

V. Commission's Findings and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose is instructive.⁷ The stated purpose is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities ("FMUs") and strengthening the liquidity of systemically important FMUs.⁸ Section 805(a)(2) of the Clearing Supervision Act⁹ authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the Supervisory Agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act¹⁰ states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act¹¹ and the Exchange Act ("Clearing Agency Standards").¹² The Clearing Agency Standards require registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.¹³ Therefore, it is appropriate for the Commission to review advance notices against these Clearing Agency Standards and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.¹⁴

The Commission believes that the proposal in the advance notice is consistent with the Clearing Agency Standards, in particular, Exchange Act Rule 17Ad-22(d)(11) and Exchange Act

Rule 17Ad-22(b)(3). Exchange Act Rule 17Ad-22(d)(11) requires that registered clearing agencies "establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable . . . establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default." The Commission believes that the proposal is consistent with Exchange Act Rule 17Ad-22(d)(11) because the New Facility will allow OCC to obtain short-term funds to address liquidity demands arising out of the default or suspension of a clearing member, in anticipation of a potential default or suspension of clearing members or the insolvency of a bank or another securities or commodities clearing organization. Therefore, the New Facility should help OCC minimize losses in the event of such a default, suspension or insolvency, by allowing it to obtain funds on extremely short notice to ensure clearance and settlement of transactions in options and other contracts without interruption.

Exchange Act Rule 17Ad-22(b)(3) requires a central counterparty ("CCP"), to "establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [m]aintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions. . . ." The Commission believes that the proposal is consistent with Exchange Act Rule 17Ad-22(b)(3) because OCC's proposal to enter into the New Facility, thereby ensuring continued access to a committed bank syndicated credit facility, will help OCC maintain sufficient financial resources to withstand, at a minimum, a default by a clearing member family to which it has the largest exposure.

For these reasons, the Commission believes the proposal contained in the advance notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act, including that it reduces systemic risks and promote the safety and soundness of the broader financial system. As discussed above, the New Facility will continue to promote the reduction of risks to OCC, its clearing members, and the options market in general because it will allow OCC to obtain short-term funds to address liquidity demands, which should ensure clearance and settlement of transactions in options and other contracts without interruption. Given

that OCC has been designated as a systemically important FMU, its ability to access financial resources to address short-term liquidity demands contributes to reducing systemic risks and supporting the stability of the broader financial system.

For these reasons, stated above, the Commission does not object to the advance notice.

VI. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,¹⁵ that the Commission does not object to the proposed change, and authorizes OCC to implement the change in the advance notice (SR-OCC-2015-803) as of the date of this notice.

By the Commission.

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission Equity Market Structure Advisory Committee will hold a public meeting on Tuesday, October 27, 2015, in the Multipurpose Room, LL-006 at the Commission's headquarters, 100 F Street NE., Washington, DC.

The meeting will begin at 9:30 a.m. (EDT) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will be open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at www.sec.gov.

On October 6, 2015, the Commission published notice of the Committee meeting (Release No. 34-76081), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting will focus on Rule 610 of SEC Regulation NMS and the regulatory structure of trading venues.

For further information, please contact the Office of the Secretary at (202) 551-5400.

¹⁵ 12 U.S.C. 5465(e)(1)(I).

⁷ See 12 U.S.C. 5461(b).

⁸ *Id.*

⁹ 12 U.S.C. 5464(a)(2).

¹⁰ 12 U.S.C. 5464(b).

¹¹ 12 U.S.C. 5464(a)(2).

¹² See Exchange Act Rule 17Ad-22. 17 CFR 240.17Ad-22. Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11).

¹³ *Id.*

¹⁴ 12 U.S.C. 5464(b).

Dated: October 20, 2015.

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76183; File No. S7-04-09]

Order Extending Temporary Conditional Exemption for Nationally Recognized Statistical Rating Organizations From Requirements of Rule 17g-5(A)(3) Under the Securities Exchange Act of 1934 and Request for Comment

October 16, 2015.

I. Introduction

On May 19, 2010, the Securities and Exchange Commission (“Commission”) conditionally exempted, with respect to certain credit ratings and until December 2, 2010, nationally recognized statistical rating organizations (“NRSROs”) from certain requirements in Rule 17g-5(a)(3)¹ under the Securities Exchange Act of 1934 (“Exchange Act”), which had a compliance date of June 2, 2010.² Pursuant to the Order, an NRSRO is not required to comply with Rule 17g-5(a)(3) until December 2, 2010 with respect to credit ratings where: (1) The issuer of the structured finance product is a non-U.S. person; and (2) the NRSRO has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, only in transactions that occur outside the U.S. (“covered transactions”).³ On November 23, 2010, the Commission extended the conditional temporary exemption until December 2, 2011.⁴ On November 16, 2011, the Commission extended the conditional temporary exemption until December 2, 2012.⁵ On November 26, 2012, the Commission extended the conditional temporary exemption until

December 2, 2013.⁶ On November 22, 2013, the Commission extended the conditional temporary exemption until December 2, 2014.⁷ On November 19, 2014, the Commission extended the conditional temporary exemption until December 2, 2015.⁸ The Commission is extending the temporary conditional exemption exempting NRSROs from complying with Rule 17g-5(a)(3) with respect to rating covered transactions until December 2, 2017.

II. Background

Rule 17g-5 identifies, in paragraphs (b) and (c) of the rule, a series of conflicts of interest arising from the business of determining credit ratings.⁹ Paragraph (a) of Rule 17g-5¹⁰ prohibits an NRSRO from issuing or maintaining a credit rating if it is subject to the conflicts of interest identified in paragraph (b) of Rule 17g-5 unless the NRSRO has taken the steps prescribed in paragraph (a)(1) (*i.e.*, disclosed the type of conflict of interest in Exhibit 6 to Form NRSRO in accordance with Section 15E(a)(1)(B)(vi) of the Exchange Act¹¹ and Rule 17g-1¹² and paragraph (a)(2) (*i.e.*, 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 Exchange Act).¹³ Paragraph (c) of Rule 17g-5 specifically prohibits eight types of conflicts of interest. Consequently, an NRSRO is prohibited from issuing or maintaining a credit rating when it is subject to these conflicts regardless of whether it had disclosed them and established procedures reasonably designed to address them.

In November 2009, the Commission adopted paragraph (a)(3) of Rule 17g-5. This provision requires an NRSRO that is hired by an arranger to determine an initial credit rating for a structured finance product to take certain steps designed to allow an NRSRO that is not hired by the arranger to nonetheless determine an initial credit rating—and subsequently monitor that credit rating—for the structured finance

product.¹⁴ In particular, under Rule 17g-5(a)(3), an NRSRO is prohibited from issuing or maintaining a credit rating when it is subject to the conflict of interest identified in paragraph (b)(9) of Rule 17g-5 (*i.e.*, being hired by an arranger to determine a credit rating for a structured finance product)¹⁵ unless it has taken the steps prescribed in paragraphs (a)(1) and (2) of Rule 17g-5 (discussed above) and the steps prescribed in paragraph (a)(3) of Rule 17g-5.¹⁶ Rule 17g-5(a)(3), among other things, requires that the NRSRO must:

- Maintain on a password-protected Internet Web site a list of each structured finance product for which it currently is in the process of determining an initial credit rating in chronological order and identifying the type of structured finance product, the name of the issuer, the date the rating process was initiated, and the Internet Web site address where the arranger represents the information provided to the hired NRSRO can be accessed by other NRSROs;
- Provide free and unlimited access to such password-protected Internet Web site during the applicable calendar year to any NRSRO that provides it with a copy of the certification described in paragraph (e) of Rule 17g-5 that covers that calendar year;¹⁷ and

¹⁴ See 17 CFR 240.17g-5(a)(3); see also Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832 (Dec. 4, 2009) (“Adopting Release”) at 63844-45.

¹⁵ Paragraph (b)(9) of Rule 17g-5 identifies the following conflict of interest: 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 securities transaction that was paid for by the issuer, sponsor, or underwriter of the security or money market instrument. 17 CFR 240.17g-5(b)(9).

¹⁶ 17 CFR 240.17g-5(a)(3).

¹⁷ Paragraph (e) of Rule 17g-5 requires that an NRSRO seeking to access the hired NRSRO’s Internet Web site during the applicable calendar year must furnish the Commission with the following certification:

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 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

¹ See 17 CFR 240.17g-5(a)(3).

² See Exchange Act Release No. 62120 (May 19, 2010), 75 FR 28825 (May 24, 2010) (“Order”).

³ See *id.* at 28827-28 (setting forth conditions of relief).

⁴ See Exchange Act Release No. 63363 (Nov. 23, 2010), 75 FR 73137 (Nov. 29, 2010) (“First Extension Order”).

⁵ See Exchange Act Release No. 65765 (Nov. 16, 2011), 76 FR 72227 (Nov. 22, 2011) (“Second Extension Order”).

⁶ See Exchange Act Release No. 34-68286 (Nov. 26, 2012), 77 FR 71201 (Nov. 29, 2012) (“Third Extension Order”).

⁷ See Exchange Act Release No. 34-70919 (Nov. 22, 2013), 78 FR 70984 (Nov. 27, 2013) (“Fourth Extension Order”).

⁸ See Exchange Act Release No. 34-73649 (Nov. 19, 2014), 79 FR 70261 (Nov. 25, 2014) (“Fifth Extension Order”).

⁹ 17 CFR 240.17g-5(b) and (c).

¹⁰ 17 CFR 240.17g-5(a).

¹¹ 15 U.S.C. 78o-7(a)(1)(B)(vi).

¹² 17 CFR 240.17g-1.

¹³ 15 U.S.C. 78o-7(h).

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