

written request of a nationally recognized statistical rating organization if the Commission finds that such extension or exemption is necessary or appropriate in the public interest and consistent with the protection of investors.

[72 FR 33620, June 18, 2007, as amended at 74 FR 6482, Feb. 9, 2009]

**§ 240.17g-4 Prevention of misuse of material nonpublic information.**

(a) The written policies and procedures a nationally recognized statistical rating organization establishes, maintains, and enforces to prevent the misuse of material, nonpublic information pursuant to section 15E(g)(1) of the Act (15 U.S.C. 78o-7(g)(1)) must include policies and procedures reasonably designed to prevent:

(1) The inappropriate dissemination within and outside the nationally recognized statistical rating organization of material nonpublic information obtained in connection with the performance of credit rating services;

(2) A person within the nationally recognized statistical rating organization from purchasing, selling, or otherwise benefiting from any transaction in securities or money market instruments when the person is aware of material nonpublic information obtained in connection with the performance of credit rating services that affects the securities or money market instruments; and

(3) The inappropriate dissemination within and outside the nationally recognized statistical rating organization of a pending credit rating action before issuing the credit rating on the Internet or through another readily accessible means.

(b) For the purposes of this section, the term *person within a nationally recognized statistical rating organization* means a nationally recognized statistical rating organization, its credit rating affiliates identified on Form NRSRO, and any partner, officer, director, branch manager, and employee of the nationally recognized statistical rating organization or its credit rating affiliates (or any person occupying a similar status or performing similar functions).

**§ 240.17g-5 Conflicts of interest.**

(a) A person within a nationally recognized statistical rating organization is prohibited from having a conflict of interest relating to the issuance or maintenance of a credit rating identified in paragraph (b) of this section, unless:

(1) The nationally recognized statistical rating organization has disclosed the type of conflict of interest in Exhibit 6 to Form NRSRO in accordance with section 15E(a)(1)(B)(vi) of the Act (15 U.S.C. 78o-7(a)(1)(B)(vi)) and § 240.17g-1;

(2) The nationally recognized statistical rating organization has 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 Act (15 U.S.C. 78o-7(h)); and

(3) In the case of the conflict of interest identified in paragraph (b)(9) of this section relating to 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 or mortgage-backed securities transaction, the nationally recognized statistical rating organization:

(i) Maintains on a password-protected Internet Web site a list of each such security or money market instrument for which it is currently in the process of determining an initial credit rating in chronological order and identifying the type of security or money market instrument, the name of the issuer, the date the rating process was initiated, and the Internet Web site address where the issuer, sponsor, or underwriter of the security or money market instrument represents that the information described in paragraphs (a)(3)(iii)(C) and (a)(3)(iii)(D) of this section can be accessed;

(ii) Provides free and unlimited access to such password-protected Internet Web site during the applicable calendar year to any nationally recognized statistical rating organization that provides it with a copy of the certification described in paragraph (e) of this section that covers that calendar year, provided that such certification indicates that the nationally recognized statistical rating organization providing the certification either:

(A) Determined and maintained credit ratings for at least 10% of the issued securities and money market instruments for which it accessed information pursuant to 17 CFR 240.17g-5(a)(3)(iii) 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

(B) Has not accessed information pursuant to 17 CFR 240.17g-5(a)(3) 10 or more times during the most recently ended calendar year; and

(iii) Obtains from the issuer, sponsor, or underwriter of each such security or money market instrument a written representation that can reasonably be relied upon that the issuer, sponsor, or underwriter will:

(A) Maintain the information described in paragraphs (a)(3)(iii)(C) and (a)(3)(iii)(D) of this section 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;

(B) Provide access to such password-protected Internet Web site during the applicable calendar year to any nationally recognized statistical rating organization that provides it with a copy of the certification described in paragraph (e) of this section that covers that calendar year, provided that such certification indicates that the nationally recognized statistical rating organization providing the certification either:

(1) Determined and maintained credit ratings for at least 10% of the issued securities and money market instruments for which it accessed information pursuant to 17 CFR 240.17g-5(a)(3)(iii) 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

(2) Has not accessed information pursuant to 17 CFR 240.17g-5(a)(3) 10 or more times during the most recently ended calendar year.

(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

(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.

(b) *Conflicts of interest.* For purposes of this section, each of the following is a conflict of interest:

(1) Being paid by issuers or underwriters to determine credit ratings with respect to securities or money market instruments they issue or underwrite.

(2) Being paid by obligors to determine credit ratings with respect to the obligors.

(3) Being paid for services in addition to determining credit ratings by issuers, underwriters, or obligors that have paid the nationally recognized statistical rating organization to determine a credit rating.

(4) Being paid by persons for subscriptions to receive or access the credit ratings of the nationally recognized statistical rating organization and/or for other services offered by the nationally recognized statistical rating organization where such persons may use the credit ratings of the nationally

recognized statistical rating organization to comply with, and obtain benefits or relief under, statutes and regulations using the term *nationally recognized statistical rating organization*.

(5) Being paid by persons for subscriptions to receive or access the credit ratings of the nationally recognized statistical rating organization and/or for other services offered by the nationally recognized statistical rating organization where such persons also may own investments or have entered into transactions that could be favorably or adversely impacted by a credit rating issued by the nationally recognized statistical rating organization.

(6) Allowing persons within the nationally recognized statistical rating organization to directly own securities or money market instruments of, or having other direct ownership interests in, issuers or obligors subject to a credit rating determined by the nationally recognized statistical rating organization.

(7) Allowing persons within the nationally recognized statistical rating organization to have a business relationship that is more than an arms length ordinary course of business relationship with issuers or obligors subject to a credit rating determined by the nationally recognized statistical rating organization.

(8) Having a person associated with the nationally recognized statistical rating organization that is a broker or dealer engaged in the business of underwriting securities or money market instruments.

(9) 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 or mortgage-backed securities transaction that was paid for by the issuer, sponsor, or underwriter of the security or money market instrument;

(10) Any other type of conflict of interest relating to the issuance of credit ratings by the nationally recognized statistical rating organization that is material to the nationally recognized statistical rating organization and that is identified by the nationally recognized statistical rating organization in Exhibit 6 to Form NRSRO in accordance with section 15E(a)(1)(B)(vi) of the

Act (15 U.S.C. 78o-7(a)(1)(B)(vi)) and § 240.17g-1.

(c) *Prohibited conflicts*. A nationally recognized statistical rating organization is prohibited from having the following conflicts of interest relating to the issuance or maintenance of a credit rating as a credit rating agency:

(1) The nationally recognized statistical rating organization issues or maintains a credit rating solicited by a person that, in the most recently ended fiscal year, provided the nationally recognized statistical rating organization with net revenue (as reported under § 240.17g-3) equaling or exceeding 10% of the total net revenue of the nationally recognized statistical rating organization for the fiscal year;

(2) The nationally recognized statistical rating organization issues or maintains a credit rating with respect to a person (excluding a sovereign nation or an agency of a sovereign nation) where the nationally recognized statistical rating organization, a credit analyst that participated in determining the credit rating, or a person responsible for approving the credit rating, directly owns securities of, or has any other direct ownership interest in, the person that is subject to the credit rating;

(3) The nationally recognized statistical rating organization issues or maintains a credit rating with respect to a person associated with the nationally recognized statistical rating organization;

(4) The nationally recognized statistical rating organization issues or maintains a credit rating where a credit analyst who participated in determining the credit rating, or a person responsible for approving the credit rating, is an officer or director of the person that is subject to the credit rating;

(5) The nationally recognized statistical rating organization issues or maintains a credit rating with respect to an obligor or security where the nationally recognized statistical rating organization or a person associated with the nationally recognized statistical rating organization made recommendations to the obligor or the issuer, underwriter, or sponsor of the security about the corporate or legal

## § 240.17g-6

structure, assets, liabilities, or activities of the obligor or issuer of the security;

(6) The nationally recognized statistical rating organization issues or maintains a credit rating where the fee paid for the rating was negotiated, discussed, or arranged by a person within the nationally recognized statistical rating organization who has responsibility for participating in determining credit ratings or for developing or approving procedures or methodologies used for determining credit ratings, including qualitative and quantitative models; or

(7) The nationally recognized statistical rating organization issues or maintains a credit rating where a credit analyst who participated in determining or monitoring the credit rating, or a person responsible for approving the credit rating received gifts, including entertainment, from the obligor being rated, or from the issuer, underwriter, or sponsor of the securities being rated, other than items provided in the context of normal business activities such as meetings that have an aggregate value of no more than \$25.

(d) For the purposes of this section, the term *person within a nationally recognized statistical rating organization* means a nationally recognized statistical rating organization, its credit rating affiliates identified on Form NRSRO, and any partner, officer, director, branch manager, and employee of the nationally recognized statistical rating organization or its credit rating affiliates (or any person occupying a similar status or performing similar functions).

(e) *Certification.* In order to access a password-protected Internet Web site described in paragraph (a)(3) of this section, a nationally recognized statistical rating organization must furnish to the Commission, for each calendar year for which it is requesting a password, the following certification, signed by a person duly authorized by the certifying entity:

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

## 17 CFR Ch. II (4-1-10 Edition)

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.

[72 FR 33620, June 18, 2007, as amended at 74 FR 6482, Feb. 9, 2009; 74 FR 63864, Dec. 4, 2009]

### § 240.17g-6 Prohibited acts and practices.

(a) *Prohibitions.* A nationally recognized statistical rating organization is prohibited from engaging in any of the following unfair, coercive, or abusive practices:

(1) Conditioning or threatening to condition the issuance of a credit rating on the purchase by an obligor or issuer, or an affiliate of the obligor or issuer, of any other services or products, including pre-credit rating assessment products, of the nationally recognized statistical rating organization or any person associated with the nationally recognized statistical rating organization.

(2) Issuing, or offering or threatening to issue, a credit rating that is not determined in accordance with the nationally recognized statistical rating organization's established procedures and methodologies for determining credit ratings, based on whether the rated person, or an affiliate of the rated person, purchases or will purchase the credit rating or any other service or product of the nationally