

MEMORANDUM

TO: File No. S7-18-08

FROM: Robert J. Soffer
Office of Commissioner Luis A. Aguilar

DATE: May 10, 2011

SUBJECT: Teleconference with Representatives of the Boeing Company and Boeing Capital Corporation

On March 31, 2011, Zachary S. May and Robert J. Soffer, Counsels to Commissioner Luis A. Aguilar, participated in a teleconference with Benedict S. Cohen of the Boeing Company, and David Menz, of Boeing Capital Corporation. The participants discussed the Commission's proposed rules regarding Security Ratings. In connection with the teleconference, the participants furnished the following materials.



BOEING CAPITAL CORPORATION

“Security Ratings” Proposal of the SEC

Summary of Comments of
Boeing Capital Corporation

Summary of Comments

- **We understand SEC is required by Dodd-Frank Act to replace “investment grade” S-3 eligibility criteria with suitable alternative**
- **We agree with SEC position that companies “widely followed in the marketplace” should remain Form S-3 eligible**
- **Commission’s proposal would provide S-3 eligibility for companies**
 - with less than \$75m public equity float that have publicly issued for cash \$1B non-convertible securities, other than common equity, in the preceding 3 years
- **That proposal is, by itself, too restrictive**
 - Will cause loss of S-3 eligibility for many well-known issuers
- **Commission should supplement the proposed test with additional eligibility criteria:**
 - S-3 available to majority (or wholly) owned subsidiary of a WKSI so long as subsidiary has at least \$1B assets or \$1B publicly issued debt securities outstanding, and
 - meets Registrant Requirements of Form S-3

Current proposal would cause widely followed companies to lose S-3 eligibility

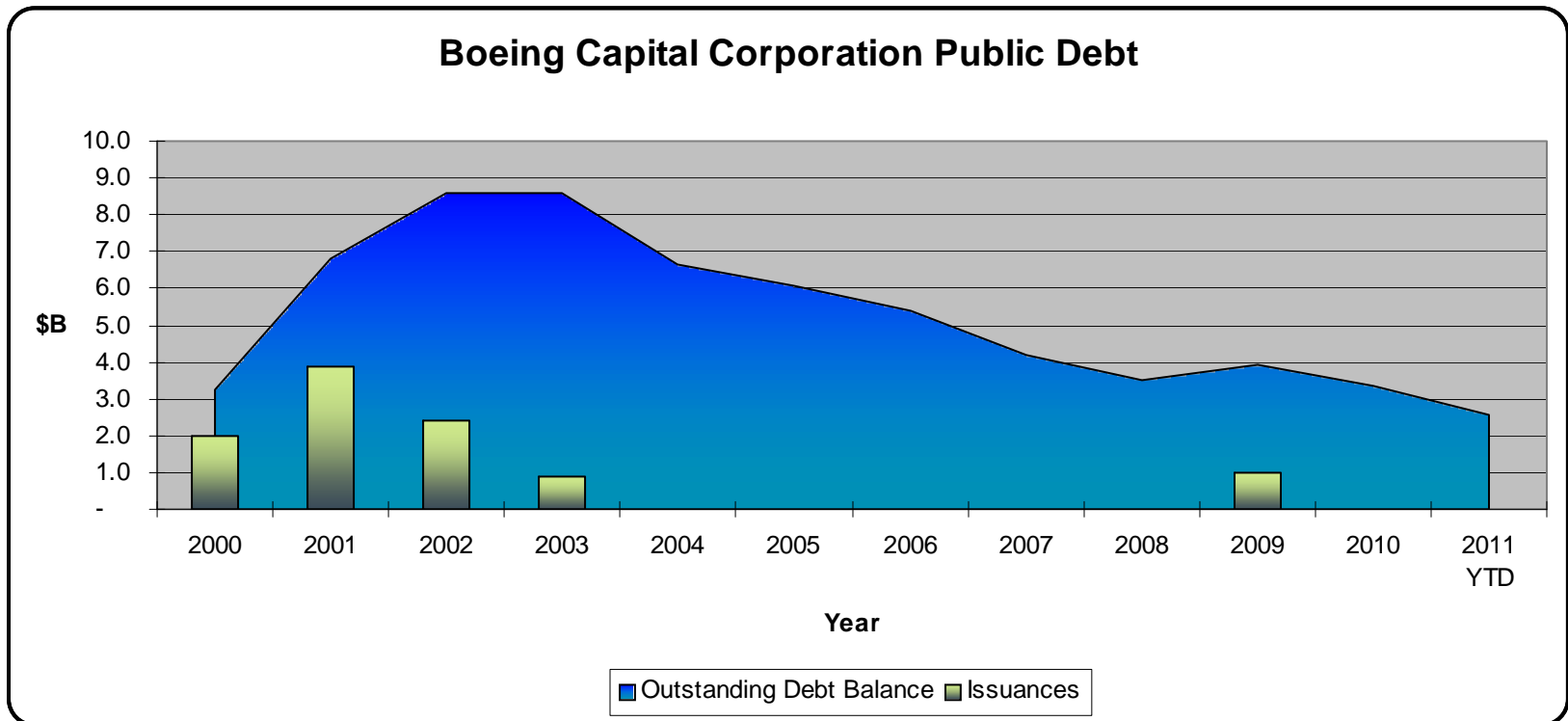
Boeing Capital Corporation

- **Wholly-owned finance subsidiary of The Boeing Company, a WKSI with a market cap in excess of \$50B**
- **BCC's mission is to support the sale of Boeing products**
 - \$10B of financing provided from 2001-2010, substantially all of which supported new Boeing aircraft deliveries
 - \$9.9B of outstanding financing commitments related to the sale of new Boeing aircraft (TBC and BCC at 3/3/11)
- **Currently Form S-3 eligible because investment grade**
 - S-3 critical for most cost-effective debt issuances and BCC's debt programs
- **Widely followed by investors and analysts**
 - part of Boeing; separate reporting segment
 - \$5.0B in assets; \$2.5B outstanding public debt (at 3/31/11)
- **SEC proposal could cause BCC to lose Form S-3 eligibility in near future**

Widely followed company that could be adversely affected by the proposal

BCC's debt history

- BCC would not have been Form S-3 eligible for its 2009 issuance (without Boeing guarantee) if proposed rule had then been in place
- Could lose eligibility at end of 2012



Large reporting issuer remains widely followed even if out of markets for extended period

BCC's suggested addition

- **Subsidiary of WKSI, provided the subsidiary has**
 - \$1B in assets
 - sizable company
 - will be followed by parent's analysts
 - covers almost all affected utility subsidiaries (based on comment letter review)

or

- \$1B in publicly issued debt securities outstanding
 - will be followed by its investors and parent's analysts
 - issuance date not relevant
 - BCC's history shows 3-year lookback overly restrictive

Would cover similarly-situated issuers across industries

Guarantee not appropriate alternative

- **Many finance subsidiaries of manufacturers issue debt securities without corporate guarantee**
 - capital structure preferences
 - bankruptcy protection issues for subsidiary bondholders
 - rating agency leverage considerations
 - single issuer – avoids costs
- **Boeing should not be in position of needing to guarantee debt solely to retain BCC's S-3 eligibility**
 - Widely followed reporting company with substantial amount of assets and publicly traded debt securities
 - Remains so even if out of debt markets for extended period of time

Should guarantee if needed for credit support – not because of regulations

