

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95127 / June 21, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20902

In the Matter of

**EGAN-JONES RATINGS
COMPANY and SEAN EGAN,**

Respondents.

**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 and in the public interest 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 Egan-Jones Ratings Company and Sean Egan (“Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent 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 Respondents' Offers, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the securities laws, including provisions intended to curb potential conflicts of interest at credit rating agencies, by Egan-Jones Ratings Company ("EJR"), a Nationally Recognized Statistical Rating Organization ("NRSRO"). Specifically, EJR violated Rule 17g-5(c)(8)(i) of the Exchange Act by issuing and maintaining a credit rating for a client where Sean Egan, EJR's founder and sole owner, had participated in determining the credit rating at issue and engaged in sales and marketing activities with respect to that client. Because Egan had been influenced by sales or marketing considerations at the time that he participated in determining the credit rating, EJR also violated Rule 17g-5(c)(8)(ii) of the Exchange Act. Egan caused EJR's violation of Rules 17g-5(c)(8)(i) and (ii).

2. EJR also violated Rule 17g-5(c)(1) of the Exchange Act, which is a conflict-of-interest rule that prohibits an NRSRO from issuing or maintaining a credit rating solicited by a person that, in the most recently ended fiscal year, provided the NRSRO with net revenue equaling or exceeding ten percent of the total net revenue of the NRSRO for the fiscal year.

3. EJR also failed to establish, maintain, and enforce policies and procedures reasonably designed to manage conflicts of interest, in violation of Section 15E(h)(1) of the Exchange Act.

4. An order issued by the Commission on January 22, 2013 (the "2013 Order")² revoked EJR's NRSRO registration for rating the classes of issuers of (a) asset-backed securities and (b) government, municipal, and foreign government securities, and also ordered EJR and Egan to cease and desist from committing or causing any violations of various securities laws. By rating two asset-backed securities and two municipal securities in 2017 and 2018 and making statements indicating that it was a registered NRSRO, but without prominently disclosing that the ratings in such ratings classes were not issued or maintained by an NRSRO that was registered to issue ratings in such classes, EJR violated Section 15E(f)(2) of the Exchange Act.

Respondents

5. **Egan-Jones Ratings Company** is a privately owned credit rating agency

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

² *In re Egan-Jones Ratings Co., et al.*, Exch. Act Rel. No. 68703 (Jan. 22, 2013) (settled order).

incorporated in Delaware and headquartered in Haverford, Pennsylvania. On December 21, 2007, the Commission approved EJR's application to become registered as an NRSRO for three rating classes: financial institutions, insurance companies, and corporate issuers. On December 4, 2008, the Commission approved EJR's application for registration as an NRSRO for two additional rating classes: issuers of asset-backed securities ("ABS") and issuers of government securities, municipal securities, or securities issued by a foreign government.

6. **Sean Egan**, age 64, is the founder and chief executive officer of EJR. Egan is, and during the relevant time was, the sole shareholder of EJR. During the relevant time, Egan also was EJR's president, the head of EJR's ratings group, and, other than the period from August 21, 2018 to April 29, 2019, the chairperson of EJR's board of directors.

Facts

A. EJR and Egan are Subject to a Prior Cease-and-Desist and Administrative Order Issued by the Commission.

7. The 2013 Order found that EJR willfully violated Sections 15E(a)(1), 15E(a)(1)(B)(ix), 15E(a)(1)(C), 15E(b)(2), 15E(h)(1), and 17(a) of the Exchange Act and Rules 17g-1(a), 17g-1(b), 17g-1(f), 17g-2(a)(2), 17g-2(a)(6), 17g-2(b)(2), 17g-2(b)(7), and 17g-5(c)(2), and that Egan willfully made, or caused EJR to make, material misstatements in its Form NRSRO; and caused EJR's violations of Sections 15E and 17(a) of the Exchange Act and Rules 17g-1, 17g-2, and 17g-5 thereunder. The 2013 Order also required EJR to cease and desist from committing or causing violations of Section 15E(h)(1) and Rule 17g-5, and Egan to cease and desist from committing or causing any violations of Rule 17g-5.

8. The 2013 Order revoked EJR's NRSRO registrations for the classes of (a) issuers of asset-backed securities and (b) issuers of government, municipal and foreign government securities, and barred Egan from association with any NRSRO registered in those classes, with a right to reapply for registration and reentry after eighteen months. It further ordered EJR to disclose prominently that its ratings of asset-backed and government securities were not issued or maintained by a registered NRSRO.

B. EJR Violated, and Egan Caused EJR's Violation of, Rules 17g-5(c)(8)(i) and (ii) of the Exchange Act.

9. The Commission adopted Rule 17g-5(c)(8) pursuant to the Dodd-Frank Act. In the wake of the 2008 financial crisis, Congress mandated that the Commission prescribe rules to improve the regulation of NRSROs. Congress specifically found that "credit rating agencies face conflicts of interest that need to be carefully monitored." Dodd-Frank § 931. Accordingly, the statute directed the Commission to "issue rules to prevent the sales and marketing considerations of a [NRSRO] from influencing the production of ratings by the [NRSRO]." Dodd-Frank § 932(a), *codified at* 15 U.S.C. § 78o-7(h)(3)(A).

10. The Commission adopted Rule 17g-5(c)(8) for the purpose of insulating rating

analysts from business pressures by separating rating agencies' business-development function from their analytical function (that is, the function of determining or monitoring a credit rating or approving procedures or methodologies used for determining the credit rating). The rule states that an NRSRO "is prohibited from having the following conflicts of interest relating to the issuance or maintenance of a credit rating as a credit rating agency . . . (8) The [NRSRO] issues or maintains a credit rating where a person within the [NRSRO] who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also: (i) Participates in sales or marketing of a product or service of the [NRSRO] or a product or service of an affiliate of the [NRSRO]" or "(ii) is influenced by sales or marketing considerations."

11. According to the Commission's adopting release, Rule 17g-5(c)(8)(i) "is designed to address situations in which, for example, individuals within an NRSRO who engage in activities to sell products and services (both ratings-related and non-ratings-related) of the NRSRO or its affiliates could seek to influence a specific credit rating to favor an existing or prospective client . . ." *Nationally Recognized Statistical Rating Organizations*, Final Rule, 79 Fed. Reg. 55,078, 55,108 (Sept. 15, 2014).

12. Rule 17g-5(c)(8)(ii) was intended to "curb potential conflicts of interest related to 'rating catering' practices" and "promote the integrity and quality of credit ratings to the benefit of their users." *Id.* at 55,092. The Commission's adopting release explained that "there are a number of possible channels of influence" by sales or marketing considerations, including clients "who pressure analysts to produce inflated credit ratings to retain their business" or "managers who are not involved in sales and marketing activities but may seek to pressure analysts to produce inflated credit ratings to increase or retain the NRSRO's market share." *Id.* at 55,110.

13. The Commission further explained that the prohibition against those participating in a credit rating from being influenced by sales or marketing considerations is "an absolute prohibition." *Id.* at 55,108.

EJR's Procedure for Determining Ratings

14. In light of the requirement that credit rating analysts be insulated from business pressures, EJER's policies and procedures required that the firm's ratings group be separated from the firm's business and marketing group. All business matters were required to be handled by a client relationship manager in the firm's business and marketing group; members of the ratings group were permitted to discuss only rating matters with clients and were prohibited from discussing, negotiating, or arranging fees or engaging in other sales and marketing activities.

15. If a client requested a private rating from EJER, a member of EJER's business and marketing group would convey that request to EJER's ratings analysts, who would determine their recommended rating for a given transaction. EJER would convene a Ratings Review Committee ("RRC") to evaluate the proposed rating and vote on it. An RRC consisted of (1) the presenting analyst, who led the ratings team that proposed the rating; and (2) at least two voting members, one of whom also could serve as the committee's chairperson. The presenting analyst was not

allowed to vote. According to EJR's rating policies and procedures, a majority of the voting members of the RRC needed to vote in support of a proposed rating before it could be issued by EJR.

Egan Caused EJR's Violation of Rule 17g-5(c)(8)(i) and (ii)

16. On July 11, 2019, Client A engaged EJR to issue a rating for a real estate transaction. Although EJR's typical turnaround time for that type of rating was approximately five days, on July 23, EJR discovered that the client relationship manager for Client A had failed to submit the ratings request to the ratings group.

17. On July 31, Client A emailed EJR's client relationship manager to ask about the status of the rating and the reason for the delay. In those emails to EJR, Client A complained that the delay was "beyond ridiculous" and demanded that the rating be issued that day by 5:00 p.m. Client A also threatened to cancel the pending rating request and stop doing business with EJR.

18. Egan — who at the time was EJR's president and the head of EJR's ratings group — spoke to the client relationship manager and stated that Client A was an important client for EJR and that he was concerned that EJR could lose Client A's business.

19. Later on July 31, Egan called Client A and promised that EJR would provide the requested rating later that day. Egan also told Client A that the client relationship manager was being replaced. That communication violated EJR's policies, which stated that "communication between the Ratings group and the clients shall only relate to the rating matters and not involve sales or marketing matters nor being influenced by the sales and marketing matters." The client relationship manager, ultimately, was taken off the account for Client A.

20. At around 4:30 p.m. on July 31, a half hour before Client A's deadline, EJR convened an RRC by telephone to vote on a proposed rating for Client A. Egan and a senior EJR analyst ("Analyst 1") were the voting members of the committee, with Analyst 1 serving as the chairperson. The presenting analyst on the committee (the "Presenting Analyst") recommended a rating of BBB+ for the transaction. However, during the RRC meeting, Analyst 1 requested certain information about the transaction that she believed was essential for determining an accurate rating. Because EJR did not have the information that she sought, Analyst 1 abstained from voting on the proposed rating. Without a majority of voting members in support, the proposed rating was not approved by the RRC.

21. At approximately 5:13 p.m., Client A sent Egan an email stating: "We are passed [sic] 5pm. Where is the rating?"

22. At approximately 5:17 p.m., Egan became the chairperson of the RRC. Analyst 1 was replaced with another EJR analyst ("Analyst 2") as the second voting member.

23. At 5:21 p.m., Egan and Analyst 2 voted to approve the proposed BBB+ rating, which EJR then issued.

24. Client A, however, was displeased with the BBB+ rating, and emailed the Presenting Analyst asking why the rating only was BBB+ and noted that EJR had recently rated another, similar transaction for Client A two notches higher. When the Presenting Analyst attempted to explain the reason for the BBB+ rating, Client A replied, “Surely you jest. I recommend you go back and verify your models. You must have missed something.” Client A then forwarded those emails to Egan and asked Egan to call to discuss the rating.

25. At that time it was EJR’s policy that any client who disagreed with an EJR rating would be asked to “provide written support for their objection including any relevant materials” for review by the RRC. Client A, however, provided no written support for its purported objections to the BBB+ rating, and EJR did not ask Client A for such written support.

26. On August 6 and August 7, 2019, Client A emailed Egan asking him whether there was any “update” on the rating.

27. Around this time, Egan, in his capacity as a member of the prior RRC that had approved the BBB+ rating on July 31, directed the Presenting Analyst to develop a new rating tool in light of Client A’s concerns about the BBB+ rating. On August 12, EJR convened another RRC, with Egan as a voting member and an analyst who had not participated in either of the two prior RRCs as the RRC chair and second voting member (“Analyst 3”). Neither Analyst 1 nor Analyst 2 was invited to serve on this new RRC.

28. The Presenting Analyst again proposed a rating of BBB+. Notwithstanding the Presenting Analyst’s recommendation, and although EJR had received no substantive information from Client A to support a higher rating, Egan and Analyst 3, relying on the new rating tool referenced above, voted to increase the rating one notch to A-.

29. On August 16, EJR sent Client A the upgraded rating. After receiving the upgraded rating, a manager at Client A emailed his team at Client A, “Finally got the A-rating....”

30. Upon learning over a month later that two RRCs with different voting members had been convened to consider Client A’s rating, EJR’s Designated Compliance Officer emailed another EJR employee: “I don’t think it’s appropriate to change RRC members when reconvening to address a[] [client’s] appeal” unless approved by compliance, since doing so may give rise to a claim of “shuffling people around for a higher rating.”

31. Under these circumstances, Egan, by advising Client A that EJR’s client relationship manager was being replaced and informing Client A when the rating would be issued, effectively assumed the role of EJR’s client relationship manager with Client A. After doing so, Egan — who knew that Client A was important to EJR and understood that potential future business with Client A was at risk — rejected the concerns and recommendations of senior EJR analysts in ultimately approving the A- rating for Client A. Egan’s continued participation in and direction of the rating process as to Client A — after becoming involved in business and marketing activities as to Client A and being influenced by sales and marketing

considerations — constituted a prohibited conflict of interest.

32. By issuing and maintaining the rating for Client A under the circumstances described above, EJR violated Rule 17g-5(c)(8)(i) and (ii). By violating the rule, EJR violated the 2013 Order. Egan caused EJR's violations of Rule 17g-5(c)(8)(i) and (ii). By causing EJR's violations, Egan violated the 2013 Order.

C. EJR Violated Rule 17g-5(c)(1) of the Exchange Act.

33. Rule 17g-5(c)(1) of the Exchange Act (the "Ten Percent Rule") prohibits an NRSRO from issuing or maintaining a credit rating solicited by a person that, in the most recently ended fiscal year, provided the NRSRO with net revenue equal to or exceeding ten percent of the total net revenue of the NRSRO for the fiscal year.³ The adopting release for Rule 17g-5(c)(1) explains that a person who provides ten percent or more of an NRSRO's net revenue would be "in a position to exercise substantial influence on the NRSRO," and that it would "be difficult for the NRSRO to remain impartial, given the impact on the NRSRO's income if the person withdrew its business." *Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations*; Final Rule, 72 Fed. Reg. 33,564, 33,598 (June 18, 2007).

34. By August 2017, EJR was aware, based on internal revenue forecasts, that a particular client (Client B) might contribute more than ten percent of EJR's net revenue by the end of the fiscal year. EJR continued to provide rating services and accept payments from Client B through the end of 2017.

35. As of December 31, 2017, Client B accounted for 13.9 percent of EJR's year-to-date net revenue.

36. On March 26, 2018, EJR submitted its independently audited 2017 financial statements and the associated unaudited financial revenue report. In those financial statements, EJR recorded a \$538,000 loss contingency, which EJR described as "excess revenue refundable" and classified as a current liability on its balance sheet as of December 31, 2017. The loss contingency purported to offset the exact amount by which revenues from Client B exceeded ten percent of EJR's net revenues for 2017.

37. That loss contingency, however, was not accrued in accordance with generally accepted accounting principles ("GAAP") because EJR failed to satisfy the conditions precedent for accrual of a loss contingency under ASC 450-20-25-2. EJR lacked a reasonable basis for believing that it was probable that (a) a claim would be asserted by or concerning Client B or (b)

³ As explained in the Ten Percent Rule Final Release, "net revenue" is "revenue earned by the ... NRSRO for any type of service or product, regardless of whether related to credit rating services, and net of any rebates and allowances paid or owed to the person by the ... NRSRO." *Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations*; Final Rule, 72 Fed. Reg. 33,564, 33,580 (June 18, 2007).

the outcome of any such claim would be unfavorable. The amount of any unfavorable outcome also was not reasonably estimable.

38. Notwithstanding that Client B had contributed more than ten percent of EJR's net revenues in 2017, EJR continued to issue and maintain ratings for Client B in 2018, issuing at least thirty-nine new ratings for Client B from January through May 2018. During that time, EJR also continued to surveil and maintain ratings that it previously had issued for Client B.

39. On May 25, 2018, EJR ceased issuing new ratings or surveillance ratings for Client B. However, at least until December 2018, EJR continued to maintain ratings for Client B that it had previously issued.

40. By continuing to issue and maintain ratings for Client B in 2018 — notwithstanding that Client B had contributed more than ten percent of EJR's net revenue in 2017 — EJR violated Exchange Act Rule 17g-5(c)(1) and, by violating the rule, EJR also violated the 2013 Order.

D. EJR Failed to Establish, Maintain, or Enforce Policies and Procedures Reasonably Designed to Manage Conflicts of Interest.

41. Section 15E(h)(1) of the Exchange Act requires NRSROs to “establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address and manage any conflicts of interest that can arise from such business.”

42. EJR had in place during the relevant time certain policies and procedures intended to address the Ten Percent Rule. However, at least throughout 2017 and early 2018, those policies and procedures were neither reasonably designed nor enforced. EJR did not have any written process or procedure outlining what steps EJR would take if a client was projected to or did contribute ten percent or more of EJR's net revenue by the end of a given fiscal year.

43. EJR also had established certain policies and procedures that were designed to prevent someone who had participated in determining a credit rating from also participating in sales or marketing or being influenced by sales and marketing considerations with respect to the rating. EJR failed to enforce those policies and procedures. With respect to the rating EJR provided for Client A, EJR failed to enforce its policies and procedures and, as a result, did not prevent the issuance and maintenance of a rating that Egan had participated in determining at a time when he also participated in sales or marketing and was influenced by sales or marketing considerations.

44. As a result, EJR violated Section 15E(h)(1) of the Exchange Act. By violating the Section 15E(h)(1), EJR also violated the 2013 Order.

E. EJR Violated Section 15E(f)(2) of the Exchange Act.

45. Section 15E(f)(2) of the Exchange Act makes it unlawful for any rating agency that is not registered as an NRSRO to state that it is an NRSRO. At all relevant times, EJR and Egan were subject to the 2013 Order which, among other things, revoked EJR's registration to rate issuers of asset-backed and government securities as an NRSRO and required EJR to disclose prominently that ratings in those rating classes are not issued or maintained by a registered NRSRO.

46. Despite not being registered as an NRSRO for rating issuers of ABS and government securities, in 2017 and 2018, EJR rated two ABS and two municipal securities. In its report for each of the ratings, EJR stated that it used a methodology described in its Form NRSRO, without prominently disclosing in its reports that those ratings were not issued or maintained by an NRSRO registered to issue ratings in those classes. The methodologies required to be described in Form NRSRO are those that are used to determine credit ratings in ratings classes in which an NRSRO is registered.

EJR's Rating of ABS

47. In late 2016, Client C engaged EJR to rate two tranches of a transaction involving the financing of certain receivables. On January 19, 2017, EJR provided Client C with an indicative rating on the transaction, but at the same time questioned whether the transaction might constitute an ABS. EJR asked Client C to provide it with the transaction documents to evaluate whether the transaction was an ABS.

48. In February and March 2017, EJR issued two more indicative ratings on the transaction. EJR informed Client C at this time that Client C "might be bumping into structured finance if [it] plan[s] to structure with various tranche [sic]."

49. Based on a term sheet and other materials received from Client C, on May 3, 2017, EJR issued the final rating for two tranches of Client C's transaction in the corporate ratings class, in which EJR was registered as an NRSRO, rather than the ABS class in which EJR's registration had been revoked. EJR issued those ratings notwithstanding that Client C had not provided the requested transaction documents and the question of whether the transaction was an ABS remained unresolved at that time. Moreover, the final ratings had been reviewed by a EJR senior analyst and voted on by the RRC without any documented discussion concerning the structure or proper rating class of the transaction. In its rating report, EJR stated that it used a methodology described in its Form NRSRO, but failed to disclose prominently that the rating had not been issued by an NRSRO registered to issue ratings for the ABS class.

50. In August 2017, Client C requested an updated rating letter from EJR and provided EJR with certain transaction documents. On or around September 6, based on advice from its outside counsel, EJR determined that the two ratings in May 2017 involved an ABS.

51. EJR notified Client C of its determination but did not withdraw the May 2017 NRSRO rating. Instead, EJR told Client C that it would need to restructure the transaction as a

loan or as a note from an operating company in order to receive an updated NRSRO rating in the corporate ratings class. Client C subsequently modified the terms of the transaction such that the transaction was not classified as an ABS.

EJR's Rating of Municipal Securities

52. In October 2017, Client D requested that EJR provide a final rating for a bond referred to as a Property Assessed Clean Energy (“PACE”) bond, which would finance a redevelopment and energy-efficiency improvement of a certain property.

53. Client D’s requests sent to EJR included an excerpt, in bold type, that identified the bond’s CUSIP as a “*Municipal CUSIP*” (emphasis added).

54. The ratings team that generated the rating was unfamiliar with the PACE program, and conducted general internet research on the bond. During the preparation of the ratings report, an EJR analyst questioned whether the bond was a municipal security, but was told by her supervisor that it was not. The ratings team consequently treated the bond as a corporate security rather than as a municipal security.

55. On December 27, EJR issued a final rating for the transaction. In its rating report, EJR stated that it used a methodology described in its Form NRSRO, but failed to disclose prominently that the rating had not been issued by an NRSRO registered to issue ratings for issuers of government, municipal, or foreign government securities.

56. On January 11, 2018, Client D asked EJR to provide a final rating for another, similar PACE bond. Documents for that transaction also included an excerpt that identified, in bold type, the bond’s CUSIP as a “*Municipal CUSIP*” (emphasis added).

57. Nevertheless, on January 26, EJR issued a final rating for the transaction. In its rating report, EJR stated that it used a methodology described in its Form NRSRO, but failed to disclose prominently that the rating had not been issued by an NRSRO registered to issue ratings for issuers of government, municipal, or foreign government securities.

58. By rating two asset-backed securities and two municipal securities in 2017 and 2018 — while making statements indicating that it was a registered NRSRO, but without prominently disclosing that the ratings in such ratings classes were not issued or maintained by an NRSRO that was registered to issue ratings in such classes — EJR violated Section 15E(f)(2) of the Exchange Act and the 2013 Order.

Violations

59. As a result of the conduct described above, EJR willfully⁴ violated Rule 17g-5(c)(8)(i) of the Exchange Act, which prohibits NRSROs from issuing or maintaining a credit rating where a person within the NRSRO who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also participates in sales or marketing of a product or service of the NRSRO or an affiliate of the NRSRO.

60. As a result of the conduct described above, EJR willfully violated Rule 17g-5(c)(8)(ii) of the Exchange Act, which prohibits NRSROs from issuing or maintaining a credit rating where a person within the NRSRO who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also is influenced by sales or marketing considerations.

61. As a result of the conduct described above, Egan caused EJR's violations of Rules 17g-5(c)(8)(i) and (ii) of the Exchange Act.

62. As a result of the conduct described above, EJR willfully violated Rule 17g-5(c)(1) of the Exchange Act, which prohibits an NRSRO from issuing or maintaining a credit rating solicited by a person that, in the most recently ended fiscal year, provided the NRSRO with net revenue equal to or exceeding ten percent of the total net revenue of the NRSRO for the fiscal year.

63. As a result of the conduct described above, EJR willfully violated Section 15E(h)(1) of the Exchange Act, which requires an NRSRO to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such NRSRO and affiliated persons and affiliated companies thereof, to address and manage any conflicts of interest that can arise from such business.

64. As a result of the conduct described above, EJR willfully violated Section 15E(f)(2) of the Exchange Act, which prohibits a credit rating agency that is not registered as an NRSRO under that section to state that such credit rating agency is a registered NRSRO.

⁴ "Willfully," for purposes of imposing relief under Section 15E(d)(1) of the Exchange Act, "means no more than that the person charged with the duty knows what he is doing." *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 Advisers Act).

Disgorgement

65. The disgorgement and prejudgment interest ordered in paragraph IV.E is consistent with equitable principles, does not exceed EJR's net profits from its violations, and returning the money to EJR would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.D shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Undertakings

Respondent EJR has undertaken to:

66. Within 90 days of the entry of this Order, conduct a training program addressing the Commission's conflict of interest rules, including but not limited to the prohibitions set forth in Rules 17g-5(c)(8) and 17g-5(c)(1) of the Exchange Act. This training program shall educate attendees regarding applicable rules and regulations and relevant policies and procedures. This training shall also explain how employees can raise concerns and the avenues for doing so, including internally and directly with the SEC through the Whistleblower Program. Attendance at this training program will be mandatory for all current EJR personnel, each of whom shall certify in writing that he or she attended this program. Within 90 days of the entry of this Order, EJR also will create policies or procedures to ensure that this training is provided to all new employees in their first fourteen days of employment, and repeated annually for all employees. As part of this policy or procedure, both new employees and recipients of the annual training shall attest in writing that they attended the training. EJR or any successor will maintain the training program for not less than two years after entry of this order. EJR will certify, through its Designated Compliance Officer, that it has conducted the above-described training program and has created the above-described policies and procedures.

67. Prepare and submit revenue reports through fiscal year 2024 as follows:

- a. For each ratings client that provided EJR with at least eight percent of EJR's net revenue (as defined in the note to Rule 17g-3(a)(5)) as of the end of each fiscal quarter, a report stating: (i) EJR's year-to-date revenue, by client; (ii) EJR's total projected annual net revenue; (iii) EJR's total year-to-date net revenue ; and (iv) the name of each client that accounts for eight percent or more of EJR's year-to-date net revenue or is projected to account for eight percent or more of EJR's year-end net revenue and the percentage share of such net revenue for each listed client.
- b. For each report, the Designated Compliance Officer of EJR shall certify in writing that the information in the report has been fairly presented in all material respects and that all projections were prepared in good faith using assumptions believed by such person to be reasonable.

- c. Within twenty calendar days after the end of each fiscal quarter commencing with the third quarter of each fiscal year, EJR shall submit the reports and certifications specified above to the Director, Office of Credit Ratings, U.S. Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

68. Within 60 days from the entry of this Order, retain the services of an independent consultant that is not unacceptable to the staff of the U.S. Securities and Exchange Commission's Division of Enforcement and Office of Credit Ratings ("Staff"). The Independent Consultant's compensation and expenses shall be borne exclusively by EJR.

- a. EJR shall provide a copy of the engagement letter to the Staff detailing the Independent Consultant's responsibilities.
- b. EJR shall require that the Independent Consultant perform the following duties:
 - i. Conduct a comprehensive review of EJR's written policies and procedures intended to address and manage conflicts of interest ("EJR's Policies and Procedures");
 - ii. Assess whether EJR's Policies and Procedures are reasonably designed, taking into consideration the nature of EJR's business and affiliated persons and affiliated companies thereof, to address and manage any conflicts of interest that can arise from such business;
 - iii. Make recommendations with respect to EJR's Policies and Procedures and their implementation and enforcement;
 - iv. Submit, within 180 days of the entry of this order, a written and dated report of its findings and recommendations (the "Initial Report") to EJR's board of directors, EJR senior management, and the Staff. EJR and its employees shall have no input into the Independent Consultant's report, other than to provide information and other cooperation requested by the Independent Consultant. The Initial Report shall (a) set forth the Independent Consultant's findings about the adequacy of EJR's Policies and Procedures and (b) if necessary, make recommendations regarding how EJR should modify or supplement its Policies and Procedures;
 - v. No sooner than six months from EJR's receipt of the Initial Report, require the Independent Consultant to conduct a review of EJR's implementation of the Independent Consultant's recommendations discussed above; and
 - vi. Within eight months from EJR's receipt of the Initial Report, submit a

written final report (“Final Report”) to EJR’s board of directors, EJR senior management, and the Staff. The Final Report shall describe the review made of EJR’s implementation of the Independent Consultant’s recommendations and describe how EJR has implemented and is complying with the Independent Consultant’s recommendations.

- c. EJR shall cooperate fully with the Independent Consultant, including providing the Independent Consultant with access to the files, books, records, and personnel of EJR as reasonably requested for the above-described reviews, and obtaining the cooperation of employees or other persons under EJR’s control.
- d. EJR will work with the Independent Consultant to implement the Independent Consultant’s recommendations, and where necessary, will consult with the Staff on any recommendations that EJR considers unduly burdensome or would have difficulty implementing for other reasons.
- e. EJR shall require the Independent Consultant to report to the Staff on his/her activities as the Staff may reasonably request.
- f. To ensure the independence of the Independent Consultant, EJR shall not have the authority to terminate the Independent Consultant without prior written approval of the Staff and shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.
- g. EJR shall expend sufficient funds to permit the Independent Consultant to discharge all of his/her duties. EJR shall permit the Independent Consultant to engage such assistance, clerical, legal or expert, as necessary and at a reasonable cost, to carry out his/her activities, and the cost, if any, of such assistance shall be borne exclusively by EJR.
- h. EJR shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with EJR, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Director of the SEC’s Division of Enforcement, enter into any

employment, consultant, attorney-client, auditing or other professional relationship with EJR, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

- i. The reports by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

69. EJR shall prohibit Egan from participating directly or indirectly in (a) determining or monitoring any credit rating issued or maintained by EJR or (b) developing or approving procedures or methodologies used for determining credit ratings issued or maintained by EJR, including qualitative and quantitative models. Within 45 days of entry of this Order, EJR shall establish written policies and procedures designed to implement and maintain the aforesaid prohibition.

70. Compliance with the undertaking set forth in paragraph 69 shall not terminate upon the sale, acquisition, or other transaction affecting the ownership or control of EJR.

71. EJR shall bear the full expense of carrying out these undertakings, including the costs of retaining the Independent Consultant and implementing the Independent Consultant's recommendations.

72. The chief executive officer and Designated Compliance Officer of EJR shall certify in writing, under penalty of perjury, that EJR has complied with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and EJR agrees to provide such evidence. The certification and supporting material shall be submitted to Yuri B. Zelinsky, Assistant Director, with a copy to the Office of Chief Counsel of the Enforcement Division, and to the Director of the Office of Credit Ratings, no later than sixty (60) days from the date of the Final Report referenced above. Respondent EJR agrees that if the Division of Enforcement believes that Respondent EJR has not satisfied these undertakings, it may petition the Commission to reopen the matter to determine whether additional sanctions are appropriate.

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 Respondents' Offers.

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

- A. Respondent EJR cease and desist from committing or causing any violations and any future violations of Sections 15E(h)(1) and 15E(f)(2) of the Exchange Act and Rules 17g-5(c)(8)(i), 17g-5(c)(8)(ii), and 17g-5(c)(1) thereunder;
- B. Respondent Egan cease and desist from committing or causing any violations and any future violations of Rules 17g-5(c)(8)(i) and 17g-5(c)(8)(ii);
- C. EJR hereby is censured;
- D. Respondent EJR shall comply with the undertakings enumerated in Section III above;
- E. Respondent EJR shall, within ten (10) days of the entry of this Order, pay disgorgement of \$129,000 and prejudgment interest of \$17,592, 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 SEC Rule of Practice 600;
- F. Respondent EJR shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$1,700,000 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; and
- G. Respondent Egan shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$300,000 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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 EJR and Egan as Respondents 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 Jennifer S. Leete, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

H. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within thirty 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 Respondents 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent Egan, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Egan under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Egan of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary