

## Press Release

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# SEC Adopts Amendments to Codify Exemption to Credit Rating Agency Rule

**FOR IMMEDIATE RELEASE**

**2019-145**

*Washington D.C., Aug. 7, 2019 —*

The Securities and Exchange Commission today announced that it has voted to adopt rule amendments codifying an existing exemption for credit rating agencies registered with the Commission as nationally recognized statistical rating organizations (NRSROs).

Rule 17g-5(a)(3) under the Securities Exchange Act provides for the ability of information necessary to determine a structured finance product's credit rating to NRSROs that were not hired by the issuer, sponsor, or underwriter of the structured finance product. Prior to the compliance date for Rule 17g-5(a)(3), the Commission granted a temporary conditional exemption to the rule for certain structured finance products issued by non-U.S. persons and offered and sold outside the United States. The Commission subsequently extended this exemption.

The amendments adopted by the Commission codify the existing exemption to Rule 17g-5(a)(3) and clarify the exemption's conditions. The amendments also clarify the conditions applicable to similar exemptions in Exchange Act Rules 17g-7(a) and 15Ga-2 so that the approach among these exemptions remains consistent. Rule 17g-7(a) requires an NRSRO to disclose certain information when it publishes a rating action. Rule 15Ga-2 requires an issuer or underwriter to disclose the findings and conclusions of any third-party due diligence report it obtains with respect to an asset-backed security that is to be rated by an NRSRO.

"These appropriately tailored amendments provide needed clarity to NRSROs and other market participants," said Chairman Jay Clayton.

The amendments will become effective 30 days after publication of the adopting release in the Federal Register.

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### **FACT SHEET**

#### **Amendments to Rules for Nationally Recognized Statistical Rating Organizations**

**Aug. 7, 2019**

#### **Action**

The Commission today adopted amendments that codify an existing exemption to Exchange Act Rule 17g-5(a)(3) relating to ratings of structured finance products. The amendments also clarify that the exemptions to Exchange Act Rules 17g-5(a)(3), 17g-7(a), and 15Ga-2 apply only if all offers and sales of a security or money market instrument by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the United States.

#### **Highlights**

The amendment to Rule 17g-5(a)(3) adds a new paragraph to the rule to provide that the rule will not apply to an NRSRO when 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, if:

- the issuer of the security or money market instrument is not a U.S. person (as defined in Securities Act Rule 902(k)); and
- the NRSRO has a reasonable basis to conclude that all offers and sales of the security or money market instrument by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the U.S. (as that phrase is used in Regulation S under the Securities Act).

The amendments to Rules 17g-7(a) and 15Ga-2 conform the conditions of the existing exemptions to such rules to the conditions of the exemption to Rule 17g-5(a)(3). The amendment to Rule 17g-7(a) also clarifies that the application of the conditions to the exemption applies differently in the case of rated obligors than it does in the case of rated securities or money market instruments.

**Background**

In 2009, the Commission adopted amendments to Rule 17g-5 that established a program by which an NRSRO that is not hired by an issuer, sponsor, or underwriter of a security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction is able to obtain the same information that the issuer, sponsor, or underwriter provides to an NRSRO hired to determine a credit rating for such security or money market instrument. The rule requires an NRSRO to maintain on a password-protected website a list of each structured finance product for which it currently is in the process of determining an initial credit rating and to provide free and unlimited access to any NRSRO that, among other things, certifies it will access the website solely for the purpose of determining and monitoring credit ratings. The rule also requires, among other things, an NRSRO to obtain from the applicable arranger a written representation that can reasonably be relied upon that the arranger will maintain on a password-protected website the information it provides to the NRSRO and will provide access to the website to any NRSRO that, among other things, certifies it will access the website solely for the purpose of determining and monitoring credit ratings. Prior to the June 2, 2010 compliance date for Rule 17g-5(a)(3), the Commission granted a temporary conditional exemption to the rule for certain offshore transactions issued by non-U.S. persons. Such exemption has been extended several times and remains in effect.

In 2014, the Commission adopted Rules 17g-7(a) and 15Ga-2. Rule 17g-7(a) requires an NRSRO, when taking a rating action, to publish an information disclosure form containing specified information about the related credit rating. Rule 15Ga-2 requires the issuer or underwriter of an asset-backed security that is to be rated by an NRSRO to furnish a form to the Commission containing the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter. Both rules include an exemption from the disclosure requirements for securities offered and sold outside the U.S.

**What's Next**

The amendments to Rule 17g-5(a)(3), Rule 17g-7(a), and Rule 15Ga-2 become effective 30 days after publication in the Federal Register.

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