



November 12, 2025

Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
Attn: Vanessa A. Countryman, Secretary

VIA EMAIL to the Secretary of the Commission

Re: Petition for Rulemaking to Amend Rule 17g-5 under the Exchange Act

Ladies and Gentlemen:

The CRE Finance Council (“CREFC”), the Mortgage Bankers Association (“MBA”), and the Securities Industry and Financial Markets Association (“SIFMA”)¹ hereby respectfully petition the Securities and Exchange Commission (the “Commission”) pursuant to Rule 192 of the Commission’s Rules of Practice² for a rulemaking to amend Rule 17g-5 under the Exchange Act³ to remove the procedural requirements under Rule 17g-5(a)(3)(iii)(C) and (D) (the “Posting Requirements”).

Over the past 15 years, considerable resources have been devoted to making information available to nationally recognized statistical rating organizations (“NRSROs”) in compliance with the Posting Requirements to allow NRSROs to issue unsolicited ratings. We are aware of no such unsolicited ratings having been issued since the rule became effective in 2010.

The request set forth below is the product of discussions with key constituencies, including issuers, servicers, and rating agencies, and is informed by the specific experiences of our industries with Rule 17g-5.

A. Background

In September 2006, Congress passed the Credit Rating Agency Reform Act of 2006 (the “Rating Agency Act”) with the stated goal of improving credit ratings by “fostering accountability, transparency, and competition.”⁴ As part of the Rating Agency Act, Congress

¹ Please see Appendix for more information about the undersigned trade organizations.

² 17 C.F.R. § 201.192(a).

³ 17 C.F.R. § 240.17g-5. The Securities Exchange Act of 1934 is referred to herein as the “Exchange Act.”

⁴ Pub. L. 109-291 (2006).

adopted new Section 15E of the Exchange Act, which prescribes rules for the registration of NRSROs and also directs the Commission to issue rules to prohibit, or require the management and disclosure of, conflicts of interest relating to the issuance of credit ratings by NRSROs.⁵

In June 2007, the Commission adopted a set of rules pursuant to the direction under Section 15E(h)(2) of the Exchange Act.⁶ Those rules included Rule 17g-5, which prohibits persons at an NRSRO from having certain conflicts of interests. Some conflicts of interest are prohibited outright (e.g., an NRSRO may not rate an entity if the NRSRO has a direct ownership interest in such entity), and some are permissible subject to certain conditions (e.g., an NRSRO that is paid by an issuer to rate its securities has a permissible conflict of interest).⁷ As originally adopted, the requirements for permissible conflicts of interest were: disclosure of the type of conflict of interest on Form NRSRO and maintaining policies and procedures to manage conflicts of interest (the “Original Requirements”).⁸

In December 2009, Rule 17g-5 was amended to add a permissible conflict of interest provision specifically relating to asset-backed securities and to add the Posting Requirements as additional requirements applicable to that conflict of interest.⁹ The Posting Requirements require an NRSRO engaged on a transaction to obtain a written representation from the issuer, sponsor, or underwriter that such party will make available on a website accessible by all NRSROs¹⁰ all information provided to engaged NRSROs for purposes of determining initial credit ratings or undertaking credit rating surveillance.¹¹ Such information must be posted at the same time that it is provided to the engaged NRSROs.

⁵ 15 U.S.C. § 78o-7.

⁶ Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations, Release No. 34-55857; File No. S7-04-07, 72 Fed. Reg. 33564 (Jun. 18, 2007).

⁷ Id. at 33623. See also 17 C.F.R. § 240.17g-5(b)(1) and (c)(2).

⁸ Id. at 33622-23.

⁹ Amendments to Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-61050; File No. S7-04-09, 74 Fed. Reg. 63831 (Dec. 4, 2009) (the “Amending Release”). Under new clause (b)(9) of Rule 17g-5, an NRSRO has a conflict of interest if it issues or maintains credit ratings with respect to asset-backed securities where the issuer, sponsor, or underwriter pays for such credit ratings.

¹⁰ As a condition to accessing such information, Rule 17g-5(a)(3)(ii) requires a non-engaged NRSRO to certify that it will determine and maintain credit ratings for at least 10% of the securities for which it accesses information (if it accesses such information for 10 or more securities during the related calendar year).

¹¹ The posting requirements under Rule 17g-5(a)(3)(iii)(C) and (D) are set out in full below:

(C) Post on such password-protected Internet Web site all information the issuer, sponsor, or underwriter provides to the nationally recognized statistical rating organization, or contracts with a third party to provide to the nationally recognized statistical rating organization, 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 nationally recognized statistical rating organization; and

In the release proposing such amendment, the Commission noted that the new specified conflict of interest for asset-backed securities is a “subset of the broader conflict already identified in paragraph (b)(1) of Rule 17g-5.”¹² The Commission reasoned that adding the Posting Requirements would give NRSROs the opportunity to provide competing unsolicited ratings and provide an additional check on NRSROs with a conflict of interest.¹³ More credit ratings would, in the Commission’s view, reveal NRSROs that are unduly influenced by the related conflict of interest, while also providing a counterweight that would allow NRSROs to resist pressure to issue favorable credit ratings.

B. The CRE Industry’s Experience with the Posting Requirements

To our knowledge, since the adoption of the Posting Requirements, no unsolicited ratings have been issued and no investors have requested that outside NRSROs issue competing ratings on existing transactions. Information continues to be posted to the relevant websites, but remains unused by non-engaged NRSROs. At the same time, the CRE industry has borne the burdens of the Posting Requirements, some of which have worked against stated goals of the Rating Agency Act. These specifically include reduced transparency, legal uncertainty, and unnecessary additional costs.

Reduced transparency. The requirement to post all information, including information conveyed orally, restricts the free flow of information to and from NRSROs. Legal and other compliance restrictions often prevent recording or other transcription of oral communications. As a result, instead of real-time discussions with NRSRO representatives, market participants are often forced into cumbersome written correspondence. NRSROs are therefore less able to timely incorporate relevant information into their ratings process. This restriction also impairs deal participants’ ability to obtain timely NRSRO feedback on deal terms and features, making it more difficult to optimize deal terms for market conditions.

(D) Post on such password-protected Internet Web site all information the issuer, sponsor, or underwriter provides to the nationally recognized statistical rating organization, or contracts with a third party to provide to the nationally recognized statistical rating organization, 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 nationally recognized statistical rating organization.

¹² Proposed Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-57967; File No. S7-13-08, 73 Fed. Reg. 36212 at 36219 (Jun. 25, 2008) (the “Proposing Release”). In the amendment, the Commission focused specifically on asset-backed securities, noting that its goal was to improve “the quality of credit ratings determined by NRSROs generally and, in particular, for structured finance products such as RMBS and CDOs.”

¹³ The Proposing Release states in relevant part: “The goal of this proposed amendment is to promote the effective management of this conflict of interest, increase the transparency of the process for rating structured finance products, and foster competition by making it feasible for more market participants, in particular NRSROs that are not contracted by the arranger to issue a rating but still wish to do so, to perform credit analysis on the instrument and to monitor the instrument’s creditworthiness. As noted above, by providing the opportunity for more NRSROs to determine credit ratings for structured finance products, this proposal is designed to increase the number of ratings extant for a given instrument and, in particular, promote the issuance of ratings by NRSROs that are not hired by the arranger.” Id. at 36219.

Legal uncertainty. Rule 17g-5 requires posting information “at the same time” that it is provided to any NRSRO. In the absence of recordings (as noted above), oral communications must be transcribed or the substance otherwise memorialized, which introduces a delay between the communication and posting that is arguably in contravention of such requirement. This uncertainty creates costly and time-consuming barriers to engaging in discussions with NRSROs and providing them with timely information.

Cost. The Posting Requirements create an unnecessary burden and expense for the CRE industry. Each market participant, from issuers to service providers, must also dedicate personnel and technology resources to capture and post communications and materials for the life of the transaction. After the initial issuance of securities, all communications of the trustee, servicers, and other service providers regarding each mortgage loan and the securities continue to be subject to the Posting Requirements.

C. Overall Impact

The Posting Requirements are a burden with no corresponding benefit. Removing the Posting Requirements would relieve this burden and would in fact advance the stated goals of the Rating Agency Act.

We note that our proposal would leave in place the Original Requirements under Rule 17g-5, as well as all other conflict of interest measures implemented under the Rating Agency Act. For example, (1) Commission certification of NRSROs, (2) separation of the production of credit ratings from sales and marketing activities, and (3) the requirement to publish detailed performance data regarding credit ratings have all served as effective checks on NRSRO conflicts of interest.

D. Request

In light of the experiences described above, we request a rulemaking to remove the Posting Requirements from Rule 17g-5. We believe that such removal can be implemented by the Commission pursuant to Section 15E(h)(2) of the Exchange Act.

We greatly appreciate the Commission’s consideration of our request. If the Staff of the Commission have any questions or would like to discuss, please feel free to contact Sairah Burki at SBurki@crefc.org.

Sincerely,

CRE Finance Council

Mortgage Bankers Association

Securities Industry and Financial Markets Association

Appendix

CREFC comprises over 400 institutional members representing U.S. commercial and multifamily real estate investors, lenders, and service providers – a market with over \$6 trillion of commercial real estate (“CRE”) debt outstanding. Our principal functions include setting market standards, facilitating the free and open flow of market information, and education at all levels. One of our core missions is to foster the efficient and sustainable operation of CRE securitizations. To this end, CREFC has worked closely with policymakers to educate and inform legislative and regulatory actions to help optimize market standards and regulations and ensure a consistent flow of commercial real estate capital.

MBA is the national association representing the real estate finance industry, an industry that employs more than 330,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 1,700 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, SIFMA advocates on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. SIFMA serves as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. SIFMA also provides a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).