

## § 240.17g-7

withdrawing or threatening to withdraw a credit rating, with respect to securities or money market instruments issued by an asset pool or as part of any asset-backed securities transaction, unless all or a portion of the assets within such pool or part of such transaction also are rated by the nationally recognized statistical rating organization, where such practice is engaged in by the nationally recognized statistical rating organization for an anticompetitive purpose.

[13 FR 8178, Dec. 22, 1948, as amended at 79 FR 55264, Sept. 15, 2014]

### § 240.17g-7 Disclosure requirements.

(a) *Disclosures to be made when taking a rating action.* Except as provided in paragraph (a)(3) of this section, a nationally recognized statistical rating organization must publish the items described in paragraphs (a)(1) and (2) of this section, as applicable, when taking a rating action with respect to a credit rating assigned to an obligor, security, or money market instrument in a class of credit ratings for which the nationally recognized statistical rating organization is registered. For purposes of this section, the term *rating action* means any of the following: the publication of an expected or preliminary credit rating assigned to an obligor, security, or money market instrument before the publication of an initial credit rating; an initial credit rating; an upgrade or downgrade of an existing credit rating (including a downgrade to, or assignment of, default); and an affirmation or withdrawal of an existing credit rating if the affirmation or withdrawal is the result of a review of the credit rating assigned to the obligor, security, or money market instrument by the nationally recognized statistical rating organization using applicable procedures and methodologies for determining credit ratings. The items described in paragraphs (a)(1) and (2) of this section must be published in the same manner as the credit rating that is the result or subject of the rating action and made available to the same persons who can receive or access the credit rating that is the result or subject of the rating action.

(1) *Information disclosure form.* A form generated by the nationally recognized

## 17 CFR Ch. II (4-1-19 Edition)

statistical rating organization that meets the requirements of paragraphs (a)(1)(i) through (iii) of this section.

(i) *Format.* The form generated by the nationally recognized statistical rating organization must be in a format that:

(A) Organizes the information into numbered items that are identified by the type of information being disclosed and a reference to the paragraph in this section that specifies the disclosure of the information, and are in the order that the paragraphs specifying the information to be disclosed are codified in this section;

*Note to paragraph (a)(1)(i)(A):* A given item in the form should be identified by a title that identifies the type of information and references paragraph (a)(1)(ii)(A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), (M), (N), or (a)(2) of this section based on the information being disclosed in the item. For example, the information specified in paragraph (a)(1)(ii)(C) of this section should be identified with the caption “Main Assumptions and Principles Used to Construct the Rating Methodology used to Determine the Credit Rating as required by Paragraph (a)(1)(ii)(C) of Rule 17g-7”. The form must organize the items of information in the following order: items 1 through 14 must contain the information specified in paragraphs (a)(1)(ii)(A) through (N) of this section, respectively, and item 15 must contain the certifications specified in paragraph (a)(2) of this section (the information specified in each paragraph comprising a separate item). For example, item 3 must contain the information specified in paragraph (a)(1)(ii)(C) of this section.

(B) Is easy to use and helpful for users of credit ratings to understand the information contained in the form; and

(C) Provides the content described in paragraphs (a)(1)(ii)(K) through (M) of this section in a manner that is directly comparable across types of obligors, securities, and money market instruments.

(ii) *Content.* The form generated by the nationally recognized statistical rating organization must contain the following information about the credit rating:

(A) The symbol, number, or score in the rating scale used by the nationally recognized statistical rating organization to denote credit rating categories and notches within categories assigned to the obligor, security, or money market instrument that is the subject of the credit rating and, as applicable, the identity of the obligor or the identity and a description of the security or money market instrument;

(B) The version of the procedure or methodology used to determine the credit rating;

(C) The main assumptions and principles used in constructing the procedures and methodologies used to determine the credit rating, including qualitative methodologies and quantitative inputs, and, if the credit rating is for a structured finance product, assumptions about the correlation of defaults across the underlying assets;

(D) The potential limitations of the credit rating, including the types of risks excluded from the credit rating that the nationally recognized statistical rating organization does not comment on, including, as applicable, liquidity, market, and other risks;

(E) Information on the uncertainty of the credit rating including:

(1) Information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and

(2) A statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including:

(i) Any limits on the scope of historical data; and

(ii) Any limits on accessibility to certain documents or other types of information that would have better informed the credit rating;

(F) Whether and to what extent the nationally recognized statistical rating organization used due diligence services of a third party in taking the rating action, and, if the nationally recognized statistical rating organization used such services, either:

(1) A description of the information that the third party reviewed in conducting the due diligence services and a summary of the findings and conclusions of the third party; or

(2) A cross-reference to a Form ABS Due Diligence-15E executed by the third party that is published with the form, provided the cross-referenced Form ABS Due Diligence-15E (§ 249b.500 of this chapter) contains a description of the information that the third party reviewed in conducting the due diligence services and a summary of the findings and conclusions of the third party;

(G) If applicable, how servicer or remittance reports were used, and with what frequency, to conduct surveillance of the credit rating;

(H) A description of the types of data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating;

(I) A statement containing an overall assessment of the quality of information available and considered in determining the credit rating for the obligor, security, or money market instrument, in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar obligors, securities, or money market instruments;

(J) Information relating to conflicts of interest of the nationally recognized statistical rating organization, which must include:

(1) As applicable, a statement that the nationally recognized statistical rating organization was:

(i) Paid to determine the credit rating by the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated;

(ii) Paid to determine the credit rating by a person other than the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated; or

(iii) Not paid to determine the credit rating;

(2) If applicable, in a statement required under paragraph (a)(1)(ii)(J)(1)(i) or (ii) of this section, a statement that the nationally recognized statistical rating organization also was paid for services other than determining credit ratings during the most recently ended fiscal year by the person that paid the nationally recognized statistical rating

**§ 240.17g-7**

**17 CFR Ch. II (4-1-19 Edition)**

organization to determine the credit rating; and

(3) If the rating action results from a review conducted pursuant to section 15E(h)(4)(A) of the Act (15 U.S.C. 78o-7(h)(4)(A)) and § 240.17g-8(c), the following information (as applicable):

(i) If the rating action is a revision of a credit rating pursuant to § 240.17g-8(c)(2)(i)(A), an explanation that the reason for the action is the discovery that a credit rating assigned to the obligor, security, or money market instrument in one or more prior rating actions was influenced by a conflict of interest, including a description of the nature of the conflict, the date and associated credit rating of each prior rating action that the nationally recognized statistical rating organization has determined was influenced by the conflict, and a description of the impact the conflict had on the prior rating action or actions; or

(ii) If the rating action is an affirmation of a credit rating pursuant to § 240.17g-8(c)(2)(i)(B), an explanation that the reason for the action is the discovery that a credit rating assigned to the obligor, security, or money market instrument in one or more prior rating actions was influenced by a conflict of interest, including a description of the nature of the conflict, an explanation of why no rating action was taken to revise the credit rating notwithstanding the presence of the conflict, the date and associated credit rating of each prior rating action the nationally recognized statistical rating organization has determined was influenced by the conflict, and a description of the impact the conflict had on the prior rating action or actions.

(K) An explanation or measure of the potential volatility of the credit rating, including:

(I) Any factors that are reasonably likely to lead to a change in the credit rating; and

(2) The magnitude of the change that could occur under different market conditions determined by the nationally recognized statistical rating organization to be relevant to the rating;

(L) Information on the content of the credit rating, including:

(I) If applicable, the historical performance of the credit rating; and

(2) The expected probability of default and the expected loss in the event of default;

(M) Information on the sensitivity of the credit rating to assumptions made by the nationally recognized statistical rating organization, including:

(I) Five assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on the credit rating if the assumptions were proven false or inaccurate; provided that, if the nationally recognized statistical rating organization has made fewer than five such assumptions, it need only disclose information on the assumptions that would have an impact on the credit rating; and

(2) An analysis, using specific examples, of how each of the assumptions identified in paragraph (a)(1)(ii)(M)(I) of this section impacts the credit rating;

(N)(I) If the credit rating is assigned to an asset-backed security as defined in section 3(a)(79) of the Act (15 U.S.C. 78c(a)(79)), information on:

(i) The representations, warranties, and enforcement mechanisms available to investors which were disclosed in the prospectus, private placement memorandum or other offering documents for the asset-backed security and that relate to the asset pool underlying the asset-backed security; and

(ii) How they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities;

(2) A nationally recognized statistical rating organization must include the information required under paragraph (a)(1)(ii)(N)(I) of this section only if the rating action is a preliminary credit rating, an initial credit rating, or, in the case of a rating action other than a preliminary credit rating or initial credit rating, the rating action is the first rating action taken after a material change in the representations, warranties, or enforcement mechanisms described in paragraph (a)(1)(ii)(N)(I) of this section and the rating action involves an asset-backed security that was initially rated by the nationally recognized statistical rating organization on or after September 26, 2011.

(iii) *Attestation.* The nationally recognized statistical rating organization must attach to the form a signed statement by a person within the nationally recognized statistical rating organization stating that the person has responsibility for the rating action and, to the best knowledge of the person:

(A) No part of the credit rating was influenced by any other business activities;

(B) The credit rating was based solely upon the merits of the obligor, security, or money market instrument being rated; and

(C) The credit rating was an independent evaluation of the credit risk of the obligor, security, or money market instrument.

(2) *Third-party due diligence certification.* Any executed Form ABS Due Diligence-15E (§249b.500 of this chapter) containing information about the security or money market instrument subject to the rating action that is received by the nationally recognized statistical rating organization or obtained by the nationally recognized statistical rating organization through an Internet Web site maintained by the issuer, sponsor, or underwriter of the security or money market instrument pursuant to §240.17g-5(a)(3).

(3) *Exemption.* The provisions of paragraphs (a)(1) and (a)(2) do not apply to a rating action if:

(i) The rated obligor or issuer of the rated security or money market instrument is not a U.S. person (as defined in §230.902(k) of this chapter); and

(ii) The nationally recognized statistical rating organization has a reasonable basis to conclude that a security or money market instrument issued by the rated obligor or the issuer will be offered and sold upon issuance, and that any underwriter or arranger linked to the security or money market instrument will effect transactions in the security or money market instrument after issuance, only in transactions that occur outside the United States.

(b) *Disclosure of credit rating histories—(1) Credit ratings subject to the disclosure requirement.* A nationally recognized statistical rating organization must publicly disclose for free on an

easily accessible portion of its corporate Internet Web site:

(i) For a class of credit rating in which the nationally recognized statistical rating organization is registered with the Commission as of the effective date of paragraph (b) of this section, the credit rating assigned to each obligor, security, and money market instrument in the class that was outstanding as of, or initially determined on or after, the date three years prior to the effective date of this rule, and any subsequent upgrade or downgrade of the credit rating (including a downgrade to, or assignment of, default), and a withdrawal of the credit rating; and

(ii) For a class of credit rating in which the nationally recognized statistical rating organization is registered with the Commission after the effective date of paragraph (b) of this section, the credit rating assigned to each obligor, security, and money market instrument in the class that was outstanding as of, or initially determined on or after, the date three years prior to the date the nationally recognized statistical rating organization is registered in the class, and any subsequent upgrade or downgrade of the credit rating (including a downgrade to, or assignment of, default), and a withdrawal of the credit rating.

(2) *Information.* A nationally recognized statistical rating organization must include, at a minimum, the following information with each credit rating disclosed pursuant to paragraph (b)(1) of this section:

(i) The identity of the nationally recognized statistical rating organization disclosing the rating action;

(ii) The date of the rating action;

(iii) If the rating action is taken with respect to a credit rating of an obligor as an entity, the following identifying information about the obligor, as applicable:

(A) The Legal Entity Identifier issued by a utility endorsed or otherwise governed by the Global LEI Regulatory Oversight Committee or the Global LEI Foundation (LEI) of the obligor, if available, or, if an LEI is not available, the Central Index Key (CIK) number of the obligor, if available; and

(B) The name of the obligor.

(iv) If the rating action is taken with respect to a credit rating of a security or money market instrument, as applicable:

(A) The LEI of the issuer of the security or money market instrument, if available, or, if an LEI is not available, the CIK number of the issuer of the security or money market instrument, if available;

(B) The name of the issuer of the security or money market instrument; and

(C) The CUSIP of the security or money market instrument;

(v) A classification of the rating action as either:

(A) An addition to the rating history disclosure because the credit rating was outstanding as of the date three years prior to the effective date of the requirements in paragraph (b) of this section or because the credit rating was outstanding as of the date three years prior to the nationally recognized statistical rating organization becoming registered in the class of credit ratings;

(B) An initial credit rating;

(C) An upgrade of an existing credit rating;

(D) A downgrade of an existing credit rating, which would include classifying the obligor, security, or money market instrument as in default, if applicable; or

(E) A withdrawal of an existing credit rating and, if the classification is withdrawal, the nationally recognized statistical rating organization also must classify the reason for the withdrawal as either:

(1) The obligor defaulted, or the security or money market instrument went into default;

(2) The obligation subject to the credit rating was extinguished by payment in full of all outstanding principal and interest due on the obligation according to the terms of the obligation; or

(3) The credit rating was withdrawn for reasons other than those set forth in paragraph (b)(2)(v)(E)(1) or (2) of this section; and

(vi) The classification of the class or subclass that applies to the credit rating as either:

(A) Financial institutions, brokers, or dealers;

(B) Insurance companies;

(C) Corporate issuers; or

(D) Issuers of structured finance products in one of the following subclasses:

(1) Residential mortgage backed securities ("RMBS") (for purposes of this subclass, RMBS means a securitization primarily of residential mortgages);

(2) Commercial mortgage backed securities ("CMBS") (for purposes of this subclass, CMBS means a securitization primarily of commercial mortgages);

(3) Collateralized loan obligations ("CLOs") (for purposes of this subclass, a CLO means a securitization primarily of commercial loans);

(4) Collateralized debt obligations ("CDOs") (for purposes of this subclass, a CDO means a securitization primarily of other debt instruments such as RMBS, CMBS, CLOs, CDOs, other asset backed securities, and corporate bonds);

(5) Asset-backed commercial paper conduits ("ABCP") (for purposes of this subclass, ABCP means short term notes issued by a structure that securitizes a variety of financial assets, such as trade receivables or credit card receivables, which secure the notes);

(6) Other asset-backed securities ("other ABS") (for purposes of this subclass, other ABS means a securitization primarily of auto loans, auto leases, floor plans, credit card receivables, student loans, consumer loans, or equipment leases); or

(7) Other structured finance products ("other SFPs") (for purposes of this subclass, other SFPs means any structured finance product not identified in paragraphs (b)(2)(iv)(D)(1) through (6) of this section; or

(E) Issuers of government securities, municipal securities, or securities issued by a foreign government in one of the following subclasses:

(1) Sovereign issuers;

(2) U.S. public finance; or

(3) International public finance; and

(vii) The credit rating symbol, number, or score in the applicable rating scale of the nationally recognized statistical rating organization assigned to the obligor, security, or money market instrument as a result of the rating action or, if the credit rating remained unchanged as a result of the action, the

credit rating symbol, number, or score in the applicable rating scale of the nationally recognized statistical rating organization assigned to the obligor, security, or money market instrument as of the date of the rating action (in either case, include a credit rating in a default category, if applicable).

(3) *Format and frequency of updating.* The information identified in paragraph (b)(2) of this section must be disclosed in an interactive data file that uses an XBRL (eXtensible Business Reporting Language) format and the List of XBRL Tags for nationally recognized statistical rating organizations as published on the Internet Web site of the Commission, and must be updated no less frequently than monthly.

(4) *Timing.* The nationally recognized statistical rating organization must disclose the information required in paragraph (b)(2) of this section:

(i) Within twelve months from the date the rating action is taken, if the credit rating subject to the action was paid for by the obligor being rated or by the issuer, underwriter, depositor, or sponsor of the security being rated; or

(ii) Within twenty-four months from the date the rating action is taken, if the credit rating subject to the action is not a credit rating described in paragraph (b)(4)(i) of this section.

(5) *Removal of a credit rating history.* The nationally recognized statistical rating organization may cease disclosing a rating history of an obligor, security, or money market instrument if at least 15 years have elapsed since a rating action classified as a withdrawal of a credit rating pursuant to paragraph (b)(2)(v)(E) of this section was disclosed in the rating history of the obligor, security, or money market instrument.

[79 FR 55264, Sept. 15, 2014]

**§ 240.17g-8 Policies, procedures, and internal controls.**

(a) *Policies and procedures with respect to the procedures and methodologies used to determine credit ratings.* A nationally recognized statistical rating organization must establish, maintain, enforce, and document policies and procedures reasonably designed to ensure:

(1) That the procedures and methodologies, including qualitative and quantitative data and models, the nationally recognized statistical rating organization uses to determine credit ratings are approved by its board of directors or a body performing a function similar to that of a board of directors.

(2) That the procedures and methodologies, including qualitative and quantitative data and models, the nationally recognized statistical rating organization uses to determine credit ratings are developed and modified in accordance with the policies and procedures of the nationally recognized statistical rating organization.

(3) That material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the nationally recognized statistical rating organization uses to determine credit ratings are:

(i) Applied consistently to all current and future credit ratings to which the changed procedures or methodologies apply; and

(ii) To the extent that the changes are to surveillance or monitoring procedures and methodologies, applied to current credit ratings to which the changed procedures or methodologies apply within a reasonable period of time, taking into consideration the number of credit ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated.

(4) That the nationally recognized statistical rating organization promptly publishes on an easily accessible portion of its corporate Internet Web site:

(i) Material changes to the procedures and methodologies, including to qualitative models or quantitative inputs, the nationally recognized statistical rating organization uses to determine credit ratings, the reason for the changes, and the likelihood the changes will result in changes to any current credit ratings; and

(ii) Notice of the existence of a significant error identified in a procedure