

the broker-dealers and may be reviewed during the course of an examination by the Commission.

The Commission estimates that there are approximately 240 broker-dealers that could potentially be subject to current Rule 15g-2, and that each one of these firms processes an average of three new customers for penny stocks per week. Thus, each respondent processes approximately 156 penny stock disclosure documents per year. If communications in tangible form alone are used to satisfy the requirements of Rule 15g-2, then (a) the copying and mailing of the penny stock disclosure document takes no more than two minutes per customer, and (b) each customer takes no more than eight minutes to review, sign and return the penny stock disclosure document. Thus, the total existing respondent burden is approximately 10 minutes per response, or an aggregate total of 1,560 minutes per respondent. Since there are 240 respondents, the current annual burden is 374,400 minutes (1,560 minutes per each of the 240 respondents) or 6,240 hours. In addition, broker-dealers incur a recordkeeping burden of approximately two minutes per response. Since there are approximately 156 responses for each respondent, the respondents incur an aggregate recordkeeping burden of 74,880 minutes (240 respondents  $\times$  156 responses for each  $\times$  2 minutes per response) or 1,248 hours, under Rule 15g-2. Accordingly, the current aggregate annual hour burden associated with Rule 15g-2 (that is, assuming that all respondents provide tangible copies of the required documents) is approximately 7,488 hours (6,240 response hours + 1,248 recordkeeping hours).

The burden hours associated with Rule 15g-2 may be slightly reduced when the penny stock disclosure document required under the rule is provided through electronic means such as e-mail from the broker-dealer (e.g., the broker-dealer respondent may take only one minute, instead of the two minutes estimated above, to provide the penny stock disclosure document by e-mail to its customer) and return e-mail from the customer (the customer may take only seven minutes, to review, electronically sign and electronically return the penny stock disclosure document). In this regard, if each of the customer respondents estimated above communicates with his or her broker-dealer electronically, the total ongoing respondent burden is approximately 8 minutes per response, or an aggregate total of 1,248 minutes (156 customers  $\times$  8 minutes per respondent). Assuming 240 respondents, the annual burden, if

electronic communications were used by all customers, is 299,520 minutes (1,248 minutes per each of the 240 respondents) or 4,992 hours. Under Rule 15g-2, the recordkeeping burden is 1,248 hours. Thus, if all broker-dealer respondents obtain and send the documents required under the rules electronically, the aggregate annual hour burden associated with Rule 15g-2 is 6,240 (1,248 hours + 4,992 hours).

In addition, if the penny stock customer requests a paper copy of the information on the Commission's Web site regarding microcap securities, including penny stocks, from his or her broker-dealer, the printing and mailing of the document containing this information takes no more than two minutes per customer. Because many investors have access to the Commission's Web site via computers located in their homes, or in easily accessible public places such as libraries, then, at most, a quarter of customers who are required to receive the Rule 15g-2 disclosure document request that their broker-dealer provide them with the additional microcap and penny stock information posted on the Commission's Web site. Thus, each broker-dealer respondent processes approximately 39 requests for paper copies of this information per year or an aggregate total of 78 minutes per respondent (2 minutes per customer  $\times$  39 requests per respondent). Since there are 240 respondents, the estimated annual burden is 18,720 minutes (78 minutes per each of the 240 respondents) or 312 hours.

We have no way of knowing how many broker-dealers and customers will choose to communicate electronically. Assuming that 50 percent of respondents continue to provide documents and obtain signatures in tangible form and 50 percent choose to communicate electronically to satisfy the requirements of Rule 15g-2, the total aggregate burden hours is 7,176 ((aggregate burden hours for documents and signatures in tangible form  $\times$  0.50 of the respondents = 3,744 hours) + (aggregate burden hours for electronically signed and transmitted documents  $\times$  0.50 of the respondents = 3,120 hours) + (312 burden hours for those customers making requests for a copy of the information on the Commission's Web site)).

The Commission does not maintain the risk disclosure document. Instead, it must be retained by the broker-dealer for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place. The collection of information required by

the rule is mandatory. The risk disclosure document is otherwise governed by the internal policies of the broker-dealer regarding confidentiality, etc.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: [Alexander.T.Hunt@omb.eop.gov](mailto:Alexander.T.Hunt@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted within 30 days of this notice.

Dated: June 16, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 58000]**

### **Securities Exchange Act of 1934; Order Granting Registration of Realpoint LLC as a Nationally Recognized Statistical Rating Organization**

June 23, 2008.

Realpoint LLC ("Realpoint"), a credit rating agency, furnished to the Securities and Exchange Commission ("Commission") an application for registration as a nationally recognized statistical rating organization ("NRSRO") under Section 15E of the Securities Exchange Act of 1934 ("Exchange Act") for the class of credit ratings described in clause (iv) of Section 3(a)(62)(B) of the Exchange Act.

Based on the information provided in the application, Realpoint has a conflict of interest that would cause the firm to be in violation of Exchange Act Rule 17g-5(c)(1) (17 CFR 240.17g-5(c)(1)) if it became registered. Realpoint requested that the Commission grant Realpoint an exemption from the conflict of interest prohibition in Exchange Act Rule 17g-5(c)(1). Simultaneously with this Order, the Commission is issuing an

Order (“Exemptive Order”) granting Realpoint an exemption from Exchange Act Rule 17g-5(c)(1) until January 1, 2009.<sup>1</sup>

The Commission finds that the application furnished by Realpoint is in the form required by Exchange Act Section 15E, Exchange Act Rule 17g-1 (17 CFR 240.17g-1), and Form NRSRO (17 CFR 249b.300) and contains the information described in subparagraph (B) of Section 15E(a)(1) of the Exchange Act.

Based on the application and Exemptive Order, the Commission finds that the requirements of Section 15E of the Exchange Act are satisfied.

Accordingly,

*It is ordered*, under paragraph (a)(2)(A) of Section 15E of the Exchange Act, that the registration of Realpoint LLC with the Commission as an NRSRO under Section 15E of the Exchange Act for the class of credit ratings described in clause (iv) of Section 3(a)(62)(B) of the Exchange Act is granted.

By the Commission.

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58001]

### Order Granting Temporary Exemption of Realpoint LLC From the Conflict of Interest Prohibition in Rule 17a-5(c)(1) Under the Securities Exchange Act of 1934

June 23, 2008.

#### I. Introduction

The Credit Rating Agency Reform Act of 2006 (“Rating Agency Act”),<sup>1</sup> enacted on September 29, 2006, defined the term “nationally recognized statistical rating organization” (“NRSRO”), added Section 15E to the Securities Exchange Act of 1934 (“Exchange Act”), and provided authority for the Securities and Exchange Commission (“Commission”) to implement registration, recordkeeping, financial reporting, and oversight rules with respect to registered credit rating agencies. Exchange Act Rule 17g-1 (17 CFR 240.17g-1), and Form NRSRO (17 CFR 249b.300), prescribe the process for a credit rating agency to apply for registration. Rule 17g-1 and Form NRSRO were effective on June 18, 2007,

and the other rules, Rules 17g-2 through 17g-6 (17 CFR 240.17g-2 through 17g-6), became effective on June 26, 2007.<sup>2</sup>

In particular, Rule 17g-5(c)(1) 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 10% of the total net revenue of the NRSRO for the fiscal year. In adopting this rule, the Commission stated that such a person would be in a position to exercise substantial influence on the NRSRO, which in turn would make it difficult for the NRSRO to remain impartial.<sup>3</sup>

#### II. Application and Exemption Request of Realpoint LLC

Realpoint LLC (“Realpoint”), a credit rating agency, furnished to the Commission an application for registration as an NRSRO under Section 15E of the Exchange Act for the class of credit ratings described in clause (iv) of Section 3(a)(62)(B) of the Exchange Act.<sup>4</sup> Based on the information provided in the application, Realpoint has a conflict of interest that would cause the firm to be in violation of Rule 17g-5(c)(1) if Realpoint became registered. Specifically, for the fiscal year ending December 31, 2007, Realpoint maintained credit ratings solicited by a person that provided Realpoint with 10% or more of its total net revenue for that year.

Realpoint has requested<sup>5</sup> that the Commission exempt it from Rule 17g-5(c)(1) for the fiscal year ending December 31, 2007 on the grounds that the prohibition hinders its ability as a small entity to further develop its business issuing credit ratings on asset-backed securities. Realpoint also stated that it expects the percentage of net revenue attributable to the relevant client to decrease to approximately 7.5% of its fiscal year 2008 net revenue.

#### III. Discussion

The Commission, when adopting Rule 17g-5(c)(1), noted that it intended to monitor how the prohibition operates in practice, particularly with respect to asset-backed securities, and whether

<sup>2</sup> Release No. 34-55857 (June 5, 2007), 72 FR 33564, 33564-65 (June 18, 2007).

<sup>3</sup> *Id.* at 33598.

<sup>4</sup> This class of credit ratings is for “issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations \* \* \*”) (“asset-backed securities”). Section 3(a)(62)(B)(iv) of the Exchange Act.

<sup>5</sup> Letter dated April 28, 2008 to the Commission from Robert Dobilas, CEO and President of Realpoint.

exemptions may be appropriate.<sup>6</sup> The Commission notes that the revenue in question was earned by Realpoint before it submitted its application for registration and in the year before Rule 17g-5 was adopted, which limited the time for Realpoint to adjust its activities to conform to the requirements of the rule. In addition, the Commission recognizes that, given Realpoint’s size, it is more likely that the firm would be affected by Rule 17g-5(c)(1) than a larger credit rating agency with a more diversified client base. Further, the Commission notes that Realpoint has stated that it expects that the percentage of total net revenue provided by the client will be below 10% for fiscal year 2008. Finally, the Commission notes that the threshold in Rule 17g-5(c)(1) is, of necessity, a bright line, but activities that exceed that threshold may or may not necessarily raise the concerns that are the basis for the rule. Hence, the Commission believes that it is important for the Commission to consider for each application the specific facts and circumstances of the applicant and whether to grant an exemption from Rule 17g-5(c)(1). Moreover, in this instance, the Commission recognizes that granting this exemption furthers the primary purpose of the Rating Agency Act, which is to enhance competition in the highly concentrated ratings industry. Granting Realpoint’s registration will increase the number of NRSROs registered in the asset-backed security class, which could increase competition.

For these reasons, the Commission finds that granting Realpoint an exemption from Rule 17g-5(c)(1) for calendar year 2008 is necessary and appropriate in the public interest and is consistent with the protection of investors.<sup>7</sup> The exemption will expire on January 1, 2009 (Realpoint’s fiscal year ends on December 31, 2008). The Commission believes that providing Realpoint with the opportunity to be registered as an NRSRO during this time frame is an appropriate approach to addressing the unique circumstances of a small credit rating agency, while balancing this against the goal of Rule 17g-5(c)(1)—to prohibit a conflict that has the potential to influence a credit rating agency’s impartiality. Consequently, this exemption is

<sup>6</sup> Release No. 34-55857 (June 5, 2007), 72 FR 33564, 33598 (June 18, 2007).

<sup>7</sup> Section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to conditionally or unconditionally exempt any person from any rule under the Exchange Act, to the extent that the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors. 15 U.S.C. 78mm.

<sup>1</sup> Release No. 34-58001 (June 23, 2008).

<sup>1</sup> Pub. L. No. 109-291 (2006).