senior levels, have communicated internally and externally for purposes relating to Credit Rating Activities using text messages on personal devices, which were not retained or monitored by A.M. Best Rating Services.

13. In March 2023, Commission staff commenced an investigation to determine whether A.M. Best Rating Services was properly retaining messages relating to Credit Rating Activities that were sent and received on personal or work-issued devices. A.M. Best Rating

Services cooperated with the investigation by voluntarily gathering communications from the devices of a sampling of employees, including senior executives and group managers.

14. The Commission staff's investigation uncovered off-channel communications relating to Credit Rating Activities at various seniority levels of A.M. Best Rating Services' credit rating business. The staff requested off-channel communications data from various A.M. Best Rating Services personnel and found that a majority of the individuals sampled had engaged in off-channel communications relating to Credit Rating Activities. Overall, these personnel sent and received numerous off-channel communications on their personal devices relating to Credit Rating Activities, involving other A.M. Best Rating Services employees and credit rating clients.

15. For example, from July 13, 2021 to September 30, 2021, a senior director exchanged numerous off-channel communications, on his personal device, relating to Credit Rating Activities with at least three A.M. Best Rating Services colleagues, including multiple directors.

16. In addition, from December 15, 2021 to June 24, 2022, a senior director exchanged off-channel communications, on his personal device, relating to Credit Rating Activities with at least three A.M. Best Rating Services colleagues, including multiple directors.

17. As another example, from December 2, 2022 to December 15, 2022, a managing director exchanged numerous off-channel communications, on his personal device, relating to Credit Rating Activities with a representative of a potential client.

A.M. Best Rating Services' Violation

18. As a result of the conduct described above, A.M. Best Rating Services willfully² violated Section 17(a)(1) of the Exchange Act and Rule 17g-2(b)(7) thereunder, which requires each NRSRO, for a period of three years, to retain internal and external communications, including electronic communications, received and sent by the NRSRO and its employees that relate to initiating, determining, maintaining, monitoring, changing, or withdrawing a credit rating.

² "Willfully," for purposes of imposing relief under Section 15E(d) of the Exchange Act, "means no more than that the person charged with the duty knows what he is doing." See *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Investment Advisers Act of 1940).

A.M. Best Rating Services' Efforts to Comply

19. In determining to accept the Offer, the Commission considered steps undertaken by A.M. Best Rating Services prior to and after being approached by Commission staff, as well as cooperation afforded the Commission staff. Beginning in April 2014, A.M. Best Rating Services began to ensure that employees' firm-issued devices were equipped with mobile device management technology, which ensured that electronic communications, including text messages, were maintained and preserved, and which restricted users' ability to download non-approved software. A.M. Best Rating Services introduced additional or revised policies and procedures regarding use of electronic communications, including by requiring employees to submit quarterly certifications as to their compliance with A.M. Best Rating Services' electronic communications policies starting in October 2023.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondent A.M. Best Rating Services' Offer.

Accordingly, pursuant to Sections 15E(d) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent A.M. Best Rating Services cease and desist from committing or causing any violations and any future violations of Section 17(a)(1) of the Exchange Act and Rule 17g-2(b)(7) thereunder.

B. Respondent A.M. Best Rating Services is censured.

C. Respondent A.M. Best Rating Services shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$1,000,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying A.M. Best Rating Services as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Sheldon L. Pollock, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York 10004-2626.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within thirty (30) days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary