



Overview of Rule 17g-5

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Amended Rule 17g-5

- December 2009 – SEC amended Rule 17g-5 to impose additional disclosure and conflict of interest requirements on nationally recognized statistical rating organizations (“**NRSROs**”) and, by extension, additional disclosure requirements on “arrangers” (defined as issuers, sponsors or underwriters) of structured finance products.
- The amended rule was prompted by concerns about “ratings shopping” and the potential conflict of interest that arises in an arranger-pay model. Therefore, SEC distinguishes throughout the amended rule between the obligations of an NRSRO that is hired by an arranger to issue a credit rating (such NRSRO, a “**hired NRSRO**”) and the obligations of an NRSRO that provides a rating under another business model (such NRSRO, a “**non-hired NRSRO**”).
- Rule 17g-5 identifies a series of conflicts of interest arising from the business of determining credit ratings. **New paragraph (b)(9)** identifies as a conflict “[i]ssuing 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.”
- In the final regulations, SEC indicated that the rule is intended to cover the full range of structured finance products (including ABCP conduits), and not just transactions subject to Regulation AB.

Amended Rule 17g-5 (Continued)

- To manage the conflict of interest, the amended rule is designed to encourage the issuance of unsolicited ratings by non-hired NRSROs by requiring each hired NRSRO to:
 - (1) disclose to all other NRSROs that the arranger is in the process of determining an initial credit rating; and
 - (2) obtain a representation from each arranger that the arranger will make the information it provides to the hired NRSRO available at the same time to non-hired NRSROs.

Amended Rule 17g-5 (Continued)

- **New paragraph (a)(3)** requires a hired NRSRO to:
 - maintain on a password-protected Internet website a list of each structured finance product for which it currently is in the process of determining an initial credit rating;
 - provide free and unlimited access to that website to non-hired NRSROs that provide the hired NRSRO with a copy of the annual SEC certification described below; and
 - obtain representations from the arranger that the arranger will –
 - maintain a password-protected Internet website and post on that site all information that the arranger provides to the hired NRSRO, or contracts with a third party to provide to a hired NRSRO, for the purpose of determining the initial credit rating and for the purpose of undertaking credit rating surveillance on the product, in a manner indicating which information currently should be relied on to determine or monitor the credit rating, at the same time such information is provided to the hired NRSRO; and
 - provide access to that website to non-hired NRSROs that provide the arranger with a copy of the annual SEC certification described below.

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