

William J. Harrington

March 14, 2023

Mr. Christopher Kirkpatrick

Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
11 55 21st Street NW
Washington, DC 20581

Ms. Vanessa Countryman

Secretary, Office of the Secretary
U.S. Securities and Exchange Commission
100 F St. NE
Washington, DC 20549-1090

Copy: Office of Credit Ratings, U.S. Securities and Exchange Commission; Supervision of Credit Rating Agencies, European Securities and Markets Authority; Credit Rating Supervision, UK Financial Conduct Authority; Fitch Ratings; Moody's Investors Service; and S&P Global Ratings

Via Electronic Mail

Re: U.S. Commodity Futures Trading Commission [GMAC Global Market Structure Subcommittee Self-Nomination](#) AND [§ 13.1 Petition for Rulemaking](#) (*"Petition to the Secretariat for the U.S. Commodity Futures Trading Commission to Issue a Rule that Prohibits a Swap Dealer, Major Swap Participant, or Other Regulated Entity from Predicating a Swap Obligation on a Flip Clause, Walk-Away, or Variable Subordination"*)

AND

U.S. Securities and Exchange Commission [Petition for Rulemaking "File No. 4-790"](#) (*"I seek a rulemaking by the Commission that prohibits a security-based swap dealer or other entity subject to Commission regulation from predicating a security-based swap or other financial instrument subject to Commission regulation on a flip clause, walk-away, or variable subordination"*) and [Petition for Rulemaking "File No. No. 4-799"](#) (*Petition for Policy Clarification on Credit Rating Agencies*).

Dear All,

This letter and the two other documents that the delivering email attached ("WJH—CV—March 2023" and Moody's Investors Service "Elstree Funding No.3 PLC", respectively) comprise a joint submission to the U.S. Commodity Futures Trading Commission and the U.S. Securities Exchange Commission regarding each of the four title-line matters.

Unless otherwise noted, today's letter quotes ***Federal Register / Vol. 88, No. 39 / Tuesday, February 28, 2023 / Notices***, pages 12663-12664.¹

"The Commission invites the submission of nominations for membership in each of the Subcommittees. Each nomination submission should include the proposed member's name, title, organization affiliation and address, email address and telephone number, as well as information that supports the individual's qualifications to serve on the relevant Subcommittee. The submission should also include the name, email address and telephone number of the person nominating the proposed Subcommittee member. Self-nominations are acceptable."

My name is Bill Harrington and I am Senior Fellow at the non-profit research and action Croatan Institute.² My address is "3200 N Ocean Blvd, Unit 1703 Fort Lauderdale, FL 33308". Page 1 lists my email address and phone.

I nominate myself to the Global Market Structure Subcommittee and to the Technical Issues Subcommittee. Today's submission, including my CV and the Moody's Investors Service document, support my qualifications to serve on each committee.

"The purpose of the proposed Subcommittees would be to provide report(s) and/or recommendations to the GMAC that will identify and examine key issues that affect the integrity and competitiveness of U.S. markets and U.S. firms engaged in global business, including the regulatory challenges of a global marketplace that reflects the increasing interconnectedness of markets and the multinational nature of business, including for derivatives markets; and to assess and inform international standards through engagement with international policymakers and authorities in other jurisdictions, with a focus on global market structure, digital asset markets, and technical issues, respectively."

The bail-outs of Silicon Valley Bank and of Signature Bank demonstrate that the U.S. public still props up the financial sector fifteen years after the 2008 financial calamity. Why? Because financial sector practitioners, credit rating companies, and regulators eschew basic self-governance. For instance, practitioners, credit rating companies, and regulators such as the CFTC

¹ (<https://www.cftc.gov/sites/default/files/2023/02/2023-04048a.pdf>)

² (<https://croataninstitute.org/>).

and SEC emphatically disregard prescriptions for responsible finance that a handful of experienced practitioners and public interest advocates, include me, continually provide.

My work to ban swap-contracts-with-a-flip-clause, and to increase awareness of the poor information content of credit ratings in all sectors, has direct application to the GMAC agenda. Negligently deficient capitalization by both parties to a swap-contract-with-a-flip-clause, and negligent due diligence by all parties that rely on credit ratings, are “*key issues that affect the integrity and competitiveness of U.S. markets and U.S. firms engaged in global business, including the regulatory challenges of a global marketplace that reflects the increasing interconnectedness of markets and the multinational nature of business, including for derivatives markets.*”

“Global Market Structure Subcommittee. Identifying and assessing key issues and policy proposals with an impact on global markets, including global market structure and access to markets.”

“Technical Issues Subcommittee. Identifying and assessing key issues and policy proposals with respect to technical requirements that apply to global markets, including financial market infrastructures, market participants, end-users, and service providers.”

No swap dealer anywhere in the world should provide the swap-contract-with-a-flip-clause, as my previous submissions to the CFTC and the SEC, including but not limited to my respective petitions to ban the flip clause, demonstrate. Unfortunately, financial practitioners and regulators outside the U.S., as well as credit rating companies, routinely incentivize swap dealers to provide the swap-contract-with-a-flip-clause and, in so doing, induce future bail-outs as comprehensively as SVB and Signature Bank officials, regulators, and credit rating companies induced current U.S. bail-outs.³

Moody’s Investors Service, “[Elstree Funding No.3 PLC](#)” shows why the CFTC must NOT harmonize policy with non-U.S. policy that endorses the swap-contract-with-a-flip-clause. NatWest Markets Plc, which provides the swap-contract-with-a-flip-clause, can choose to be exposed to the self-referencing credit risk of loss of 100% of swap for the life of the swap. See page 20.

“However, there is no transfer trigger in the swap definition and swap counterparty must post collateral or transfer rights.”

Neither UK regulators nor any credit rating company obliges NatWest to mark the swap-contract-with-flip-clause accurately by recognizing the self-exposure of 100% loss of swap value.

Best regards,

Bill Harrington

³ Moody’s Investors Service, “[Moody’s downgrades SVB Financial Group \(senior unsecured to C from Baa1\) and will withdraw the ratings](https://www.moodys.com/research/Moodys-downgrades-SVB-Financial-Group-senior-unsecured-to-C-from-Baa1-and-will-withdraw-the-ratings)”, March 10, 2023. (https://www.moodys.com/research/Moodys-downgrades-SVB-Financial-Group-senior-unsecured-to-C-from--PR_474735).



SUMMARY OF EXPERIENCE

1983 to Present

I work to fix the interconnected, intentional *shortcomings* of derivative contracts, asset-backed securities (ABS), U.S. and international financial regulation, U.S. and international law, credit rating methodologies, and environmental, social, and governance (ESG) evaluations.

My passion is demystifying needlessly complex finance to identify and promote best practices that direct investment to socially optimal uses. My expertise is using plain language to communicate findings to allies, adversaries, and everyone in between. My goal is to inject accountability into the U.S. and global financial systems by improving the regulatory and credit rating components of deal templates.

For output, see ‘Publications,’ ‘Methodology Critiques to Credit Rating Companies,’ ‘Submissions to U.S. and International Regulators,’ ‘Meetings with Regulators,’ and ‘Broadcasts’ beginning page 7. See also <http://www.croataninstitute.org/william-j-harrington>, and <https://croataninstitute.org/2021/05/30/injecting-accountability-into-the-u-s-and-global-financial-systems/>, <https://www.linkedin.com/in/williamjharrington>.

ADVOCACY

Jan 2011 to Oct 2015 & Dec 2016 to Present

ADVOCATE FOR ACCOUNTABILITY IN COMPLEX FINANCE New York, NY
Private Citizen (i.e., entirely self-financed and self-directed)

Fulltime, entirely self-financed, and highly resourceful expansion of previous work as a derivative and ABS analyst at Moody’s Investors Service (Moody’s) and as a byline journalist at *Debtwire ABS*.

GOALS

- Improve market information that individuals and firms use to make economic decisions.
- Decrease systemic risk and avoid bailouts.
- Improve public understanding of the origins of the 2008 financial crisis.

ACCOMPLISHMENTS

- Helped stall CFTC enactment of respective proposals to issue a deficient Japan Swap Dealer Capital Comparability Determination and a deficient Mexico Swap Dealer Capital Comparability Determination, respectively.
- Apprised U.S. and non-U.S. regulators via resourceful, comprehensive, and exhaustive communication of the negligent under-capitalization of an uncleared, non-margined swap contract with a flip clause and RAC provisions—the go-to swap contract for ABS issuers worldwide and an indispensable component of the failed complex finance that caused and prolonged the 2008 financial crisis. Partly owing to my work, U.S. regulators have subjected the swap contract with a flip clause to best-practice regulation despite industry groups insistently lobbying for an exemption. Communications included submitting detailed responses to rule proposals that regulators addressed in the respective rulemakings, initiating in-person and electronic meetings, emailing and posting follow-up

materials, questioning regulators at public and private convenings, and posting all of the foregoing in the public domain. See ‘Submissions to U.S. and International Regulators,’ ‘Meetings with Regulators,’ and ‘Citations,’ beginning page 11.

- Induced Moody’s Investors Service to withdraw an intentionally deficient proposal regarding ESG factors in structured finance credit ratings.
- Filed rulemaking petition with the U.S. Securities and Exchange Commission (SEC) in 2022 to permanently ban the swap contract with a flip clause. Continue to augment the petition file with supporting analyses and data.
- Filed Section 13.1 petition with the U.S. Commodity Futures Trading Commission (CFTC) in 2020 to permanently ban the swap contract with a flip clause and obligated the CFTC to acknowledge the petition in writing. The petition will help preserve best-practice limitations on the swap with a flip clause that the CFTC and the prudential regulators implemented in 2015.
- Obtained CFTC materials via Freedom of Information Act request that corroborated my contention that the 2020 CFTC rulemaking cited immediately below violated the Administrative Procedures Act. More particularly, the materials demonstrated that the CFTC did not conduct its own analysis—the only materials that the CFTC provided concerned my submissions to it. With funding, I could sue the CFTC to rescind the rulemaking in question.
- Challenged deficient, 2020 CFTC rulemaking on the capitalization of derivative contract providers by alerting the CFTC Office of Inspector General to violations of the Administration Procedures Act.
- Convinced U.S. Securities and Exchange Commission (SEC) via my comment response that 2020 capital and margin rules should include a market liquidity test for complex finance posted as collateral.
- Thanked by state attorneys general for analyses submitted over four years that supported the settlement dated 13 January 2017 between: the U.S. Department of Justice, 21 state attorneys general and the District of Columbia; and Moody’s, its parent Moody’s Corporation, and affiliate Moody’s Analytics.
- Provided rationales that the CFTC and the five U.S. “prudential regulators” (Federal Deposit Insurance Corporation, Federal Reserve Board, Farm Credit Administration, Federal Housing Finance Agency, Office of the Comptroller of the Currency, and U.S. Department of the Treasury) cited in respective 2015 rules that subject a swap contract with a flip clause to best practice, i.e., the daily exchange of variation margin.
- Briefed a variety of groups, including: the Alternative Banking working group of Occupy Wall Street (twice); the credit risk and structured product group of the Federal Reserve Bank of New York; and U.S. Rep. Jerrold Nadler [D] 10th New York and staff.
- Successfully cold called legislative staff to provide technical and practical insights to U.S. House investigation into MF Global and to UK Commons investigation into the role of rating agencies in the financial crisis.
- Asked by staff of U.S. Rep. Randy Neugebauer [R] 19th Texas to review section on rating agencies in U.S. House report on MF Global. Thanked in writing by UK Commons staff.
- Alerted the SEC and entire world to ongoing malfeasance at Moody’s in 2011 by inducing *Business Insider* to post the entirety of my 40,000-word, first-person comment response to proposed rules for Nationally Recognized Statistical Rating Organizations (NRSROs.) In 2021, the U.S. House of Representatives introduced legislation to enact one of the fixes that my NRSRO comment proposed.

METHODS

- Wrote and spoke entirely for attribution.
- Disseminated findings by placing them in the public domain, obtaining media coverage, writing op-eds and blog posts, and delivering findings to financial regulators, market participants, and journalists.
- Cold-called all types of entities to present advocacy and share insights.
- Cultivated networks of like-minded researchers, practitioners, and consumer lobbyists.

PRODUCTION

- Proposed substantive amicus curiae brief to the U.S. Court of Appeals for the Second Circuit regarding litigation of Lehman Brothers portfolio of uncleared, non-margined swap contracts with RAC provisions. Delivered and cured the proposed amicus curiae brief and accompanying motion to file. Also delivered a second motion for reconsideration of my initial motion and a case evaluation in the context of the Deutsche Bank “bad” bank. The proposed amicus curiae brief and motion to file are collectively the most comprehensive evaluation and history of the swap contract with a flip clause that has been posted publicly to-date.
- Periodically report Moody’s ongoing *violations* of its 2017 settlement (inconsistent applications of credit methodologies) to the U.S. Department of Justice, specified state attorneys general, the SEC, Moody’s staff, and external counsel.
- 31 plain-spoken responses to U.S., EU, and U.K. regulatory proposals for complex finance and ESG rulemakings. U.S. regulators include: the CFTC; the SEC; and each of the five “prudential regulators.” EU and U.K. regulators include: the Bank of England; European Banking Authority; European Central Bank; European Commission; European Securities Markets Authority (ESMA); and Financial Conduct Authority.
- 10 on-the-record meetings and teleconferences with regulatory rule writing teams and key staff of seven U.S. financial regulators (the CFTC, SEC, and the five prudential regulators.)
- Six analyses and proposed questions regarding derivative contracts and credit rating processes for U.S. and UK legislative inquiries and investigations.
- 10 critiques of credit rating methodologies for derivative contracts and other complex finance.
- Two critiques of credit rating methodologies for exposures to ESG factors.
- 200 analytical and reportorial *LinkedIn* posts that have conveyed original research and findings to significant following of market participants, government policy specialists, and academicians.

Dec 2017 to
Present

CROATAN INSTITUTE ([Croatan Institute – Croatan Institute](#))

Senior Fellow ([Bill Harrington – Croatan Institute](#))

Various U.S. Locales

Affiliate of independent, nonprofit research and action institute with mission to build social equity and ecological resilience by leveraging finance to create pathways to a just economy.

- Conceived, promote, and demonstrate global plan for debt markets activism, namely submitting and publicizing critiques of credit rating methodologies.
- Alerted global financial regulators and ESG practitioners to key reasons why ESG analyses must differ from credit ratings.
- Sole author “[Can Green Bonds Flourish in a Complex-Finance Brownfield?](#), *Croatan Institute Working Paper* (July 2018). The paper proposes a “financial sustainability score” to measure the impact of a financial product on the marginal improvement or distortion of price signals, reduction or buttressing of chronic economic imbalances,

boost or draining of public resources, and reduction or increase in the odds of self-induced catastrophe.

- Authored three substantive opinions in global ESG media in response to invitations by respective editors.
- Authored five *Croatan Views* that detail the economic and information costs that accumulate owing to failed governance by global supervisory bodies (IOSCO), global media (Reuters and CGTN), U.S. regulators (CFTC and Federal Reserve), and participants in global debt markets (not least, Moody's and other credit rating companies.)
- Publicly engage ESG allies and practitioners on respective Croatan institute projects. Promote the Institute to U.S. and global constituencies via a range of online platforms and media.

2013–Present WIKIRATING (wikirating.org)

Various U.S. Locales

Experts Board – Key Expert on Structured Finance Topics

Work with seven fellow board members to improve the utility of credit ratings and the content of rating methodologies, processes, and regulations.

- Write blog posts that identify deficiencies in methodologies for derivative contracts. A notable example is the common ABS methodology for a non-cleared, non-margined swap contract with a flip clause and RAC provisions. These swap contracts reference basis rates, interest rates, currencies, single name credits and credit indexes.
- Review the blog posts and written submissions of board members. Advise on follow-up with rating agencies, regulators, and the media.

PROFESSIONAL HISTORY

Oct 2015 to DEBTWIRE (<https://www.debtwire.com>)
Nov 2016 Senior ABS Analyst

New York, NY

Byline journalist for wire service that provides sector-leading intelligence to hedge funds, law firms, traders, and other subscribers. Analyzed derivative contracts, ABS, credit rating methodologies, international regulation of the preceding, and bankruptcy rulings.

- Coupled primary research and journalistic follow-up to write and post original content.
- Provided real time analysis of credit rating actions and regulatory developments to 15 editor and journalist colleagues in multiple U.S. and EU locales.
- Identified breaking announcements for immediate aggregation posting.
- Chose articles for social media colleagues to release publicly on the Debtwire Exclusives site and promote via a variety of channels. Wrote and edited promotional text.
- Built relationships with outside press, financial regulators, legislative staffs, think tank researchers, and consumer finance lobbyists.
- Panelist at the Center for American Progress event "Exploring Shadow Banking – Can the Nation Avoid the Next Crisis?" in Washington DC on 12 July 2016.
- Thirty-seven articles ranged from 400 to 3,000 words and are available upon request.

Noteworthy Reporting

- Definitive series on the impacts of the U.S. swap margin rule on ABS investors, issuers, and credit ratings.
- Scrutinized the credit rating practice of upgrading bank obligations under derivative and other contracts to avoid downgrading ABS when issuers are party to these contracts.

- Mapped circular conflict of interest with respect to the inflated ratings of student loan ABS (SLABS), inflated ratings for the largest sponsor Navient Corp., and inflated valuations of its residual interests in long-term SLABS.
- Measured the ongoing use of crisis-era structures such as combination securities, flip clauses, and JPY repackagings by Collateralized Loan Obligation (CLO) underwriters.

1999 to 2010 MOODY'S INVESTORS SERVICE

New York, NY

Summary – Senior Derivatives Analyst and Credit Officer

Go-to analyst for long-term engagements with challenging issuers and underwriters of structured products. Fused skeptical viewpoint with numeric, legal, and qualitative detail.

- Wrote and presented plain language assessments of complex deals.
- Spurred colleagues and rating committees to assign accurate rather than inflated ratings before, during and after the financial crisis.
- Conveyed clear, exacting feedback to underwriters, issuers, and Moody's management.
- Developed best practice methodologies for ABS end users and providers of derivative contracts. See 'Publications' section, further below.
- On-call resource for colleagues worldwide regarding derivative contracts in the funds, corporate, municipal, sovereign, banking, and structured sectors.
- Senior, outside member of 40 sovereign committees 2009-2010.

2006 to 2010 SVP & Team Co-Leader of Structured Finance Operating Companies (SFOCS)

SFOCs included Derivative Product Companies (DPCs), Credit Derivative Product Companies (CDPCs) and collateralized swap programs. Collectively, these entities provided derivative contracts to sovereign, supranational, corporate, municipal and ABS end users.

- Spearheaded methodology revisions and downgrades for DPCs in the wake of legal and operational failures at the Bear Stearns and Lehman Brothers DPCs. Addressed the capacities of a DPC with a parent in bankruptcy to make timely payments to end users.
- Led team that induced Merrill Lynch to install rigorous credit support annexes in controversial USD 12 billion PARCS/PYXIS programs.
- Organized firm-wide response to the initial guarantee that JPMorgan Chase issued on behalf of certain Bear Stearns entities in 2008. JPMorgan Chase amended the guarantee to include performance obligations such as collateral posting.
- Led legal reviews of non-consolidation, security interest and the pari-passu positions of new and existing counterparties.
- Evaluated capital and collateral models that estimated the amount that an SFOC owed under each derivative contract. These models simulated market volatility, credit events, termination payments, flip clauses, trading costs and the credit profiles of counterparties.
- Increased capital charges for untested contractual provisions. Stressed the termination amount that an SFOC might owe a defaulted counterparty. Factored the enforceability of SFOC provisions to avoid making payment in applicable domicile. Specified the capital requirement of flip clause swaps that operated inversely with SFOC rating.

1999 to 2006 Vice President/Senior Credit Officer

- Lead analyst for 40 cashflow CLOs, emerging market CDOs and self-hedging structures.
- Evaluated new DPCs to assign initial ratings, generally a two-year process. Commented on governing documents. Evaluated capital and collateral formulae. Assigned capital penalties for infrequently traded products. Led operation reviews.
- Monitored existing DPCs. Assessed capital, collateral and proposals for new products.

- 2003 to 2006** **Global Structured Credit Committee**. Co-developed ABS methodology for derivative contracts that referenced interest rates, basis rates, and currencies.
- Conducted worldwide review of existing protocols in ABS sectors from the vantages of both issuers and providers. Conducted in-person interviews with U.S. and EU derivative providers. Solicited market feedback via two public comment requests.
 - Specified rating triggers, procedures to determine and post collateral, a mechanism to effect assignment, events of default and additional termination events. Articulated the flip clause, i.e., the priority of payment that is favorable to a counterparty while it is solvent and unfavorable otherwise.
 - Modified ISDA protocols to reflect sector realities, e.g., the small number of replacement providers and trustee reluctance to determine collateral sufficiency or send notices.
 - Reviewed compliance templates of banks, swap dealers and law firms.
- 1992–1998** **MERRILL LYNCH & CO.** New York, NY
Vice President, Global Swaps Trading Group
 Structured non-USD fixed-income and currency products. Representative transactions: chooser FX option issued by a South American sovereign; spread on EU swap indices paid in USD; and USD note indexed to the JPY/USD basis swap. Traded options on currencies and on government bonds denominated in a second currency.
- 1987–1990** **THE WEFA GROUP, Wharton Econometric Forecasting Associates** Bala Cynwyd, PA
International Economist – Foreign Exchange & European Economies
 Member of three-person team that forecast major currency pairs, crosses and interest rates. Users included both corporate subscribers and 30 colleagues that forecast macro and financial trends for the U.S., other G20 and emerging market economies.
- Oversaw on-time distribution of *The WEFA Group Monthly Foreign Exchange Rate Outlook*, a significant contributor to company earnings. Co-authored the overview section and wrote articles on selected EC currencies. Supervised timely publication including articles submitted by fifteen colleagues. Kept each production step to schedule.
 - Cultivated financial media to obtain ongoing coverage of WEFA insights.
- 1983–1986** **HAY GROUP** Philadelphia, PA
Analyst, Strategic Consulting Practice
 Conducted primary research as part of a 15-person management consulting team that assessed the nationwide markets for telecommunication and pharmaceutical products.
- Representative project – interviewed staff of the 50 state utility commissions to help build state-by-state projections for a newly deregulated telecommunications product.

EDUCATION

- 1990–1992** **WHARTON SCHOOL, UNIVERSITY OF PENNSYLVANIA** Philadelphia, PA
 MBA Finance
 Self-financed 100% of tuition, fees, course materials and living expenses.
 Jobs included: writing the "Italian Lira" report for *The WEFA Group Monthly Foreign Exchange Rate Outlook*; summer associate at Salomon Brothers; and teaching assistant for derivatives seminar that Professor Robert Litzenberger taught.

1979–1983

UNIVERSITY OF PENNSYLVANIA

Philadelphia, PA

BA Economics

Junior year at The University of Edinburgh in Edinburgh, Scotland.

Self-financed 90% of tuition, fees, course materials and living expenses.

Jobs included: national park ranger; sheet metal presser; Manny; lab assistant; tennis instructor in municipal recreation program; and convenience store stocker, cashier and closer.

HOBBY

AVID TENNIS PLAYER

PUBLICATIONS (Bill Harrington sole author unless cited otherwise).

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- “Investors who want to fast-track sustainable fixed-income investments should inundate credit rating agencies with methodology critiques.” *Responsible Investor*. 28 January 2020. Available at: <https://www.responsible-investor.com/articles/investors-who-want-to-fast-track-sustainable-fixed-income-investments-should-inundate-credit-rating-agencies-with-methodology-critiques>.
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- “A Welcome if Belated Victory for Financial Sustainability.” *Croatan View*. January 18, 2018. Available at: <https://croataninstitute.org/2018/01/16/a-welcome-if-belated-victory-for-financial-sustainability/>. Wikirating.org posted as “Republicans Immunize Rating Agencies from Accountability in Financial Choice Act” on May 1, 2017. Available at: <https://blog.wikirating.org/2017/05/01/republicans-immunize-rating-agencies-from-accountability-in-financial-choice-act/>.
- “Financial Choice Act Immunizes Rating Agencies from Accountability.” *LinkedIn.com article*. April 27, 2017. Available at: <https://www.linkedin.com/pulse/republicans-love-bad-ratings-no-account-rating-why-bill-harrington/>.
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- “US margin rules for swaps obliges securitization issuers to overhaul structures, add resources and rethink capital structures—ANALYSIS.” 4 November 2015. Previously available at: *Debtwire.com* until January 1, 2018 and now available upon request.
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 - “CLO combo note issuance lags 2015 pace after Moody’s shake-up.” 4 November 2016.
 - “Deutsche Bank counterparty assessments: Who’s counting?” 7 October 2016.
 - “Deutsche bailout denial belies ratings assumption of government support; margin calls ahead?” 30 September 2016.
 - “Are FFELP raters and sponsors communicating on tough downgrades?” 21 September 2016.
 - “ISDA not pushing for delay in implantation of global swap margin rules.” 15 September 2016.
 - “CFTC lets ABS sector guess on global implementation of swap margin rules.” 14 September 2016.
 - “Fitch re-rate of FFELP ABS uncovers ‘liquidity risk’ in recent deals.” 2 September 2016.
 - Bolger, Ryan, Al Yoon, and Bill Harrington. “FFELP bonds trade as investors shrug off Fitch ratings drop.” 22 August 2016.
 - “Existing ABS swaps also caught in swap margin net.” 12 August 2016.
 - “Margin for SPVs of captive finance companies, over to you, CFTC.” 4 August 2016.
 - “US margin rules for ABS and other swap users keep to schedule.” 2 August 2016.
 - “FFELP ABS ratings: paralysis by . . . ?” 28 July 2016.
 - “FFELP ABS downgrades drag on 18 months after Fed alert: just a ‘technicality’?” 26 July 2016.
 - “Taxation with(out) bank representation.” 1 July 2016.
 - “Moody’s rolling reviews.” 23 June 2016.

- “Moody’s FFELP downgrades might start rolling very soon: Good luck modeling this one.” 17 June 2016.
- “Navient extensions of SLM Trust 2013-2 Class A: AAA off ramp from Moody’s watchlist?” 14 June 2016.
- “Moody’s may take new stand on CLO, CDO combo notes.” 3 June 2016.
- “Can CLO issuance bounce back without a few billion BBB- combo notes?” 13 June 2016.
- “Margin posting: swaps increase ABS issuance costs by 1%, 3%, 7% . . . of deal size.” 16 May 2016.
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- “HPA 2016-1 hinges on renters keeping faith in home ownership and above-market rents.” 5 February 2016.
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METHODOLOGY CRITIQUES TO CREDIT RATING COMPANIES

- “Joint Submission: (1) Petition for the U.S. Securities and Exchange to Ban the Flip Clause (SEC Petition File No. 4-790); and (2) Response to Moody’s Investors Service Request for Comment ‘General Principles for Assessing ESG — Structured Finance Annex.’” July 21, 2022. Submitted jointly to Moody’s and the SEC. Available at: <https://croataninstitute.org/wp-content/uploads/2022/07/WJH-Joint-Submission-to-SEC-and-Moodys-Re-Flip-Clause-July-21-2022.pdf>.
- “Deficient Accounting, Capitalization, Credit Ratings, and Regulation of EVERY Party to a Swap Contract with a Flip Clause or Other Walk-Away Provision.” December 28, 2020. Submitted to the SEC, the CFTC, the Loans Syndication and Trading Association (LSTA), the Structured Finance Association (SFA), DBRS, Fitch, Moody’s, and S&P. Available at: https://croataninstitute.org/wp-content/uploads/2021/09/20201228_Harrington_J_William_Flip-Clause_Questions_to_CFTC-SEC-LSTA-SFA-DBRS-Fitch-Moodys-SP.pdf.
- “Response to ‘General Principles for Assessing Environmental, Social and Governance Risks: Proposed Methodology Update.’” October 19, 2020. Submitted to Moody’s. Also submitted to the U.S. Justice Department, 21 state attorneys general, and D.C. attorney general signatories to the January 2017 settlement with Moody’s, parent Moody’s Corporation, and affiliate Moody’s Analytics. Available at: <https://croataninstitute.org/wp-content/uploads/2021/08/WJH-Response-to-Moodys-Investors-Service-Request-for-Comment-General-Principles-for-Assessing-ESG-Risks-1.pdf>.
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- “Response to 'Proposed Changes to Moody's Rating Criteria to Reflect New Swap Margin Rules'.” 16 May 2017. Submitted to Moody’s. Also submitted to the U.S. Justice Department, 21 state attorneys general, and D.C. attorney general signatories to the January 2017 settlement with Moody’s, parent Moody’s Corporation, and affiliate Moody’s Analytics. Available at: <https://www.linkedin.com/pulse/moodys-request-commentproposed-changes-rating-reflect-bill-harrington/>.
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SUBMISSIONS TO U.S. AND INTERNATIONAL REGULATORS, COURTS, LAW ENFORCEMENT, AND LEGISLATIVE COMMITTEES

- “Joint submission to U.S. Securities and Exchange Commission (1) “Petition for Rulemaking "File No. 4-790" and (2) “Petition for Rulemaking No. 4-799” and to U.S. Commodity Futures Trading Commission (3) “§ 13.1 Petition for Rulemaking” AND (4) “Mexico Swap Dealer Capital Comparability Determination” AND (5) “Global Markets Advisory Committee”.” February 13, 2023. Available at <https://www.sec.gov/comments/4-790/4790-20157278-325597.pdf>.
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- “Environmental, Social, and Governance Ratings and Data Providers.” September 6, 2021. (Submitted to the International Organization of Securities Commissions (IOSCO), with copies to 13 SEC staff and six staff at the NRSROs DBRS Morningstar (DBRS), Fitch, Moody’s, and S&P. Available at: <https://croataninstitute.org/wp-content/uploads/2021/09/Public-Comment-on-ESG-Ratings-and-Data-Products-Providers-William-J-Harrington-Croatan-Institute-to-IOSCO.pdf>.
- “Materials for Record – U.S. House Financial Services Committee (HFSC) Subcommittee on Investor Protection Entrepreneurship and Capital Markets - In-Person Hearing - Bond Rating Agencies Examining the NRSROs - July 21, 2021.” July 15, 2021. Submitted to HFSC staff, other U.S. House staff, nine SEC staff, and two Moody’s staff. Available upon request.
- “Climate Change Disclosures.” Sec.gov. June 14, 2021. Submitted to the SEC. Available at: <https://www.sec.gov/comments/climate-disclosure/cl112-8915570-244817.pdf>.
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- “RIN 3038-AD54 CFTC ‘Capital Requirements of Swap Dealers and Major Swap Participants’ (A Proposed Rule by the CFTC on 12/19/2019).” cftc.gov. March 3, 2020. Submitted to the CFTC. Available at: <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62366&SearchText>
- “Alternative Compensation Models for Credit Rating Agencies.” Sec.gov. November 3, 2019. Submitted to the SEC Fixed Income Market Structure Advisory Committee. Also submitted to the U.S. Justice Department, 21 state attorneys general, and D.C. attorney general signatories to the January 2017 settlement with Moody’s, parent Moody’s Corporation, and affiliate Moody’s Analytics. Available at: <https://www.sec.gov/comments/265-30/26530-6383231-197808.pdf>.
- “Re: ‘In re Lehman Brothers Holdings Inc., No. 18-1079’.” August 8, 2019. “I am reminding the Court that the proposed amicus curiae brief has from the outset contained analyses of the Bankruptcy’s Court findings and decision which indicate that defendant-appellee Natixis may be in violation of one or more provisions of the U.S. swap margin rules.” Filed with the U.S. Court of Appeals for the Second Circuit Re: Lehman Brothers Special Financing, Inc. against Branch Banking and Trust Company, et al. Also submitted to the CFTC, Federal Reserve Bank of New York, Natixis, Navient, Fitch, Moody’s, and S&P. Also submitted to the U.S. Justice Department, 21 state attorneys general, and D.C. attorney general signatories to the January 2017 settlement with Moody’s, parent Moody’s Corporation, and affiliate Moody’s Analytics. Available upon request.
- “Re: ‘In re Lehman Brothers Holdings Inc., No. 18-1079’.” July 24, 2019. “I write to bring to the Court’s attention the information that Deutsche Bank has increased the amount of its “bad bank” to Euro 288 billion of derivative assets, according to multiple published reports.” Filed with the U.S. Court of Appeals for the Second Circuit Re: Lehman Brothers Special Financing, Inc. against Branch Banking and Trust Company, et al. Available on Court docket and upon request.
- “Motion That the Court Reconsider My Motion to File the Amicus Curiae Brief That I Proposed on June 25, 2019.” July 17, 2019. Filed with the U.S. Court of Appeals for the Second Circuit Re: Lehman Brothers Special Financing, Inc. against Branch Banking and Trust Company, et al. Available on Court docket and upon request.
- “Proposed Amicus Curiae Brief to the U.S. 2nd Circuit Re: Case No. 18-1079 (Lehman vs 250 Financial Entities Re Flip Clause Enforceability).” June 25, 2019. Filed with the U.S. Court of Appeals for the Second Circuit Re: Lehman Brothers Special Financing, Inc. against Branch Banking and Trust Company, et al. Available on Court docket and at: <https://croatianinstitute.org/wp-content/uploads/2021/06/18-1079-bk-WJH-08-08-19-Letter-to-US-Court-of-Appeals-for-Second-Circuit-Proposed-Amicus-Curiae-Brief-Re-Case-No-18-1079.pdf>.
- “Motion to File Proposed Amicus Curiae Brief with the U.S. 2nd Circuit Re: Case No. 18-1079.” June 25, 2019. Available on Court docket and at: [WJH-Motion-to-File-Amicus-Brief-in-2nd-Circuit-Case-18-1079-bk-Lehman-Brothers-vs-the-World.pdf](https://croatianinstitute.org/WJH-Motion-to-File-Amicus-Brief-in-2nd-Circuit-Case-18-1079-bk-Lehman-Brothers-vs-the-World.pdf) (croatianinstitute.org).

- “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants / Margin and Capital Requirements for Covered Swap Entities / (In the Event of No-Deal Brexit).” fdic.gov. May 31, 2019. Submitted to the CFTC and five prudential regulators. Available at: <https://www.fdic.gov/resources/regulations/federal-register-publications/2019/2019-margin-capital-requirements-covered-swap-entities-3064-af00-c-001.pdf>.
- “CFTC Open Commission Meeting of March 7, 2019.” March 1, 2019. Submitted to the CFTC. Available at: https://www.wikirating.org/data/other/20190302_Harrington_J_William_CFTC_Open_Meeting_March7_2019_JPY&AUD_Flip_Clause_Swap_Contracts.pdf.
- “Senator Elizabeth Warren Questions Re: Leveraged Loans / CLOs / Volcker Rule / NRSRO Credit Ratings.” December 4, 2018. Submitted to the SEC and staff of U.S. Senator Warren (D-MA). Available at: https://www.wikirating.org/data/other/20181205_Harrington_J_William_Sen_Elizabeth_Warren_Questions_Re_Leveraged_Loans-CLOs-Volcker_Rule-NRSRO_Credit_Ratings.pdf.
- “Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker Dealers.” (Federal Register Vol 83, No. 203, Pages 53007-53020). SEC.gov. November 19, 2018. Submitted to the SEC. Available at: <https://www.sec.gov/comments/s7-08-12/s70812-4663154-176520.pdf>.
- “MRAC Nomination and Topic Submissions.” March 28, 2018. Submitted to the CFTC. Available at: https://www.wikirating.org/data/other/20180329_Harrington_J_William_MRAC_Nomination_and_Topic_Submissions.pdf.
- “CFTC Letter No. 17-52, No Action, 27 November 2017, Division of Swap Intermediary Oversight.” February 8, 2018. Submitted to the CFTC, the SEC, the Bank of England, ESMA, National Futures Association, SFA, Navient, Fitch, Moody’s, and S&P. Wikirating.org posted as “31 Misrepresentations in CFTC Letter No. 17-52” at: https://www.wikirating.org/data/other/20180203_Harrington_J_William_31_Misrepresentations_in_CFTC%20Letter_No_17-52.pdf.
- “Capital Requirements for Swap Dealers and Major Swap Participants.” (Federal Register Vol 81, No. 242, Pages 91252-91334). cftc.gov. 4 May 2017. Submitted to the CFTC and OMB. Also submitted to the U.S. Justice Department, 21 state attorneys general, and D.C. attorney general signatories to the January 2017 settlement with Moody’s, parent Moody’s Corporation, and affiliate Moody’s Analytics. Available at: <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61196&SearchText>.
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- “Moody’s DOJ Settlement Won’t Stop Fake Rating Analysis & Derivative Denial.” *LinkedIn.com* article. 14 January 2017. Submitted to the CFTC, SEC and ESMA. Available at: <https://www.linkedin.com/pulse/moodys-doj-settlement-wont-stop-fake-rating-analysis-bill-harrington/>.
- “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Interim Final Rule.” (Federal Register Vol 81, No. 3, Pages 636-638). 6 February 2016. Submitted to CFTC.
- “Margin and Capital Requirements for Covered Swap Entities; Interim Final Rule to Exempt Commercial End Users and Small Banks (Federal Register Vol. 80, No. 229,

Pages 74916-74924).” federalreserve.gov. 31 January 2016. Submitted to the Federal Reserve Board of Governors, FDIC, Farm Credit Administration, Federal Housing Finance Agency, and OCC — collectively, the “prudential regulators.” Available at: <https://www.fdic.gov/resources/regulations/federal-register-publications/2015/2015-covered-swap-entities-3064-ae21-c02.pdf>.

- “CFTC Letter No. 15-21 & Rating Agency Overrides of Published Methodologies for Swap Contracts.” 15 May 2015. Submitted to the CFTC, SEC, and ESMA. Available in Appendix A of the submission immediately above.
- “Response to Public Consultation on an EU Framework for Simple, Transparent, and Standardised Securitisation.” 13 May 2015. Submitted to the European Commission.
- “Orderly Resolution, Systemic Stability, and Sustainable Economic Growth – Why Issuers of Asset-Backed Securities Must Post Full Margin Against All Swap Contracts.” CFTC.gov. 12 May 2015. Presentation for joint teleconference with the six rule writing teams of the CFTC and each prudential regulator, respectively. Available at: https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/dfsmissionon/dfsmission_051215_2376_0.pdf.
- “SFIG/Flip Clauses/Exempting ABS Issuers from Posting Margin.” fdic.gov. December 4, 2014. Submitted to the SEC, CFTC, five prudential regulators, and Structured Finance Industry Group. Available at: https://www.fdic.gov/resources/regulations/federal-register-publications/2014/2014-covered_swap_entities-c_48.pdf.
- “Comment on U.S. Treasury Effort to Revive Private-Label RMBS.” Regulations.gov. 8 August 2014. Submitted to the U.S. Treasury.
- “Request for Re-proposal on Rules for Nationally Recognized Statistical Rating Organizations (File Number S7-18-11).” SEC.gov. 29 May 2014. Submitted to the SEC. Available at: <https://www.sec.gov/comments/s7-18-11/s71811-84.pdf>.
- “Proposed Derivative Disclosures Under Reg AB (File Number S7-08-10).” SEC.gov. 17 February 2014. Submitted to the SEC. Available at: <https://www.sec.gov/comments/s7-08-10/s70810-283.pdf>.
- “Securitization Swaps and the CFTC Clearing Mandate for Interest Rate Swaps.” 3 February 2014. Submitted to the CFTC. See SEC submission immediately below, last nine pages.
- “Questions for the SEC Open Meeting of 5 February 2014.” SEC.gov. 2 February 2014. Submitted to the SEC. Available at: <https://www.sec.gov/comments/s7-08-10/s70810-256.pdf>.
- “ABS Losses Attributable to Securitization Swaps.” 11 September 2013. Submitted to the SEC and ESMA. See SEC submission immediately above.
- “Comments on SEC Roundtable for Asset-Backed Securities.” SEC.gov. 3 June 2013. Submitted to the SEC. Available at: <https://www.sec.gov/comments/4-661/4661-28.pdf>.
- “Questions for Mr. Ray McDaniel, Chairman & CEO of Moody's Investors Service.” 3 April 2012. Shared with UK Commons Treasury Select Committee to aid review of credit rating agencies.
- “BAC Transfer of ML Derivatives to BANA.” 15 Mar 2012. Shared with staff of Senate Banking Committee.
- “Collapse of MF Global: Part 2 – Comments on NRSRO Testimony and Questions for the Open Record.” 17 Feb 2012.
- “WJH Notes 1 & 2 – Moody's and S&P Summaries on MF Global.” 6 Feb 2012. Prepared for House Financial Services Sub-Committee for Oversight and Investigations examining MF Global bankruptcy. Also submitted to UK Commons Treasury Select Committee to aid review of credit rating agencies. See above 3 April 2012.

- [“Comment on Proposed Rules for Nationally Recognized Statistical Rating Organizations \(File Number S7-18-11\).” SEC.gov. 8 August 2011. Submitted to the SEC. Available at: https://www.sec.gov/comments/s7-18-11/s71811-33.pdf.](https://www.sec.gov/comments/s7-18-11/s71811-33.pdf)

MEETINGS WITH U.S. AND EU REGULATORS AND U.S. LAW ENFORCEMENT

- 18 May 2016 in-person meeting with attorneys at nine state attorneys general who were among the 21 state attorneys general, D.C. attorney general, and U.S. Department of Justice signatories to the January 2017 settlement with Moody’s, parent Moody’s Corporation, and affiliate Moody’s Analytics. Available at: <https://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-nearly-864-million-settlement-moody-s-arising>.
- 31 March 2016 teleconference with FCA and FDIC staff regarding my comment to the prudential regulators of 31 January 2016. I urged that the final TRIPRA exemption *exclude* ABS issuers from “captive finance companies” not required to post swap margin.
- 28 May 2015 teleconference with chief counsel and staff of the CFTC Division of Swap Dealer and Intermediary Oversight. I discussed the misrepresentations that the Structured Finance Industry Group made to the CFTC regarding non-cleared swap contracts with RAC provisions and flip clauses. See 15 May 2015 in ‘Submissions’ section, above.
- 12 May 2015 joint teleconference with the six CFTC and prudential regulators teams that were writing parallel rules on swap margin. I successfully advocated that neither final rule exempt ABS issuers from exchanging daily variation margin. Summaries available at: http://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/dfmeeting_051215_2376.
https://www.fdic.gov/regulations/laws/federal/2014/2014-covered_swap_entities-staff_02.pdf.
https://www3.fca.gov/projectws/regdev/_layouts/15/WopiFrame.aspx?sourcedoc=/projectws/regdev/Lists/Public%20Comments/Attachments/5896/Harrington%20Meeting%20Summary%209%207%2015.docx&action=default.
- 18 March 2015 in-person meeting with Bank of England staff to specify features that the definition of “simple, transparent, and standardized” securitizations should *exclude*. Notable features were: (1) RAC provisions that effectuate changes to securitizations with rating agency rather than noteholder consents; and (2) flip clauses in swap contracts.
- 2 December 2014 teleconference with counsel to SEC Commissioner Kara Stein and staff of the Office of Credit Ratings and the Division of Corporation Finance. I briefed counsel to Commissioner Stein (for the first time) and the SEC staff (for the second time) on the investor risks that arise when ABS issuers with swap contracts do not reserve against counterparty non-performance. I also urged that the derivative disclosures that I proposed on 17 February 2014 be added to unfinished work of Reg AB that Comm. Stein enumerated at the Open Meeting of 27 August 2014. Notice of the call and my presentation available at: <http://www.sec.gov/comments/s7-08-10/s70810-310.pdf>.
- 30 June 2014 teleconference with counsel to SEC Commissioner Luis A. Aguilar. I followed-up on my 29 May 2014 comment that urged the SEC to re-propose rules for rating agencies and for Reg AB disclosures by securitization issuers. I also described the inaccuracies of ABS credit ratings when issuers with swap contracts do not reserve against counterparty non-performance. Notice of the call and my presentation available at: <https://www.sec.gov/comments/s7-08-10/s70810-304.pdf>.
- 30 April 2014 teleconference with staff of the SEC Divisions of Corporation Finance and Economic and Risk Analysis. I discussed the 13 disclosure items for derivative contracts

in my Reg AB comment response of 17 February 2014. Notice of the call and my presentation available at: <https://www.sec.gov/comments/s7-08-10/s70810-301.pdf>.

- 11 February 2014 in-person meeting with staff of the credit risk and structured products divisions of the Federal Reserve Bank of New York. I discussed the capital shortfalls for banks that hold under-capitalized ABS and the systemic risks that arise when ABS issuers with swap contracts do not reserve against counterparty non-performance.
- 24 January 2014 teleconference with staff of the CRA Supervision Unit of the ESMA. I discussed rating agency conflict of interest as evidenced by Moody's RACs for swap amendments that benefited swap providers and reduced protections for ABS investors.
- 12 November 2013 in-person meeting with staff of the SEC Division of Trading and Markets and Office of Credit Ratings. I discussed my 11 August 2011 comment response on the SEC Proposed Rules for NRSROs. Notice of the meeting available at: <https://www.sec.gov/comments/s7-18-11/s71811-76.pdf>.
- 5 August 2013 in-person meeting with attorneys at the Connecticut attorney general, one of the 21 state attorneys general who, with the D.C. attorney general and the U.S. Department of Justice, were signatories to the January 2017 settlement with Moody's, parent Moody's Corporation, and affiliate Moody's Analytics. Available at: <https://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-nearly-864-million-settlement-moody-s-arising>.

MEDIA AND CLOSED-CIRCUIT BROADCASTS

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