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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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ADMINISTRATIVE PROCEEDING
File No. 3-16349

In the Matter of BARBARA DUKA,	DIVISION OF ENFORCEMENT'S MOTION FOR PARTIAL SUMMARY DISPOSITION

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The Division of Enforcement for the Securities and Exchange Commission ("Division") moves for partial summary adjudication under Rule 250 of the Commission's Rules of Practice and the Court's February 26, 2015 Order Following Prehearing Conference, on its claims that Respondent Barbara Duka ("Duka") willfully aided and abetted and/or caused Standard & Poor's Ratings Services ("S&P") violations of:

> (1) Rule 17g-2(a)(2)(iii) under the Securities Exchange Act of 1934 ("Exchange Act"), which requires NRSROs to make and retain complete and current records of the rationale for any material difference between the credit rating implied by a model and the final credit rating issued; and
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> (2) Section 15E(c)(3) of the Exchange Act, which requires nationally recognized statistical ratings organizations ("NRSROs") to establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings; and
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> (3) Rule 17g-2(a)(6) under the Exchange Act, which requires NRSROs to make and retain complete and current records documenting the established procedures and methodologies used to determine credit ratings.[1]

I. INTRODUCTION

From late 2010 through July 2011, Duka directed a material and inadequately disclosed change to the ratings model S&P used to rate commercial mortgage backed securities ("CMBS") transactions without following required and established internal S&P procedures. Specifically, Duka caused S&P's CMBS ratings group to switch from using a conservative "loan constant" – a key input to the CMBS ratings model that was intended to reflect the effects of economic stress

[1] On January 14, 2015, S&P submitted an Offer of Settlement wherein it consented to entry of an Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Sections 15E(d) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order") finding that S&P violated Section 15E(c)(3) of the Exchange Act and Exchange Act Rules 17g-2(a)(2)(iii) and 17g-2(a)(6) and admitted certain findings set forth in Annex A of the Order. Ex. A at 1. That Order was instituted on January 21, 2015. *Id.* S&P's consent is not a finding that S&P violated these provisions, against S&P or Duka, but the consent and admitted findings are evidence against Duka.

on the performance of CMBS – to using a much less conservative loan constant.[2] This change to the CMBS ratings model was inconsistent with S&P's publicly disclosed CMBS ratings criteria ("the CMBS Criteria") – the established methodology CMBS analysts were required to apply consistently across all ratings – and resulted in CMBS transactions receiving higher ratings than they would have had Duka used the loan constant mandated under the CMBS Criteria and disclosed to investors.[3] These higher ratings, in turn, garnered more issuer-paid CMBS ratings business for S&P – indeed, prior to Duka's change to the CMBS ratings model, S&P was hired to rate only one CMBS transaction in 2010, while after Duka loosened the CMBS ratings model, S&P was hired to rate eight CMBS transactions through July of 2011, when the truth about Duka's improper conduct emerged.

The undisputed facts compel a finding of liability on the Division's three claims under Exchange Act Rule 17g-2(a)(2)(iii), Section 15E(c)(3), and Rule 17g-2(a)(6).[4]

First, Duka aided and abetted and/or caused S&Ps failure to adequately document the procedures and methodologies it used to determine CMBS credit ratings, in violation of Rule 17g-2(a)(2)(iii) and Rule 17g-2(a)(6). There is no genuine dispute that S&P failed to disclose or otherwise document Duka's change to the CMBS ratings model, which was used to rate or

[2] In its ratings model, S&P intentionally revises metrics it obtains from issuers concerning the loans and the properties in the CMBS pool to make those metrics more conservative. This allows the model to project how the loans would perform in stressed economic times, up to and including the Great Depression.

[3] The CMBS Criteria set forth the methodology that ratings analysts follow when rating a particular issuance. The "ratings model" is an Excel spreadsheet that ratings analysts use to input data and generate a particular rating. The ratings model takes data from loans collateralizing the CMBS as inputs and, using various formulas that are supposed to be derived from CMBS Criteria, calculates expected loan defaults, losses from defaults, and credit enhancement necessary to protect investors from experiencing those losses. A change to the model that changes the way the CMBS Criteria methodology is implemented is thus tantamount to a change to the CMBS Criteria itself.

[4] The Division is not moving for summary disposition on its fraud charges or its Rule 17g-6(a)(2) claim.

preliminarily rate eight CMBS transactions in 2011. S&P maintained Rating Analysis and Methodology Profiles ("RAMPs") – internal documentation that was required to preserve and explain the ratings methodologies utilized. The relevant RAMPs did not adequately disclose Duka's change to the CMBS ratings model; much less explain the rationale for Duka's change. By changing S&P's CMBS ratings model and failing to disclose either the change itself or any rationale for it, Duka aided and abetted and/or caused S&P's failure to make and retain accurate, complete, and current records of its CMBS ratings methodology, including the rationale for the material difference between the credit rating implied by S&P's model and the higher credit ratings that actually issued.

Second, Duka aided and abetted and/or caused S&P's failure to maintain and enforce effective internal controls in violation of Section 15E(c)(3). At least two individuals within S&P knew that Duka was contemplating a material change to the CMBS ratings model and told her that any change to the model would have to be fully disclosed in internal and external S&P documentation. Neither individual, however, made any real effort to maintain and enforce S&P's internal control procedures by following up to determine whether a change was in fact made and, if made, properly disclosed. S&P thus failed to maintain and enforce its internal controls in violation of Section 15E(c)(3). Duka, who directed the change to the model, aided and abetted and/or caused that violation.

Because the facts underlying these charges are admitted or not genuinely disputed, summary disposition of these claims is appropriate.

II. BACKGROUND

A. Respondent

Barbara Duka, age [redacted] is a resident of New York City, New York. During 2009 through 2011, Duka was a managing director at Standard & Poor's Ratings Services and, in that capacity, oversaw an analytical team that formulated ratings for new issue ratings of CMBS and, after approximately early 2011, surveillance ratings of CMBS. Ex. C, Duka Answer at ¶ 1.

B. Standard and Poor's Ratings Services

S&P is a Nationally Recognized Statistical Rating Organization ("NRSRO") headquartered in New York City, New York. Ex. C at ¶ 2.

C. Summary

These proceedings involve a scheme and fraudulent practice or course of business arising out of S&P's post-financial crisis methodology for rating CMBS. The conduct at issue concerns S&P's calculation of the Debt Service Coverage Ratio ("DSCR"), a key quantitative metric used to rate CMBS transactions. Ex. C at ¶ 3. A DSCR was one of the calculations made in the model employed by S&P to assign levels of credit enhancement ("CE") and ratings levels applicable to particular CMBS transaction tranches. Ex. C at ¶ 4.[5] Assuming that all other model assumptions, inputs and metrics were held equal, a higher level of CE for a particular tranche of a CMBS would decrease the likelihood that holders of securities in that tranche would suffer losses given specific assumed cash shortfalls. *Id.*

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[5] Credit enhancement is the support junior tranches in the capital structure of a CMBS provide to senior tranches. Losses within a CMBS are allocated first to junior tranches and only after the junior tranches take losses are losses passed up through the capital structure to more senior tranches. For example, a CE of 20% on the most senior – AAA in S&P ratings terminology – tranche in a CMBS transaction would mean that collateral in a CMBS pool would have to suffer losses of 20% before the AAA rated securities suffered any loss.

Duka oversaw CMBS new issuance for S&P and, beginning in early 2011, she was asked to and began to oversee CMBS surveillance. Ex. C at ¶ 5.[6] In late 2010, S&P's CMBS Group, acting through and led by Duka, loosened its methodology for calculating DSCRs. Ex. A, Order, Annex A at 1, last full paragraph; Ex. B, Duka Tr. at ¶¶ 14, 28, 29. This resulted in CE requirements that were significantly lower for bonds at each different level of the capital structure.[7]

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[6] In addition to providing ratings on newly issued CMBS, S&P and other ratings agencies also periodically surveil existing CMBS, issuing ratings upgrades or downgrades as applicable.

[7] *See, e.g.*, Ex. D, Fisher Tr. at 157-158, describing investigative exhibit 109 (Ex. E hereto) an email from analyst Luciene Fisher attaching the model for GSMS 2011-GC4 using blended constants and investigative exhibit 111 (Ex. F hereto) an email from Fisher attaching the model for GSMS 2011-GC4 using Criteria Constants. The "output" page of the model appears as the third page of each exhibit and describes the CE for each rating level; the table below copies the CE from those models and then shows the absolute difference between the two CE numbers and the difference expressed as a percentage of the CE with blended constants:

Rating level	CE with blended constants	CE with criteria constants	Absolute difference (basis points)	Percentage difference
AAA	14.50%	20.50%	600	41%
AA+	13.13%	18.75%	562.5	43%
AA	11.75%	17.00%	525	45%
AA-	10.38%	15.13%	475	46%
A+	8.88%	13.38%	450	51%
A	7.50%	11.63%	412.5	55%
A-	6.13%	9.88%	375	61%
BBB+	4.63%	8.00%	337.5	73%
BBB	3.25%	6.25%	300	92%
BBB-	2.88%	5.50%	262.5	91%
BB+	2.50%	4.75%	225	90%
BB	2.13%	3.88%	175	82%
BB-	1.75%	3.13%	137.5	79%
B+	1.38%	2.38%	100	73%
B	1.00%	1.63%	62.5	62%
B-	0.88%	1.13%	25	29%
CCC+	0.75%	0.75%	0	0
CCC	0.50%	0.50%	0	0
CCC-	0.00%	0.00%	0	0

S&P's CMBS Group, acting through and led by Duka, published eight CMBS Presale reports in which ratings are announced between February and July 2011. Ex. C at ¶ 6. Each of these eight CMBS Presale reports failed to disclose S&P's relaxed methodology for calculating DSCRs. The reports instead represented that S&P used the more conservative methodology for calculating DSCRs when rating the transactions. Ex. A, Annex A at 2, first full paragraph.

For the purposes of this Motion, we will focus on admitted and/or undisputed conduct which directly and substantially contributed to S&P's failure to (1) make and retain complete and current books and records with respect to each credit rating indicating, where a quantitative model was a substantial component in the process of determining the credit rating, a record of the rationale for any material difference between the credit rating implied by the model and the final credit rating issued; (2) establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining ratings; and (3) make and maintain books and records documenting the established procedures and methodologies used to determine credit ratings.

D. S&P CMBS Ratings

S&P's Code of Conduct requires S&P employees to consistently apply established criteria, avoid being influenced by non-criteria factors, such as business relationships with CMBS issuers, and publish sufficient information about S&P's procedures and assumptions so that users of credit ratings could understand how S&P arrived at its ratings. Ex. G at 4, 7, 10.

A conduit/fusion CMBS is a group of bonds, payment of which is backed by a pool of loans secured by commercial real estate. Ex. C at ¶ 10. The bonds at the top of the capital structure receive priority in payment of principal and interest, while the bonds at the bottom experience losses first when obligors default on the underlying loans. *Id.* Because of these differences, the bonds at the bottom of the capital structure receive the highest rate of return, while the bonds at the top receive the lowest rate of return. *Id.* The bonds at the bottom of the structure thus provide a cushion against loss to the bonds at the top of the structure. *Id.* How much cushion is required to achieve a particular credit rating is a key aspect of rating CMBS transactions.

During the relevant time period (2010 and 2011), fees for rating CMBS transactions were paid by the issuers. *Id.* at ¶ 11. Issuers typically announced a potential CMBS transaction privately to most or all of the NRSROs that rate CMBS several months before the issuer anticipated selling the bonds. *Id.* NRSROs typically responded to these announcements by undertaking initial analyses of the transaction and providing feedback to the issuers concerning how much CE they would require for each bond in the capital structure to be rated at particular levels. *Id.*[8] Typically, the issuer then retained two NRSROs to rate the transaction, usually choosing the agencies that proposed the lowest CE. *Id.*; Ex. H, Thompson Tr. at 9:3-8.

S&P was asked by issuers from time to time in 2010 and 2011 to review and analyze potential CMBS conduit fusion new issuances and their related loan pools and underlying real estate collateral and provide feedback. Ex. C at ¶ 12. If and when S&P was engaged to rate a new CMBS new issuance, members of the CMBS new issuance group would perform further analysis and modeling typically over a period of more than one month and provide feedback to the issuer concerning ratings levels applicable to the separate tranches of the security, which included DSCR and other information. *Id.*

[8] *See, e.g.*, fn. 7, *supra*.

After receiving final feedback, the issuer announced the transaction to the public. Shortly after the announcements on transactions for which S&P was retained by the issuer, S&P's CMBS Group published Presale reports that purportedly set forth the explanation, disclosure and analysis concerning S&P's views on ratings applicable to tranches of new issuance CMBS. Ex. C at ¶ 13.

Duka, as managing director of the CMBS Group, oversaw the entire process whereby the CMBS Group analyzed new issuance CMBS, submitted feedback to issuers, assessed ratings levels, prepared, used and drew upon models and internal S&P documents pertaining to such ratings, contributed to reports published by S&P describing ratings (Presales) that were attributed to them, and contributed to commentaries published by S&P describing CMBS new issuance opinions concerning particular CMBS transactions. Ex. C at ¶ 14; Ex. U at 1 (showing CMBS analyst names on cover page). Certain members of CMBS new issuance group were members of S&P Criteria Committee(s) responsible for developing and amending S&P's CMBS Criteria. Ex. C at ¶ 14. As an experienced employee of S&P, Duka was familiar with S&P's internal policies and procedures governing CMBS ratings, and understood that CMBS ratings were to be issued in compliance with CMBS Criteria. *Id.*[9]

E. S&P's established methodology for rating CMBS using published loan constants to calculate debt service coverage ratios

On or about June 26, 2009, S&P published "U.S. CMBS Rating Methodology And Assumptions For Conduit/Fusion Pools" ("the Criteria Article"). *Id.* at ¶ 15. The Criteria Article was intended to inform market participants, including investors, how S&P determined its

[9] CMBS Criteria were inputs to be used in S&P's ratings models that were approved by an S&P Criteria Committee. *See* Section II.E., *infra*.

ratings. Ex. J at 3, 4. In the Criteria Article, S&P announced "a significant update to its methodologies and assumptions for determining credit enhancement levels and ratings for CMBS conduit/fusion pools" and noted that "[a]s a result of this update, we expect that 'AAA' credit enhancement levels will rise significantly from current levels." *Id.* at 4 Specifically, the Criteria Article explained how S&P calculated net cash flow, used DSCRs to estimate losses on loans in CMBS pools, and used those loss estimates to calculate the CE necessary for the various rating levels. *Id.* at 11-19.

The DSCR is the annual net cash flow produced by an income-generating property, divided by the annual debt service payment required under the mortgage loans. Ex. C at ¶ 16. DSCRs are usually expressed as a multiple, for example, 1.2x. *See* Ex. J at 4. DSCRs give a measure of a property's ability to cover debt service payments. Ex. C at ¶ 16. The CMBS Group calculated the denominator in the DSCR (the debt service) by multiplying the original principal amount of the loan by a "loan constant" reflecting an interest rate and an amortization schedule. *Id.* at ¶ 17. A 1.2x DSCR would indicate that a property generated 120% of the cash flow needed to service its debt.

The Criteria Article's methodology refers to an "archetypical pool" of commercial real estate loans. *Id.* at ¶ 18. The "archetypical pool" is described in a table identified as Table 1. Ex. J at 4. Table 1 included fixed loan constants determined by property type – Retail 8.25%, Office 8.25%, Multifamily 7.75%, Lodging 10.00% and Industrial 8.50%. *Id.* at 5.[10]

[10] These loan constants are alternately referred to within S&P as "Table 1 constants," "criteria constants," "stress or stressed constants," and "published constants" and, as discussed above, are designed to project stressed economic conditions into the ratings model. In this motion we refer to the stressed loan constants published in Table 1 of the Criteria Article as "Criteria Constants."

After publication of the Criteria Article, internal discussions ensued concerning the loan constants that S&P would use to calculate debt service. Ex. C at ¶ 19. Some personnel took the position that S&P should use the Criteria Constants while others argued that S&P should use "actual constants" derived from the terms of the loans. *Id.* On or about July 31, 2009, senior S&P management affirmed that the firm would use the Criteria Constants to calculate DSCRs. Ex. H, Thompson Tr. at 11:21-16:10; *see also* Ex. C at ¶ 19 (acknowledging that it was decided that "CMBS NI and CMBS Surveillance would use the constants published in the Criteria Article to calculate DSCRs"). On or about March 10, 2010, the CMBS Criteria Committee further decided that S&P would use the actual constants if higher than the Criteria Constants to determine debt service payments. Ex. C at ¶ 19; Ex. L at 1, 2. Duka was a lead CMBS Group member on the CMBS Criteria Committee and signed the written decision of the CMBS Criteria Committee. Ex. L at 2, 3. The March decision was a minor change to the prior practice because actual loan constants were rarely higher than the Criteria Constants. Ex. M, Digney Tr. at 335:11-22. The CMBS Group, with Duka's knowledge and acquiescence, incorporated the methodology that resulted from these decisions into the ratings model that it used to analyze CMBS transactions. *See* Ex N, Pollem Tr. at 79:23-80:3; Ex. A, Annex A at 2, second full paragraph.

F. Duka's decision to relax S&P's methodology was made to attract more business.

Prior to the financial crisis, S&P held a dominant share of the market for rating CMBS. Ex. H, Thompson Tr. at 20:23-22:6. The financial crisis essentially halted the new issue CMBS market. When issuers started marketing CMBS transactions again in 2010, S&P's market share did not rebound to its pre-crisis level. *Id.* Instead, S&P was losing market share to other

NRSROs, a fact that Duka and other members of the CMBS Group believed was caused by the conservatism of the CMBS Criteria. *Id.*; Ex. B, Duka Tr. at 225:4-227:1.

Duka was aware of and concerned about S&P's low market share and blamed it in part on her perception that S&P's CMBS Criteria were producing CE levels that were too high for S&P to get rating assignments from CMBS issuers. In an email dated November 11, 2010, Duka wrote that S&P's "more conservative criteria . . . could impact the business" and were among the "key challenges" facing the CMBS Group. Ex. O at 1. In an email dated October 11, 2010, Duka wrote that "we looked at and lost [a CMBS new issue] because our feedback was much more conservative than the other rating agencies." Ex. P at 1. In a December 2010 activity report to S&P management, Duka noted that S&P had lost a different CMBS new issue assignment and again noted that "our criteria has historically been somewhat more conservative than the other agencies." Ex. Q at 6 (SP-CMBS 00521834).

Duka's concerns about S&P's conservative CMBS Criteria culminated in mid-December 2010. At the time, S&P's Model Quality Review group ("MQR") had just produced a draft report concerning the CMBS ratings model that included the 2009 Criteria Article Table 1 Criteria Constants. Ex. C at ¶ 25. The purpose of the MQR review was to determine whether the model was "an appropriate computer implementation of the S&P criteria." Ex. R at 4. The model MQR reviewed used the methodology based on the Criteria Constants, as directed by the CMBS Criteria Committee. Ex. C at ¶ 25.

Duka and several other persons within the CMBS Group circulated emails within the Group concerning how to respond to the draft report. *See, e.g.,* Ex. S. They asserted that they were basing their DSCRs on the Criteria Constants, which had been "vetted in a Criteria

Committee." Ex. T at 2. Nevertheless, Duka wrote that a member of the CMBS Group was "starting to convince me that we should rethink this, as it doe[s] not have the intended result." Ex. S at 3.

In or around mid-December 2010, the CMBS Group materially changed their methodology. Ex. C at ¶ 28. While the model previously calculated the DSCR for each loan by using the higher of the actual loan constant or the Criteria Constant, the new model calculated the DSCR for each loan by using the higher of the actual loan constant or the ***average*** of the actual loan constant and the Criteria Constant. *Id.* This new methodology was inconsistent with the CMBS Criteria and was not approved by the Criteria Committee.

Personnel within S&P described the average constants as "blended constants." Ex. C at ¶ 29. Criteria Constants were in nearly all cases higher than actual loan constants because they were meant to reflect stressed economic conditions; in contrast, blended constants were almost always ***lower*** than the Criteria Constants. Ex. M, Digney Tr. at 335:11-22. The use of blended constants resulted in lower annual debt service calculations and, therefore, higher DSCRs, which led the model to estimate fewer anticipated defaults as well as lower losses from defaults. Ex. C at ¶ 29. This in turn resulted in CE requirements that were significantly lower than they would have been had the CMBS Group used the Criteria Constants to compute DSCRs. *See* fn. 7, *supra*. As a result, the CMBS Group had a ratings methodology that would produce lower CE levels. Lower CE levels are attractive to fee-paying issuers because more of the bonds in the CMBS transaction receive a AAA rating, allowing more bonds to be sold at a premium and thereby increasing the issuer's revenue.

G. Duka's false and misleading statements to investors, and internally, concerning ratings using the relaxed DSCR methodology

During the first half of 2011, the CMBS Group experienced a surge in ratings engagements, using its blended constant methodology to rate the following six conduit/fusion CMBS transactions: MSC 2011-C1, FREMF 2011-K701, JPMCC 2011-C3, FREMF 2011-K11, FREMF 2011-K13 and JPMCC 2011-C4. Ex. C at ¶ 32. Issuers paid S&P approximately $7 million to rate these six transactions. Ex. A, Annex A at 2, third to last paragraph.

For each transaction, the CMBS Group published a Presale. Ex. C at ¶ 33. Each Presale set forth the recommended S&P ratings for the various bonds in the CMBS capital structure, which were based on the CE that the structure provided to each level. *See, e.g.,* Ex. U at 4. The text of the Presale then began with a paragraph entitled "Rationale," which was in essence an executive summary of the document. *Id.* at 5. The Rationales for each of the six rated transactions explicitly stated S&P's DSCR for the pool based on the Criteria Constants, implying that those DSCRs formed the analytical basis for the assigned ratings. *Id.* The Rationale did not disclose that S&P in fact had based its recommended CE on a far less conservative analysis that was based on blended constants. *Id.*; Ex. A, Annex A at 2, second full paragraph. The Presales continued with over 40 more representations of DSCRs calculated using the Criteria Constants. *Id., passim* (this Presale is highlighted to show the numerous instances where it showed a Criteria Constant or a DSCR derived therefrom when in fact the CE level calculated by the CMBS Group for the transaction used the lower blended loan constant and resultant higher DSCR). These representations included DSCRs for the entire pool, stratified portions of the pool, and individual loans. Ex. U at *e.g.* 21, 23. Some Presales also included DSCRs calculated from actual loan constants, but none of the Presales included any DSCRs calculated from the blended constants that S&P actually used to calculate CE and rate the transactions. *See, e.g.,* Ex. V at 5, 22; Ex. B, Duka Tr. at 467:19-25.

In connection with the MQR group's review of the CMBS ratings model, which was not concluded until June 2011, Duka used vague language in responding to the MQR group's questions. Ex. N, Pollem Tr. at 184:15-189:24; Ex. W at 1). She thus misled MQR into believing that her group continued to use Criteria Constants in its ratings model. *See* Ex. X at 3 (noting that "MQR was informed that the Loan Constant used to calculate AAA Debt Service is typically the higher of the actual loan constant and that specified in Table 6 [the criteria constant]"). Duka later stated that she did not want to publish the use of blended constants (and the resulting DSCR range) because the new issue process with respect to loan constants differed from that of surveillance and she did not want to have to explain the difference to investors. Ex. Y at 6. MQR focused part of its review on the loan constants, and explicitly requested that Duka certify that she was "comfortable with the assumption that … [l]oan constants used to derive debt service are appropriate to estimate the debt service amount." Ex. W at 3. In response, Duka stated that "we consider both the constants in [Criteria Table 1] and the actual constants," and that "New Issuance would use the actual (if higher) but look at both if the actual constant is lower than the [Criteria Constant]." *Id.* at 1, 2. This language suggested that Duka's group engaged in some sort of analysis when deciding upon which constant to use, when in fact Duka and her CMBS group were simply using a 50/50 blended constant for all loans in all pools.[11] Significantly, even though Duka's CMBS Group changed the model in the midst of the MQR review, Duka never provided the new model to MQR. Ex. B, Duka Tr. at 700:23-702:25.

[11] For one loan in one pool, the CMBS group used the actual constant because it was higher than the Criteria Constant. See Ex. F at 1

Instead, Duka allowed MQR to perform its important internal control function with a model that was outdated and incorporated Criteria Constants that the CMBS Group no longer used.

Duka also caused the CMBS Group to misrepresent the calculation of DSCRs in internal documents known as Rating Analysis and Methodology Profiles ("RAMPs"). According to S&P's RAMP Guidelines, "The RAMP's objective is to explain the rating recommendation to voting committee members [who approved the proposed rating] through application of criteria." Ex. Z at 2. "The RAMP captures the key drivers of the issue being rated, the relevant facets of analysis, the pertinent information being considered, and the underlying criteria and applicable assumptions . . . ." *Id.* S&P's Model Use Guidelines described various matters pertaining to models that must be documented in RAMPs, including key assumptions used in models and modifications to models. Ex. AA at 5.

Duka met briefly with S&P's chief structured finance criteria officer, Frank Parisi, in December of 2010, before starting to use blended constants, and agreed that she and her CMBS Group would disclose the methodology used to calculate DSCRs, and any changes to that methodology, in the RAMPs and the Presales. Ex. B, Duka Tr. at 410:11-18. She also met with S&P quality officer, Susan Barnes, in January of 2011, who was investigating the use of loan constants in new issuance ratings. *Id.* at 414:5-415:2. Duka did not tell Barnes that a blended constant would be used in the model, and Barnes did not independently uncover that fact. *Id.* at 417:4-11, 478:17-479:12. Duka testified that she "disclosed what constants I was using, but not necessarily the actual blended constant for the transaction." *Id.* at 417:4-11. Duka's obfuscation led Barnes to prematurely conclude her investigation, fail to discover that Duka had made a wholesale change to using blended loan constants in the model, and fail to conduct a "level 2 review" and review the issue with S&P's chief credit officer as requested by S&P's executive vice president. *See* Ex. BB, at 1, 2.

Instead of disclosing the blended constants CMBS was using in its ratings model, the RAMPs for each of the six transactions listed above disclosed DSCRs calculated using the Criteria Constants. *See* Ex. B at 469:6-25. The RAMPs did not describe the use of blended constants, the data derived from blended constants (other than the ultimate CE), or the fact that the models were modified to use blended constants in calculating CE. *Id.*; 605:5-13; Ex A, Annex A, p. 2, fifth full paragraph.

In July 2011, S&P published Presales with preliminary ratings for two additional CMBS transactions called GSMS 2011-GC4 and FREMF 2011-K14. Ex. C at ¶ 43. As with the previous six transactions, the Presales contained multiple DSCRs calculated based on the Criteria Constants. *See, e.g.,* Ex. CC at 4, 5, 8, 9, 22; Ex. DD at 5, 6, 10. They also included DSCRs calculated from actual loan constants, but did not provide any DSCRs derived from the blended constants S&P actually used in calculating CE for the preliminary ratings. *See, e.g.*, Ex. CC at 23 and Ex. DD at 5. As a result of publishing Criteria Constants and resultant DSCRs, while actually assigning CE and rating the transactions using the lower blended loan constants, these Presales also made numerous false and misleading statements about the amount of stress that S&P placed on the loans in the pools when assigning its ratings.

The day before S&P published the Presale for GSMS 2011-GC4, one of the rating analysts on the transaction asked Duka's chief subordinate, James Digney, whether "BD [Duka] wants us to report DSC based on the blend as well as the stressed [criteria] constant?" Ex. FF. Digney replied, "I spoke with her and she wants to show both the dsc using stressed constant and the dsc using actual constant." *Id.* Thus, Duka explicitly decided not to disclose DSCRs using blended constants – *i.e.*, the input the analyst actually used to calculate the ratings.

Several potential investors questioned the low level of CE for the AAA bonds in the GSMS 2011 GC-4 transaction. *See* Exs. GG and HH. S&P gave a preliminary AAA rating to bonds with 14.5% CE. *See* Ex. CC at 4. Using the DSCRs described in the Presale, which calculated DSCRs based on the Criteria Constants, S&P's model would have required 20.5% CE for the AAA bond. *See* fn. 7, *supra.*[12]

In light of the investor questions, S&P's senior management reviewed S&P's ratings and discovered the use of blended constants. *See, e.g.,* Ex. II, Jacob Tr. at 112:5-114:1; Ex. A, Annex A at 2, penultimate paragraph. S&P then withdrew its preliminary ratings for the two transactions. *See* Ex. JJ at 2; Ex. A, Annex A at 2, last paragraph. As a result, these transactions did not close on schedule, even though, at least with regards to the GSMS 2011-GC4 transaction, the issuer and investors had entered into contracts for purchase and sale. S&P's decision to withdraw the ratings occurred over a series of internal meetings. Several persons who attended those meetings reported that Duka admitted that the decision not to disclose blended constants in the Presales was intentional. *See* Ex. KK, Adelson Tr. at 103:13-22; Ex. LL, Barnes Tr. at 184:22-185:13; Ex. MM, Byrnes Tr. at 59:15-62:3; Ex. NN, Osborne Tr. at 186:6-187:15; Ex. OO, Gillis Tr. at 102:3-14.

[12] The 14.5% CE percentage given to GSMS 2011-GC4 was significantly lower than the CE percentages on the three previous (non-Freddie Mac) deals S&P had rated in 2011, where AAA CE was 22.875%, 17%, and 18.375%, respectively, as well as the 19% CE assigned to the archetypical pool. Freddie Mac deals typically have lower CE percentages because they are backed by multi-family properties which are viewed as less risky than other commercial property loans held in CMBS transactions.

On May 24, 2012, S&P's Compliance Department issued a memorandum regarding a Targeted Post Event Review of the GSMS 2011-GC4 transaction. Ex. PP. The Compliance Department found that Duka violated the S&P Ratings Services Codes of Conduct in eight separate instances and the Model Quality Review Guidelines in one instance. *Id.* at 1. Because Duka had resigned and left S&P on March 5, 2012, the Compliance Department did not recommend any remedial action against her. *Id.*

III. LEGAL STANDARD

Rule 250(a) of the Commission's Rules of Practice permits a party to move "for summary disposition of any or all allegations of the order instituting proceedings" before hearing with leave of the hearing officer. 17 C.F.R. § 201.250(a). The Administrative Law Judge's February 26, 2015 Order Following Prehearing Conference gave the parties until May 8, 2015 to file full or partial motions for summary disposition. Rule 250(b) provides that a hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b); *see Michael Puorro*, Initial Decision Rel. No. 253, 2004 SEC LEXIS 1348, at *3 (June 28, 2004); *Garcis, U.S.A.*, Securities Exchange Act of 1934 Rel. No. 38495 (Apr. 10, 1997) (granting motion for summary disposition).

IV. ARGUMENT

A. Rule 17g-2(a)(2)(iii)

1. S&P violated Rule 17g-2(a)(2)(iii) of the Exchange Act by failing to disclose the use of and rationalization for using a blended loan constant in S&P's RAMPs.

Rule 17g-2(a)(2)(iii) of the Exchange Act requires a NRSRO like S&P to make and retain accurate books and records relating to models it uses in making ratings, including the rationale for any material difference between the rating implied by the model and the final credit rating issued, specifically:

> (a) A nationally recognized statistical rating organization must make and retain the following books and records, which must be complete and current: … (2) Records with respect to each current credit rating of the nationally recognized statistical rating organization indicating (as applicable): … (iii) If a quantitative model was a substantial component in the process of determining the credit rating of a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, a record of the rationale for any material difference between the credit rating implied by the model and the final credit rating issued;

17 CFR § 240.17g-2(a)(2)(iii).

S&P's CMBS Group rated six conduit fusion transactions in 2011: MSC 2011-C1, FREMF 2011-K701, JPMCC 2011-C3, FREMF 2011-K11, FREMF 2011-K13 and JPMCC 2011-C4. Ex. C at ¶ 32. For each rating, a quantitative model was a substantial component in the process of determining the credit rating. Duka "admits that S&P used [ ] blended constants in rating [those] new issuances." *Id.* She further "admits that she agreed to disclose the change in application of methodology" from using Criteria Constants to using the significantly lower blended constants in 2011. *Id.* at ¶ 31.

According to S&P's RAMP Guidelines, "The RAMP's objective is to explain the rating recommendation to voting committee members [who approved the proposed rating] through application of criteria." Ex. Z at 2. Duka's sworn testimony is that:

> [The RAMP is] meant to highlight certain facts that were used internally to rate the transaction. It's also meant to be used by surveillance so that they have a guide or a reference as to the rationale used at issuance. It should reflect the relevant factors that were considered in the analysis in the rating committee.
>
> ....
>
> [I]t documents the discussions in the rating committee, and it creates a record for surveillance so that they – they can understand the transaction.

Ex. B, Duka Tr. at 449:17-450:5.

As noted above, Duka agreed that she and her CMBS Group would disclose the methodology used to calculate DSCRs, and any changes to that methodology, in the RAMPs. Ex. B, Duka Tr. at 410:11-18. Instead, the RAMPs for each of the six transactions listed above disclosed DSCRs calculated using the Criteria Constants, when in fact S&P rated the transactions using DSCRs calculated using blended constants. *See id.* at 469:6-25. The RAMPs did not disclose the use of blended constants, the data derived from blended constants, or the fact that the models were modified to apply blended constants. *Id.* The RAMPs on these six new issuances thus failed to make the required record of the actual model used in reaching the credit rating that was issued, let alone the rationale for any material difference between the credit rating implied by the model and the final credit rating issued. As a result, S&P violated 17 CFR § 240.17g-2(a)(2)(iii).

Duka contended in her Wells submission that the Presale documents were not inaccurate because a single sentence inserted deep within that approximately 70 page document purportedly fully disclosed S&P's transition from using stressed/criteria loan constants to the less stressed blended loan constants. That sentence read: "[i]n determining a loan's DSCR, Standard & Poor's will consider both the loan's actual constant and a stressed constant based on property type as further detailed in our conduit/fusion criteria." Ex. QQ at 7. [Wells submission] Duka then claims that because "the RAMPS incorporated the presales by reference" the RAMPS disclosed the change to blended constants and did not violate any rules or internal control procedures. *Id.* at 37.

But even if this vague disclosure adequately disclosed the switch to the blended constant – which it did not – it does not comply with the RAMP Guidelines' requirement to explain the rating recommendation, the Model Use Guidelines' requirement to describe and document in RAMPs key assumptions used in models and modifications to models, or Rule 17g-2(a)(2)(iii)'s requirement to disclose the rationale for any material difference between the credit rating implied by the model and the final credit rating issued.

There can be no doubt that the change in the model from using a Criteria Constant to a blended loan constant made a material difference in the credit rating the model produced. Duka herself testified that the switch to a blended constant was "an enormous decision" and "[t]he consequences of being wrong were enormous as I saw later on" in connection with the withdrawn GSMS 2011-GC4 rating. Ex. B, Duka Tr. at 384:9-19 and 385:16-386:8; *see also* Ex. JJ (announcing that discovery of S&P's change in its methodology for calculating ratings required S&P to temporarily discontinue conduit/fusion ratings). Susan Barnes testified that in her opinion a 10 percent change in credit enhancement on AAA credit enhancement would be material. Ex. LL, Barnes Tr. at 147:16-25. Barnes also noted that the change to the blended constant moved the AAA credit enhancement on GSMS 2011-GC4 from approximately 14 percent to 20 percent. *Id.* at 145:16-24. More precisely, the AAA credit enhancement on that deal moved from 14.5 percent to 20.5 percent, a change in CE of 41 percent. *See* fn. 7, *supra*.

The credit rating implied by S&P's approved model was the lower rating achieved through use of Criteria Constants. The RAMP gave no explanation for why S&P changed the model to use the blended loan constants, thus arriving at and issuing materially higher ratings.

2. Duka aided and abetted and/or caused S&P's violation of 17 CFR § 240.17g-2(a)(2)(iii).

A finding of aiding and abetting requires proof of: (1) a primary violation of the securities laws; (2) knowledge of the primary violation by the aider and abettor; and (3) substantial assistance by the aider and abettor in the commission of the primary violation. *SEC v. DiBella*, 587 F.3d 553, 566 (2d Cir. 2009). The knowledge requirement can be satisfied by recklessness when the alleged aider and abettor is a fiduciary or an active participant. *Geman v. SEC*, 334 F.3d 1183, 1195-96 (10th Cir. 2003); *Ross v. Bolton*, 904 F.2d 819, 824 (2d Cir. 1990). "While it is unnecessary to show that an aider and abettor know [s]he was participating in or contributing to a securities law violation, there must be sufficient evidence to establish 'conscious involvement in impropriety.'" *SEC v. Slocum, Gordon & Co.*, 334 F. Supp. 2d 144, 184 (D.R.I. 2004). "This involvement may be demonstrated by proof that the aider or abettor 'had general awareness that his role was part of an overall activity that [was] improper.'" *Id.* (*quoting SEC v. Coffey*, 493 F.2d 1304, 1316 (6th Cir. 1974)). The element of substantial assistance is met when, based upon all the circumstances surrounding the conduct in question, a defendant's actions are a "substantial causal factor" in bringing about the primary violation. *SEC v. K.W. Brown & Co.*, 555 F. Supp. 2d 1275, 1307 (S.D. Fla. 2007).

Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. *KPMG Peat Marwick LLP*, 54 S.E.C. 1135, 1175 (2001), *recons. denied*, Exchange Act Release No. 44050, 2001 SEC LEXIS 422 (Mar. 5, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002). A respondent who aids and abets a violation also is a cause of the violation. *See Zion Capital Mgmt. LLC*, Securities Act Release No. 8345, 2003 SEC LEXIS 2939, at *28 (Dec. 11, 2003). The Commission has determined that causing liability under Section 21C(a) requires findings that: (1) a primary violation occurred; (2) the respondent knew, or should have known, that his or her conduct would contribute to the violation; and (3) an act or omission by the respondent caused the violation. *See Robert M. Fuller*, 80 SEC Docket 3539, 3545 (Aug. 25, 2003), *pet. denied*, 95 Fed. Appx. 361 (D.C. Cir. 2004); *Erik W. Chan*, 55 S.E.C. 715, 724-25 (2002).

As noted above, S&P violated 17 CFR § 240.17g-2(a)(2)(iii) by failing make a record of the modified ratings models used in rating six CMBS transactions in 2011, and failing to record the rationale for changing the loan constant and resultant DSCRs used in the models used to rate the transactions. Duka has admitted that the change to using the blended constant was done at her direction. She was thus an active participant. She further knew or was reckless in not knowing that including DSCRs from an outdated ratings model in the RAMP, and failing to provide any explanation for why the ratings model was changed, were failures by S&P to properly document its ratings process as required by S&P's RAMP and Model Use Guidelines, as well as 17 CFR § 240.17g-2(a)(2)(iii).

As the senior person in the CMBS Group and supervisor of the analysts who signed off on all six RAMPs completed for these transactions, Duka had responsibility to ensure that the

RAMPs were accurate. *See e.g.* Ex. EE at 1, 4, and 5.[13] Duka also signed the March 10, 2010 CMBS Framework Model Enhancement / Validation Documentation, documenting the Criteria Committee's decision that going forward S&P would use the higher of the actual constants, if higher than the Criteria Constants, or the Criteria Constants, if not, to determine debt service. Ex. L at 1, 3; Ex. C at ¶ 19. Thus, Duka knew that the switch to using blended constants was not an approved criteria change.

B. Duka also aided and abetted and caused S&P's violation of Section 15E(c)(3) of the Exchange Act.

Section 15E(c)(3) of the Exchange Act requires that:

> Each nationally recognized statistical rating organization shall establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining ratings, taking into consideration such factors as the Commission may prescribe by rule.

15 U.S.C. § 78o-7(c)(3).

S&P's RAMP guidelines were designed to explain ratings recommendations to voting committee members and, as Duka herself recognized, RAMPs should reflect the relevant factors that were considered in the analysis in the rating committee. Yet, Duka and her CMBS Group created and submitted RAMPs that contained multiple references to Criteria Constants and DSCRs based upon Criteria Constants while knowing that the actual rating was based on the lower blended constant, which was notably absent from the RAMPs. This also violated S&P's Model Use Guidelines which required RAMPs to document key assumptions used in models and modifications made to models.

[13] It is not disputed that Brian Snow and Kurt Pollem were an analyst and an analytical manager that worked under Duka's supervision in the CMBS ratings group.

Parisi, Barnes, and others were aware that a change to methodology was being contemplated by Duka's CMBS Group. Parisi and Barnes were also both assured by Duka that any change to methodology would be documented in both the Presale and the RAMP. Yet neither checked or directed anyone else to check that the disclosures in the Presales and RAMPs were consistent with the models used to rate new issue CMBS transactions in 2011. S&P thus failed to establish, maintain and enforce an effective internal control structure governing the implementation of and adherence to policies, procedures and methodologies for determining ratings. Duka, who directed that models be modified to use blended constants, was told to and agreed to disclose any such modifications but failed to do so, and was less than forthcoming with Barnes in connection with her January 2011 investigation, aided and abetted and caused this violation.

S&P also failed to establish, maintain, and enforce effective internal controls for its model quality review group when the group reviewed an outdated model that continued to use Criteria Constants after Duka's group had changed the model to use blended constants. Duka aided, abetted, and/or caused this failure by changing the model and being obtuse in her answers to MQR. *See* Ex. C at ¶ 25.

C. Duka aided and abetted and caused S&P's violation of Rule 17g-2(a)(6) of the Exchange Act.

Rule 17g-2(a)(6) of the Exchange Act provides that:

> (a) A nationally recognized statistical rating organization must make and retain the following books and records, which must be complete and current: … (6) A record documenting the established procedures and methodologies used by the nationally recognized statistical rating organization to determine credit ratings.

17 CFR § 240.17g-2(a)(6).

By failing to explain and make an accurate record of the rating recommendations in the RAMPs as required by the RAMP Guidelines, and failing to describe and document in the RAMPs key assumption used in and modifications made to models as required by the Model Use Guidelines, S&P failed to maintain complete and current books and records documenting established procedures and methodologies used to determine credit ratings. For all the reasons discussed above, Duka caused, aided, and abetted these violations.

V. CONCLUSION

Because there are no reasonably disputed issues of fact regarding S&P's violations of Section 15E(c)(3) of the Exchange Act or Rules 17g-2(a)(2)(iii) and 17g-2(a)(6) thereunder, or of Duka's causing and aiding and abetting those violations, summary disposition finding Duka liable on those claims is appropriate.

Dated: May 8, 2015.

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CERTIFICATE OF SERVICE

On May 8, 2015, the foregoing Motion was sent to the following parties and other persons entitled to notice as follows:

Brent Fields, Secretary
Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
(Original and three copies by UPS)

Honorable Cameron Elliot
Administrative Law Judge
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Marla J. Pinkston
Senior Trial Paralegal

EXHIBIT A

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9705 / January 21, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 74104 / January 21, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16348

In the Matter of **STANDARD & POOR'S RATINGS SERVICES,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTIONS 15E (d) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Sections 15E(d) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Standard & Poor's Ratings Services ("S&P" or the "Respondent").

II.

In anticipation of the institution of these proceedings, S&P has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it, the subject matter of these proceedings, and the facts set forth in Annex A attached hereto, which are admitted, S&P consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the

Securities Act and Sections 15E(d) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and S&P's Offer, the Commission finds[1] that:

Summary

These proceedings involve statements by S&P concerning its methodology for rating conduit/fusion Commercial Mortgage Backed Securities ("CF CMBS"). Conduit/fusion transactions are those that are comprised of geographically diversified pools of at least 20 mortgages loans made to unrelated borrowers. The disclosures at issue concern S&P's application of the Debt Service Coverage Ratio ("DSCR"), a key quantitative metric used to rate CF CMBS transactions.

S&P used DSCRs to estimate term defaults of loans in CF CMBS as part of its analysis of appropriate levels of Credit Enhancement ("CE") for particular ratings. CE is a critical consideration for a credit rating; in general terms, ratings with higher levels of CE are more conservative and provide greater protection against loss to investors. In late 2010, S&P changed its methodology for calculating DSCRs, which had the impact of lowering the amount of CE necessary to achieve a particular rating for transactions then in the market.

S&P published eight CF CMBS Presale reports between February and July 2011 in which it failed to describe its changed methodology for calculating DSCRs. The reports included DSCRs calculated using its prior methodology, which were misleading because they communicated that the ratings at issue were more conservative than they actually were. S&P did not follow its internal policies and procedures when making the change to its method for calculating DSCRs. S&P's internal control structure also did not sufficiently address red flags – including an internal complaint – that S&P had improperly changed its method for rating CF CMBS.

Respondent

S&P is a Nationally Recognized Statistical Rating Organization ("NRSRO") headquartered in New York City, New York. S&P is comprised of a separately identifiable business unit within Standard & Poor's Financial Services LLC, a Delaware limited liability company wholly-owned by McGraw Hill Financial, Inc. ("MHFI"), and the credit ratings business housed within certain other wholly-owned subsidiaries of, or businesses continuing to operate as divisions of, MHFI.

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Facts

A. S&P's CMBS ratings.

1. Rating agencies' consistency and transparency are crucial to investors, including in the CF CMBS market. Without consistent application of rating methodology, ratings are not comparable from deal to deal. Similarly, without transparency, investors can assess neither the methodology employed by the rating agency nor the application of that methodology. S&P's policies reflected these priorities by requiring S&P employees to consistently apply established Criteria, avoid being influenced by business relationships with the issuers, and publish sufficient information about S&P's procedures and assumptions so that users of credit ratings could understand how S&P arrived at its ratings.

2. A CF CMBS is a type of mortgage-backed security backed by a pool of commercial real estate loans. Commercial properties that secure loans in CF CMBS pools are broadly divided into five categories: retail, office, multifamily, lodging, and industrial. CF CMBS are typically structured as multiple "tranches," or bonds, which have differing risk/return profiles. The bonds at the top of the capital structure generally receive priority in payment of principal and interest, while the bonds at the bottom experience losses first after the underlying loans incur losses. Because of these differences, the bonds at the bottom of the capital structure generally receive the highest rate of return, while the bonds at the top receive the lowest rate of return. The bonds at the bottom of the structure thus provide a cushion against loss to the bonds at the top of the structure. This cushion is a key element of the CE applicable to each bond in a CF CMBS transaction.

3. During the time frame covered by this Order (2010 and 2011), fees for rating CF CMBS transactions were paid by the issuers. Issuers typically announced potential CF CMBS transactions privately to NRSROs several months before they anticipated selling the bonds. NRSROs typically responded to these announcements by undertaking initial analyses of the pool and providing feedback to the issuers concerning how much CE they would require for each bond in the capital structure to be rated at particular levels. Typically, the issuers then retained two NRSROs to rate the transaction, usually choosing the agencies that proposed the lowest credible CE.

4. S&P competed for and sometimes obtained CF CMBS rating assignments in 2010 and 2011. After being hired to rate a transaction, S&P spent approximately two months analyzing the loans and properties. As part of this analysis, S&P made reductions to projected cash flows and property values for the purpose of estimating how the loans would perform under stressed economic conditions. S&P then gave final feedback to the issuer concerning recommended ratings for levels of the capital structure proposed by the issuer. The feedback included summary data concerning DSCRs and other key metrics, which reflected the stress that S&P placed on the loans.

5. After receiving final feedback, the issuers announced the transactions to the public. Shortly after the announcements, S&P publicly disseminated Presale reports setting forth S&P's preliminary recommended ratings and the detailed rationale for the ratings. Although these ratings were designated as preliminary, they were issued in the offer and sale of the CMBS bonds because issuers and investors used the Presales as part of the total mix of information available to analyze the transactions. Final ratings were not issued until after the closing of the transactions. Investors typically had approximately one week after the announcement of the proposed transaction to make their investment decisions.

B. S&P's established rating methodology for CF CMBS used published loan constants for calculating DSCR.

6. On or about June 26, 2009, S&P published "U.S. CMBS Rating Methodology And Assumptions For Conduit/Fusion Pools" ("the Criteria Article"). The Criteria Article was intended to inform market participants, including investors, how S&P calculated net cash flow, how S&P used DSCRs and other information to estimate losses on loans in CF CMBS pools, and how S&P used estimated losses to calculate recommended CE for the various rating levels, among other things.

7. The Criteria Article established a 19% "AAA" CE for an "archetypical pool" of commercial real estate loans. In S&P's view, bonds rated at the AAA level would withstand market conditions commensurate with an extreme economic downturn like the Great Depression without defaulting.

8. S&P used DSCRs to estimate term defaults of loans in CF CMBS pools in connection with determining appropriate levels of CE for particular ratings. The DSCR is the ratio of the annual net cash flow produced by an income-generating property, divided by the annual debt service payment required under the mortgage loans. DSCRs are usually expressed as a multiple, for example, 1.2x. DSCRs give a measure of a property's ability to cover debt service payments. Put another way, an initial DSCR shows the cushion that is available to absorb a decline in net cash flow generated by a property during the term of the mortgage loan.

9. For the purposes of estimating whether a loan would default during its term (as opposed to at its maturity date), S&P calculated the numerator in the DSCR (the net cash flow) by beginning with the current net cash flow data provided by the issuers of the CF CMBS transaction and then applying stresses and discounts to estimate how the income from the property would be affected by economic circumstances. S&P calculated the denominator in the DSCR (the debt service) by multiplying the original principal amount of the loan by a "loan constant" reflecting an interest rate and an amortization schedule.

10. Although the Criteria Article provided loan constants for an "archetypical pool" of loans in a table identified as Table 1 by property type – Retail 8.25%, Office 8.25%,

Multifamily 7.75%, Lodging 10.00% and Industrial 8.50% – it did not state whether S&P would calculate the denominator of the DSCR using the Table 1 loan constants for the purpose of estimating whether a loan would default during its term.

11. After internal discussion, on or about July 31, 2009, S&P decided to use the Table 1 loan constants to calculate DSCRs. On or about March 10, 2010, the CMBS criteria committee further decided that S&P would use the "higher of" the actual constants or Table 1 loan constants to determine debt service payments. S&P incorporated the methodology that resulted from these decisions into the model that it used to analyze CF CMBS transactions.

12. On or about June 22, 2010, S&P published a commentary on a CF CMBS transaction called JPMCC 2010-C1. S&P did not rate the transaction. In the commentary, S&P included DSCR data based on actual loan constants, but then stated that the firm "typically evaluates a transaction's loan default probability using a stressed DSC based on 'BBB' and 'AAA' cash flow scenarios and a stressed loan constant. For JPMCC 2010-Cl, the pool's weighted average stressed debt constant would equal approximately 8.33%, based primarily on the retail and office exposure, for which our constant is 8.25%." S&P closed the commentary with a direct comparison of the JPMCC 2010-C1 pool to the archetypical pool. In that comparison S&P stated that the pool's DSCR was based upon "stressed constants." Through these statements, S&P informed the public that it used the Table 1 loan constants to calculate DSCRs in its analysis of CF CMBS transactions.

13. On or about September 24, 2010, S&P published a Presale for a CF CMBS transaction called JPMCC 2010-C2. The Presale set forth preliminary ratings for the transaction and detailed S&P's analysis that led to its ratings. It began with a summary overview that highlighted the pool-wide DSCR, and the subsequent analysis contained approximately 45 DSCR representations, an indication of the importance of the DSCR in commercial real estate analysis. In addition to the pool-wide DSCR, the Presale presented DSCRs for stratified portions of the pool and for individual loans. In each case, the DSCRs were calculated using the "higher of" the actual loan constants or Table 1 loan constants.

14. As a result of its internal actions described above, including decisions and model implementation, the published commentary on JPMCC 2010-Cl, and the published Presale for JPMCC 2010-C2, S&P established that it used the "higher of" the actual loan constants or Table 1 loan constants to calculate DSCRs.

C. In late 2010, S&P adjusted its methodology for calculating DSCRs.

15. S&P's market position for rating CMBS transactions had declined in the years following the financial crisis, which essentially halted the new issuance CMBS market. When issuers started marketing CMBS transactions again in 2010, S&P's market share did not rebound

to its pre-2008 level, a fact that some members of the CMBS Group believed was caused by, among other things, the conservatism of the firm's criteria.

16. In or around mid-December 2010, the CMBS Analytical Group made a change to the assumption embodied in its model for analyzing new issue CF CMBS transactions. While the model previously calculated the DSCR for each loan by using the "higher of" the actual loan constant or Table 1 loan constant, the assumption was changed to calculate the DSCR for each loan by using the simple average of (1) the higher of the actual loan constant or the Table 1 loan constant and (2) the actual loan constant.

17. Personnel within S&P described the average constants as "blended constants." In all cases in which a loan's actual constant was lower than the Table 1 loan constant, the blended constant would also be lower than the Table 1 loan constants. The use of blended constants generally resulted in lower annual debt service calculations and, therefore, higher DSCRs, which led the model to estimate fewer defaults under a "AAA" stress during the term of a loan, but more defaults at the maturity of the loan, but ultimately leading to lower losses from defaults. This resulted in CE requirements that were lower than they would have been had S&P calculated DSCRs using the "higher of" Table 1 or actual constants, which was more attractive as a commercial matter because issuers seek lower CE levels.

D. S&P rated six transactions and produced preliminary ratings for two more transactions using the revised DSCR methodology, but published data using different DSCRs.

18. During the first half of 2011, S&P used its blended constant methodology to rate the following six CF CMBS transactions: MSC 2011-C1, FREMF 2011-K701, JPMCC 2011-C3, FREMF 2011-K11, FREMF 2011-K13 and JPMCC 2011-C4. Issuers paid S&P approximately $7 million to rate and conduct surveillance on these six transactions.

19. For each transaction, S&P published a Presale. Each Presale contained over 40 representations of DSCRs calculated using the "higher of" the actual loan constants or Table 1 loan constants. These representations included DSCRs for the entire pool, stratified portions of the pool, and individual loans. Three of the six Presales also included DSCRs calculated from actual loan constants, but none of the Presales included any DSCRs calculated from the blended constants that S&P actually used to rate the transactions.

20. Had S&P actually used the DSCRs derived from the Table 1 loan constants, as set forth in the Presales, it would have required materially higher amounts of CE in the six rated transactions.

21. The Presales for the 2011 transactions included a sentence that stated, "[i]n determining a loan's DSCR, Standard & Poor's will consider both the loan's actual debt constant

and a stressed constant based on property type as further detailed in our conduit/fusion criteria." This sentence did not inform investors that S&P had changed its methodology to use blended constants, but was consistent with its previously established methodology of calculating DSCRs with the higher of Table 1 or actual constants.

22. S&P's statements in the Presales concerning DSCRs were thus knowingly or recklessly false and misleading concerning the amount of stress S&P applied in rating the transactions.

23. On at least four of the 2011 transactions, while S&P reported DSCRs based on the Table 1 loan constants to the public, the CMBS Group reported the DSCRs they actually used, based on the blended constants, to the issuers who paid S&P. Thus, the CMBS Group knew that the DSCRs they actually used were important to assessing the ratings, but still did not provide them to investors who used their ratings.

24. S&P also misrepresented the calculation of DSCRs in internal documents known as Rating Analysis and Methodology Profile ("RAMP"), despite acknowledging, in a December 2010 internal email that "[i]f we do [use an alternate debt constant], we would document it in the RAMP."

25. According to S&P's RAMP Guidelines, "The RAMP's objective is to explain the rating recommendation to voting committee members [who approved the proposed rating] through application of criteria. The RAMP captures the key drivers of the issue being rated, the relevant facets of analysis, the pertinent information being considered, and the underlying criteria and applicable assumptions...." S&P's Model Use Guidelines described various matters pertaining to models that must be documented in RAMPs, including key assumptions used in models and modifications to models.

26. The RAMPs for each of the six transactions listed above disclosed DSCRs calculated using the Table 1 loan constants and, for three transactions, the actual constants, when in fact S&P rated the transactions using blended constants. The RAMPs did not describe the use of blended constants, the data derived from blended constants, or the fact that the models were modified to apply blended constants.

27. In July 2011 S&P published Presales with preliminary ratings for two additional CF CMBS transactions called GSMS 2011-GC4 and FREMF 2011-K14. As with the previous six transactions, the Presales contained multiple DSCRs calculated using the higher of the actual loan constants or Table 1 loan constants. They also included DSCRs calculated from actual loan constants, but did not provide any DSCRs derived from the blended constants S&P actually used for the preliminary ratings. As a result, these Presales also made false and misleading statements about the amount of stress that S&P placed on the loans in the pools when assigning its ratings.

The RAMPs for these transactions similarly provided data based on the Table 1 loan constants, and actual constants, but not blended constants.

28. Several potential investors questioned the low level of CE for the AAA bonds in the GSMS 2011 GC-4 transaction. S&P gave a preliminary AAA rating to bonds with 14.5% CE Using the higher of the actual loan constants or Table 1 loan constants, rather than the blended constants, S&P's model would have resulted in approximately 20% CE for the AAA bond.

29. In light of the investor questions, S&P's senior management reviewed S&P's ratings and discovered the use of blended constants. S&P then withdrew its preliminary ratings for the two transactions. As a result, these transactions did not close on schedule.

30. Following withdrawal of the preliminary ratings on the July transactions, S&P reviewed the ratings on the six transactions from earlier in 2011. S&P's Chief Credit Officer believed that those ratings were not assigned in accordance with S&P's criteria because they were based on blended constants.

31. On or about August 5, 2011 and August 16, 2011, S&P issued press releases called "Advanced Notice of Proposed Criteria Change[,]" which disclosed the methodology S&P had used in rating the CMBS transactions and stated that the ratings were "consistent with S&P's rating definitions." These publications did not inform investors of the effect of the change in methodology on required CE levels.

E. S&P's internal controls did not detect and prevent the Criteria change.

32. In 2010 and 2011, S&P purported to maintain a system of internal controls designed to ensure, among other things, that ratings were assigned using S&P's approved criteria. However, S&P's internal controls failed to identify and respond adequately to red flags that the CMBS Group had changed its methodology for rating CF CMBS transactions without appropriate process or disclosures.

33. The internal controls failures included:

a. S&P's Model Quality Review Group ("MQR"), which was supposed to determine whether numerical models used by rating practice groups appropriately implemented S&P's criteria, conducted a review of the CMBS model during the time that the CMBS Group was using blended constants to calculate DSCRs. MQR began its review with a model that used the higher of the actual loan constants or Table 1 loan constants. The CMBS Group modified the model to use blended constants while the review was ongoing, but failed to provide the modified model to MQR. Nevertheless, the CMBS Group provided information to MQR which, although vague, was a red flag that the CMBS Group was no longer applying the "higher of" methodology. MQR failed to respond to this red flag and never requested the modified model.

b. In January 2011, S&P received an anonymous email asserting that the CMBS Group was inappropriately using blended constants to produce lower CE levels and make S&P more competitive. S&P's Quality Group, whose responsibilities included reviews of ratings files to determine whether ratings analytical groups were complying with S&P's criteria, investigated the complaint. The Quality Group did not conduct a sufficient investigation of how the CMBS Group calculated DSCRs, and the complaint was not discussed with S&P's Chief Credit Officer.

c. S&P's Criteria Group was supposed to enforce S&P's Criteria Process Guidelines, which set forth procedures for researching and approving proposed criteria changes and publicizing any resulting changes. The Criteria Group knew that the CMBS Group was considering changes to the methodology for calculating DSCRs, and that the Quality Group was investigating such possible changes. However, the Criteria Group failed to identify the change the CMBS Group actually made to the methodology for calculating DSCRs, and failed to enforce the Criteria Process Guidelines despite these red flags.

Violations

34. As a result of the conduct described above, S&P willfully violated Section 17(a)(l) of the Securities Act, which prohibits fraudulent conduct in the offer and sale of securities.

35. As a result of the conduct described above, S&P violated Section 15E(c)(3) of the Exchange Act, which requires NRSROs to establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings.

36. As a result of the conduct described above, S&P violated Rules 17g-2(a)(2)(iii) and 17g-2(a)(6) under the Exchange Act, which require NRSROs to make and retain complete and current records of the rationale for any material difference between the credit rating implied by a model and the final credit rating issued and of the established procedures and methodologies used by the NRSRO to determine credit ratings.

Undertakings

Respondent has undertaken to refrain from making preliminary or final ratings for any new issue U.S. conduit/fusion CMBS transaction for a period of twelve months from the date of this Order, including engaging in any marketing activity related thereto. This prohibition extends to all new issuance ratings activity whether undertaken for a fee or otherwise. This undertaking does not prohibit S&P from engaging in surveillance of outstanding conduit/fusion CMBS issues that S&P has previously rated.

Within 180 days of the entry of this Order, or as otherwise agreed to with the Commission's Office of Credit Ratings, S&P shall adopt, implement, and maintain policies, procedures, practices and internal controls that address the recommendations and issues identified in the September 9, 2014 summary letter concerning the completed 2014 Section 15E Examination of S&P conducted by the Commission's Office of Credit Ratings ("2014 S&P Exam").

S&P shall submit a report, approved and signed under penalty of perjury by the President and the Chief Compliance Officer of S&P, to Thomas Butler, Director, Office of Credit Ratings, Securities and Exchange Commission New York Regional Office, 3 World Financial Center, Suite 400, New York, NY 10281-1022, and Michael J. Osnato, Jr., Chief, Complex Financial Instruments Unit, Securities and Exchange Commission, 3 World Financial Center, Suite 400, New York, NY 10281-1022, which details the new policies, procedures, practices, and internal controls adopted, and the actions taken to implement and maintain the new policies, procedures, practices, and internal controls.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in S&P's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15E(d) and 21C of the Exchange Act, it is hereby ORDERED that:

A. S&P cease and desist from committing or causing any violations and any future violations of Section 17(a)(1) of the Securities Act, Section 15E(c)(3) of the Exchange Act~~,~~ and Exchange Act Rules 17g-2(a)(2)(iii) and 17g-2(a)(6).

B. S&P is censured.

C. S&P shall, within thirty (30) days of the entry of this Order, pay disgorgement of $6.2 million, prejudgment interest of $800,000, and a civil money penalty of $35 million to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or 31 U.S.C. § 3717 as applicable. Payment must be made in one of the following ways:

(1) S&P may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) S&P may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) S&P may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by cover letter identifying S&P as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Michael J. Osnato, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 4000, New York, New York 10281.

By the Commission.

Brent J. Fields
Secretary

ANNEX A

S&P admits to the facts set forth below.

Beginning in 2009, S&P developed new commercial mortgage backed securities ("CMBS") ratings criteria that generally increased the required credit enhancement levels for conduit/fusion CMBS ("CF CMBS").

On June 26, 2009, S&P published "US. CMBS Ratings Methodology and Assumptions for Conduit/Fusion Pools" setting forth its methodology for rating CF CMBS. That article described how S&P used the debt service coverage ratio ("DSCR") to estimate whether the loans comprising the conduit/fusion pool would default during their term. This term default estimate was an important variable in S&P's calculation of the amount of credit enhancement S&P would require for each rating level (AAA, AA, A, etc.).

The Criteria article defined the DSCR as "the ratio of a real property's [Net Cash Flow] to the scheduled debt service expressed as a multiple (e.g. 1.2x)." Debt service on a loan can be calculated by multiplying the outstanding principal balance by a loan constant, which reflects both an interest rate and an amortization schedule. The Criteria article also included a table, called Table 1, which defined an "archetypical" CF CMBS pool. Table 1 included loan constants for five property types as follows (the "Table 1 constants"):

Retail: 8.25%
Office: 8.25%
Multifamily: 7.75%
Lodging: 10.00%
Industrial: 8.50%

In July 2009, S&P decided to use the Table 1 constants to calculate DSCRs when analyzing loans as part of the rating of CF CMBS. Subsequently, in March 2010, the CMBS Criteria Committee approved the use of the actual loan constant to calculate a loan's DSCR when the actual loan constant was higher than the Table 1 constant. These decisions were incorporated in the mathematical model that S&P used to calculate credit enhancement requirements for various rating levels.

In December 2010, S&P's CMBS Ratings Group began analyzing loans in new issue CF CMBS using the higher of the actual loan constant or the average of the actual loan constant and the Table 1 constant to calculate debt service. Members of the CMBS ratings group sometimes described this average as a "blended constant." The usage of blended constants rather than the higher of the actual loan constant or the Table 1 loan constant had the effect of lowering the debt service for loans that had actual loan constants that were lower than the Table 1 loan constants, which in turn could have the effect of lowering the credit enhancement applicable to each rating level.

Between February 2011 and May 2011, S&P published Presale reports for six CF CMBS transactions the company ultimately rated. The reports reflected S&P's preliminary ratings of the offerings and its methodology for arriving at the ratings. In these reports, S&P

published pool level data, data on stratifications of the pool, and data concerning the top 10 loans.

The DSCRs in the Presale reports generally were calculated using the higher of the actual loan constants or the Table loan constants. In three of the six Presale reports, S&P also presented DSCRs based on actual loan constants. The Presale reports, in a section called "Conduit/fusion methodology[,]" stated: "In determining a loan's DSCR, Standard & Poor's will consider both the loan's actual debt constant and a stressed constant based on property type as further detailed in our conduit/fusion criteria."

S&P did not, however, determine its ratings based on the Table 1 loan constants or the actual debt service data in the manner it disclosed in the Presale reports. Rather, the CMBS ratings group used blended constants to arrive at ratings for these CF CMBS.

In connection with each preliminary and final set of ratings on the six transactions described above, S&P analysts prepared a Rating Analysis and Methodology Profile ("RAMP") as required by S&P's policies and procedures. According to S&P's RAMP guidelines, the purpose of a RAMP "is to explain the rating recommendation" to S&P personnel who would vote on the rating. The RAMP guidelines further stated that, "[t]he RAMP captures the key drivers of the issue being rated, the relevant facets of the analysis, the pertinent information considered, and the underlying criteria and applicable assumptions . . . ."

The RAMPs for the six transactions described above included DSCR data derived from the Table 1 constants but did not include the data derived using blended constants that were actually used to rate the transactions, other than by reference to the model results that were considered in arriving at the ratings.

The issuers of the six rated transactions paid S&P approximately $7 million to rate and conduct surveillance on those transactions.

In July 2011, S&P published Presale reports for two additional CF CMBS conduit/fusion transactions. As with the earlier transactions rated in 2011, S&P used the higher of the actual loan constants or the blended constants to calculate DSCRs for these transactions, while its publicly disclosed Presale reports included data using the Table 1 constants and, in both cases, the actual constants. After investors questioned the credit enhancement levels on one of those transactions, S&P's senior management conducted a review which concluded that the CMBS ratings group was in fact using blended constants to calculate DSCRs.

S&P voluntarily withdrew the preliminary ratings described in the Presales for the two July 2011 transactions.

EXCERPT

EXHIBIT B

S&P CMBS Ratings

Duka, Barbara - 10-22-13

10/22/2013

Condensed Transcript

Prepared by:

SEC

Thursday, November 21, 2013

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THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

)

STANDARD & POOR'S CMBS) File No. D-03302-A

RATINGS)

WITNESS: Barbara Duka

PAGES: 1 through 265

PLACE: Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549

DATE: Friday, October 22 2013

The above entitled matter came on for hearing, pursuant to notice, at 9:20 a.m.

Diversified Reporting Services, Inc.

(202) 467 9200

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APPEARANCES:

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Page 3

APPEARANCES (CONT.)

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(212) 370-0330

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CONTENTS

as much of this as you want to feel comfortable answering my questions.

A Okay.

Q Okay. Have you taken a look at Exhibit 51?

A I have.

Q All right. So my questions really concern only that -- the information in the middle of that first paragraph.

Do you see where it says, "We were not mandated on two conduit transactions that came to the market in June, the Freddie Mac 2010-K7 transaction and the JP Morgan 2010-1 transaction."

Do you see that?

A I do.

Q It says, "Freddie would not sign the revised engagement letter and JP Morgan deemed the combination of our model output/criteria application and business terms to be the least competitive."

Do you see that?

A I do.

Q What was the issue with the engagement letter?

A I don't specifically know what the issues were with the engagement letter, other than

understanding that most issuers had multiple issues with the engagement letter and some had some similar issues. I just recall there being several issues that were pretty consistent among issuers.

Q Do you recall what those issues were?

A I -- I -- I don't recall today. I might have had some sort of an idea at the time. I -- I -- I don't recall what they were today.

Q What -- what's the meaning of "the combination of our model output/criteria application and business terms to be the least competitive"?

A I don't know what I meant by business terms. It could just be a combination of our credit enhancement levels were the highest, and combined with the cost of the transaction -- overall cost of the transaction to those items were not economically feasible for JP Morgan. That's how I would interpret that reading it today.

Q I'm not sure I'm understanding, so let me just break it down a little bit.

Business terms, that means S&P's fees?

A Yes.

Q Okay. And the model output/criteria application, that means S&P's credit enhancement levels?

A Correct.

Q Okay. So just to ask the question only a lawyer could ask, this was -- not getting mandated on those two deals was not a favorable development for S&P, right?

A I'm not sure I understand what you're asking.

Q Well, I'm asking whether it was a good thing for S&P not to get hired to rate those two deals.

MR. PETRILLO: Objection.

THE WITNESS: I'm not sure that I can answer that question. It was a fact that we weren't mandated to rate those things. I'm not sure that I can evaluate whether or not it was a good or bad thing. Based on what?

BY MR. LEIDENHEIMER:

Q Well, S&P is in business to make money, right?

A I think that should be one of its goals, yes.

Q Well, if they don't get hired to rate a transaction, they're not going to make any money on that transaction, right?

A That doesn't mean they have to rate every

transaction.

Q That wasn't my question.

If they don't get hired to rate a transaction, they don't make any money on that transaction, right?

A On that particular transaction, that's correct.

Q Okay. And not making money as opposed to making money is generally considered unfavorable if your goal is to make money, right?

A Well, if it's -- if that's a consistent pattern, yeah, I think, if you don't rate any transactions. But drawing the line between not rating two transactions and not rating any transactions, I'm not sure that's fair.

Q Well, I -- I understand that you want to broaden my question, but I'd really like you to answer the question that I asked. I get it.

MR. PETRILLO: Objection.

BY MR. LEIDENHEIMER:

Q It's not a good thing for S&P to not get hired to rate deals --

A I don't --

Q -- right?

A I don't know that I agree. It's -- if --

criteria as well as the -- actually, probably more of the conversations were around the real estate criteria, but some of the conversations were on the CMBS criteria.

Q When you say real estate criteria, do you mean the property valuation?

A Yeah, the underlying loss.

Q It looks like you're getting tired. Do you want to call it a day?

A No, no, we can finish this.

Q Are you sure?

A I can do it.

Q Okay. All right. Okay. We're just about finished with this document, so why don't we make this the last one.

What are -- what kinds of general criteria questions would you field?

A I would field questions about how I would look at specific situations, how would you look at -- how would you look at subordinate debt outside the trust, how would you look at a single tenant that wasn't credit rated with a short-term lease, with a long-term lease, with something in between. How would you look at -- how do you like J.C. Penney or Sears. You name it, I would hear it all.

And it just depended on who it was at the meeting, but I would get a lot of -- I would actually say I would get more property level and very detailed questions than I would deal level questions.

Q Okay. I tried to ask this question. I'm not sure if I got it out -- and if I did, I'm not sure I heard your answer -- and that is: What part of your -- percentage of your day or time like over the course of a week or month was spent in meetings with issuers or investors fielding these questions?

A I don't -- I don't even know if I can accurately answer that question. I'm not sure. It would be a wild guess if I tried.

Q Okay. How about -- how about we just confine it to a little bit or a lot or a medium amount?

A I'd say medium.

Q Okay. So some part of your day?

A Yes.

Q Okay. All right. So that's -- I think that's it on this document, and I'll -- I'll tell you, I'm tired too –

MR. PETRILLO: Okay.

BY MR. LEIDENHEIMER:

Q -- but let me ask you one more question --

MR. PETRILLO: Yeah.

BY MR. LEIDENHEIMER:

Q -- and Guy will tell me if I just asked this.

MR. PETRILLO: Okay.

MR. LEIDENHEIMER: I'm relying on him.

BY MR. LEIDENHEIMER:

Q When you say the real estate criteria, do you mean the property valuation criteria?

A I -- I do.

THE REPORTER: You mean the what? Sorry.

MR. LEIDENHEIMER: Property valuation --

THE WITNESS: Property valuation --

MR. LEIDENHEIMER: -- criteria.

THE WITNESS: -- criteria.

MR. LEIDENHEIMER: And if everybody is ready, we'll go off the record at --

THE VIDEOGRAPHER: We're going off the record at 5:12 p.m. This is the end of tape number 4.

MR. LEIDENHEIMER: Off the record at 5:12.

(Whereupon, at 5:12 p.m., the examination was concluded.)

* * * * *

PROOFREADER'S CERTIFICATE

In The Matter of: STANDARD & POOR'S CMBS RATINGS
Witness: Barbara B. Duka
File Number: D-03302-A
Date: October 22, 2013
Location: Washington, D.C.

This is to certify that I, Nicholas J. Wagner, (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

________________ ________________

(Proofreader's Name) (Date)

S&P CMBS Ratings

Duka, Barbara - 10-23-13

10/23/2013

Condensed Transcript

Prepared by:

SEC

Thursday, November 21, 2013

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

)

STANDARD & POOR'S CMBS) File No. D-03302-A

RATINGS)

WITNESS: Barbara Duka

PAGES: 265 through 502

PLACE: Securities and Exchange Commission

100 F Street, NE

Testimony Room 1

Washington, D.C. 20549-7553

DATE: Wednesday, October 23, 2013

The above-entitled matter came on for hearing, pursuant to notice, at 9:08 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

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was it that you realized that?

THE WITNESS: It would have to be the model review process would have been one place I would have realized it.

MR. SMITH: Well, that model review process as we've seen was --

THE WITNESS: The end of 2010. So by then I would have realized it. Just by the commentary I was making, and -- and the detail that I was providing, but I'm not sure that I didn't see it. I can't be sure I noticed it or see it before. It's possible. I just don't recall.

MR. SMITH: So what did the criteria require in your mind as to how the denominator and the debt service coverage ratio was determined?

THE WITNESS: I think in my mind it was not clear. And so in my mind, I wanted to understand what exactly the archetypical pool was meant to be. Was it meant to be an example which was my view of the archetypical pool is meant to be an example. If you saw a deal that looked like this, expect to have X credit support level. So to me, it was a benchmark, not necessarily something that forced those assumptions on to all transactions, so that was, that was my view, but I realized that the

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criteria was really vague on that issue.

MR. SMITH: So if the criteria was vague on how the denominator and debt service ratio was to be calculated, what -- given that you had to calculate debt service coverage ratios to come up with ratings, what did you do?

THE WITNESS: Well, I was forced to do what was -- what was implemented at the time because new issuance deals, there weren't a lot of them getting done in 2009, so the -- the basis was set by surveillance immediately after criteria was published. There was significant surveillance activity and they set the basis which was to start with that constant, so I did that initially.

MR. SMITH: Okay, so -- so the criteria was unclear to you that surveillance was using the higher of the actual constant or the criteria constant, is that correct?

THE WITNESS: Eventually. Yes. That's what they were doing.

MR. SMITH: Okay. And so when new issues started getting deals, the idea was that you would do the same thing.

THE WITNESS: Initially, I did do the same thing.

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MR. SMITH: And that's why when Mr. Leidenheimer asked you as of December 9th, were you using the higher of the actual constant or the criteria constant, you said that yes, that's the way we are doing it, is that correct?

THE WITNESS: That's the best of my recollection. Yes.

BY MR. LEIDENHEIMER:

Q If you didn't think that the criteria required you to use the actual constant, then why bother with Mr. Manzi in March of 2010 or with Mr. Parisi in December of 2010? Why not just use the actual constants and be done with it?

A I -- I felt -- I wasn't sure whether or not that fell under criteria or interpretation. There were massive changes in personnel, particularly at the criteria level. To me it was -- it was an enormous decision that I wanted to make sure I got right, but I got --

MR. LEIDENHEIMER: Let's go off the record.

THE VIDEOGRAPHER: The time is 12:19 p.m. We are going off the record.

(Discussion off the record.)

THE VIDEOGRAPHER: The time is 12:20 p.m. We are back on the record.

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MR. LEIDENHEIMER: We are back on the record at 12:20, and for the stenographic record, I'll explain what just happened. We had one of our colleagues from Denver attending by video teleconference and we were then joined by someone else on the video teleconference which was quite confusing, so we went off the record. What I'd like to do now is get the court reporter to read back maybe the last question and answer and question so that everybody can be refreshed about where we were.

MR. PETRILLO: And just to be clear that mysterious person then hung up and we no longer have him in the meeting.

MR. LEIDENHEIMER: Yes. Thank you. That is correct.

THE REPORTER: "Question: If you didn't think that the criteria required you to use the actual constant, then why bother with Mr. Manzi in March of 2010 or with Mr. Parisi in December of 2010? Why not just use the actual constants and be done with it?

"Answer: I felt -- I wasn't sure whether or not that fell under certain criteria or interpretation. There were massive changes in personnel, particularly at the criteria level. To me it was -- it was an enormous decision that I wanted to make sure I got right, but I got --"

THE WITNESS: I basically wanted to make sure that I understood which of those it was and that I was following the appropriate process, and that I think that was just it. The consequences of being wrong were enormous as I saw later on, and that's what I was trying to prevent.

BY MR. LEIDENHEIMER:

Q When you say the consequences of being wrong were enormous, what do you mean?

A The whole Goldman situation. If I interpreted something incorrectly and I was second-guessed, I don't think I could have envisioned that happening, but I envisioned that the consequences of being wrong on something like that could be enormous, and I didn't think it hurt me to go and get the opinion of someone I felt who can give me a valid opinion.

Q You didn't want to misinterpret the criteria? Is that fair?

A Misinterpret the criteria but also not follow the appropriate channels.

Q So there is sort of two things you were trying to avoid were getting the criteria wrong or

not going to the right person or getting the right clearance?

A Yes. But once you decided which of those it was, what steps did you need to take to make sure you were following procedures and so that's the more complicated step. What do I need to do so that I'm doing all the right things.

Q Point of clarification about your answer. When you say which of those two things it was, you mean which of the two constants it was?

A No. Was it criteria or is it interpretation. First define which of those it is, and then once you define which of those it is, what is it that I have to do to do it appropriately going forward.

MR. LEIDENHEIMER: Is this a good time to -- why don't we go off the record.

MR. PETRILLO: Sure.

THE VIDEOGRAPHER: The time is 12:23 p.m. We are going off the record.

MR. LEIDENHEIMER: We are off the record at 12:23.

(Whereupon, at 12:23 p.m., the investigative testimony in the above-entitled matter was recessed, to reconvene at 1:30 p.m.)

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16
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AFTERNOON SESSION

(1:30 p.m.)

Whereupon,

BARBARA DUKA, the witness on the stand at the time of recess, having been previously duly sworn, was further examined and testified as follows: EXAMINATION BY COUNSEL FOR SEC (RESUMED)

THE VIDEOGRAPHER: This is tape number 3, Volume II in the investigative testimony of Barbara Duka taken in the matter of Standard & Poor's CMBS ratings D-3302. Please proceed.

BY MR. LEIDENHEIMER:

Q We are back on the record at about 1:30. Ms. Duka, did you have any substantive discussion with anyone from the government during your lunch break?

A I did not.

(Government Exhibit No. 72 was

marked for identification.)

BY MR. LEIDENHEIMER:

Q Let me digress a little bit from what we were talking about before lunch and just ask whether a document that I'm about to hand you which has been marked Government Exhibit 72 is the procedures document that you identified yesterday when we were talking about what the established procedures and methodologies were for rating CMBS?

A Yes. This is a document I was talking about yesterday.

Q That's all the questions I have about it. I just wanted to make sure that I understood what you were talking about. For the record, this document bears Bates number SP-CMBS 480712 through 64. And also for the record, I'm going to put another -- a copy of a formal order out here. There should be one at the bottom of this pile.

I just want to make sure that as I represented to you this morning, there would be a copy of it available so I just want to be double sure. It's right there if you want to take a look at it. Same as it was yesterday.

I think before lunch, there was a question and an answer that concerned when in time you decided struggling here is -- let me try it this way. Can you think of a good argument based on property characteristics for using the blended constant instead of the strict constant, the criteria constant?

A I would say no, because the intent of the constant was not driven by property characteristics. It was -- it was driven by loan structure, so I don't think that I would have thought that those two things were the same.

Q Did you document either the Freddie meeting with Parisi or the loan constant meeting with Parisi?

A I didn't document the loan constant meeting. And I was just asked to document both in the presales and the RAMPs. I didn't do a meeting minutes. I don't recollect sending an email of any sort. I don't believe it exists, but it's possible that it exists.

Q I don't mean to -- to tread on a sensitive area here, but I mean, can you tell me why you didn't?

A I just think it was -- I had so many of these meetings and so many of these conversations and I never imagined them going -- I think going forward I might have done them, and I probably would have had

-- have been much better at deciding not every meeting needed to be recorded, but some meetings should be recorded. I was just never in a position like this and I never imagined being in a position like this. I think today I would document it.

Q Did you look through your notebooks during the time of the Goldman deal to see if there was anything in your notebooks about either of these meetings?

A I just don't think I had time. So I'm going to say I looked through my emails. I looked for -- I looked for calendar meetings. I looked for task -- but I just couldn't find it and at some point I just digressed by being asked for a tremendous amount of information and I just -- I just couldn't get to it. I didn't get to it.

Q So it might make sense if I could get ahold of your notebooks to look through it and see if there might be something?

A I mean, I think I gave you everything I had.

Q Well, you have, but you left your notebooks at S&P.

A I left boxes. Boxes of files at S&P.

Q Okay. All right. Again, I don't mean to

talk about a sore subject, although it might be a sore subject, but when the Goldman deal sort of blew up, did you talk to Mr. Thompson or Mr. Geramian or Mr. Parisi about whether they had documented either of those meetings?

A Well, Eric Thompson was no longer with S&P, so I did not reach out to Eric Thompson. I didn't think it was appropriate at the time. I did not reach out to Majid or Frank. I didn't. I didn't think about it at the time.

Q Okay.

MR. SMITH: So what was the precise outcome of the constants meeting with Mr. Parisi?

THE WITNESS: The precise outcome as I recall it was we agreed to the use of a blended constant. Because the blended constant was still a stress above the actual and if our intent was in any way to capture refinance risk, blended constant does that by equally weighting the term risk and the default risk. That was, that was the methodology that was agreed to.

But Frank -- what Frank asked me to do is he didn't believe that it was a criteria issue. It was something that -- that I really wanted to make sure that was this criteria or was it interpretation.

I walked out of there understanding it was an interpretation. Because it was an interpretation, the proper documentation would be disclosure in a presale and disclosure in the RAMP. I think I asked whether or not this needed to be escalated above Frank. I knew that Mark was very involved in some of the initial meetings. I wanted to make sure that Frank had the authority to make this decision, and I asked him and then he confirmed that he did have that authority. And that's about all I remember.

(Government Exhibit No. 73 was marked for identification.)

BY MR. LEIDENHEIMER:

Q Ms. Duka, let me hand you what's been marked Exhibit 73. Exhibit 73 is a one-page document that bears Bates number SP-CMBS 379948. Would you review that for me, please.

A Yes. I reviewed the document.

Q Is this some email traffic between yourself and Susan Barnes for January 23rd, 2011?

A Yes.

Q I notice that you're both at work on a Sunday.

A We are exciting.

Q Well, yes. Well, again, I'll editorialize

here, I noticed in a lot of your emails evenings and weekends and what appear to be holidays, so it's clear that you put a lot into your job.
A Thank you.
Q And your email to Ms. Barnes, you say as a follow-up in part, you say, as a follow-up to your conversation for the following deals we provided feedback which incorporated looking at both the actual constant and S&P constants. What conversation are you referring to there?
A Susan approached me at some point during this period of time, and I wasn't sure what the catalyst was, but she was looking at -- she was investigating how new issuance was rating transactions and specifically the use of what I call either the blended constant or the weighted average constant. So here she is asking me to produce when we used them, what deals we rated, what deals we didn't rate. That's how I would read this looking at it today.
Q Did you -- did you ask her why she was asking?
A I did. It was clear she could only tell me pieces of it so I just -- I just knew she was asked to do an investigation. She couldn't tell me

necessarily what was behind it. But based on the questions, I knew it was about constants.
Q Did you direct her to Mr. Parisi and tell her about your conversation that you had had with him about this?
A I did.
Q Did you call up Mr. Parisi and sort of ask him what was going on?
A I don't remember doing that. No. I may have. I just don't remember.
Q Sure. What was your reaction to learning that Susan Barnes was investigating the way new issue was applying the constant?
A I don't remember my reaction at the time. I'm not sure. Probably why. Just confusion. But I complied and I was helpful.
Q Sure. I understand. If it had been me, if somebody wanted to look at what I did, I think I'd be kind of nervous even if I hadn't done anything wrong and it would be a matter of concern. I'm the nervous type. Were you nervous or was it just another something else to put on the to do list?
A If I was nervous, I put it aside and I didn't think about it.
Q Okay. So this email continues and says of

these deals, we were asked to rate FREMFK 701 JPM 2011-C3 and MSC 2011-C1. Do you see that?
A I do.
Q So that's a Freddie Mac deal, a JP Morgan deal, and a Morgan Stanley deal?
A That's correct.
Q And then it continues, as for most of the others, we lost the transactions due to criteria. Do you see that?
A I do.
Q And when you say lost the transactions due to criteria that's because of the indicative feedback that S&P gave was higher than the indicative feedback given by the other rating agencies?
A I think that's a safe assumption.
Q So then at the bottom of this email that you sent, it says, if you would like, I can forward you the presales when we have conducted our rating process and published our rationale which my analysts typically do anyway. Do you see that?
A Yes.
Q Okay. Would you tell me what that's about?
A I'm not sure I remember. I think I was just trying to provide as much information. So to the extent that we had rated deals, I was more than

happy to provide the presales on the deals we had rated, but I can't recollect what -- any more than that.
Q Okay. Did you tell Ms. Barnes in the course of her conducting her investigation that use of the blended constant would be disclosed in the rating rationale in the presales?
A I didn't tell her that the blended constant would be used. I said that I disclosed what constants I was using, but not necessarily the actual blended constant for the transaction.
Q Maybe I'm not understanding how the transactions got rated, but I thought the blended constant was the constant that you were using to rate the transaction?
A The blended constant was the result of all the individual, the weighted average of all the individual constants that I was using. It was -- it was a number, but that wasn't the number I applied to all the loans. It was just the sum of the weighted average constants for the loans, if that makes sense.
Q You lost me.
A Sorry. I'm going to try again. Let me see how I can explain this with an analogy. The actual model will look at each loan's economics, but we are

A Yes.
Q And this is 2010-C2?
A Right.
Q So are you saying that there was another deal before this?
A Yes. That may have been the first. So there weren't any conduit/fusion transaction or very few conduit/fusion transactions between 2008 and 2010, and while this may have been the first CMBS transaction, conduit/fusion transaction that S&P rated, it may have only been the second that the CMBS market saw.
Q Oh, I see. Okay. So you didn't rate the C1 transaction?
A Correct.
Q But that may have been the first one coming back after the market froze up?
A Yes. I'm not going to promise you that's true but I think that's close to being true.
Q And C2 was the first one that you all rated?
A That's correct.
Q So given that, in answer to a couple of my questions we talked about there was just kind of a historical reason for doing things and, but -- but

with this presale on this transaction, how -- did you -- where did you go to find historical examples as to how it's done?
A I didn't find historical examples. I would likely have consulted with my criteria officer at the time to say I have this issue. It falls a little outside the conduit/fusion criteria. This is how I think we should handle it. It makes sense. And --
Q Okay. Are you referring specifically to the issue that you raised earlier that this 2010-C2 deal had too small a number of loans to be considered a conduit/fusion deal?
A That's my recollection. That's the case.
Q What about things like the inclusion of table 17 that we talked about earlier? Where did you go historically to see that something like table 17 ought to be included?
A What we always included it going back to my first day at S&P. That was a table that we included.
Q Okay. So you went back to presales from the mid 2000s?
A Well, I think we started with old presales and included any changes that we thought were made that should have been disclosed but we generally kept intact much of what was disclosed prior to 2009.

Q Can you explain to me what table 16 is? That's on page 21.
A I'll try.
Q Please.
A I don't exactly remember the catalyst, but it was important for -- for us to disclose how different ratings might react under different scenarios. We were asked to include this in our analyses.
Q Asked by whom?
A Quality, I believe. It wasn't CMBS centric. It was S&P centric, and so this was something that we developed, how would the ratings react under certain scenarios.
Q Okay. How does table 16 show how the ratings would react under certain scenarios?
A What it basically says is that it assumes decreases in cash or it says that net, net cash flow haircut assumption, kind of in the middle. So that's basically saying if cash flow changed by these amounts, this is how debt service coverage would change and here is what the trust pool losses would be under the different scenarios.
Q Okay. Now let me hand you Exhibit 78.
(Government Exhibit No. 78 was

marked for identification.)
BY MR. SMITH:
Q Take a minute to thumb through Exhibit 78. It's a multipage document SP-CMBS 0082267 through 00822280. It's titled Global Structured Finance CMBS New Issuance RAMP, R-A-M-P, and it is for the DO JP Morgan Chase Commercial Mortgage Securities Trust 2010-C2. Tell me when you're ready.
A I've reviewed the document.
Q Do you know what RAMP is? That an acronym for something?
A Yes.
Q Do you know what it is? Ratings. The R is ratings.
A I bet you're right. I'm blank. I'm completely blank.
Q What is a RAMP?
A It's -- it's meant to highlight certain facts that were used internally to rate the transaction. It's also meant to be used by surveillance so that they have a guide or a reference as to the rationale used at issuance. It should reflect the relevant factors that were considered in the analysis in the rating committee.
Q Okay. Do you know why S&P would want to

create and maintain a RAMP for each deal?
A I think it documents the discussions in the rating committee, and it creates a record for surveillance so that they -- they can understand the transaction.
Q Who is responsible for writing the rationale and strengths and concerns in mitigating factor sections?
A It would be the -- the primary analyst.
Q And how is the analyst supervised in doing that?
A This would be reviewed in much the same way the presale is reviewed, at different steps in the process. There were typically multiple RAMPs related to the various committees. I think the -- every committee had a document attached to it, but the main body of the RAMP was prepared for preliminary ratings and then finalized for final ratings.
Q What role did you have in terms of creating and supervising the creation of the RAMP?
A I didn't -- this is with respect to deal analysis, not actually the RAMP form which I spent an enormous amount of time, so we are just talking about at the deal level, not the document itself.
Q Well, let's talk about both, but we can

separate it. So let's talk about the part that you had an enormous part in. What was that?
A I mean, the RAMP document itself was under development for a very long period of time, so every time there was a change contemplated or proposed because theoretically it was a document that was somewhat consistent across -- I'm guessing S&P, but I would think structured that there was some input or at least it was sent to the analytical managers every time there was a change to the document.
Q Was there an official template for the RAMP?
A Yes. But that template could be amended, but yes, there was a template for the RAMP.
Q Okay. And who was in charge of maintaining that template and -- well, who was in charge of maintaining that template? Let's just stop there.
A I'm not sure if I remember who was in charge. I mean, to the best of my recollection, it would be quality, someone in the quality function would create the document and then the practice would have the document.
Q When you say the template could be -- I think you said amended, what did you mean by that?
A It was amended very many times.

Q And when it was amended, was there some process to be sure that everybody used the amended one?
A I believe it was just distributed to everyone, so that was the process.
Q Who distributed it?
A I can't -- I can't remember.
Q And was there a RAMP committee or something like that?
A There may very well have been. I wasn't part of the RAMP committee. But there was -- there was a champion, shall we say, of this document and to the best of my recollection, that champion had sent around the document every time it was amended.
Q And do you know what department the champion was from?
A My best recollection is quality but I'm not entirely sure.
Q Again, 2010-C2 was the first deal that S&P had rated for a CMBS conduit/fusion deal that S&P had rated for quite some time. Where did you go to get the template for the RAMP on this deal?
A I can't remember. I have to think that we had a RAMP, but I don't remember where we kept it.
Q Was there any training in the late summer,

fall time frame of 2010 concerning how to write a presale? How to write a RAMP? What needs to be in the presale? What needs to be in the RAMP?
A I don't remember if there was. There may have been. I just don't remember.
Q Did -- when training was conducted, did S&P keep a record of that?
A I believe so. Yes.
Q What do you know about that? About the record, the record keeping for training?
A Not very much. I can't be very helpful. Aside from that there probably is a repository that tracks every person's training schedule or what -- what training they may have taken. Beyond that, I'm not -- I'm not sure.
Q Was it part of the supervisory responsibilities of supervisors in your group to be sure that the people you supervised attended the proper training?
A Yes. Yes.
Q Do you remember doing that?
A Supervising that people attended training?
Q Yes.
A I would imagine I did. I don't remember doing it, but --

loan constant, the pool's LTV ratio and the pool's -- well, the pool's beginning LTV and ending LTV ratio, because those were good general summaries of the important information that people that look at CMBS are interested in, is that correct?
A I'm sorry. I need you to repeat that just one more time because I want to make sure or --
Q I'll try to --
A Or do you want to repeat that?
Q Let me try. I keep adding things.
A Yes.
Q Let me just be short here. The -- you wanted the rationale section to disclose the pool debt service coverage, the pool loan constant and the pool beginning loan to value and the pool ending loan to value, is that correct?
A Correct.
Q Because those are a good capsule summary of important data for the pool, is that correct?
A I believe so. Yes.
Q And then if you wanted to get into more detail, someone could look back at page 21 and see table 16 which gives a little more detail on the debt service coverage, rather than the pool, it's broken down into categories from less than one and then by

increments of .05 up to greater than 1.35. It gives a little more granular data, is that correct?
A Correct.
Q And then if you go to page 23, you can see the S&P debt service coverage and the issuer debt service coverage for a particular loan, in this case the biggest loan in the pool, is that correct?
A I'm sorry. Page 23.
Q Uh-huh. This is the Christiana Mall in table 20.
A Correct.
Q So the rationale paragraph gives a general capsule summary, table 16 gives it a little more on a granular basis for the pool, and then if we look at the top 10 loans, we can see the debt service coverage for -- for the Christiana Mall loan and then did the others also have that?
A My assumption would be yes.
Q Okay. And in all of those disclosures, is there a disclosure of debt service coverages and loan constants that are derived from the blended loan constant?
A In all of those?
Q Yes.
A Not on a blended constant.

Q Okay. And other than when we get into the Christiana Mall loan, is there disclosure of debt service constant using -- debt service coverage using the actual constant?
A Not based on the areas you pointed me to.
Q Okay. And are you aware of -- of anywhere else in the presale where there is disclosure of the -- of the debt service coverage based on the actual constant other than in the descriptions of the individual 10 loans?
A I'm not, but I could look to see if it's here.
Q Please take your time.
A Page 18.
Q Okay.
A That's the first place under conduit/fusion methodology in the second paragraph.
Q Okay.
A In determining a loan's debt service coverage, Standard & Poor's will consider both the loan's actual constant and a stressed constant based on property type as further details in our conduit/fusion criteria.
Q Okay. Keep looking.
A That's the only place I was able to find it

in this presale.
Q Okay. And let me hand you Exhibit 81.
(Government Exhibit No. 81 was marked for identification.)
BY MR. SMITH:
Q Exhibit 81 is SP-CMBS 00132668 through 132685. It's called rating summary record structured finance, final ratings for Morgan Stanley Capital One Trust 2011-C1. Is this a RAMP for the 2011-C1 deal?
A Yes.
Q Okay. And if you'll look at the rating rationale on page 6. You will see, I believe, that the rating rationale on page 6 is quite similar to the rating rationale on the presale, and in particular it has the same numbers for debt service coverage, 1.20, weighted average loan constant 8.46 percent, beginning LTV 88.9 percent and ending LTV 78.5 percent. To your knowledge, does the RAMP disclose the data based upon the blended constant?
A It doesn't appear to.
Q Do you wish to take more time to review the RAMP to see if it does.
A Yes.
Q Please do.
A I don't see any additional disclosure.

the data that you were actually using to Morgan Stanley even though you were disclosing the data that you were not actually using to the public?
A I wasn't disclosing data, but I was disclosing what I was doing. So it was important for me to disclose what I was doing. I don't remember -- I don't remember considering anything other than what I did was the appropriate thing to do until sometime later.
Q Okay. But why would you want to disclose data from the blended constant that you were actually using to Morgan Stanley, the issuer or in this case the issuer's representative who was hiring you when you were disclosing data using the criteria constant that you were not actually using to disclose that to the public?
A I'm not sure I realized that those two things until today, so I don't really have an answer. I -- it was the disclosure. I didn't give it that much thought to Morgan Stanley and I didn't -- and I didn't consider anything more than that.
Q Mr. Pollem in Exhibit 85 was under your direct supervision. Is that the case?
A He was.
Q And did you do anything to make sure that

the data that he was disclosing to Morgan Stanley in the preliminary or indicative feedback was the appropriate data?
A I mean, I don't remember specifically overseeing him, but Kurt's been doing this for a long time so he, you know, he understands what needs to be put together, and I would have felt confident if he put it together without my seeing it.
Q Okay. Again, this K701 feedback was probably one of the first feedbacks that would have been given after you started using the blended constant, so was there a discussion? Did you have a discussion with Mr. Pollem about okay what -- what kind of data are we going to disclose to the underwriters and the issuer's representatives?
A It's possible. I don't remember. I don't remember having a discussion. But it's possible.
Q Okay. And as you did with the other presale and RAMP with the C1 deal that we looked at a few minutes ago, did you go through the K701 presale and the K701 RAMP that's Exhibits 86 and 87 and let me know if there is anything other than the sentence on page 20 of Exhibit 86 that we've talked about previously that complies with the representation that you made to Dr. Parisi?

A I don't see anything different in the RAMP. I don't, other than page 20.
Q Okay. I think we are going to adjourn for today, so thank you again for your testimony today and we will start up again at 9 o'clock tomorrow morning and we'll go off the record.
THE VIDEOGRAPHER: This is the end of tape number 4 in the investigative testimony of Barbara Duka. The time is 5:13 p.m. We are going off the record.
MR. SMITH: Off the record at 5:13.
(Whereupon, at 5:13 p.m., the examination was concluded.)
* * * * *

PROOFREADER'S CERTIFICATE

In The Matter of: STANDARD & POOR'S
CMBS RATINGS
Witness: Barbara Duka
File Number: D-03302-A
Date: October 23, 2013
Location: Washington, D.C.

This is to certify that I, Nicholas J. Wagner, (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

____________________ ____________________
(Proofreader's Name) (Date)

S&P CMBS Ratings

Duka, Barbara - 10-24-13

10/24/2013

Condensed Transcript

Prepared by:

SEC

Thursday, November 21, 2013

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. D-03302-A
STANDARD & POOR'S)
CMBS RATINGS)

WITNESS: Barbara Duka
PAGES: 503 through 733
PLACE: Securities and Exchange Commission
100 F Street, N.E.
Testimony Room 1
Washington, D.C. 20549-7553

DATE: Thursday, October 24, 2013

The above-entitled matter came on for hearing, pursuant to notice, at 9:07 a.m.

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A I don't recall. It just looks like there are sections of the model that are being extrapolated and given to the issuer.
Q Okay.
A I can't recall any specific conversations or reasons why -- why we did it this way.
Q Okay. If we change the assumptions tab, if we changed cell D15 in the assumptions tab to 100 percent, we looked at that earlier and we got the published constants on column G on the formatted data sheet. Do you agree with that?
A Yes.
Q And then we get, these numbers on the output page for the trust DSC and the weighted average debt constant change.
A That's correct.
Q And so now we have 1.26 as the trust that service constant, 8.22 as the average debt constant. Do you see that?
A I do.
Q And if you look at Exhibit 92 on page 4 and 5 under rationale, we see those same numbers of 1.26 debt service coverage and 8.22 percent loan constant. Do you see that?
A I do.

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Q And on the RAMP, we also see under rating rationale, those same numbers of 1.26 debt service coverage and 8.22 percent loan constant. Do you see that on page 6 of the RAMP?
A I do.
Q Of the rating rationale. Do you see that?
A I do.
Q And do you know whether the numbers from the blended constant that we just looked at for debt service coverage and weighted average debt constant, those numbers 1.39 and 7.47 percent, do you know if those show up in the presale or the RAMP?
A I'd have to look. I don't know.
Q Okay. Go ahead.
A I don't remember if this was one of the deals we looked at the other day.
Q We did not look at this yesterday.
A Okay. You're looking for actual numbers, correct, not what we spoke about yesterday in the conduit/fusion methodology section?
Q Correct. Correct.
A Okay. Table 17 and 18 on page 23.
Q Okay. It looks like table 17 has the 8.22 which is again the same as in the rationale section?
A Correct.

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Q Using the published constants and it looks like table 18 is based on the actual constant. Is that correct?
A That does appear correct. Yes.
Q And as I recall, I think my question was the -- do the numbers show up here from the blended constant?
A They do not.
Q So you do not see the numbers from the blended constant in the presale?
A I do not. No.
Q And are they in the RAMP?
A Do not see them in the RAMP.
Q Okay. So yesterday we talked about the representation that you made to Dr. Parisi about reporting the -- well, remind me again the representation that you made to Dr. Parisi when after you -- when you had the meeting in December and that he agreed that you could move to the blended constants, I think it was provided that something was published in the presale and disclosure, and written in the RAMP.
A That's correct.
Q So what was the -- what was the representation that you made to Dr. Parisi again?

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A Just disclosure methodology in the presale and disclose it in the RAMP.
Q And other than that, again that one sentence in the methodology, is there any other disclosure pertaining to the representation you made to Dr. Parisi?
A My view was table 17 and 18 was -- was that disclosure.
Q Okay. Now, as we noted, table 18 has data based on the actual debt constant. I think the presales we looked at yesterday just had a table with the stressed constant or the published constant. How did it come to be that there was added a table based on the actual debt constant?
A I'm just going to correct you.
Q Oh. Okay.
A It's -- I think you said stressed and published, which is the same thing, and I think what you meant was stressed and actual.
Q Okay.
A Just to --
Q Thank you.
A Just so I can answer the question.
Q Okay.
A I don't recall. I don't recall why I did

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Exhibit 20. And ask you to review that. In particular, I'm just going to ask you about the last two emails in this chain which would be the one from Mr. Ramkhelawan to you and to Ms. Hu and then yours responding to that.
A Okay. I've reviewed it.
Q Is this an email chain that you were involved in on March 21st, 2011?
A It was.
Q Mr. Ramkhelawan three minutes after you said yes please do to his question about whether he should tell Ms. Hu surveillance's practice emailed to her and to you the following. Good morning, Haixin. I hope all is well. As a point of clarification earlier to below, CMBS surveillance generally employs the higher of the predefined stressed constants and the actual in place constants. Thanks. Gregg. Do you see that?
A I do.
Q And was that a truthful and accurate description of surveillance's practice as of March 21st, 2011?
A I believe it was. Yes.
Q And then you responded, about an hour and a half later to Mr. Ramkhelawan's email by sending an

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email to him and to Ms. Hu with a copy to a few other addressees, Haixin, new issue -- I'm sorry, Haixin, new issuance would use the actual if higher but look at both if the actual constant is it lower than the table six. Do you see that?
A I do.
Q Okay. And just looking at Mr. Ramkhelawan's email, I mean what he tells Haixin Hu, she can turn into an equation, right?
A I'm not sure what you mean.
Q Well, you can put that into a spreadsheet right in the lookup table? It tells you specifically which stressed or which constant gets used, right?
A I imagine. Yes. I imagine you could.
Q So and -- and my question to you now is why didn't you just write to Haixin Hu and say look we used the 50/50 blend of the actual and the criteria unless the actual is higher? Or we use a 50/50 blend, period?
A I'm not sure that I didn't. I know I didn't here, but I can't be sure that I didn't say that somewhere.
Q Okay. Well, I mean right here, let's deal with what's in front of us. And why not -- first of all, let me just be clear in my head, as of March

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21st, 2011 new issuance was using a 50/50 blend, right?
A That's correct.
Q There wasn't -- if the actual was higher, you didn't use 100 percent actual. You used 50 percent actual and 50 percent criteria, right?
A Um, I'm not sure. We might have used the actual if it was higher.
Q Okay. So understanding that you might have told Ms. Hu somewhere else specifically what the practice was, I come back to why not just tell her here? I mean, you knew MQR was supposed to know exactly what you were doing, right?
A Right.
Q So why not tell her?
A I mean, sitting here, all I can say is I thought I was and if I wasn't, she could have asked if it wasn't clear.
MR. SMITH: Did you make sure that she had a copy of a model which had the formula with the blend in it?
THE WITNESS: I thought I did at the time. Yes.
MR. SMITH: And when and how did you do that?

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THE WITNESS: There was a model placed in the repository for her to take a look at. Yes.
MR. SMITH: That had the blended constant?
THE WITNESS: I do not believe that the model in the repository had the blended constant.
MR. SMITH: You were using a model since late December which had a blended constant, is that correct?
THE WITNESS: I was.
MR. SMITH: Did you place such a model in the repository or otherwise make sure that Haixin Hu had a copy that used the blended constant.
THE WITNESS: I believe I did, but I did not.
MR. SMITH: You believed you did, but you did not?
THE WITNESS: Yes.
MR. SMITH: Okay. So when and how did you discover that you did not?
THE WITNESS: At some point during the aftermath of the Goldman transaction, when there was a significant amount of -- there was just a significant amount of looking into transactions, it came to my attention that it actually was not in the model repository.

forwarded to you?
A I don't remember.
Q Did you try to figure out what Mr. Penner was complaining about other than just generally the subordination levels being too low?
A I can't remember.
Q Well, is it fair to say that as of July 15th, 2011 you had received or had forwarded to you at least two complaints about the low level of subordination on the GC4 deal?
A I'm not sure I would call them complaints but I would call them opinions definitely.
Q Okay.
THE VIDEOGRAPHER: This is the end of tape number 4, Volume III in the investigative testimony of Barbara Duka. The time is 5:25 p.m. We are going off the record.
MR. LEIDENHEIMER: We are off the record at 5:25 p.m.
(Whereupon, at 5:25 p.m., the investigative testimony adjourned to be resumed on Friday, October 25, 2013, at 8:00 a.m.)

PROOFREADER'S CERTIFICATE

In the Matter of: STANDARD & POOR'S CMBS RATINGS
Witness: Barbara Duka
File Number: D-03302-A
Date: Thursday, October 24, 2013
Location: Washington, D.C. 20549-7553

This is to certify that I, Don R. Jennings (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

____________________ ____________________
(Proofreader's Name) (Date)

REPORTER'S CERTIFICATE

I, , reporter, hereby certify that the foregoing transcript of 229 pages is a complete, true and accurate transcript of the testimony indicated, held on Thursday, October 24, 2013, in the matter of: STANDARD & POOR'S CMBS RATINGS

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date: ____________________
Official Reporter: ____________________
Diversified Reporting Services, Inc.

EXHIBIT C

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UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16349

In the Matter of

BARBARA DUKA

Respondent.

ANSWER OF RESPONDENT BARBARA DUKA

Respondent Barbara Duka ("Ms. Duka"), by and through her counsel, Petrillo Klein & Boxer LLP, hereby Answers the Order Instituting Administrative and Cease-and-Desist Proceedings ("OIP") of the U.S. Securities and Exchange Commission's ("SEC"), as follows.

INTRODUCTORY STATEMENT

In the paragraphs that follow, unless otherwise indicated, Ms. Duka denies knowledge or information sufficient to form a belief as to the truth of any allegation relating to any other person or entity, including Standard & Poor's Ratings Services ("S&P"), or S&P's CMBS professionals as a group specifically. In addition, all allegations not expressly admitted are denied.

The headings used in the OIP do not require a response but, for the avoidance of doubt, to the extent they contain allegations against Ms. Duka, any such allegations are denied.

The OIP contains numerous purported allegations that constitute legal conclusions. Because she is not required to respond to legal conclusions in this Answer, Ms. Duka neither admits nor denies such purported allegations. To the extent a response is required, Ms. Duka denies such allegations. Specifically, Ms. Duka denies that she with *scienter* or otherwise made any materially misleading statements or omissions, engaged in a scheme to defraud, breached any obligations she may have had under Section 15E(c)(3) of the Exchange Act, breached any obligations she may have had under Rules 17g-2(a)(2)(iii), 17g-6(a)(2), or 17g-2(a)(6) of the Exchange Act, or otherwise engaged in any actionable or wrongful conduct.

The OIP is replete with references to purported descriptions and/or summaries of, and purported quotations from, various documents, including S&P internal emails and S&P presale reports. As appropriate below, Ms. Duka, without admitting the truth thereof or the admissibility of the documents, respectfully refers to the relevant documents for a complete and accurate statement of their contents. To the extent that the OIP's purported descriptions, summaries and quotations are taken from sources not specifically identified in the OIP and/or not in Ms. Duka's possession, or the sourcing of which is otherwise unclear, Ms. Duka denies knowledge or information sufficient to form a belief as to the truth of the relevant allegations and, in the case of quotations, as to the accuracy of such quotations.

This Answer is filed without prejudice to and expressly preserving all claims and contentions asserted in Ms. Duka's lawsuit against the SEC currently pending before the Honorable Richard M. Berman in the United States District Court for the Southern District of New York, captioned *Barbara Duka v. U.S. Securities and Exchange Commission*, 15 Civ. 357 (RMB).

SPECIFIC RESPONSES

Paragraph 1: *Barbara Duka, age 49, is a resident of New York City, New York. During 2009 through 2011, Duka was managing director at Standard & Poor's Ratings Services with* *responsibility for new issue ratings of Commercial Mortgage Backed Securities ("CMBS") and, after approximately early January 2011, surveillance ratings of CMBS.*

Answer to Paragraph 1: Ms. Duka denies the allegations contained in Paragraph 1, except admits that she was and is a resident of New York, New York; from 2009 through 2011, she was a managing director at S&P; in her capacity as managing director at S&P, she oversaw an analytical team that formulated ratings of CMBS new issuance transactions ("CMBS NI"), and that team's work was subject to review by other groups within S&P that were external to CMBS NI, including functions within S&P denominated as Quality and Criteria; and, in early 2011, she began to oversee an S&P analytical team that assigned surveillance ratings to outstanding CMBS transactions ("CMBS Surveillance"), again subject to like review by other groups within S&P that were external to CMBS Surveillance, including Quality and Criteria.

Paragraph 2: *Standard & Poor's Ratings Services ("S&P") is a Nationally Recognized Statistical Rating Organization ("NRSRO") headquartered in New York City, New York. S&P is comprised of a separately identifiable business unit within Standard & Poor's Financial Services LLC, a Delaware limited liability company wholly-owned by the McGraw-Hill Companies, Inc. ("McGraw-Hill"), and the credit ratings business housed within certain other wholly-owned subsidiaries of, or businesses continuing to operate as divisions of, McGraw-Hill.*

Answer to Paragraph 2: Ms. Duka admits that S&P is a Nationally Recognized Statistical Rating Organization ("NRSRO") headquartered in New York City, New York. Ms. Duka denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 2.

Paragraph 3: *These proceedings involve a scheme and fraudulent practice or course of business that led to false and misleading statements by S&P concerning its post-financial crisis* *methodology for rating conduit/fusion CMBS. The disclosures at issue concern S&P's calculation of the Debt Service Coverage Ratio ("DSCR"), a key quantitative metric used to rate CMBS transactions.*

Answer to Paragraph 3: To the extent the allegations in Paragraph 3 aver legal conclusions, no response is required. To the extent a response is required, Ms. Duka denies the allegations contained in Paragraph 3, except admits that S&P's calculation of the Debt Service Coverage Ratio ("DSCR") was a part of the process of rating CMBS transactions.

Paragraph 4: *S&P used DSCRs to predict defaults of loans in CMBS pools and thereby determine appropriate levels of Credit Enhancement ("CE") for particular ratings. CE is a critical component of a credit rating; in general terms, ratings with higher levels of CE are more conservative and provide greater protection against loss to investors.*

Answer to Paragraph 4: Ms. Duka denies the allegations contained in Paragraph 4, except admits that CMBS NI and CMBS Surveillance calculated DSCRs in modeling whether a commercial real estate loan would hypothetically default during the term of the loan; a DSCR was one of the calculations made in the model employed by S&P to assign levels of Credit Enhancement and ratings levels applicable to a particular CMBS transaction's tranches; and, as a general matter, assuming that all other model assumptions, inputs, and metrics were hypothetically held equal, a higher level of CE for a particular tranche of a CMBS would, on a modeled basis, decrease the likelihood that holders of securities in that tranche would suffer losses given specific assumed cash shortfalls.

Paragraph 5: *Duka led and was responsible for the actions of the analytical group within S&P that analyzed and assigned ratings to new issue CMBS transactions, and (after approximately early January 2011) that assigned surveillance ratings to outstanding CMBS* *bonds (the "CMBS Group"). In late 2010, S&P's CMBS Group, acting through and led by Duka, loosened its methodology for calculating DSCRs, resulting in CE requirements that were approximately 25% to 60% lower for bonds at each different level of the capital structure. This change to S&P's methodology was designed to make S&P's ratings more attractive to fee-paying CMBS issuers. Duka ordered the change because she perceived that S&P's criteria were too conservative and were causing S&P to lose rating assignments, thereby threatening both the profitability of the CMBS Group she led and her position within the firm.*

Answer to Paragraph 5: Ms. Duka denies the allegations contained in Paragraph 5, except admits that during 2010, Ms. Duka oversaw CMBS NI, and beginning in early 2011, Ms. Duka was asked to begin and began to oversee CMBS Surveillance.

Paragraph 6: *S&P's CMBS Group, acting through and led by Duka, published eight CMBS Presale reports between February and July 2011 in which S&P failed to disclose its relaxed methodology for calculating DSCRs. The reports instead represented that S&P used a more conservative methodology for calculating DSCRs when rating the transactions. Market participants were therefore misled into believing that the ratings at issue were more conservative than they actually were.*

Answer to Paragraph 6: Ms. Duka denies the allegations contained in Paragraph 6, except admits that S&P published eight CMBS conduit fusion new issuance presale reports between in or around February 2011 and in or around July 2011.

Paragraph 7: *S&P and Duka acted with scienter in connection with the false and misleading CMBS Presales, in that Duka and the CMBS Group knew that the Presales contained inaccurate data and intentionally or recklessly caused such inaccurate data to be published, and for other reasons discussed below.*

Answer to Paragraph 7: To the extent the allegations in Paragraph 7 aver legal conclusions, no response is required. To the extent a response is required, Ms. Duka denies the allegations contained in Paragraph 7.

Paragraph 8: *S&P failed to follow its own established internal policies and procedures when the CMBS Group changed its method for calculating DSCRs and in connection with ratings that the CMBS Group assigned by using the undisclosed new methodology. Duka caused and aided and abetted such failures, among other things, by causing the CMBS Group to prepare internal documents that failed to describe the new methodology, contrary to the policies that governed such documents, and by changing the numerical model for CMBS ratings without adequately communicating those changes to the responsible persons within S&P's internal control structure.*

Answer to Paragraph 8: To the extent the allegations in Paragraph 8 aver legal conclusions, no response is required. To the extent a response is required, Ms. Duka denies the allegations contained in Paragraph 8 that purport to characterize her conduct.

Paragraph 9: *Rating agencies' consistency and transparency are important to investors, including in the CMBS market. Without consistent application of rating methodology, ratings are not comparable from deal to deal. Similarly, without transparency, investors can neither assess the methodology employed by the rating agency nor the application of that methodology, and thus cannot determine what weight to accord the rating. S&P's Code of Conduct reflected these priorities by requiring S&P employees to consistently apply established criteria, avoid being influenced by non-criteria factors, such as business relationships with the issuers, and publish sufficient information about S&P's procedures and assumptions so that users of credit ratings could understand how S&P arrived at its ratings.*

Response to Paragraph 9: Ms. Duka denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9, and respectfully refers the ALJ to the actual language contained in S&P's Code of Conduct, the relevant presale reports and surveillance reports and the published S&P ratings criteria.

Paragraph 10: *A conduit/fusion CMBS is a group of bonds, payment of which is backed by a pool of loans secured by commercial real estate. The bonds at the top of the capital structure receive priority in payment of principal and interest, while the bonds at the bottom experience losses first when obligors default on the underlying loans. Because of these differences, the bonds at the bottom of the capital structure receive the highest rate of return, while the bonds at the top receive the lowest rate of return. The bonds at the bottom of the structure thus provide a cushion against loss to the bonds at the top of the structure. This cushion is a key aspect of the CE applicable to each bond in a CMBS transaction.*

Response to Paragraph 10: Ms. Duka denies the allegations contained in Paragraph 10, except admits that in a CMBS conduit fusion transaction as defined by S&P's criteria, securities are issued that are backed by a pool of loans secured by commercial real estate; securities in higher-rated tranches are generally in a priority position with respect to payment of collateral principal and interest in relation to securities in relation to lower-rated tranches; securities in the higher-rated tranches generally carry a lower coupon than securities in lower-rated tranches; and, by virtue of the priority in payment of principal and interest, any decrease in cash flow from the collateral backing the loan pool may potentially affect the cash flow available to the securities in relatively lower rated tranches before it affects the securities in relatively higher rated tranches.

Paragraph 11: *During the time frame covered by this Order (2010 and 2011), fees for rating CMBS transactions were paid by the issuers. Issuers typically announced a potential*

CMBS transaction privately to most or all of the NRSROs that rate CMBS several months before the issuer anticipated selling the bonds. NRSROs typically responded to these announcements by undertaking initial analyses of the transaction and providing feedback to the issuers concerning how much CE they would require for each bond in the capital structure to be rated at particular levels. Typically, the issuer then retained two NRSROs to rate the transaction, usually choosing the agencies that proposed the lowest CE.

Response to Paragraph 11: Ms. Duka denies knowledge or information sufficient to form a belief as to the truth of the allegation that issuers typically choose NRSROs that propose the lowest CE to rate CMBS new issuances, and otherwise denies the allegations contained in Paragraph 11, except admits that, although the topic falls outside of her personal experience and personal knowledge, it has been repeatedly publicly reported that pursuant to a market regime known to and tolerated by regulators including the SEC for years, fees to NRSROs for rating CMBS conduit fusion new issuances were paid by securities issuers; issuers would provide information to NRSROs typically months in advance of the issuance of the relevant CMBS transaction, so that NRSROs could analyze the potential CMBS and provide feedback regarding the NRSROs' then-held views of the CEs they would assign to each tranche of the security to be rated at a predetermined rating level; and the issuers, as a general matter, selected at least two NRSROs to rate its CMBS transactions.

Paragraph 12: *The CMBS Group led by Duka competed for and sometimes obtained CMBS rating assignments in 2010 and 2011. After being hired to rate a transaction, the CMBS Group spent approximately two months analyzing the loans and properties. The CMBS Group then gave final feedback to the issuer concerning recommended ratings for levels of the capital* *structure proposed by the issuer. The feedback included summary data concerning DSCRs and other key metrics.*

Answer to Paragraph 12: Ms. Duka denies the allegations in Paragraph 12, except admits that S&P was asked by issuers from time to time in 2010 and through roughly the first half of 2011, to review and analyze potential CMBS conduit fusion new issuances and their related loan pools and underlying real estate collateral and provide feedback; and if and when S&P was engaged to rate a CMBS new issuance, members of CMBS NI would perform further analysis and modeling typically over a period of more than one month and provide feedback to the issuer concerning ratings levels applicable to the separate tranches of the security, which included DSCR and other information.

Paragraph 13: *After receiving final feedback, the issuer announced the transaction to the public. Shortly after the announcements, the CMBS Group publicly disseminated a Presale report setting forth S&P's preliminary recommended ratings and the detailed rationale for the ratings. Although these ratings were designated as preliminary, they were issued in the offer and sale and in connection with the purchase and sale of the CMBS bonds because issuers and investors used the Presales as part of the total mix of information available to analyze the transactions. Final ratings were not issued until after the closing of the transactions. Investors typically had approximately one week after the announcement of the proposed transaction to make their investment decisions.*

Answer to Paragraph 13: To the extent the allegations in Paragraph 13 aver legal conclusions, no response is required. To the extent a response is required, Ms. Duka denies that the presale reports were issued in the offer and sale and in connection with the purchase and sale of CMBS securities, and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 13, except admits that for those CMBS conduit fusion new issuances that it was engaged to rate in 2010 and 2011, S&P published presale reports that set forth explanation, disclosure and analysis concerning S&P's provisional views of ratings applicable to tranches of CMBS new issuances.

Paragraph 14: *Duka, as managing director of the CMBS Group, oversaw the entire process whereby the CMBS Group analyzed CMBS transactions, submitted feedback to issuers, made ratings determinations, prepared models and internal documents pertaining to such ratings, published reports and commentaries announcing ratings or other actions taken by the CMBS Group, and, in conjunction with S&P's criteria organization, decided and published matters regarding the criteria that S&P used to rate CMBS. As an experienced employee of S&P, Duka was thoroughly familiar with S&P's internal policies and procedures governing CMBS ratings, and in particular the requirement that the CMBS Group comply with published criteria when assigning ratings to transactions.*

Response to Paragraph 14: Ms. Duka denies the allegations contained in Paragraph 14, except admits that she was a managing director responsible for overseeing CMBS NI's analytic work on new issuances; CMBS NI analyzed CMBS new issuances, submitted feedback to issuers, assessed ratings levels, prepared, used and drew upon models and internal S&P documents pertaining to such ratings, contributed to reports published by S&P describing rating opinions, and contributed to commentaries published by S&P describing CMBS NI's opinions concerning particular CMBS transactions; certain members of CMBS NI were members of S&P CMBS Criteria Committee(s) responsible for developing and amending S&P's CMBS Criteria; and Ms. Duka was not a Criteria officer or Quality officer, but was familiar generally with S&P's internal policies and procedures governing CMBS ratings, and understood that CMBS ratings were to be issued in compliance with CMBS criteria, as guided by the Criteria group and its professionals.

Paragraph 15: *On or about June 26, 2009, S&P published "U.S. CMBS Rating Methodology And Assumptions For Conduit/Fusion Pools" ("the Criteria Article"). The Criteria Article was intended to inform market participants, including investors, how S&P determined its ratings. Specifically, the Criteria Article explained how S&P calculated net cash flow, used DSCRs to estimate losses on loans in CMBS pools, and used those loss estimates to calculate the CE necessary for the various rating levels.*

Answer to Paragraph 15: Ms. Duka denies the allegations contained in Paragraph 15, except admits that on or about June 26, 2009, S&P published "U.S. CMBS Rating Methodology And Assumptions For Conduit/Fusion Pools" ("Criteria Article"), and respectfully refers the ALJ to the actual language contained in the Criteria Article.

Paragraph 16: *The DSCR is the annual net cash flow produced by an income-generating property, divided by the annual debt service payment required under the mortgage loans. DSCRs are usually expressed as a multiple, for example, 1.2x. DSCRs give a measure of a property's ability to cover debt service payments. Put another way, DSCRs show the cushion that is available to absorb a decline in net cash flow generated by a property during the term of the mortgage loan.*

Answer to Paragraph 16: Ms. Duka denies the allegations contained in Paragraph 16, except admits that DSCR is an acronym standing for "debt service coverage ratio"; that such ratio is of cash flow, as the same may be defined, to debt service, as the same may be defined, and is expressed typically as a ratio; that when a DSCR is a positive whole integer or greater, cash flow as defined is greater than debt service as defined; and that CMBS NI in the relevant period calculated DSCR and net cash flow based on assumptions.

Paragraph 17: *The CMBS Group calculated the denominator in the DSCR (the debt service) by multiplying the original principal amount of the loan by a "loan constant" reflecting an interest rate and an amortization schedule.*

Response to Paragraph 17: Ms. Duka denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17, except admits that, as appropriate, CMBS NI calculated the denominator in the DSCR by multiplying the original principal amount by a loan constant.

Paragraph 18: *The Criteria Article's methodology is based on an "archetypical pool" of commercial real estate loans. The "archetypical pool" is described in a table identified as Table 1. Table 1 included loan constants by property type – Retail 8.25%, Office 8.25%, Multifamily 7.75%, Lodging 10.00% and Industrial 8.50%. The Criteria Article did not clearly state how S&P used the loan constants in Table 1 (the "criteria constants") in its analysis for CMBS ratings.*

Answer to Paragraph 18: Ms. Duka admits that the Criteria Article refers to an "archetypical pool" of commercial real estate loans, denies that the "archetypical pool" is described in a table identified as Table 1, and respectfully refers the ALJ to the actual language contained in the Criteria Article.

Paragraph 19: *After publication of the Criteria Article, extensive internal discussions ensued concerning the loan constants that S&P would use to calculate debt service. Some personnel took the position that S&P should use the published criteria constants while others argued that S&P should use "actual constants" derived from the terms of the loans. On or* *about July 31, 2009, senior S&P management affirmed that the firm would use the criteria constants to calculate DSCRs. On or about March 10, 2010, the CMBS criteria committee further decided that S&P would use the actual constants if higher than the criteria constants to determine debt service payments. Duka was the lead CMBS Group member on the CMBS criteria committee and signed the written decision of the CMBS criteria committee. The March decision was a minor change to the prior practice because actual loan constants were rarely higher than the criteria constants. The CMBS Group, with Duka's knowledge and acquiescence, incorporated the methodology that resulted from these decisions into the model that it used to analyze CMBS transactions.*

Response to Paragraph 19: Ms. Duka denies that she "was the lead CMBS Group member" on the CMBS criteria committee, and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 19, except admits that although she was not included in the referenced July meeting, she understands that different views were expressed regarding whether CMBS NI and CMBS Surveillance would use the constants published in the Criteria Article to calculate DSCRs; and that in March 2010, Ms. Duka participated in a decision to use the higher of the actual constant or the criteria constant in calculating a loan's DSCR.

Paragraph 20: *On or about June 22, 2010, S&P published a commentary on a CMBS transaction called JPMCC 2010-C1. S&P did not rate the transaction. The Commentary was prepared under Duka's guidance, identified Duka as the Analytical Manager for U.S. CMBS New Issuance, and listed persons supervised by Duka as Primary Credit Analysts. In the commentary, S&P included DSCRs based on actual loan constants, but then stated that the firm "typically evaluates a transaction's loan default probability using a stressed DSC based on . . . a* *stressed loan constant. For JPMCC 2010-C1, the pool's weighted average stressed debt constant would equal approximately 8.33%, based primarily on the retail and office exposure, for which our constant is 8.25%." S&P closed the commentary with a direct comparison of the JPMCC 2010-C1 pool to the archetypical pool. In that comparison S&P stated that the pool's DSCR was based upon "stressed constants." Through these statements, S&P informed the public that it used the criteria constants to calculate DSCRs in its analysis of CMBS transactions.*

Answer to Paragraph 20: Ms. Duka denies the allegations contained in Paragraph 20, except admits that on or about June 22, 2010, S&P published a commentary on but did not rate a CMBS new issuance called JPMCC 2010-C1, that the commentary was prepared by individuals within CMBS NI that she was then supervising and with her senior-level input and involvement, and respectfully refers the ALJ to the actual language used in the commentary.

Paragraph 21: *On or about September 24, 2010, S&P published a Presale for a CMBS transaction called JPMCC 2010-C2. Duka supervised the preparation and publication of the Presale. The Presale set forth preliminary ratings for the transaction and detailed S&P's analysis that led to its ratings. It began with a summary overview that highlighted the pool-wide DSCR, and the subsequent analysis contained approximately 45 DSCR representations. In addition to the poolwide DSCR, the Presale presented DSCRs for stratified portions of the pool and for individual loans. In each case, the DSCR was calculated based upon the criteria constants.*

Answer to Paragraph 21: Ms. Duka admits that on or about September 24, 2010, S&P published a presale for a CMBS new issuance called JPMCC 2010-C2, and that individuals in the CMBS NI group then supervised by Ms. Duka prepared the presale with her senior-level input and involvement, and respectfully refers the ALJ to the actual language in the JPMCC 2010-C2 presale.

Paragraph 22: *As a result of its internal actions described above, including decisions and model implementation, the published commentary on JPMCC 2010-C1, and the published Presale for JPMCC 2010-C2, S&P established that it based its calculation of DSCRs on the criteria constants. Duka, by virtue of her active participation in the relevant decisions and ratings activity, was fully aware of this fact.*

Answer to Paragraph 22: Ms. Duka denies the allegations contained in Paragraph 22.

Paragraph 23: *Prior to the financial crisis, S&P held a dominant share of the market for rating CMBS. The financial crisis essentially halted the new issuance CMBS market. When issuers started marketing CMBS transactions again in 2010, S&P's market share did not rebound to its pre-crisis level. Instead, S&P was losing market share to other NRSROs, a fact that members of the CMBS Group believed was caused by the conservatism of the firm's criteria.*

Answer to Paragraph 23: Ms. Duka denies the allegations contained in Paragraph 23 as they pertain to her, and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 23.

Paragraph 24: *Duka was aware of and concerned about S&P's low market share and blamed it in part on her perception that S&P's CMBS criteria were producing CE levels that were too high for S&P to get rating assignments from CMBS issuers. In an email dated October 11, 2010, Duka wrote that "we looked at and lost [a CMBS new issue] because our feedback was much more conservative than the other rating agencies." In an email dated November 11, 2010, Duka wrote that S&P's "more conservative criteria . . . could impact the business" and were among the "key challenges" facing the CMBS Group. In a December 2010 activity report* *to S&P management, Duka noted that S&P had lost a different CMBS new issue assignment due to criteria and again noted that "our criteria has historically been somewhat more conservative than the other agencies."*

Answer to Paragraph 24: Ms. Duka denies the allegations contained in Paragraph 24, and respectfully refers the ALJ to the actual language contained in the emails and report cited in Paragraph 24.

Paragraph 25: *Duka's concerns about S&P's conservative criteria culminated in mid-December 2010. At the time, S&P's Model Quality Review group ("MQR") had just produced a draft report concerning the CMBS model. The purpose of the MQR review was to determine whether the model was an appropriate computer implementation of the S&P criteria. The model MQR reviewed used the methodology based on the criteria constants, as determined by the CMBS criteria committee.*

Answer to Paragraph 25: Ms. Duka denies the allegations contained in Paragraph 25 as they pertain to her, and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 25, except admits that in or around December 2010, S&P's Model Quality Review group ("MQR") produced a draft report concerning a CMBS model that included the 2009 Criteria Article Table 1 constants.

Paragraph 26: *Duka and several other persons within the CMBS Group circulated emails within the Group concerning how to respond to the draft report. They asserted that they were basing their DSCRs on the criteria constants, which had been "vetted in a criteria committee." Nevertheless, Duka wrote that a member of the CMBS Group was "starting to convince me that we should rethink this, as it doe[s] not have the intended result."*

Answer to Paragraph 26: Ms. Duka respectfully refers the ALJ to the actual language contained in the emails cited in Paragraph 26.

Paragraph 27: *At that time, S&P had an internal procedure, called the Criteria Process Guidelines, that was specifically designed to respond to situations where analytical practice groups perceived weaknesses in S&P's criteria. The Guidelines created a five-step process of initiation, research, approval, dissemination, and review so that such issues could be resolved in a rigorous and well documented fashion. The Guidelines were a key part of S&P's internal controls because they were intended to ensure that criteria were developed with the active input and approval of independent criteria experts, and not solely by practice groups such as the CMBS Group, which were viewed as susceptible to commercial influence.*

Answer to Paragraph 27: Ms. Duka denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27, and respectfully refers the ALJ to the actual language contained in S&P's Criteria Process Guidelines.

Paragraph 28: *Rather than seeking a rigorous and comprehensive review through the criteria process as to why S&P's CMBS criteria were too conservative, Duka and her CMBS Group devised a scheme to rapidly and materially decrease CE levels with a simple change to their numerical model. In or around mid-December 2010, the CMBS Group materially changed their methodology. While the model previously calculated the DSCR for each loan by using the higher of the actual loan constant or the criteria constant, the new model calculated the DSCR for each loan by using the higher of the actual loan constant or the average of the actual loan constant and the criteria constant.*

Answer to Paragraph 28: Ms. Duka denies the allegations contained in Paragraph 28, except admits that in or around mid-December 2010, the then-Criteria Officer assigned to CMBS

NI interpreted the Criteria to permit CMBS NI's use for analytical purposes of a constant that was less inapt than the 2009 stressed constants, to wit, an average of the actual loan constant and the 2009 stressed constant, and, with said Criteria Officer's guidance and approval, CMBS NI began, in appropriate instances, to use the higher of such loan constant or the actual constant.

Paragraph 29: *Personnel within S&P described the average constants as "blended constants." Blended constants were in all cases lower than the criteria constants. The use of blended constants resulted in lower annual debt service calculations and, therefore, higher DSCRs, which led the model to estimate fewer anticipated defaults as well as lower losses from defaults. This resulted in CE requirements that were approximately 25% to 60% lower than they would have been had the CMBS Group used the criteria constants to compute DSCRs. As a result, the CMBS Group had a ratings methodology that would produce more attractive CE levels to fee-paying issuers.*

Answer to Paragraph 29: Ms. Duka denies knowledge or information sufficient to form a belief as to the truth of the allegation that blended constants were in all cases lower than the 2009 Criteria Article Table 1 constants, and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the last two sentences of Paragraph 29, and denies the remaining allegations contained in Paragraph 29, except admits that members of CMBS NI from time to time described the constants that resulted from a weighted average of the 2009 stressed constants and the actual constants as "blended constants," such constants having been approved for use by the then-Criteria Officer in or around mid-December 2010, and that the use of a blended constant that is numerically less than a stressed constant in a DSCR formula will decrease notional debt service, all other things being equal.

Paragraph 30: *Duka failed to adequately follow the Criteria Process Guidelines. Instead, Duka's effort to apply the criteria process was at best minimal and informal, and violated the standard of care applicable to a person in Duka's position. At S&P's holiday party, she and one or two other members of the CMBS Group approached the new CMBS criteria officer, who had just joined S&P earlier on the same day, and pushed him to agree to use blended constants. When he demurred, Duka approached the chief of S&P's structured finance criteria organization with the same request early the next morning. After a brief meeting, Duka unilaterally concluded that she had obtained his approval for use of the blended constants, but she made no record of the meeting or this decision. Moreover, approval from the structured finance criteria chief, even if given, would not have satisfied the requirements of the Criteria Process Guidelines. A reasonable person in Duka's position would have documented her actions concerning the change in methodology and would have made a reasonable effort to follow S&P's policies and procedures concerning criteria changes.*

Answer to Paragraph 30: To the extent the allegations in Paragraph 30 aver legal conclusions, no response is required. To the extent a response is required, Ms. Duka denies the allegations contained in Paragraph 30.

Paragraph 31: *The structured finance criteria chief denies that he gave any approval to Duka for the CMBS Group to broadly use blended constants. He and Duka, however, both agree that he instructed Duka to document the methodology that the CMBS Group used for calculating DSCRs, and any changes to that methodology, in public and internal documents, including Presales and RAMPs discussed below. Duka has admitted receiving that instruction from the structure finance criteria chief.*

Answer to Paragraph 31: Concerning the structured finance chief's denial, as alleged in Paragraph 31, Ms. Duka denies knowledge or information as to the present belief of said officer as to his determinations or actions in December 2010; and concerning sentence two of this Paragraph, admits that she agreed to disclose the change in application of methodology approved in December 2010 by the structured finance chief, and, in 2011, that she believed she was doing so appropriately.

Paragraph 32: *During the first half of 2011, the CMBS Group experienced a surge in ratings engagements. S&P used its blended constant methodology to rate the following six conduit/fusion CMBS transactions: MSC 2011-C1, FREMF 2011-K701, JPMCC 2011-C3, FREMF 2011-K11, FREMF 2011-K13 and JPMCC 2011-C4. Issuers paid S&P approximately $7 million to rate these six transactions.*

Answer to Paragraph 32: Ms. Duka denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32, except admits that S&P used approved blended constants in rating the following CMBS new issuances: MSC 2011-C1; FREMF 2011-K701; JPMCC 2011-C3; FREMF 2011-K11; FREMF 2011-K13; and JPMCC 2011-C4.

Paragraph 33: *For each transaction, the CMBS Group published a Presale. Each Presale set forth the recommended S&P ratings for the various bonds in the CMBS capital structure, which were based on the CE that the structure provided to each level. The text of the Presale then began with a paragraph entitled "Rationale," which was in essence an executive summary of the document. The Rationales for each of the six rated transactions explicitly stated S&P's DSCR for the pool based on the criteria constants, implying that those DSCRs formed the analytical basis for the assigned ratings. The Rationale did not disclose that S&P in fact had* *based its recommended CE on a far less conservative analysis that was based on blended constants.*

Answer to Paragraph 33: Ms. Duka admits that S&P published presales for the MSC 2011-C1, FREMF 2011-K701, JPMCC 2011-C3, FREMF 2011-K11, FREMF 2011-K13, and JPMCC 2011-C4 new issuances and respectfully refers the ALJ to the actual language contained in the presales.

Paragraph 34: *The placement of the DSCRs and constants in this executive summary reflects the importance of DSCRs in the analysis of CMBS bonds. But the deceptive nature of the Presales did not stop there. The Presales continued with over 40 more representations of DSCRs calculated using the criteria constants. These representations included DSCRs for the entire pool, stratified portions of the pool, and individual loans. Some Presales also included DSCRs calculated from actual loan constants, but none of the Presales included any DSCRs calculated from the blended constants that S&P actually used to rate the transactions.*

Answer to Paragraph 34: Ms. Duka denies the allegations contained in Paragraph 34, and respectfully refers the ALJ to the actual language contained in the presales cited in Paragraph 34.

Paragraph 35: *Had S&P actually used the DSCRs derived from the criteria constants, as set forth in the Presales, it would have required materially higher amounts of CE in the six rated transactions. For the AAA bonds, which were by far the largest part of the transactions, CE was lowered between approximately 500 and 750 basis points by using DSCRs derived from blended constants. For the BBB bonds, CE was lowered by approximately 250 to 300 basis points by using DSCRs derived from the blended constants.*

Answer to Paragraph 35: To the extent the allegations in Paragraph 36 aver legal conclusions, no response is required. To the extent a response is required, Ms. Duka denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36, but admits that calculation of the DSCR by CMBS NI in its ratings analysis concerning these issuances employed an approved application of the S&P Criteria methodology that was more analytically apt relative to a less apt hypothetical application of methodology using 2009 stressed constants, with resulting CEs as dictated by the CMBS model and reasonable credit analysis.

Paragraph 36: *The inclusion of data in the Presales based on criteria constants did not result from error, mistake, or negligence. Since the CMBS Group did not use the data that it published in the Presales, the CMBS Group had no analytical reason to calculate it. In order to calculate such data, the CMBS Group needed to enter the models, know where the blended loan constants appeared in the formulas, change those formulas to reflect the criteria constants, re-run the models with the criteria constants, and copy the resulting data into the Presales. These acts were all done intentionally.*

Answer to Paragraph 36: To the extent the allegations in Paragraph 36 aver legal conclusions, no response is required; to the extent they refer to the alleged conduct of others, Ms. Duka denies knowledge and information sufficient to form a belief as to the accuracy of the allegations contained in the Paragraph; and to the extent that they allege conduct on her part, Ms. Duka denies the allegations contained in the Paragraph.

Paragraph 37: *Before publishing the Presales, Duka engaged in a conversation with her chief subordinate concerning whether to disclose anything about the relaxed criteria in the Presales. They decided to add the following sentence to a section in the middle of each Presale that described the conduit/fusion methodology: "[i]n determining a loan's DSCR, Standard & Poor's will consider both the loan's actual debt constant and a stressed constant based on* *property type as further detailed in our conduit/fusion criteria." This sentence did not inform investors that S&P had changed its methodology to use blended constants. It was instead consistent with S&P's established methodology that considered both the actual constant and the criteria constant, and then chose the higher of the two. Duka's subordinate, in sworn testimony, stated that the sentence was "written to be vague . . . based upon her instruction."*

Answer to Paragraph 37: Ms. Duka denies the allegations contained in Paragraph 37 as they pertain to her and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 37, except admits that she approved the inclusion of the following sentence in each of the presales published from February 2011 through July 2011: "[i]n determining a loan's DSCR, Standard & Poor's will consider both the loan's actual debt constant and a stressed constant based on property type as further detailed in our conduit/fusion criteria."

Paragraph 38: *Duka also used vague language internally in responding to the MQR review of the CMBS model, which was not concluded until June 2011. MQR focused part of its review on the loan constants, and explicitly requested that Duka certify that she was "comfortable with the assumption that loan constants used to derive debt service are appropriate to estimate the debt service amount." In response, Duka stated that "we consider both the constants in [Criteria Table 1] and the actual constants," and that "New Issuance would use the actual (if higher) but look at both if the actual constant is lower than the [Criteria Table 1 constant]." This language suggested that Duka's group engaged in some sort of analysis when deciding upon which constant to use, when in fact Duka had decided to simply use a 50/50 blended constant for all loans in all pools.*

Answer to Paragraph 38: Ms. Duka denies the allegations contained in Paragraph 38, and respectfully refers the ALJ to the actual language contained in the emails cited in Paragraph 38.

Paragraph 39: *Significantly, even though Duka's CMBS Group changed the model in the midst of the MQR review, Duka never showed the new model to MQR. Instead, Duka knowingly allowed MQR to perform its important internal control function with a model that was outdated and applied criteria that the CMBS Group had rejected. Duka's frustration of the MQR process violated the standard of care for a person in Duka's position and aided and abetted and caused failures of S&P's internal controls.*

Answer to Paragraph 39: To the extent the allegations in Paragraph 39 aver legal conclusions, no response is required. To the extent a response is required, Ms. Duka denies the allegations contained in Paragraph 39.

Paragraph 40: *On at least four of the 2011 transactions, while S&P reported DSCRs based on the criteria constants to the public, the CMBS Group reported the DSCRs they actually used, based on the blended constants, to the issuers who paid S&P. Thus, the CMBS Group knew that the DSCRs they actually used were important to assessing the ratings, but still did not provide them to investors who used their ratings.*

Answer to Paragraph 40: Ms. Duka denies the allegations contained in Paragraph 40 as they may allegedly pertain to her.

Paragraph 41: *Duka also caused the CMBS Group to misrepresent the calculation of DSCRs in internal documents known as Rating Analysis and Methodology Profiles ("RAMPs"). According to S&P's RAMP Guidelines, "The RAMP's objective is to explain the rating recommendation to voting committee members [who approved the proposed rating] through application of criteria. The RAMP captures the key drivers of the issue being rated, the relevant* *facets of analysis, the pertinent information being considered, and the underlying criteria and applicable assumptions . . . ." S&P's Model Use Guidelines described various matters pertaining to models that must be documented in RAMPs, including key assumptions used in models and modifications to models.*

Answer to Paragraph 41: Ms. Duka denies the allegations contained in Paragraph 41, and respectfully refers the ALJ to the actual language contained in S&P's RAMP Guidelines and Model Use Guidelines.

Paragraph 42: *As noted above, Duka met briefly with S&P's chief structured finance criteria officer in December before starting to use blended constants. As further noted above, Duka agreed that she and her CMBS Group would disclose the methodology used to calculate DSCRs, and any changes to that methodology, in the RAMPs. Instead, the RAMPs for each of the six transactions listed above disclosed DSCRs calculated using the criteria constants, when in fact S&P rated the transactions using blended constants. The RAMPs did not describe the use of blended constants, the data derived from blended constants, or the fact that the models were modified to apply blended constants. Thus, Duka violated the standard of care set forth in S&P's policies and procedures and documentation requirements, and aided and abetted and caused failures of S&P's internal controls and failures by S&P to comply with requirements to make and retain books and records.*

Paragraph 42: To the extent the allegations in Paragraph 42 aver legal conclusions, no response is required. To the extent a response is required, Ms. Duka denies the allegations contained in Paragraph 42, and respectfully refers the ALJ to the actual language contained in the RAMPs.

Paragraph 43: *In July 2011, S&P published Presales with preliminary ratings for two additional CMBS transactions called GSMS 2011-GC4 and FREMF 2011-K14. As for the previous six transactions, the Presales contained multiple DSCRs calculated based on the criteria constants. They also included DSCRs calculated from actual loan constants, but did not provide any DSCRs derived from the blended constants S&P actually used for the preliminary ratings. As a result, these Presales also made numerous false and misleading statements about the amount of stress that S&P placed on the loans in the pools when assigning its ratings. The RAMPs for these transactions similarly provided data based on the criteria constants, and to some extent actual constants, but not blended constants. Duka's continuing failure to meet the standard of care set forth in S&P's policies and procedures concerning RAMPs aided and abetted and caused failures of S&P's internal controls and failures by S&P to comply with requirements to make and retain books and records.*

Answer to Paragraph 43: To the extent the allegations in Paragraph 43 aver legal conclusions, no response is required. To the extent a response is required, Ms. Duka denies the allegations contained in Paragraph 43, except admits that S&P published presales with preliminary ratings for two additional CMBS transactions called GSMS 2011-GC4 and FREMF 2011-K14, and RAMPs were prepared for GSMS 2011-GC4 and FREMF 2011-K14, and respectfully refers the ALJ to the actual language contained in those presales and RAMPs.

Paragraph 44: *The day before S&P published the Presale for GSMS 2011-GC4, one of the rating analysts on the transaction asked Duka's chief subordinate whether "BD [Duka] wants us to report DSC based on the blend as well as the stressed [criteria] constant?" The chief subordinate replied, "I spoke with her and she wants to show both the dsc using stressed* *constant and the dsc using actual constant." Thus, Duka explicitly decided not to disclose DSCRs using blended constants – the data that the analyst actually used to calculate the ratings.*

Answer to Paragraph 44: Ms. Duka denies the allegations contained in Paragraph 44, and respectfully refers the ALJ to the actual language contained in the email cited in Paragraph 44.

Paragraph 45: *Several potential investors questioned the low level of CE for the AAA bonds in the GSMS 2011 GC-4 transaction. S&P gave a preliminary AAA rating to bonds with 14.5% CE. Using the DSCRs described in the Presale, which calculated DSCRs based on the criteria constants, S&P's model would have required approximately 20% CE for the AAA bond.*

Answer to Paragraph 45: Ms. Duka denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45, except states that the precise CEs that resulted from S&P's analysis are contained in documents to which Ms. Duka respectfully refers the ALJ for the true and accurate contents thereof.

Paragraph 46: *In light of the investor questions, S&P's senior management reviewed S&P's ratings and discovered the use of blended constants. S&P then withdrew its preliminary ratings for the two transactions. As a result, these transactions did not close on schedule, even though, at least with regards to the GSMS 2011-GC4 transaction the issuer and investors had entered into contracts for purchase and sale. S&P's decision to withdraw the ratings occurred over a series of internal meetings. Several persons who attended those meetings reported that Duka admitted that the decision not to disclose blended constants in the Presales was intentional.*

Answer to Paragraph 46: Ms. Duka denies the allegations contained in Paragraph 46 as they pertain to her, and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 46.

Paragraph 47: *On May 24, 2012, S&P's Compliance Department issued a memorandum regarding a Targeted Post Event Review of the GSMS 2011-GC4 transaction. The Compliance Department found that Duka violated the S&P Ratings Services Codes of Conduct in eight separate instances and the Model Quality Review Guidelines in one instance. Because Duka had resigned and left S&P on March 5, 2012, the Compliance Department did not recommend any remedial action against her.*

Answer to Paragraph 47: Ms. Duka denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47, and respectfully refers the ALJ to the actual language contained in the Compliance Department document referred to in the Paragraph.

Paragraph 48: *S&P and Duka thus intentionally, knowingly or recklessly made and caused to be made false and misleading statements to investors concerning the DSCRs used and the amount of stress S&P applied in ratings or preliminary ratings, or both, for the eight transactions, and Duka violated the standard of care for a person in her position. S&P and Duka further intentionally, knowingly or recklessly engaged in a scheme and practice or course of business that operated as a fraud or deceit on investors.*

Answer to Paragraph 48: To the extent the allegations contained in Paragraph 48 aver legal conclusions concerning her, no response is required. To the extent a response is required, Ms. Duka denies the allegations contained in Paragraph 48 as to her.

Paragraph 49: *As a result of the conduct described above, Duka willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibits fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.*

Answer to Paragraph 49: To the extent the allegations contained in Paragraph 49 aver legal conclusions, no response is required. To the extent a response is required, Ms. Duka denies the allegations contained in Paragraph 49.

Paragraph 50: *In the alternative, as a result of the conduct described above, Duka willfully aided and abetted and caused S&P's violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.*

Answer to Paragraph 50: To the extent the allegations contained in Paragraph 50 aver legal conclusions, no response is required. To the extent a response is required, Ms. Duka denies the allegations contained in Paragraph 50.

Paragraph 51: *As a result of the conduct described above, Duka willfully aided and abetted and caused S&P's violations of Section 15E(c)(3) of the Exchange Act, which requires NRSROs to establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings.*

Answer to Paragraph 51: To the extent the allegations contained in Paragraph 51 aver legal conclusions, no response is required. To the extent a response is required, Ms. Duka denies the allegations contained in Paragraph 51.

Paragraph 52: *As a result of the conduct described above, Duka willfully aided and abetted and caused S&P's violations of Rule 17g-6(a)(2) under the Exchange Act, which prohibits NRSROs from issuing, or offering or threatening to issue, a credit rating that is not determined in accordance with the NRSRO's established procedures and methodologies for determining credit ratings, based on whether the rated person purchases or will purchase the credit rating.*

Answer to Paragraph 52: To the extent the allegations contained in Paragraph 52 aver legal conclusions, no response is required. To the extent a response is required, Ms. Duka denies the allegations contained in Paragraph 52.

Paragraph 53: *As a result of the conduct described above, Duka willfully aided and abetted and caused S&P's violations of Rules 17g-2(a)(2)(iii) and 17g-2(a)(6) under the Exchange Act, which require NRSROs to make and retain complete and current records of the rationale for any material difference between the credit rating implied by a model and the final credit rating issued and of the established procedures and methodologies used by the NRSRO to determine credit ratings.*

Answer to Paragraph 53: To the extent the allegations contained in Paragraph 53 aver legal conclusions, no response is required. To the extent a response is required, Ms. Duka denies the allegations contained in Paragraph 53.

AFFIRMATIVE DEFENSES

Without admitting any wrongful conduct on the part of Ms. Duka and without conceding that she carries the burden of proof on any of the following affirmative defenses, Ms. Duka alleges the following affirmative defenses to the claims alleged in the OIP:

1. The claims alleged in the OIP are barred, in whole or in part, because they fail to state a cause of action against Ms. Duka.

2. The claims alleged in the OIP are barred, in whole or in part, by the applicable statutes of limitation, statutes of repose and/or the doctrine of laches.

3. The claims alleged in the OIP are barred, in whole or in part, because the publications by S&P did not contain any actionable misrepresentations or omissions and all

statements alleged to have been made had a reasonable basis in fact, or because any alleged misrepresentations or omissions were not false or material.

4. The claims alleged in the OIP are barred, in whole or in part, because they fail to allege, and in any event are not supported by admissible evidence to prove that Ms. Duka acted with the requisite *scienter*.

5. The claims alleged in the OIP are barred, in whole or in part, because Ms. Duka was not a culpable participant in any alleged primary violation of the securities laws.

6. The claims alleged in the OIP are barred, in whole or in part, because at all times mentioned in the OIP and with respect to all matters contained therein, Ms. Duka acted in good faith and exercised reasonable care and diligence and did not know, and in the exercise of reasonable care could not have known, of any alleged misconduct, untruth, omission, or any other action alleged by the OIP that allegedly gives rise to liability under the law. At all relevant times, Ms. Duka acted without intent to defraud and without recklessness, and Ms. Duka contemporaneously believed in good faith that the statements identified in the OIP were not incorrect, incomplete, or misleading.

7. This proceeding violates Article II of the Constitution and Ms. Duka's rights to due process.

8. Ms. Duka reserves the right to plead additional affirmative defenses as this case proceeds into discovery.

Dated: February 23, 2015
New York, New York

Respectfully submitted,

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EXCERPT

EXHIBIT D

S&P CMBS Ratings

Fisher, Lucienne - 5-6-14

5/6/2014

Condensed Transcript

Prepared by:

SEC

Tuesday, May 20, 2014

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
)
STANDARD & POOR'S CMBS) File No. D-03302-A
RATINGS)

WITNESS: Lucienne Fisher
PAGES: 1 through 232
PLACE: Securities and Exchange Commission
100 F Street, N.E.
Testimony Room 6
Washington, D.C. 20549-7553
DATE: Tuesday, May 6, 2014

The above-entitled matter came on for hearing, pursuant to notice, at 9:32 a.m.

Diversified Reporting Services, Inc.
(202) 467-9200

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CONTENTS

PROCEEDINGS

THE VIDEOGRAPHER: This begins tape number 1 in the formal Investigative Testimony of Lucienne Fisher in the matter of Standard & Poor's CMBS ratings D-3302. Today's date is Tuesday, May 6th, 2014. The time is now 9:32 A m. We are located at the offices of Securities and Exchange Commission, 100 F Street, Northeast, Washington D.C.

At this time, will counsel please identify themselves with the record beginning with the attorney giving notice.

MR. LEIDENHEIMER: That's okay. We'll take care of that in a minute. We are on the written record at 9:32. Would you raise your right hand, please.

Whereupon,

LUCIENNE FISHER,

was called as a witness by counsel for SEC, and having been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. LEIDENHEIMER:

Q Would you spell and state your full name, including middle name for the record?

A It's Lucienne Ida Fisher.

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A Yes.

Q Exhibits 109 and 111.

(Exhibit Nos. 109, 111 were marked for identification.)

MR. SMITH: Oops. This is 107.

MR. LEIDENHEIMER: Right.

MR. SMITH: 109 and 111.

MR. LEIDENHEIMER: Oh, I'm sorry. I'll collect up the 107s. Handing out Exhibit 109. 111.

BY MR. SMITH:

Q Exhibit 109 is an email from you to Susan Barnes and Tom Gillis copied to Barbara Duka dated Friday, July 22nd, and then Exhibit 111 is an email from you to Barnes, Gillis copied to Duka and Digney, model with stressed constants dated July 25th, 2011. Did you send these emails?

A It appears that I did.

Q And then attached is the output page, a printout of the output page from the model and it looks like with 109 we've -- you've printed the output page using the blended constant which is the one that's on the screen now. Do you see that?

A Yes.

Q And do you agree that that's what you did?

A Yes.

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Q Okay. And then it looks like you sent a copy of the model and we've printed out the output page with the blending constant set at 100 percent. Is that -- is that correct?

A Just, if you wouldn't mind just giving me one second to take a look at this.

Q Please, take your time. I'm going through this a little bit quickly in the interest of time so slow me down if you need to.

A Okay. No problem.

Yes. This does look like it was the -- Exhibit 111 does look like the stressed constants.

Q Okay. So even though you testified that you weren't particularly interested in what the results would be using the 100 percent blended -- the 100 percent table 1 criteria constants, it looks like you did do that calculation in order to send this model on to the quality folks, Barnes and Gillis?

A Yes.

Can I ask you a question? Was this, I can't remember the exact date that the ratings were pulled. Do you have that date? Because this might have been an exercise done after that.

Q We have that. My recollection is the ratings were pulled on the 27th or the 28th.

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A Okay.

Q And so this was before that?

A Before. Okay. That's fine. I was just curious because there was, you know, lead up to the actual ratings being pulled and then afterward where there was a lot of these type tests being run.

Q What I understand, and we can go through these exhibits if we need to, was that around -- around Friday the 22nd, Mr. -- Ms. Barnes was working with Tom Gillis who at the time I think was in quality.

A Yes.

Q And they came to you folks who had worked on rating the Goldman deal and had a conversation, and some conversations continued over that weekend, and that's when the quality folks say that they discovered that you were using the blend?

A Okay.

Q Does that make sense? Or do you think that something different happened?

A I really don't know when they discovered the blend. They had been monitoring our deals for quite some time, so they probably knew about it before that but I don't really know. It's possible that they only found out about it a couple days before the ratings were pulled. I don't know.

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BY MR. LEIDENHEIMER:

Q Okay. Who was monitoring your deals?

A It was -- I think Susan Barnes had like a whole team of people working with her that would look at your RAMPs and things like that so --

Q When was that?

A Oh, it was going on for a long time. I mean, they were always looking at our work.

Q Throughout the spring of 2011?

A They had to have been. They were always monitoring our work.

Q Okay. Sorry.

BY MR. SMITH:

Q So was it then true that they looked at the model using the 50 percent blending constant, had some discussions with you all-in the CMBS group, and, for some reasons, you sent them another copy of the model using the stressed constants?

A I mean they must have asked me for it. I don't remember the context of why they asked me for it or why I produced it for them but I assume they probably asked me for it.

Q Okay. And that's my question.

A Yeah.

A Honestly the way I wrote it is totally confusing to me now. I'm not sure I can provide you much more clarity. I wish that, you know --

Q Fair enough.

A This is causing me to, you know, think about taking a writing class to make sure my writing is clearer because it's not clear to me at all what I was trying to write here.

Q Fair enough. Thank you.

A Yes.

MR. LEIDENHEIMER: Well, why don't we take a couple minutes, and we'll consult.

THE VIDEOGRAPHER: Going off the record. The time is 4:04 p.m.

MR. LEIDENHEIMER: Off the record at 4:04.

(Recess.)

THE VIDEOGRAPHER: We are back on the record. The time is 4:07 p.m.

MR. LEIDENHEIMER: Back on the record at 4:07. Ms. Fisher, did you have any substantive discussions with staff while we were off the record.

THE WITNESS: No.

MR. LEIDENHEIMER: Okay. At this time, we've concluded our questions. You have an opportunity now to make a clarifying statement, if

you'd like. And your lawyer then has an opportunity to ask clarifying questions.

MR. PETRILLO: All right. So we've discussed that already, and at this time, we neither have a clarifying statement nor questions on my part for the witness, and we are prepared to close it out.

MR. LEIDENHEIMER: All right then. Ms. Fisher, thank you for coming down today. We really appreciate your time.

THE WITNESS: Sure.

MR. LEIDENHEIMER: If we need to talk to you again, we'll get in touch with Mr. Petrillo. And have a safe trip back to New York.

THE WITNESS: Thank you. I appreciate it.

MR. LEIDENHEIMER: We are off the record.

THE VIDEOGRAPHER: This concludes today's videotaped deposition of Lucienne Fisher. This is tape 3 of 3. Going off the record. The time is 4:08 p.m.

MR. LEIDENHEIMER: Off the record at 4:08 p.m.

(The Investigative Testimony adjourned at 4:08 p.m.)

PROOFREADER'S CERTIFICATE

In the Matter of: STANDARD & POOR'S CMBS RATINGS
Witness: Lucienne Fisher
File Number: D-03302-A
Date: May 6, 2014
Location: Washington, D.C.

This is to certify that I, Nicholas Wagner, (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

__________________ __________________
(Proofreader's Name) (Date)

EXHIBIT E

GOVERNMENT EXHIBIT 109 D-03302

From:	Fisher, Lucienne
Sent:	Friday, July 22, 2011 5:20 PM
To:	Barnes, Susan; Gillis, Tom
Cc:	Duka, Barbara
Subject:	GSMS 2011-GC4
Attachments:	GSMS 2011-GC4 Model SH +IL Prop Types 20110705 FINAL.xls

Hi Susan and Tom,

The model for this transaction is attached. If you have any questions, please let me know.

Thanks, Lucie

Lucienne Fisher
Associate Director
Structured Finance Department
~~55 Water Street, 40th Floor~~
New York, NY 10041
P[redacted]

Production Number

S&P-SEC 2012 0013907

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GSMS 2011-GC4

Trust Beg. Pool Balance:	$1,476,098,884
Trust End Pool Balance:	$1,284,754,856
All-In Beg. Pool Balance:	$1,504,305,472
Number of Loans:	70
Average Loan Size:	$21,087,127
S&P BBB NCF:	$153,275,557
S&P AAA NCF:	$112,280,973
S&P BBB NCF Haircut:	-5.4%
Appraisal Trust LTV:	61.4%
Appraisal All-In LTV:	62.6%
S&P Beg .Trust LTV:	86.8%
S&P End Trust LTV:	75.6%
S&P All-In LTV:	88.5%
S&P Value Haircut:	-29.2%
S&P BBB Value:	$1,699,922,373
Appraised Value	$2,089,350,000
Actual DS	$99,618,145
S&P Stressed DS:	$111,160,716
S&P Wtd. Avg. Debt Const.:	7.53%
Issuer Trust DSC:	1.63
S&P BBB Trust DSC:	1.38
S&P Term AAA Trust DSC:	1.13
Raw AAA C/E:	11.5%
Concentration Factor:	1.29

Prop Type	Loan Bal	% of Pool	Archetypical Pool %	S&P BBB LTV	S&P Cap Rate	S&P BBB DSC	S&P AAA DSC	S&P BBB NCF Haircut	S&P AAA NCF Haircut	Implied App. Cap Rate	Actual Constants	Constants Applied	Interest Rates Applied	BBB Mkt Value Decline	AAA Mkt Value Decline	Appraisal LTV	Issuer DSC
OF	$270,513,792	18.3%	32.5%	80.0%	9.18%	1.57	1.06	-7.6%	-32.6%	7.82%	6.34%	7.29%	6.41%	-28.9%	-51.0%	56.9%	1.96
RT	$694,131,299	47.0%	32.5%	86.1%	8.75%	1.36	1.00	-5.3%	-26.2%	7.03%	6.72%	7.40%	6.36%	-28.6%	-47.1%	61.5%	1.60
SS	$20,802,681	1.4%	0.0%	102.0%	10.25%	1.28	0.93	-0.8%	-27.5%	7.06%	7.14%	7.82%	6.69%	-33.4%	-51.7%	68.0%	1.42
SH	$132,092,253	8.9%	0.0%	91.9%	8.75%	1.24	1.08	-4.6%	-13.0%	7.02%	7.30%	7.65%	6.24%	-26.3%	-35.8%	67.8%	1.37
IN	$23,110,000	1.6%	10.0%	99.1%	9.50%	1.27	0.86	-6.3%	-32.5%	7.74%	6.56%	7.53%	6.40%	-31.1%	-53.5%	68.3%	1.56
SP	$14,976,989	1.0%	0.0%	93.5%	9.75%	1.31	0.84	-12.6%	-36.1%	8.83%	7.45%	7.98%	6.62%	-32.1%	-56.6%	63.5%	1.60
OT	$39,566,300	2.7%	0.0%	90.5%	8.75%	1.32	1.01	-1.0%	-23.8%	6.97%	6.65%	7.32%	6.42%	-21.6%	-40.3%	70.9%	1.47
LO	$106,946,801	7.2%	10.0%	103.5%	11.22%	1.28	0.74	-3.5%	-41.7%	7.62%	6.97%	8.48%	7.39%	-42.9%	-66.7%	59.1%	1.61
MU	$40,325,854	2.7%	0.0%	86.6%	8.86%	1.42	1.14	-3.5%	-19.9%	6.76%	6.20%	7.22%	6.37%	-30.6%	-44.4%	60.1%	1.71
MH	$28,695,234	1.9%	0.0%	75.7%	8.89%	1.56	1.35	-1.2%	-13.1%	7.98%	7.33%	7.55%	6.44%	-13.3%	-24.6%	65.7%	1.62
MF	$104,937,681	7.1%	15.0%	87.0%	8.54%	1.33	1.09	-4.8%	-18.2%	6.97%	7.03%	7.39%	6.17%	-28.0%	-41.1%	62.6%	1.47
	$1,476,098,884	100.0%	100.0%	86.8%	9.02%	1.38	1.01	-5.38%	-26.7%	7.26%	6.75%	7.53%	6.43%	-29.1%	-47.4%	61.44%	1.63

	Subject Pool	Archetypical Pool
Top 5 Loan %	36.1%	25.0%
Top 10 Loan %	50.2%	35.0%
Top 20 Loan %	67.1%	45.0%

	Loss	Loss % of Pool	# of Loans	Bal % of Pool
Term Loss:	-$135,862,224	-9.20%	24	32.8%
Maturity Loss:	-$34,495,588	-2.34%	18	17.9%
Total:	-$170,357,811	-11.54%	42	50.7%

	Raw C/E	Rounded Midpoint	Proceeds	Tranches	BBB DSC	BBB Debt Yield	AAA DSC	AAA Debt Yield	S&P LTV	Appraisal LTV	w/ copper With Additional Debt Raw C/E	Without Additional Debt Raw C/E	Average	Rounded Midpoint
AAA	14.8616%	14.875%	$1,256,529,175	$1,256,529,175	1.62	12.2%	1.19	8.9%	73.9%	52.3%	14.862%	14.233%	14.547%	14.500%
AA+	13.4327%	13.375%	$1,278,670,658	$22,141,483	1.59	12.0%	1.17	8.8%	75.2%	53.2%	13.433%	12.843%	13.138%	13.125%
AA	12.0039%	12.000%	$1,298,967,017	$20,296,360	1.57	11.8%	1.15	8.6%	76.4%	54.1%	12.004%	11.454%	11.729%	11.750%
AA-	10.5750%	10.625%	$1,319,263,377	$20,296,360	1.54	11.6%	1.13	8.5%	77.6%	54.9%	10.575%	10.064%	10.320%	10.375%
A+	9.1462%	9.125%	$1,341,404,860	$22,141,483	1.52	11.4%	1.11	8.4%	78.9%	55.8%	9.146%	8.675%	8.910%	8.875%
A	7.7173%	7.750%	$1,361,701,220	$20,296,360	1.49	11.3%	1.09	8.2%	80.1%	56.7%	7.717%	7.285%	7.501%	7.500%
A-	6.2885%	6.250%	$1,383,842,703	$22,141,483	1.47	11.1%	1.08	8.1%	81.4%	57.6%	6.288%	5.898%	6.092%	6.125%
BBB+	4.8596%	4.875%	$1,404,139,063	$20,296,360	1.45	10.9%	1.06	8.0%	82.6%	58.4%	4.860%	4.506%	4.683%	4.625%
BBB	3.4308%	3.375%	$1,426,280,546	$22,141,483	1.43	10.7%	1.05	7.9%	83.9%	59.4%	3.431%	3.116%	3.274%	3.250%
BBB-	3.0256%	3.000%	$1,431,815,917	$5,535,371	1.42	10.7%	1.04	7.8%	84.2%	59.6%	3.026%	2.764%	2.895%	2.875%
BB+	2.6205%	2.625%	$1,437,351,288	$5,535,371	1.42	10.7%	1.04	7.8%	84.6%	59.8%	2.621%	2.411%	2.516%	2.500%
BB	2.2154%	2.250%	$1,442,886,659	$5,535,371	1.41	10.6%	1.03	7.8%	84.9%	60.1%	2.215%	2.058%	2.137%	2.125%
BB-	1.8103%	1.750%	$1,450,267,153	$7,380,494	1.40	10.6%	1.03	7.7%	85.3%	60.4%	1.810%	1.705%	1.758%	1.750%
B+	1.4051%	1.375%	$1,455,802,524	$5,535,371	1.40	10.5%	1.02	7.7%	85.6%	60.6%	1.405%	1.353%	1.379%	1.375%
B	1.0000%	1.000%	$1,461,337,895	$5,535,371	1.39	10.5%	1.02	7.7%	86.0%	60.8%	1.000%	1.000%	1.000%	1.000%
B-	0.8750%	0.875%	$1,463,183,018	$1,845,124	1.39	10.5%	1.02	7.7%	86.1%	60.9%	0.875%	0.875%	0.875%	0.875%
CCC+	0.7500%	0.750%	$1,465,028,142	$1,845,124	1.39	10.5%	1.02	7.7%	86.2%	61.0%	0.750%	0.750%	0.750%	0.750%
CCC	0.5000%	0.500%	$1,468,718,389	$3,690,247	1.39	10.4%	1.02	7.6%	86.4%	61.1%	0.500%	0.500%	0.500%	0.500%
CCC-	0.0000%	0.000%	$1,476,098,884	$7,380,494	1.38	10.4%	1.01	7.6%	86.8%	61.4%	0.000%	0.000%	0.000%	0.000%

EXHIBIT F

GOVERNMENT EXHIBIT 111 D-03302

From: Fisher, Lucienne
Sent: Monday, July 25, 2011 10:38 AM
To: Barnes, Susan; Gillis, Tom
Cc: Duka, Barbara; Digney, James
Subject: Model with Stressed Constants
Attachments: GSMS 2011-GC4 Model SH +IL Prop Types 20110705 100% Stressed Constant.xls

Susan and Tom,

The attached model reflects the subordination levels that would have resulted using the stressed constants. Please refer to column S on the Output sheet for the subordination levels and refer to column G of the Formatted Data Sheet to see the stressed constants applied to each loan. For the last loan, Oakhurst MHP, you will note that the stressed constant is 7.95%, not 7.75%. This is because the actual constant is 7.95%, which is greater than the stressed constant of 7.75%. The 7.95% constant was also applied in the model with the blended constants.

Please let me know if you have questions.

Thanks, Lucie

Lucienne Fisher
Associate Director
Structured Finance Department
55 Water Street, 40th Floor
New York, NY 10041
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Production Number

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GSMS 2011-GC4

Trust Beg. Pool Balance:	$1,476,098,884
Trust End Pool Balance:	$1,284,754,856
All-In Beg. Pool Balance:	$1,504,305,472
Number of Loans:	70
Average Loan Size:	$21,087,127
S&P BBB NCF:	$153,275,557
S&P AAA NCF:	$112,280,973
S&P BBB NCF Haircut:	-5.4%
Appraisal Trust LTV:	61.4%
Appraisal All-In LTV:	62.6%
S&P Beg .Trust LTV:	86.8%
S&P End Trust LTV:	75.6%
S&P All-In LTV:	88.5%
S&P Value Haircut:	-29.2%
S&P BBB Value:	$1,699,922,373
Appraised Value	$2,089,350,000
Actual DS	$99,618,145
S&P Stressed DS:	$122,703,286
S&P Wtd. Avg. Debt Const.:	8.31%
Issuer Trust DSC:	1.63
S&P BBB Trust DSC:	1.25
S&P Term AAA Trust DSC:	1.02
Raw AAA C/E:	16.5%
Concentration Factor:	1.25

Prop Type	Loan Bal	% of Pool	Archetypical Pool %	S&P BBB LTV	S&P Cap Rate	S&P BBB DSC	S&P AAA DSC	S&P BBB NCF Haircut	S&P AAA NCF Haircut	Implied App. Cap Rate	Actual Constants	Constants Applied	Interest Rates Applied	BBB Mkt Value Decline	AAA Mkt Value Decline	Appraisal LTV	Issuer DSC
OF	$270,513,792	18.3%	32.5%	80.0%	9.18%	1.39	0.94	-7.6%	-32.6%	7.82%	6.34%	8.25%	7.33%	-28.9%	-51.0%	56.9%	1.96
RT	$694,131,299	47.0%	32.5%	86.1%	8.75%	1.23	0.91	-5.3%	-26.2%	7.03%	6.72%	8.25%	7.33%	-28.6%	-47.1%	61.5%	1.60
SS	$20,802,681	1.4%	0.0%	102.0%	10.25%	1.18	0.86	-0.8%	-27.5%	7.06%	7.14%	8.50%	7.63%	-33.4%	-51.7%	68.0%	1.42
SH	$132,092,253	8.9%	0.0%	91.9%	8.75%	1.19	1.04	-4.6%	-13.0%	7.02%	7.30%	8.00%	7.02%	-26.3%	-35.8%	67.8%	1.37
IN	$23,110,000	1.6%	10.0%	99.1%	9.50%	1.13	0.76	-6.3%	-32.5%	7.74%	6.56%	8.50%	7.63%	-31.1%	-53.5%	68.3%	1.56
SP	$14,976,989	1.0%	0.0%	93.5%	9.75%	1.23	0.78	-12.6%	-36.1%	8.83%	7.45%	8.50%	7.63%	-32.1%	-56.6%	63.5%	1.60
OT	$39,566,300	2.7%	0.0%	90.5%	8.75%	1.21	0.92	-1.0%	-23.8%	6.97%	6.65%	8.00%	7.02%	-21.6%	-40.3%	70.9%	1.47
LO	$106,946,801	7.2%	10.0%	103.5%	11.22%	1.08	0.63	-3.5%	-41.7%	7.62%	6.97%	10.00%	9.40%	-42.9%	-66.7%	59.1%	1.61
MU	$40,325,854	2.7%	0.0%	86.6%	8.86%	1.24	0.99	-3.5%	-19.9%	6.76%	6.20%	8.25%	7.33%	-30.6%	-44.4%	60.1%	1.71
MH	$28,695,234	1.9%	0.0%	75.7%	8.89%	1.51	1.31	-1.2%	-13.1%	7.98%	7.33%	7.76%	6.72%	-13.3%	-24.6%	65.7%	1.62
MF	$104,937,681	7.1%	15.0%	87.0%	8.54%	1.27	1.04	-4.8%	-18.2%	6.97%	7.03%	7.75%	6.71%	-28.0%	-41.1%	62.6%	1.47
	$1,476,098,884	100.0%	100.0%	86.8%	9.02%	1.25	0.92	-5.38%	-26.7%	7.26%	6.75%	8.31%	7.40%	-29.1%	-47.4%	61.44%	1.63

	Subject Pool	Archetypical Pool
Top 5 Loan %	36.1%	25.0%
Top 10 Loan %	50.2%	35.0%
Top 20 Loan %	67.1%	45.0%

	Loss	Loss % of Pool	# of Loans	Bal % of Pool
Term Loss:	-$228,417,326	-15.47%	37	58.3%
Maturity Loss:	-$15,834,929	-1.07%	8	7.4%
Total:	-$244,252,256	-16.55%	45	65.7%

	Raw C/E	Rounded Midpoint	Proceeds	Tranches	BBB DSC	BBB Debt Yield	AAA DSC	AAA Debt Yield	S&P LTV	Appraisal LTV	With Additional Debt Raw C/E	w/ copper Without Additional Debt Raw C/E	Average	Rounded Midpoint
AAA	20.6673%	20.625%	$1,171,653,489	$1,171,653,489	1.57	13.1%	1.15	9.6%	68.9%	48.8%	20.667%	20.378%	20.523%	20.500%
AA+	18.8756%	18.875%	$1,197,485,219	$25,831,730	1.54	12.8%	1.13	9.4%	70.4%	49.8%	18.876%	18.605%	18.740%	18.750%
AA	17.0839%	17.125%	$1,223,316,950	$25,831,730	1.51	12.5%	1.10	9.2%	72.0%	50.9%	17.084%	16.831%	16.957%	17.000%
AA-	15.2922%	15.250%	$1,250,993,804	$27,676,854	1.47	12.3%	1.08	9.0%	73.6%	52.1%	15.292%	15.057%	15.175%	15.125%
A+	13.5005%	13.500%	$1,276,825,534	$25,831,730	1.44	12.0%	1.06	8.8%	75.1%	53.1%	13.500%	13.284%	13.392%	13.375%
A	11.7087%	11.750%	$1,302,657,265	$25,831,730	1.42	11.8%	1.04	8.6%	76.6%	54.2%	11.709%	11.510%	11.609%	11.625%
A-	9.9170%	9.875%	$1,330,334,119	$27,676,854	1.39	11.5%	1.02	8.4%	78.3%	55.4%	9.917%	9.737%	9.827%	9.875%
BBB+	8.1253%	8.125%	$1,356,165,849	$25,831,730	1.36	11.3%	1.00	8.3%	79.8%	56.5%	8.125%	7.963%	8.044%	8.000%
BBB	6.3336%	6.375%	$1,381,997,580	$25,831,730	1.33	11.1%	0.98	8.1%	81.3%	57.5%	6.334%	6.189%	6.261%	6.250%
BBB-	5.5419%	5.500%	$1,394,913,445	$12,915,865	1.32	11.0%	0.97	8.0%	82.1%	58.1%	5.542%	5.416%	5.479%	5.500%
BB+	4.7502%	4.750%	$1,405,984,187	$11,070,742	1.31	10.9%	0.96	8.0%	82.7%	58.5%	4.750%	4.642%	4.696%	4.750%
BB	3.9585%	4.000%	$1,417,054,928	$11,070,742	1.30	10.8%	0.95	7.9%	83.4%	59.0%	3.959%	3.868%	3.913%	3.875%
BB-	3.1668%	3.125%	$1,429,970,793	$12,915,865	1.29	10.7%	0.94	7.9%	84.1%	59.5%	3.167%	3.095%	3.131%	3.125%
B+	2.3751%	2.375%	$1,441,041,535	$11,070,742	1.28	10.6%	0.94	7.8%	84.8%	60.0%	2.375%	2.321%	2.348%	2.375%
B	1.5834%	1.625%	$1,452,112,277	$11,070,742	1.27	10.6%	0.93	7.7%	85.4%	60.4%	1.583%	1.547%	1.565%	1.625%
B-	1.1667%	1.125%	$1,459,492,771	$7,380,494	1.26	10.5%	0.93	7.7%	85.9%	60.8%	1.167%	1.149%	1.158%	1.125%
CCC+	0.7500%	0.750%	$1,465,028,142	$5,535,371	1.26	10.5%	0.92	7.7%	86.2%	61.0%	0.750%	0.750%	0.750%	0.750%
CCC	0.5000%	0.500%	$1,468,718,389	$3,690,247	1.26	10.4%	0.92	7.6%	86.4%	61.1%	0.500%	0.500%	0.500%	0.500%
CCC-	0.0000%	0.000%	$1,476,098,884	$7,380,494	1.25	10.4%	0.92	7.6%	86.8%	61.4%	0.000%	0.000%	0.000%	0.000%

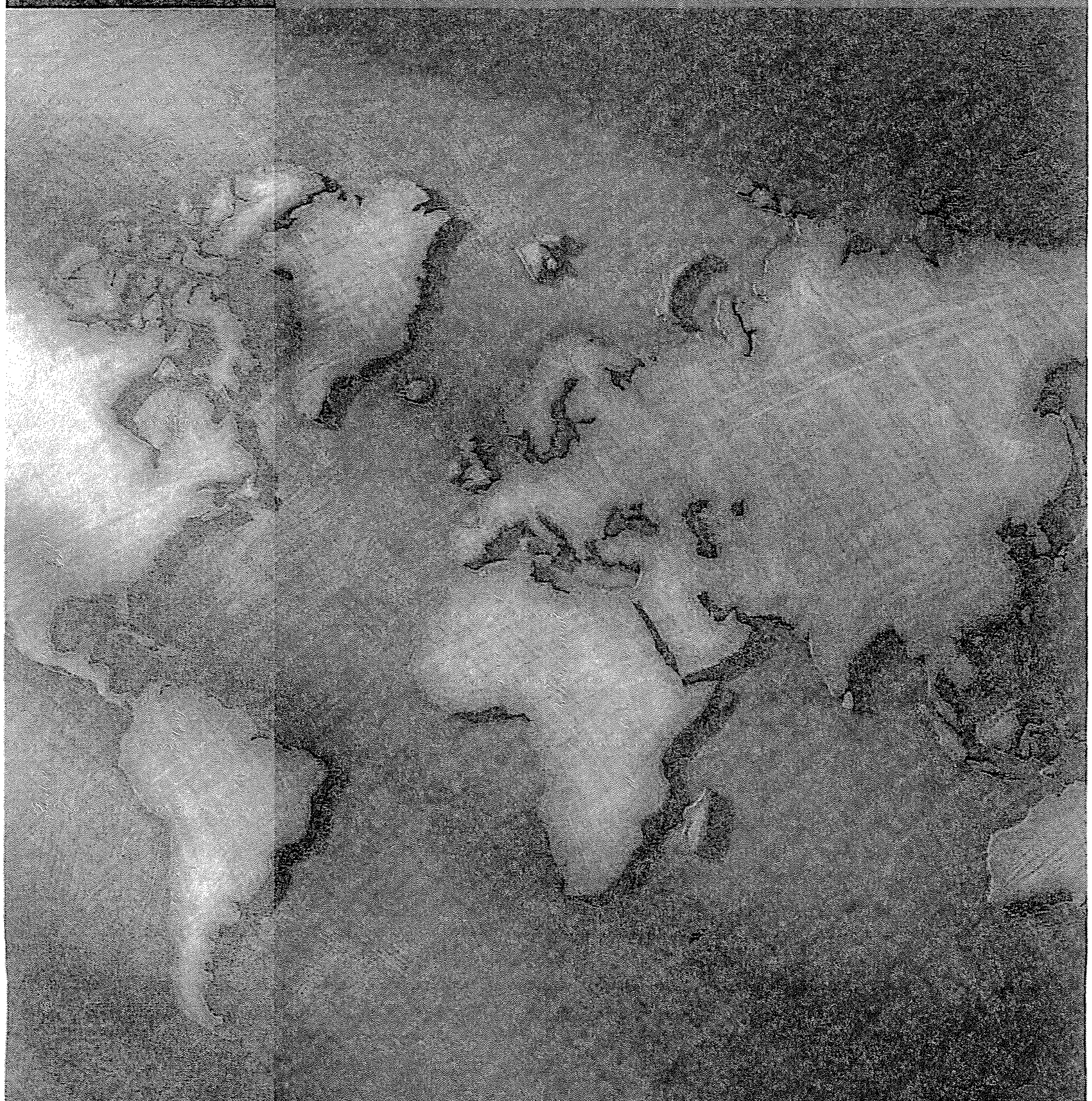
STANDARD
&POOR'S

EXHIBIT G

June 2010*

Ratings Services Code Of Conduct

GOVERNMENT
EXHIBIT
269
D-03302



*Incorporating amendments made in June 2010 to meet regulatory requirements in Australia and Japan.

decision. Ratings Services does not act as an investment, financial, or other advisor to, and does not have a fiduciary relationship with, an issuer, investor, or any other person.

Ratings Services is committed to only issuing ratings when it has a sufficient amount of information that is of a satisfactory quality as set forth in the Ratings Services Rating Information and Data Policy. If information is deemed to be from reliable sources, as further discussed in that policy, Ratings Services does not independently verify the information. Ratings are not verifiable statements of fact. The assignment of a rating to an issuer or an issue by Ratings Services should not be viewed as a guarantee of the accuracy, completeness, or timeliness of the information relied on in connection with the rating or the results obtained from the use of such information.

Ratings Services reserves the right at any time to suspend, modify, lower, raise, or withdraw a rating or place a rating on CreditWatch in accordance with its policies, guidelines and procedures.

1. Quality And Integrity Of The Rating Process

A. Quality Of The Rating Process

1.1 Each rating shall be based on a thorough analysis of all information known to Ratings Services and believed by Ratings Services to be relevant to its analysis according to Ratings Services' established criteria and methodologies.

1.2 Ratings Services shall use rating criteria and methodologies that take into consideration Ratings Services' goal of maintaining rigorous analysis and systematic processes, and, where possible, result in ratings that can be subjected to some form of objective validation based on historical experience.

1.3 In assessing the creditworthiness of an issuer or issue, Analysts involved in the preparation or review of any Rating Action shall use criteria and methodologies established by Ratings Services. Analysts shall consistently apply the then-existing rating criteria and methodologies in the analytical process for any Rating Action, in each case, as determined by Ratings Services.

1.4 Credit ratings shall be assigned by a vote of a rating committee comprised of Analysts and not by any individual Analyst. Ratings shall reflect all information known, and believed to be relevant, to the rating committee, consistent with Ratings Services' established criteria and methodologies. Ratings Services shall use Analysts who, individually or collectively, have the appropriate knowledge and experience in developing a rating opinion for the type of credit being applied.

1.5 Ratings Services shall maintain internal records to support its credit opinions for a reasonable period of time or in accordance with applicable law.

1.6 Ratings Services and its Analysts shall take steps to avoid publishing any credit analyses or reports that contain misrepresentations or are otherwise misleading as to the general creditworthiness of an issuer or issue.

1.7 Ratings Services shall endeavor to devote sufficient resources to perform credible credit assessments for all issuers and issues it rates. When deciding whether to rate or continue rating an issuer or issue, Ratings Services shall assess whether it is able to devote sufficient Analysts with sufficient skill sets to make a credible credit assessment, and whether its Analysts likely will have access to sufficient information needed in order to make such an assessment, including when the credit assessment involves a type of financial product presenting limited historical data. Although Ratings Services undertakes no duty to audit or otherwise verify information it receives, Ratings Services shall adopt reasonable measures so that the information it uses in assigning a rating is of sufficient quality to support a credible rating.

1.17 An employee may report conduct that is in violation of this Code; the related policies, procedures, and guidelines; any law applicable to Ratings Services; or that is unethical by calling The McGraw-Hill Companies Employee Hotline at 1-888-722-3277, which is available to employees worldwide and provides a confidential way of reporting such conduct.

1.18 In order to maintain Ratings Services' independence, objectivity, and credibility, Ratings Services shall maintain complete editorial control at all times over Rating Actions and all other materials it disseminates to the public, including, but not limited to, rating definitions and criteria, reports, research updates, studies, commentaries, media releases, rating opinions, or any other information relating to its ratings. Ratings Services' editorial control shall include decisions as to when, or even if, any Rating Actions and such other materials and information should be disseminated.

2. Independence And Avoidance Of Conflicts Of Interest

A. General

2.1 Ratings Services shall not forbear or refrain from taking a Rating Action, if appropriate, based on the potential effect (economic, political, or otherwise) of the Rating Action on Ratings Services, an issuer, an investor, or other market participant.

2.2 Ratings Services and its Analysts shall use care and analytic judgment to maintain both the substance and appearance of independence and objectivity.

2.3 The determination of a rating by a rating committee shall be based only on factors known to the rating committee that are believed by it to be relevant to the credit analysis.

2.4 Ratings assigned by Ratings Services to an issuer or issue shall not be affected by the existence of, or potential for, a business relationship between Ratings Services (or any Non-Ratings Business) and the issuer (or its affiliates) or any other party, or the non-existence of such a relationship.

2.5 Ratings Services shall confirm that Ancillary Business operations that do not necessarily present conflicts of interest with Ratings Services' rating business have in place procedures and mechanisms designed to minimize the likelihood that conflicts of interest will arise. Ratings Services shall establish a firewall policy governing firewalls and operations between Ratings Services and Non-Ratings Businesses to effectively manage conflicts of interest.

B. Ratings Services' Procedures And Policies

2.6 Ratings Services shall adopt written internal procedures and mechanisms to (1) identify and (2) eliminate, or manage and disclose, as appropriate, any actual or potential conflicts of interest that may influence the opinions and analyses Ratings Services makes or the judgment and analyses of Analysts. Ratings Services shall disclose such conflict avoidance and management measures without charge to the public on Standard & Poor's public Web site, www.standardandpoors.com.

2.7 Ratings Services' disclosures of actual and potential conflicts of interest should be complete, timely, clear, concise, specific, and prominent.

3.5 Ratings Services shall publish sufficient information about its procedures, methodologies, and assumptions (including financial statement adjustments that deviate materially from those contained in the issuer's published financial statements and a description of the rating committee process, if applicable) so that outside parties can understand how a rating was arrived at by Ratings Services. This information will include (but not be limited to) the meaning of each rating category and the definition of default or recovery, and the time horizon Ratings Services used when making a rating decision.

a. Where Ratings Services assigns an initial rating to a structured finance product, it shall provide investors and/or subscribers (depending on Ratings Services business model) with a brief statement of its analytic rationale.

b. Consistent with applicable regulations, Ratings Services will differentiate ratings of structured finance products from ratings of other entities, financial instruments, or financial obligations with a structured finance modifier.

c. Ratings Services shall assist investors in developing a greater understanding of what a rating is and the limitations of ratings. Ratings Services shall indicate in its ratings reports the attributes and limitations of its ratings and that Ratings Services does not audit or otherwise verify information provided to it by issuers or originators of a security rated by Ratings Services.

3.6 When publishing a rating, Ratings Services shall explain in its press releases and reports, if any, the key elements underlying the rating, subject to any restrictions imposed by applicable confidentiality agreements and any applicable laws regarding the release of Confidential Information.

3.7 Where feasible and appropriate, prior to issuing or revising a rating, Ratings Services shall inform the issuer of the critical information and principal considerations upon which a rating is based and, if appropriate, afford the issuer an opportunity to clarify any likely factual misperceptions or other matters that Ratings Services would wish to be made aware of in order to produce a credible rating. Ratings Services shall duly evaluate the response. Where in particular circumstances Ratings Services has not informed the issuer prior to issuing or revising a rating, Ratings Services shall inform the issuer as soon as practical thereafter.

3.8 Ratings Services shall conduct periodic performance studies on its ratings, which shall be designed to demonstrate to the marketplace the performance of its ratings and track records. Performance studies shall be conducted annually and may be conducted on a more frequent basis if appropriate for a particular market. Ratings Services shall make the ratings underlying each performance study available, upon request, in order to assist investors in drawing performance comparisons between Ratings Services and other credit rating agencies. The performance studies shall be available without charge to the public on Standard & Poor's public Web site, www.standardandpoors.com.

3.9 Unsolicited ratings are ratings assigned by Ratings Services without the full participation of issuers in the rating process. Ratings Services reserves the right, in its sole discretion, to issue ratings without the full participation of issuers in the rating process if Ratings Services believes (i) there is a meaningful credit market or investor interest served by the publication of such a rating, and (ii) it has sufficient information to support adequate analysis and, if applicable, ongoing surveillance. Ratings Services shall indicate if a rating is an unsolicited rating. In some cases, issuers may provide limited information to Ratings Services, and Ratings Services would still consider those ratings to be unsolicited ratings. Ratings Services shall disclose its policies and procedures regarding unsolicited ratings without charge to the public on Standard & Poor's public Web site, www.standardandpoors.com.

EXHIBIT H

S&P CMBS Ratings

Thompson, Eric - 12-11-13

12/11/2013

Condensed Transcript

Prepared by:

SEC

Monday, January 06, 2014

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
)
STANDARD & POOR'S CMBS RATING) File No. D-3302
)

WITNESS: ERIC THOMPSON
PAGES: 1 - 44
PLACE: Room 410
Securities and Exchange Commission
3 World Financial Center
New York, New York

DATE: December 11, 2013

The above-entitled matter came on for videotaped hearing at 11:15 a.m., pursuant to subpoena.

APPEARANCES:
On behalf of the Securities and Exchange Commission:
JOHN BADGER SMITH, ESQ.
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Securities and Exchange Commission
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On behalf of the Witness:

CARMEN J. LAWRENCE, ESQ.
Fried Frank Harris Shriver & Jacobson
One New York Plaza
New York, New York 10004-1980
212-859-8411.

(Exhibit 202 was premarked for identification.)

THE VIDEOGRAPHER: This is tape number one of the investigative testimony of Mr. Eric Thompson in the matter of the Standard & Poor's CMBS Ratings (D-3302).

This is being held at the Securities and Exchange Commission located at Number 3 World Financial Center, New York, New York on December 11, 2013 at 11:15 a.m.

My name is Scott Mitchell, and I am the videographer. The court reporter is Margaret Eustace.

Counsel, will you please introduce yourselves and affiliations and the witness will be sworn.

MR. LEIDENHEIMER: Okay, I will take care of all that.

We are on the record at 11:15 on December 11, 2013.

Mr. Thompson, will you raise your right hand, please.

Do you swear to tell the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, I do.

Whereupon,
ERIC THOMPSON
appeared as a witness herein and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. LEIDENHEIMER:

Q. Please state and spell your full name for the record.

A. Eric B. Thompson, E.R.I.C., and last is name is T.H.O.M.P.S.O.N.

Q. Mr. Thompson, I am Bob Leidenheimer. To my right is John Smith. We are both officers of the Commission for the purposes this proceeding.

This is an investigation by the U.S. Securities and Exchange Commission in the matter of Standard & Poor's CMBS Ratings, File D-3302, to determine whether there have been violations of certain provisions of the federal securities laws; however, the facts developed in this investigation might constitute violations of other federal or state, criminal or civil laws.

Do you understand this?

A. Yes.

Q. Prior to the opening of the record, you until I left the company very early in January of '11.

Q. Based on your experience in the structured finance field, is it fair to say that for a CMBS deal the issuer is generally going to hire the big three rating firm that has the lowest credible rating?

A. That's fair.

Q. Is there anything you would like to add to that?

A. I think the -- it is more -- when you say lower credible rating, it is more they will tend to choose one of the big three that has -- whichever one has the lowest credit enhancement for a given rating category. So more or less, I agree with statement.

Q. I understand. And lowest credit enhancement or lowest subordination is what I meant by lowest credible rating.

If an agency says that a Triple A bond only needs a half percent subordination, probably a lot of investors would balk at that.

Is that fair?

You have to say yes.

A. Yes, it's relative.

But if someone has a 21 on a Triple A credit enhancement and a 22, they would likely -- amongst the rating agencies, they would choose the one that had 21 to go ahead and rate the deal.

Q. So the first topic I want to talk about is the 2009 criteria, so I will hand you what has been marked as Exhibit 15, which is a copy of those criteria that were issued June 26, 2009.

My first question to you is: Were you one of the people involved in drafting these criteria?

A. Yes, I was involved in the drafting and the criteria meetings that produced this.

Q. Was the intent of the criteria to preserve and essentially codify the existing analysis or to change the analysis or some combination of preserving and changing the analysis?

A. As it relates to rating conduit fusion pools, it was intended -- there is multiple steps in methodology, some of which is how we derive property level cash flows, that largely does not change. In terms of the assumptions that would actually be used to arrive at credit enhancement, it was to create a new framework.

Q. There is a reference in those criteria

conduit fusion criteria for loan constants, I think it is page 6, table one.

Do you see the loan constants?

A. Yes.

Q. Were those loan constants intended to be stressed constants?

A. Yes, they were.

Q. Is it fair to say that those conduit fusion criteria that are Exhibit 15 constitute the established procedures and methodologies for determining conduit fusion ratings by Standard & Poor's?

A. At the time, yes.

Q. When you say "at the time," you mean because since that time they have been supplanted by subsequent conduit fusion criteria?

A. Yes. I am no longer there, so... But at the time, this was the operative document for coming up with conduit fusion ratings while I was there.

Q. Did there come a time in July of 2009, shortly after the issuance of these criteria, when there was some discussion and ultimately a meeting held about the use of loan constants in connection with the rating of CMBS?

A. Yes, there were. There were, as I recall, several discussions that occurred. Some of the first discussions occurred with a few folks, which included myself, Harris Trifon, David Jacob, Jim Manzi, where, you know, the use of and the application of constants was questioned. However, the results of those discussions were that we were using these in the analysis that we performed to place ratings on credit watch and resolve them.

Subsequent to those dialogues, though, as we got more toward month end, there was additional dialogue about it where it was questioned and elevated further. And, you know, that led to additional meetings which we reconfirmed the use of the constants.

Q. Let me hand you what has been marked as Exhibit 45, which is an e-mail from Pat Milano, two e-mails from Pat Milano actually, to a number of people, including yourself, and ask you to take a look at that and tell me if -- or tell me when you've read it.

MS. LAWRENCE: Counsel, do you have another copy?

MR. LEIDENHEIMER: Sure.

MS. LAWRENCE: Thanks.

A. This was what I just referred to, there were subsequent meetings where it was decided that we would use the constants. This was the ultimate meeting where that's the path that we decided going forward, that the constants that are in the criteria exhibit that you just gave me would be used in our analysis.

Q. Just so I am clear, there was an issue about whether the criteria constants should be used for the debt service calculation or whether the actual debt service should be used for determining debt service; is that right?

A. The dialogue, and again this is several years ago, but the dialogue, as I recall at the time, was centered on do we use the actual constants to calculate term default and do we use the constants that are embedded in table one for maturity default.

And, you know, there is no right or wrong answer to the question. It is about how do you think within your own framework you are adequately capturing the credit risk of the individual loans. And in the case of -- you know, the dialogue surrounded those issues and there was a little bit of testing that went back and forth, but ultimately it was decided that we use the constants for both the

term and the maturity default.

And at the time, as I recall, some of the factors that played into that were -- some of the factors that played in a decision were consistency and continuity with how we approach both new -- you know, analyzing transactions on the front end of the new issuance, if you will, and also in the surveillance, particularly in rising rate environment.

And some of the other dialogue that went it was also focused upon the criteria, depending upon one's point of view, can be viewed that it was somewhat simplistic in that during the term it essentially didn't have, you know, other features and probably defaults and things of that nature. And absent that, you know, using the constant was more appropriate would produce a conservative result. And that's where we ended up.

BY MR. SMITH:

Q. When you say "use the constant," you mean using the criteria constants that are set forth in the criteria article?

A. Yes.

Q. In table one?

A. Yes.

BY MR. LEIDENHEIMER:

Q. Let me ask you a couple questions about Exhibit 45, which is the invitation to the meeting.

Did this meeting take place?

A. Yes, it did.

Q. Did you attend?

A. I did.

Q. Can you tell me who attended, to the best of your recollection?

A. It was -- given the time that has elapsed, I know that many people were there. I am not sure exactly who, but I know that either Devon or Pat were there, because I know somebody from the exec team was there. And I believe Mark was there. I don't think David was present.

And this refers to both Jim Manzi and James Palmisano. And I believe they were either physically present or on the phone if they weren't physically there. But the meeting took place.

Q. Was Kim Diamond there?

A. I don't recall. I don't recall Kim being there. Yes, I don't recall her being there.

Q. Did the meeting conclude with a decision being made about the use of constants?

A. Yes. There was dialogue about the pros

and cons and whys, some of which I have already alluded to. You know, at the conclusion of the meeting the decision was to use these constants for calculating both term and maturity default.

Q. These constants are constants set forth in criteria?

A. Yes.

Q. Was the use of the constants determined to be done for both surveillance and new issuance?

A. Yes.

Q. I notice that Barbara Duka, who was the head -- well co-head of CMBS, and whose area was new issuance, wasn't invited to this meeting.

Was she there?

A. She was not present.

Q. Was she subsequently informed about the decision that was reached at the meeting?

A. Yes.

Q. How did that happen?

A. I believe that either I or -- either myself or the criteria officer at the time, which I can't recall if that was Jim Manzi or Jim Palmisano, we would have informed her.

Q. Do you remember to any degree whether you did that yourself?

A. I don't remember whether I did. I think it is probably likely I did. And we had periodic meetings with Kim, so -- but I don't recall the specifics.

Q. Is it accurate to say that that meeting established the practice of using the criteria constants for determining ratings by both new issuance and surveillance?

A. Yes. The meeting arose out of an issue, again it was elevated what constants we were using at the time. And that's why the meeting occurred, because we had numerous surveillance committees that were pending. Pending meaning we were either going to have them or we had had them but the use of constant was questioned. So what gave rise to the meeting was the surveillance issue.

What was talked and discussed in the meeting, you know, was about the use of the constants, how we were applying them, and also the point about consistency and continuity with the front and back. That was a specific point that I recall that was brought up. But the decision when we walked out was that we were using constants for both term and maturity default.

Q. When you say "front and back end," you

mean both new issuance and surveillance?

A. Yes.

Q. Okay, let me hand you what has been marked as Exhibit 48, which is an e-mail attaching a memo, and ask you to review that for me and let me know when you've done so.

(Witness complies.)

A. I'm sorry, what was your question?

Q. Just to let me know when you are finished reviewing it.

The question is have you reviewed Exhibit 48?

A. Yes.

Q. Is this a copy of an e-mail and attachment that you received on or about March 11, 2010?

MS. LAWRENCE: I don't think his name is on it, counsel.

MR. LEIDENHEIMER: You are right, that is true.

Let me ask you different question then.

Q. Is that your signature on the second page of the attachment?

A. Yes, yes.

Q. My next question to you is: Can you

just tell me generally what you remember about how this memo came about?

A. I think, you know, what we tried to do was, you know, keep up on our documentation records in regard to what we were doing from a modeling standpoint. The organization had a model repository where we had to update, we had to upload our models to it and we also had to have explanatory remarks about the models, and, you know, any changes and things of that nature.

So I don't remember all about how this arose, this specific instance. But what I can infer from this is that there were a couple of changes that were made, and approaches, if you will, even if they are not changes, to what we were currently doing. And this was trying to document that.

Q. And the one change with respect to the loan constants is that instead of using the constants that are set out in the criteria a decision was made to use the higher of the debt service derived from the constants in the criteria or the actual contractual debt service; is that right?

A. Yes.

Q. A consequence of that, all other things being equal, was to make the criteria more rigorous

and increase credit enhancement; is that right?

A. Yes. I mean, ultimately it would result in for certain loans higher debt service coverage or higher debt service, meaning lower debt service coverage. Potentially you could have more defaults deriving from that, and then you would have higher credit enhancement.

MR. LEIDENHEIMER: Let's go off the record for a second.

THE VIDEOGRAPHER: We are going off the record at 11:40 a.m.

(Recess taken.)

THE VIDEOGRAPHER: We are back on the at 11:42 a.m.

MR. LEIDENHEIMER: Back on the record at 11:42 a.m.

While we are off the record, counsel, the witness and myself engaged in a discussion about the scope of the testimony, and we talked about shortening the length of testimony.

Q. Is that fair?

A. Yes.

Q. So the next topic I have for you is efforts by new issuance in the 2010 into 2011 timeframe to get new business.

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And my first question on that is: If you could give a sort of general history of the market share that S&P had pre-financial crisis and the relative volume of issuance pre and post financial crisis, I would appreciate it.

A. Okay. I don't have the statistics off the top of my head, but S&P had very robust market share. It may -- and it was likely in excess of 90 percent outside of certain quarters and things of that nature in the years that ran up to the financial crisis.

And after the financial crisis there wasn't a lot of issuance and the relative denominator of the total issuance was the markedly different. There was probably almost $220 billion worth of CMBS paper that went out in '07, and that dropped off a cliff. And there was hardly any issuance as of '08, '09.

In the 2010 while market started to come back to life and even 2011, the issuance volume paled in comparison, they were very small. I don't have the actual numbers off my fingertips, but you were nowhere near 100 billion. It wasn't even 60 to 70 billion. It was much less.

So mean, I guess in this event, there

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was a lot out there to rate of the assignments that did come up. The deployment of the criteria did produces rather high credit enhancements, and because of those high credit enhancements, I think it is fair to say S&P didn't get as many engagements as it otherwise might.

Q. As part of your job, were you aware of new issuance efforts to get new deals to rate?

A. I guess in terms of being aware of the efforts -- I am just trying to clarify the question a little bit. I co-headed group but my focus was more or surveillance, however I co-headed the group, we had issue credit activity reports, we had to meet with our boss, things of that nature. I was aware in that regard about new issuance.

In terms of direct participation in regard to the ratings of those transactions or giving indicative levels, that is very limited.

Q. As part of doing these joint activity reports, were you aware of what the head of new issuance, Barbara Duka, was saying about new issuances, success or lack thereof, in getting additional deals or new deals to rate and why she was being successful or unsuccessful?

A. I mean, it is fair to say she expressed

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concerning that we weren't getting new engagements because our levels were too high. You know, again, not so much in the latter half of '09, but as the market picked up as we went to 2010 and 2011.

Q. Is it fair to say in words or substance Ms. Duka expressed the view that the criteria were too conservative?

A. In substance, yes. It is hard to say about words, but at the end of the day the thought process was it producing credit enhancements too high to get engagements. So in substance, yes.

Q. The next topic that I wanted to talk about was a meeting that was had with you and Barbara Duka and Francis Parisi concerning the use of loan constants.

Tell me what you remember about that meeting starting with approximately when it was?

A. Well, there was dialogue about the current criteria and different features within the criteria that ultimately contributed to enhancement levels being high. One of those, you know, there was dialogue around the constants. You know, what the appropriate application was, essentially questioning what the decisions were in the past and should they be revisited, should they be revised or what have

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you.

You know, a few of those dialogues happened, I guess, as we entered the fall of 2010, and in December we had a meeting with Frank that was more -- I guess I would perceive it as more of an informative meeting where we met with him and, you know, questioned the aspect of what constants were being used in criteria, when you could deviate from criteria, when you might not use -- or if not the criteria, what was kind of the established process, I guess, at the time of using what the criteria constants were.

The meeting -- during the meeting, and again this is a bit of time ago, there was dialogue around it but there wasn't, I don't think, an absolute, to my recollection, resolution of what, if anything, we would change. Frank did indicate in his view, analysts discretion could always be had to potentially average constants between the actual and what's in the criteria and things of that nature.

Q. Can I interrupt you there.

Is that on a loan-by-loan basis or a pool-wide basis?

A. My recollection was that it was not definitive enough to say on a pool-wide basis. It of the guidelines, I would -- because it is hard for me to recall everything that's in those, I would think at a minimum, that you would have to consult the guidelines.

But part of what I alluded to before was even absent guidelines making sure everyone is on the same page, because there were many more -- we referred to other meetings in this testimony that happened at very senior levels and there was an established process of using these constants. So at a minimum we would have to consult the guidelines, but I think there would have to be further dialogue internally as well as testing of what the existing portfolio was.

To the extent that change in assumption or clarification of criteria needed to be made, at the end of day the result might be you are following guidelines A to Z or it might be the case that -- and this is why you need more internal dialogue that you are trying to clarify what you already have and what elements of the policy pertain to that, I just can't recall.

Q. Sure. And I appreciate that.

In terms of internal dialogue about the change, across-the-board change to using a blend or

an average, that would involve talking about the criteria and quality?

A. Yes, in my view, yes. Although Frank was the head of criteria for structured finance, Mark Adelson, who was his boss, was very involved in the decision around the constants, so which Frank, I would imagine, would have notified him, but I can't be assured of that, I think further dialogue with him would be appropriate.

Quality, routinely it was a control mechanism, they pulled files, they looked at how we rated deals, so on and so forth. You know, it will be appropriate to them while criteria might tell you what you have to follow in terms of the process or guidelines or what have you, as a general matter if you were consulting them, quality would be how you are adhering documentation, how you apply the criteria.

So the idea of talking more with those two constituents was to make sure it was elevated on everybody's radar.

Q. You mentioned before the break, in part of one of your answers, you made reference to feedback from the market from the June 2009 criteria.

What were you referring to there, what

was the feedback?

A. The criteria that came out at the end of June 2009 was preceded with a request for comment that came out, I believe, in May of 2009, I am a little sketchy on the date. That request for comment we received a good deal of feedback from the market on what they thought about it, we gave guidance with an accompanying document about what the ramifications to the ratings might be. And I would say that on an overwhelming basis the majority of the comments were critical of the criteria, and there were very few positive comments about the criteria.

When I say critical, there was a variety of comments that were critical of it. Some had to do with the severity of the revenue declines, how they were applied, use of floors for credit. There were different comments.

Those were reviewed subsequent to the RFC process and implementation of the criteria. There were some adjustments made before it went out. But overwhelmingly, it is fair to say the reaction wasn't overly positive to the change, it was actually overwhelmingly negative.

Q. I don't have any more questions for you. At this point we give you an opportunity to make any

clarifying statements you want to make and also give your attorney an opportunity to ask any clarifying questions she would like.

MS. LAWRENCE: No, thank you.

A. I am all right.

MR. LEIDENHEIMER: In that case, I thank you for coming down. We really appreciate your time.

And we are off the record.

THE VIDEOGRAPHER: We are going off the record at 12:24 p.m.

This completes tape one of the Mr. Eric Thompson.

(Time noted: 12:24 p.m.)

EXHIBIT I

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EXHIBIT J

GOVERNMENT EXHIBIT 302 D-03302

STANDARD &POOR'S

RATINGSDIRECT®

June 26, 2009

Criteria | Structured Finance | CMBS:

U.S. CMBS Rating Methodology And Assumptions For Conduit/Fusion Pools

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Criteria | Structured Finance | CMBS:

U.S. CMBS Rating Methodology And Assumptions For Conduit/Fusion Pools

I. Introduction

Standard & Poor's Ratings Services is refining the methodology it uses to rate U.S. conduit/fusion commercial mortgage-backed securities (CMBS) transactions following the publication of "Request For Comment: U.S. CMBS Rating Methodology And Assumptions For Conduit/Fusion Pools," published May 26, 2009. We are publishing this article to help market participants better understand our approach to rating U.S. conduit/fusion CMBS transactions.

This document supersedes the "Deriving Credit Support for Pool Transactions" section of Standard & Poor's CMBS Property Evaluation Criteria published January 2004 and updates the capitalization rates listed within the "Guidelines For Analysis Of Major Property Types" section of that article. Additionally, this article relates to the "credit quality of the securitized assets" principle described in "Principles-Based Rating Methodology For Global Structured Finance Securities," published May 29, 2007.

II. Scope Of The Criteria

The criteria contained herein are intended only for CMBS transactions that are commonly referred to as "conduit" or "conduit/fusion." That is, the scope of the following criteria refers to deals that include a pool of at least 40 loans that is diversified by both property type and geography, which may or may not contain several relatively larger-sized loans. Additionally, we assume that on average, the underlying loans will represent roughly the same quality on a stand-alone basis as they have historically. In other words, we would not use these criteria to rate a deal pool composed entirely of investment-grade (above 'BBB' creditworthiness) commercial mortgage loans. Nor is this criteria intended for "single-borrower" or "large-loan" floating-rate deals, whose credit risk profile and characteristics may vary widely from what we are attempting to capture here, even though both technically fall under the same umbrella of "CMBS."

III. Effective Date

These criteria will be effective immediately upon the publication of this article. We will apply these criteria to both new and outstanding ratings.

IV. Rating Implications

The release of these criteria affects the ratings on 3,568 tranches from 217 transactions. Of these tranches, our ratings on 1,982 are currently on CreditWatch negative. We are placing the remaining ratings on CreditWatch negative immediately. We intend to resolve a substantial portion of the CreditWatch placements over the next three to six months.

In addition to the CreditWatch placements, we plan to shortly publish a companion article that outlines the projected magnitude of the rating changes for the affected securities.

V. Summary

Although we are leaving our property evaluation criteria largely unchanged, Standard & Poor's is announcing a significant update to its methodologies and assumptions for determining credit enhancement levels and ratings for CMBS conduit/fusion pools. At the core of the approach is the establishment of a 'AAA' credit enhancement level that is sufficient, in our view, to enable tranches rated at that level to withstand market conditions commensurate with an extreme economic downturn without defaulting (for further information, see "Understanding Standard & Poor's Rating Definitions," published June 3, 2009). As a result of this update, we expect that 'AAA' credit enhancement levels will rise significantly from current levels. While certain features of the methodology are new, they generally reflect concepts from our past views on commercial mortgage loan credit risk.

The principal updates to our criteria are:

- We have established 'AAA' credit enhancement levels that we expect will be sufficient to withstand a pre-set level of commercial property income declines. By extension, we also expect that the 'AAA' credit enhancement levels will be sufficient to withstand extreme declines in property values.
- We refined our capitalization rates (cap rates) to provide greater specificity and consistency from one pool to another.
- We are introducing a standardized method to assess loan and geographic (metropolitan statistical area {MSA}) concentration.
- We will now use a forward-looking commercial real estate forecast for the term of each transaction to determine the expected loss for transactions that we rate.
- We are refining our surveillance methodology for projecting losses.

The goal of the framework is to provide a more transparent and straightforward approach to assess the creditworthiness of CMBS securities. Defining our average stress for 'AAA', 'BBB', and 'B' credit enhancement levels should provide the CMBS market with clearer benchmarks against which all pools are measured, both in terms of credit support and the particular risk characteristics of each transaction. We also are making the criteria for ratings on subordinate tranches more responsive to changing conditions by placing greater emphasis on how macroeconomic factors affect property-level credit risk factors (such as income and valuation), our outlook on the commercial real estate sector, and the state of the economy.

VI. Differences In Methodology And Assumptions Between This Document And The May 26 Request For Comment

This document includes several key changes from what was proposed in the May 26 Request For Comment (RFC). These changes reflect both input from the comments received and further refinements of our methodology. The key changes include:

- This article defines the "archetypical" pool (referred to as the "prototype pool" in the RFC) as having an S&P loan-to-value (LTV) of 90% and an S&P debt service coverage (DSC) of 1.2x. This differs from the 85% S&P LTV and 1.3x DSC associated with the prototype pool in the RFC.
- We have modified the "incremental" rent stresses in table 5 of this document from the "additional" rent stresses

found in table 4 of the RFC.

- We have eliminated the top-two loan balance criterion in relation to the 'AAA' credit enhancement floor.
- We have changed the 'B' credit enhancement floor, which accounts for trust expenses or any other small unexpected expenses that may be incurred over the life of a CMBS transaction, from 1.5% to the greater of 1% and 0.25 multiplied by the 'BBB' credit enhancement level.
- The scope of the criteria applies to a pool of at least 40 loans that is diversified by both property type and geography. In the RFC, we stated that the proposed criteria would apply to a geographically diverse pool of at least 20 loans.

VII. Methodology And Assumptions

A. Summary of the archetypical pool used in this article

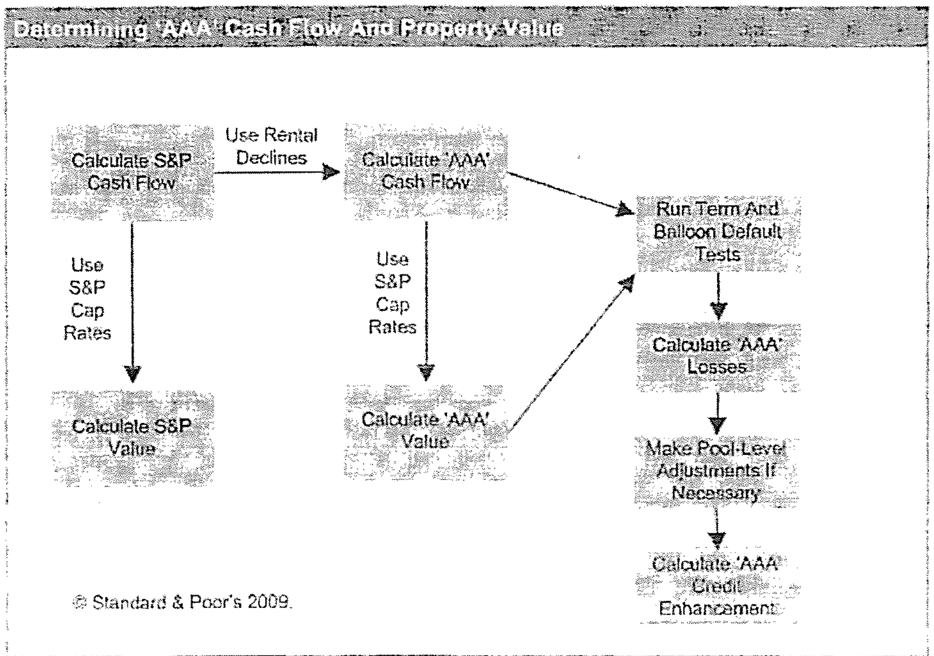
Within this article, we refer to an "archetypical" pool for U.S. conduit/fusion transactions. While we recognize (as did several respondents to the RFC) that the archetype pool could potentially represent more than one pool based on its definition, its purpose is to be used as a general benchmark against which other conduit/fusion deal pools can be compared.

We designed the archetypical pool in several steps. The geographic and property type mixes are averages based on the population of outstanding CMBS conduit/fusion deals Standard & Poor's rates. Characteristics such as a 90% S&P LTV and 1.2x S&P DSC, with no interest-only loans, reflect our view that future underwriting will likely be more conservative than it has been in the recent past (when commercial loan underwriting was notably weaker compared with historical norms). In fact, pools with S&P LTVs and DSCs at approximately the aforementioned levels are reminiscent of originations in early 2003. Lower concentrations in the five and 10 largest loans compared with recent originations reflect the fact that larger assets are generally more difficult to finance in the current environment, and may continue to be for the foreseeable future. If the pools backing actual transactions eventually differ so markedly from the archetype pool that its use as a benchmark becomes significantly diminished, we may update it—and its associated credit enhancement benchmarks—to preserve its functional utility.

Table 1

Archetypical CMBS Conduit/Fusion Pool			
100 loans		S&P LTV: 90%	
Concentration: Top 5: 25%; Top 10: 35%; Top 20: 45%		S&P DSC: 1.2x	
Loan constants		10-year term with 30-year amortization	
Retail: 8.25%			
Office: 8.25%			
Multifamily: 7.75%			
Lodging: 10.00%			
Industrial: 8.50%			
Property mix (%)		**Geographic mix (%)**	
Retail	32.5	New York	16
Office	32.5	Los Angeles	7
Multifamily	15	Washington D.C.	7
Lodging	10	Chicago	4
Industrial	10	Houston	3

Chart 2



1. Standard & Poor's NCF

The process of deriving 'AAA' cash flow and property value begins with the determination of the S&P net cash flow (NCF) for each property. S&P NCF is calculated by making selected adjustments to the cash flows provided by the issuer, as described in "CMBS Property Evaluation Criteria" (January 2004). Essentially, the following key variables are examined and potentially modified to arrive at what we consider to be a sustainable level of cash flow for the property.

- Occupancy levels: in place and market levels are considered;
- Rental rates: should reflect market conditions;
- Operating expense: should be supported by historical performance and should reflect expense ratios consistent with similar properties;
- Capital expenditures: must be adequate, in our view, to maintain the condition of the property; and
- Leasing costs: must be sufficient, in our view, to retain existing tenants and attract new ones.

2. S&P Cap Rates and S&P Value

The S&P Value is determined by direct capitalization of the S&P NCF using the capitalization rates in Appendix A of this report. We arrive at these based on (i) a benchmark level for each property type derived from about 19 years of historical data provided by various third-party vendors and industry reports and (ii) adjusting the benchmark levels in relation to our own views pertaining to property quality, market/location, etc. The objective is to use cap rates that measure average long-term value over an entire real estate cycle, rather than using whatever the prevailing market capitalization rates happen to be.

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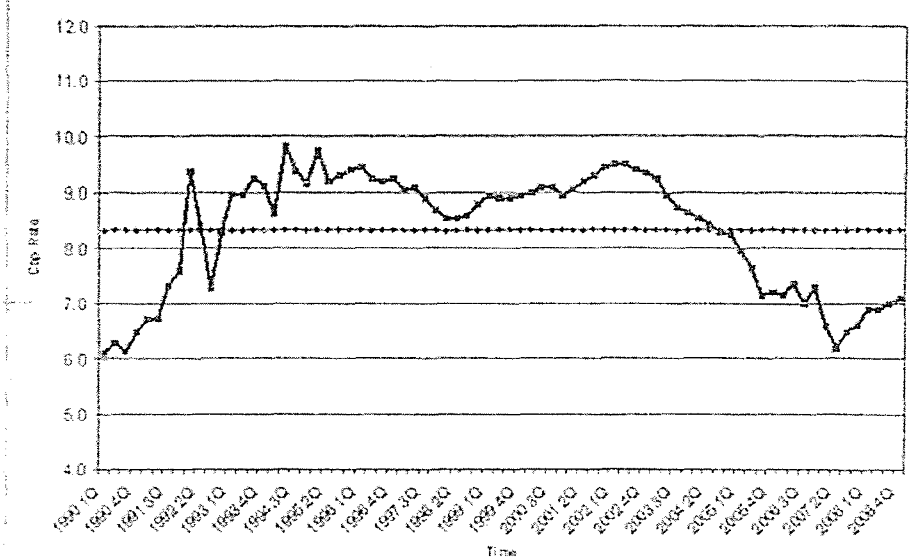
3. How did we select our cap rates?

The following example illustrates how we arrived at our cap rates in the office sector.

First, we looked to historical data to establish a benchmark (see chart 3).

Chart 3

Historical Office Sector Capitalization Rates



Sources: NCREIF, Torto Wheaton, Real Capital Analytics, Real Estate Research Corp., Principal Real Estate Investors.

We calculated the average value for office cap rates over this period to be about 8.33%. As noted in Appendix A, we value standard office properties using cap rates between 8.0% and 9.5%. We selected the different rates within that range based on considerations such as real estate quality, market size (historically, office properties in large metro areas such as New York and Washington, D.C., displayed better price performance than smaller metro areas), and location (suburban vs. central business district (CBD)). We left a buffer of plus or minus 25 basis points for other considerations/intangibles such as age, tenant composition, rental/lease structure, etc. The results are shown in table 3.

Table 3

Office Cap Rates	
Class A - New York City CBD	8.25 ±0.25
Class B – New York City CBD	8.75 ±0.25
Class A – Washington, D.C., CBD	8.50 ±0.25
Other CBD	9.00 ±0.25
Suburban NYC and Washington, D.C.	9.00 ±0.25

Table 3

Office Cap Rates (cont.)	
Other suburban	9.25 ±0.25

CBD--Central business district.

4. S&P NCF and S&P Value represent the 'BBB' stress

The S&P Value is, in our opinion, a conservative estimate of what a commercial property should sell for. Historically, there has been significant variance between S&P Values and the market values determined by appraisers. To determine weighted average variances from market values, we looked at 26 conduit/fusion transactions rated by Standard & Poor's between 2003 and 2005. The sample included more than 3,200 loans with principal balances exceeding $43 billion. Based on this analysis, we have reconfirmed that there is an inherent 'BBB' stress built into the S&P Value (see table 4). This stress can be quantified by roughly a 25% drop in total value of a property stemming from both the use of S&P NCF (more conservative than those provided by issuers) and the use of S&P Cap Rates (instead of market cap rates).

Table 4

Standard & Poor's Value Vs. Market Value Appraisal

Year	Variance (%)
2003	23
2004	23
2005	27

We use a multipronged approach to determine credit support amounts for the 'BBB' rating level. We take the greatest value determined in up to four different ways. First, we use the S&P Value and S&P NCF and apply the same default tests that we use in the determination of 'AAA' credit support amounts described below. This approach may imply relatively low 'BBB' credit enhancement levels if only a very small portion of loans trigger the default conditions at their S&P Values and S&P NCFs.

Second, we may use our newly developed stochastic commercial real estate model. Several respondents have asked for documentation about the model, which we will provide in an upcoming article. The model is based on nearly 30 years of data on rents for different property types in different MSAs. The model captures important differences in the historical volatility of rents in different markets. It helps us discern those differences by simulating future rental changes. Our tests have shown that the model provides reasonably reliable predictions over time horizons of up to three years. We can use the model to project the future path of S&P Value and S&P NCF for each loan in a pool and then apply the regular default tests. We can thus produce a second measure for a deal's 'BBB' credit enhancement amount.

Third, we apply a floor based on the 'AAA' credit enhancement amount. The floor was derived from the historical relationship between 'AAA' and 'BBB' credit enhancement levels, and is based on a simple regression utilizing the credit enhancement characteristics of over 300 existing CMBS conduit deals:

$$\text{Credit\_Enhancement}_{BBB} = 0.5\ \text{Credit\_Enhancement}_{AAA} - 4\%$$

Thus, our archetype pool, which must have a 'AAA' credit enhancement level of 19% to attain a 'AAA' rating, would require at least 5.5% credit enhancement at the 'BBB' rating. Finally, for some pools, analysts may qualitatively determine a 'BBB' credit enhancement amount that is higher than indicated by any of the first three methods. For example, qualitative determination may be used to adjust credit enhancement upward for pools that have significant event risk due to high concentrations by property type and/or geography.

5. 'AAA' NCF and 'AAA' Value

a) Derivation of 'AAA' NCF

To determine the 'AAA' stressed NCF ('AAA' NCF), we apply an incremental stress to the rental cash flow underlying the S&P NCF. The amount of incremental rent decline varies by property type (see table 5).

Table 5

Incremental Stress To Rental Cash Flow To Produce 'AAA' NCF From S&P NCF

Property type	'AAA' stressed rent decline (%)
Office	20
Retail	20
Industrial	20
Multifamily	10
Lodging	30

The incremental rent declines produce an 'AAA' credit enhancement level of 19%, and a total property value decline of 48%, for the archetypical conduit/fusion pool described in table 1. The incremental declines were chosen in the following manner.

To start, we used three years as the representative timeframe to apply the rent declines for several reasons. First, it is consistent with our criteria for incorporating credit stability into our ratings (see "Standard & Poor's To Explicitly Recognize Credit Stability As An Important Rating Factor," published Oct. 15, 2008). Those criteria state the allowable "maximum projected deterioration" in ratings over both a one-year and three-year timeframe under moderate economic stress. Second, we believe that commercial real estate is most vulnerable to the type of sustained declines in income that would result from extended periods of severe economic stress, with one year being generally not long enough, and other suggested time periods such as five-10 years being too long (the asset would have likely defaulted already, so any recovery or further deterioration after three years would therefore be immaterial).

Also, we view the office, retail, and industrial sectors as having roughly the same vulnerability to deteriorating macroeconomic conditions because all three are essentially tied to the level of business activity in the general economy. Therefore, the criteria apply the same 'AAA' stressed rent decline for those three property types. We note, however, that during the less-stressful conditions of the past several decades, these property types have displayed significant differences in rent volatility.

Office rent declines had a national three-year maximum decline of roughly 20%, according to Torto Wheaton data covering 1980-2009.

Retail rental declines, on the other hand, did not reach the 20% level in the historical data. This is largely because the most severe declines occurred in different markets at different times. However, under conditions of extreme macroeconomic stress, we expect that markets for retail property would become more highly correlated. In fact, even under current conditions, we observe various factors that suggest potentially higher correlation within the sector as stress increases. Retail revenues are facing pressure that is likely to be more severe than has occurred historically. As the consumer retrenches in the face of job losses, retailers may face a systemic correction. Also, declining sales trends, retail job losses, double-digit vacancy rates, and tenant bankruptcy filings indicate that this process is already well underway.

The industrial sector, like the retail sector, has not experienced a 20% national rental decline in the past 30 years (the highest national three-year rental decline was around 10%). However, as the health of the industrial sector is directly related to the office and retail sectors through business spending and consumer spending, respectively, we set the 'AAA' stress to the same magnitude as the office and retail sectors.

Multifamily properties haven't experienced a three-year national decline in the past 30 years—the worst performance was a gain of 0.5%. Indeed, multifamily has traditionally been considered one of the most stable property types. However, based on comments from several respondents to our May 26 RFC, we note that the multifamily properties in the CMBS market tend to be "adversely selected," perhaps because of the competition from the GSEs (which can typically offer more favorable financing terms). The average CMBS multifamily loan is a Class B/C property, which typically suffers the most in a competitive environment, as renters gravitate to higher-quality product at reduced rents. The evidence of this assertion is manifested in the difference between the delinquency rates of multifamily properties contained within our rated CMBS portfolio (currently 4.6%) and the GSE portfolios. That said, we consider the multifamily sector to be relatively more stable than the other main property types even in conditions of extreme economic stress. This is because housing is a necessity, whereas most retail, office, industrial, and lodging property performance is based on discretionary or business spending. Thus, we are using an incremental rental decline of 10% for apartment properties.

The lodging sector, according to a recent Smith Travel Research report (May 2009), is currently experiencing a year-over-year revenue (as measured by revenue per available room, or RevPAR) decline of about 21% due to the "double-whammy" of reduced consumer and business spending, though we expect this trend to moderate during the next six-12 months. However, since we view lodging as the most volatile property type of the five listed above, and because we are not currently experiencing a "depression-like" macroeconomic environment, we assigned it the highest relative stress of 30%.

Applying these incremental rent declines simultaneously across all property types and geographic regions (in conjunction with fixed and variable expenses) led to a total property value decline of 48% on the archetype pool, which falls in the high end of our "target" 40-50% range, commensurate with 'AAA' stress.

We will apply the incremental rent declines described above to rental cash flows when we determine the 'AAA' NCF. We will consider the relationship of in-place rents to current rents to avoid "double stressing" a building with below-market rents.

b) Determining 'AAA' Value

Determining 'AAA' Value is very similar to determining S&P Value (i.e., value under 'BBB' stress). The 'AAA' NCF is simply divided by the S&P Cap Rates described in the previous sections and in Appendix A.

In an 'AAA' stress environment, we expect that most leases will adjust to market levels either through expiration, renegotiation, or tenant bankruptcy. Multifamily properties typically have one-year leases, and we expect those leases to reset to stressed market levels annually. Similarly, we expect room rates for hotels to reset to stressed market levels on an almost daily basis.

Office, retail, and industrial properties, however, are generally subject to long-term leases, and we expect these leases to reset to our stressed market rents within five years. In our cash flow analysis, we will derive an alternate, less stressful, NCF to calculate DSC and related stresses (the 'AAA' Alternate NCF). The separate calculation is based on 60% of the leases resetting to stressed market levels over three years (3 / 5 = 60%). However, we will continue to use the 'AAA' NCF, with all leases reset to stressed market levels, to determine the 'AAA' Value because it is unlikely that a purchaser would attribute much value to above-market leases in a declining rent environment. An example of how the 'AAA' NCF, 'AAA' Value, and 'AAA' Alternate NCF are determined is shown in table 6.

Table 6

Suburban Office Building Analysis

($600,000 balance, 7% rate, with 30-year amortization)

	S&P NCF for DSC and Value ('BBB')	'AAA' NCF	'AAA' Alternate NCF
Effective gross income ($)	100,000	80,000	88,000
Fixed expenses ($)	31,000	31,000	31,000
Variable expenses ($)	11,500	9,200	10,120
NCF ($)	57,500	39,800	46,880
Value ($)	621,622	430,270	not applicable
LTV (%)	97	139	not applicable
DSC (x)	1.20	not applicable	0.98

NCF--Net cash flow. LTV--Loan-to-value.

To further explain the adjustments in table 6, the S&P NCF derived in the second column represents our basic analytic approach to commercial real estate. NCF is determined by subtracting fixed and variable expenses from effective gross income (EGI). The S&P Value is derived by dividing S&P NCF by a cap rate (9.25% in the example). The LTV is determined by dividing the loan balance by the S&P Value. The DSC is determined by dividing the NCF by the annual debt service ($47,902 in the example).

The third column in table 6 represents the calculation of the 'AAA' NCF used to determine the 'AAA' Value and LTV. In this analysis, the EGI is reduced by the 'AAA' office stress of 20%. Fixed expenses remain unchanged. However, since variable expenses are a function of EGI, they decline proportionally with EGI. The 'AAA' Value and LTV are also determined using the 'AAA' NCF.

The fourth column in table 6 represents the calculation of the 'AAA' Alternate NCF used to determine the 'AAA' DSC. Here, the EGI represents a scenario where 60% of the EGI has declined based on the 20% 'AAA' office stress and 40% of the EGI remains unchanged because all in-place leases haven't reset to market levels yet. Since not all EGI has declined in column 4, variable expenses haven't declined as much as in the third column.

D. Loan default tests

1. Term defaults

The tests for a term default at the 'AAA' level are as follows:

The simplest default condition is when the DSC, based on 'AAA' Alternate NCF, is below 1.0x and the LTV, based on the 'AAA' Value, is greater than 100% (the upper left quadrant of chart 4). However, there are other conditions for default. Default can also occur if the property cannot cover its debt service (i.e., DSC < 1.0x) but the borrower still retains some equity (i.e., LTV < 100% - the bottom left quadrant of chart 4). There are situations where a borrower may be willing to cover minor debt service shortfalls to protect a small amount of remaining equity. For

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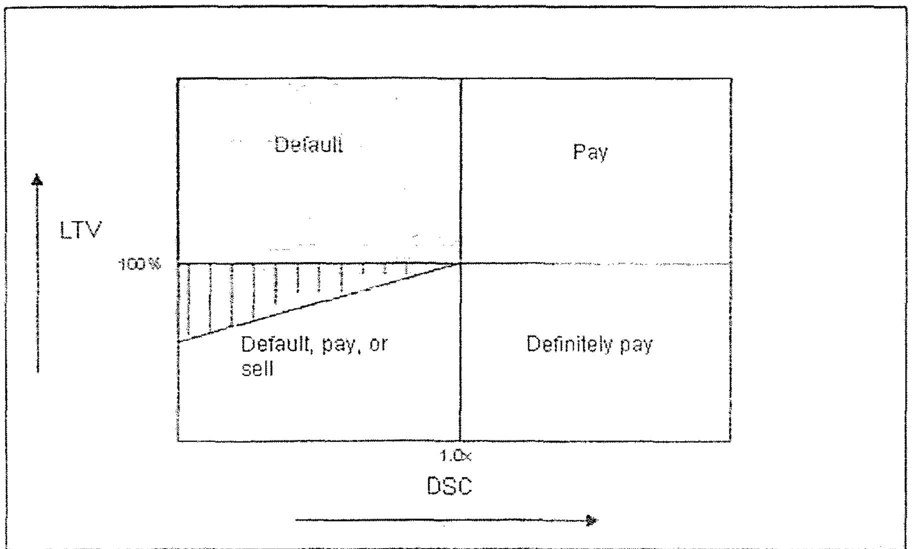
example, a borrower may continue to fund a loan with a 0.95x DSC if his LTV is 95% or less, but would be less likely to continue investing in a property if his equity was less, say, 97% LTV. Of course, if the LTV is low enough, 90% or less in our analysis, a borrower would likely sell a property and repay a loan rather than continuing to fund debt service out of pocket. Lastly, we recognize that very fluid, dynamic choices exist for properties within this quadrant, and the decision to pay one month may change to default the month after.

Chart 4

Pay Or Default/Sell?



Accordingly, in calculating whether loans suffer term defaults, the conditions for default can be summarized as follows:

1. If $LTV > 100\%$ and $DSC < 1.0$; or
2. If $90\% \leq LTV \leq 100\%$ and $DSC \leq LTV$.

The default condition for LTV > 100% and DSC < 1.0x corresponds to the light blue shaded area in chart 4. The other default condition corresponds to the red shaded area in the lower-left quadrant of the chart (not drawn to scale).

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2. Balloon defaults

We will test loans that do not default during their terms for balloon, or maturity, defaults. If a loan's 'AAA' LTV at maturity, based on the amortized loan balance, is greater than 100%, we assume that the loan will default at its maturity date. In our opinion, the incremental rent stresses and the implied market value decline of 40%-50%, used in conjunction with the term and maturity default tests, adequately account for refinancing risk in an illiquid market.

E. Calculating 'AAA' losses and 'AAA' credit

1. 'AAA' term loss

The 'AAA' term loss = 'AAA' Value – (outstanding principal balance + two years of lost interest + foreclosure expenses)

Foreclosure expenses are estimated to equal 5% of the value of the property. The two years of lost interest represent an average time between default and ultimate resolution of a distressed property, and are calculated net of rents collected. When we used state-level figures for both foreclosure expenses and the average time between default and resolution, we found doing so to be an unnecessary complication that yielded very little added value. The outstanding loan amount will be determined after subtracting scheduled amortization (if any) from the current loan balance.

2. 'AAA' balloon (maturity) loss

The 'AAA' balloon loss = 'AAA' Value – (outstanding principal balance + two years of lost interest + foreclosure expenses)

3. "Raw" 'AAA' credit support

We define the raw figure for 'AAA' credit support (before any pool-level adjustments, if necessary) as the sum of the 'AAA' term and balloon losses divided by the total loan balances.

F. Calculating 'AA', 'A', 'BB', and 'B' losses and credit enhancement

We set "benchmark" levels for 'AAA', 'BBB', and 'B' credit enhancement levels and interpolate for the remainder of the rating categories. We describe how we arrive at the unadjusted levels for 'AAA' and 'BBB' above. To determine credit support amounts for the 'B' rating level, we will utilize a method that is similar to our approach for determining 'BBB' credit enhancement. We will rely primarily on a forward-looking forecast of rents to determine our expected case. In general, our expected loss will be zero for loans in markets with stable and improving forecasts. However, we will expect losses on loans in markets with "negative" forecasts—that is, forecasts of declining rents. The expected case will be compared with the output of our stochastic commercial real estate model. In both cases, we will expect increased credit support at the 'B' rating level for any loan that doesn't comply with our legal criteria (see "U.S. CMBS Legal and Structured Finance Criteria," dated May 1, 2003, on RatingsDirect). Finally, since nearly all CMBS pools incur some trust expenses, or other unexpected expenses, due to systemic risk during their lives, we apply a formula for determining a minimum level of 'B' credit enhancement.

$$\text{Credit Enhancement}_B = \text{Max}\,[1\%,\ 0.25 * \text{Credit Enhancement}_{BBB}]$$

Credit support at the 'B' rating level will be the highest of the expected loss, the output of the stochastic model, and the aforementioned formula. Please see the Surveillance section below for the calculation of expected losses.

G. 'AAA' Credit Enhancement and the loan and geographic concentration adjustment

Applying the methodology outlined above will yield credit support levels for a diversified pool of mortgage loans. The archetypical CMBS conduit/fusion pool defined above represents the average property and geographic mixes found in the universe of U.S. CMBS loans Standard & Poor's rates. We would expect actual CMBS pools that closely resemble the archetypical CMBS pool to have credit support of approximately 19% at the 'AAA' rating level. We also plan to set a credit enhancement floor for pools with exceptional creditworthiness (higher DSC, lower LTV, little or no allowance for additional subordinate debt, etc.) at 10%. The floor is in place due to the potential for systemic shocks and event risk.

Standard & Poor's will measure the relative loan and geographic concentration of the CMBS pools it rates to the archetypical pool and make adjustments in credit support, either up or down, for pools that differ from the archetypical pool. Note that the archetypical pool is already well diversified by loan balance, and there will be little extra benefit for further diversification. However, a lack of diversification may result in significantly higher pool-level credit enhancement figures. For example, if a pool has significantly fewer than 100 loans, then additional credit enhancement may be necessary to attain a 'AAA' rating. Additionally, although our 'AAA' Great Depression-like stress already assumes full correlation between assets, we will incorporate an adjustment for geographical concentration because, as noted above, some markets have experienced greater than 40%-50% declines in market value. To account for this risk, we will employ a dual approach to the adjustment factor. Appendix B discusses the concentration adjustment factor (based on the Herfindahl-Hirschman Index) and how we calculate it.

H. Surveillance

Standard & Poor's monitors its portfolio of rated CMBS on an ongoing basis in an effort to identify potential credit risks. The monitoring process uses screening tools to generate exception reports. The exception reports are generated on a periodic basis to identify transactions for which a comprehensive rating review may be particularly appropriate.

The exception reports capture many performance attributes. Key fields include loan delinquencies, interest shortfalls, realized losses, loan payoffs, and defeasances. The reports also identify a given pool's exposure to specially serviced loans and loans on a servicer's watchlist.

A transaction may also be identified for review if we believe that "adverse selection" has occurred in the underlying collateral. This situation may arise near the end of a transaction's life, when the better-performing loans have paid off, which may leave the pool with a concentration of sub-performing assets. While the credit support available for the remaining rated classes may be proportionately higher than at the deal's inception, the pool's composition could be weaker.

Comprehensive rating reviews include:

- A review of pool-level characteristics;
- An estimation of losses for specially serviced loans, loans with low DSC, and other loans that are at heightened risk of default;
- A revaluation of 10 largest loans and other loans with significant performance changes;
- Determining credit support levels for particular ratings, which includes an evaluation of the impact of estimated losses and related recoveries on the transaction's capital structure and;

EXHIBIT K

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EXHIBIT L

From:	**Pandya, Deegant**
Sent:	**Thursday, March 11, 2010 5:11 PM**
To:	**Manzi, James**
Subject:	**CMBS Framework Model Enhancement / Validation Documentation**
Attachments:	**CMBS Framework Model Enhancement.PDF**

Hey Jim,

Attached the supporting documentation for the model repository that outlines the updates we made to the framework model (paraphrased bullets below). Eric asked me to reach out to you to see if you're signed off on the attached document – everyone else signed off – this way we can begin the upload process into the repository.

1. Capture excess NCF and when available use it to offset losses
2. Calculate the Actual debt constant and use max of Actual vs Criteria
3. Using the max Interest Rate Actual vs Criteria
4. Calculation for Lost Interest resulting from Mty defaults

Let me know if you have questions,

Deegant

GOVERNMENT EXHIBIT 48 D-03302 MHM

S&P CMBS Group
CMBS Framework Model Enhancement / Validation Documentation
March 10, 2010

Enhancement Purpose / Objectives
The group has acquired significant experience with the CMBS Framework Model since its implementation when the CMBS Conduit/Fusion Criteria was implemented on June 26, 2009 (see "*U.S. CMBS Rating Methodology And Assumptions for Conduit/Fusion Pools*"). Given our experience with using the model for new issuance and surveillance assignments we believed several enhancements could be made to produce more refined feedback within the scope of the criteria. The enhancements were championed by Kurt Pollem and presented to criteria committee on February 3rd, 2010. Criteria committee members voted to enhance the model and implement the changes once they were validated. Criteria committee attendees included Kurt Pollem (project champion/committee member); James Manzi (chair); Barbara Duka (NI Analytical Manager); Eric Thompson (SRV Analytical Manager); James Palmisano (committee member); David Henschke (committee member); Larry Kay (committee member); and Gary Carrington (committee member).

Enhancement Summary
The following is a summary of the enhancements voted on by criteria committee.

1. The original version of the model did not capture S&P NCF in excess of interest payments, if available, and use it to offset losses for loans which defaulted under the term and maturity default tests enumerated in the criteria. An enhancement was made to the model to capture excess S&P NCF, if any, and use it to offset loss. Criteria committee decided to calculate the excess S&P NCF, if any, using fully declined S&P 'AAA' NCF outlined in the Conduit/Fusion criteria (see letter "b" on page 15 of the criteria regarding how S&P 'AAA' NCF is calculated).
2. The original version of the model used the constants outlined in the criteria publication to calculate debt service payments. Some new issuance requests had been received, however, where the actual debt service was higher than that calculated with the criteria constants. It was decided that, going forward, the model would calculate the higher of the debt service derived by the constants outlined in the criteria or actual debt service.
3. The original version of the model calculated lost interest on defaulted loans using the constants, versus the interest rate derived from the constants. It was decided that it was more appropriate to calculate lost interest using the interest rate derived from the constant, or, if higher, the actual loan interest rate.
4. The original version of the model did not provide for the calculation of lost interest resulting from maturity defaults. An enhancement was made to provide for this.

To reach its conclusions, committee reviewed results from an enhanced version of the model prepared by Kurt Pollem queued to upload into the repository. The results presented a range of outcomes based on whether or not one or more of the enhancements were added to the original version of the model. A result set that incorporated all of the above enhancements was chosen by criteria committee. Although the results did not deviate materially from the original model version, the output was deemed to be more refined than the results generated by the original model, and more appropriately reflect the spirit of the criteria.

Testing & Validation

The following actions were taken to test and validate the model prior to its implementation on 03/08/2010:

1. Two analysts with strong Excel skills traced and vouched the formulas in a revised version of the model. The analysts, Gregory Ramkhelawan and David Henschke, both concurred that the formulas accurately depicted the enhancements outlined above.
2. Gregory Ramkhelawan and Deegant Pandya extracted the formulas pertaining to the enhancements and embedded them in the current working version of the model used for surveillance. They ran the enhanced version of the model in parallel with the original version of the model to ensure that it worked smoothly, and the results were what was expected. The results were reviewed with Kurt Pollem and James Digney, a senior member of the team and surveillance committee chair.
3. James Manzi reviewed the output sets noted in the preceding paragraphs. Jim is of the opinion that the enhancements worked as intended by criteria committee.

Immediately prior to implementation a brief meeting was held to provide final sign off by the project stakeholders.

Signatures:

Kurt Pollem, Project Champion 3/10/2010
Barbara Duka, Analytical Manager Barbara Duka 3/10/2010
Eric B. Thompson, Analytical Manager 3/10/2010
James Manzi, Practice Criteria Officer

David Henschke (Testing and Validation)
Gregory Ramkhelawan (Testing and Validation) Gregory Ramkhelawan
Deegant Pandya (Testing and Validation) Deegant Pandya

EXCERPT

EXHIBIT M

S&P CMBS Ratings

Digney, James - 4-2-14

4/2/2014

Condensed Transcript

Prepared by:

SEC

Wednesday, April 16, 2014

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. D-03302-A
STANDARD & POOR'S CMBS)
RATINGS)

WITNESS: James Charles Digney
PAGES: 124 through 345
PLACE: Securities and Exchange Commission
100 F Street, N.E.
Testimony Room 10
Washington, D.C. 20549-7553
DATE: Wednesday, April 2, 2014

The above-entitled matter came on for hearing, pursuant to notice, at 9:02 a.m.

Diversified Reporting Services, Inc.
(202) 467-9200

APPEARANCES:

On behalf of the Securities and Exchange Commission:
ROBERT LEIDENHEIMER, JR., ESQ.
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Division of Enforcement
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(202) 551-4818

JOHN BADGER SMITH, ESQ.
Special Counsel
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On behalf of Standard & Poor's and Witness:
S. PENNY WINDLE, ESQ.
SAMANTHA M. WALSH, ESQ.
Cahill, Gordon & Reindel, LLP
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(212) 701-3000

APPEARANCES (CONT.):

On behalf of Standard & Poor's and Witness:
ALMA MONTANEZ, ESQ.
Associate General Counsel
Standard & Poor's
55 Water Street
New York, New York 10041
(212) 438-2071

C O N T E N T S

A Because we think it still makes sense to use the blended constant.
Q Okay. So this is -- so going -- this is kind of going forward, the decision has to be made how are we going to rate deals going forward in the future. And so you're saying it was okay to use the blended constant. Let's keep doing it? Is that -- in that context?
A It may have been. I don't know --
Q Let's say that Dr. Parisi had been asked -- were the ratings on the three rated deals on Exhibit 200.
A Right.
Q Were those ratings consistent with S&P's ratings definitions? Let's say Dr. Parisi had been asked that question.
A Right.
Q And he needed to answer it. And he came to you for data about the deals in order to answer that question.
A Right.
Q Was that what this was about?
A It could have been. That sounds vaguely familiar.
Q But only vaguely familiar?

A Yeah.
Q Okay. You're not definite about that?
A Yeah. I mean, you have to remember that there was a lot going on. And I was privy to only very few of the conversations. So occasionally, I was asked to provide some data for this or that without really knowing the full picture or context of it. I think part of that was purposeful, like in the case that -- like in the example of surveillance looking at all these deals. I don't think I even knew they did that until it was done, but then part of it was probably just the circumstances. Everything was very, just crazy.
Q Do you know what S&P did with the ratings on the six transactions that had been rated with blended constants, the three listed here plus the three Freddie's?
A I don't think we took rating actions on them. I think if I recall correctly, I think they were -- they were affirmed or just sort of left alone.
Q And was -- was -- did that just happen by inertia, or was there a decision made to leave them alone?
A I don't know. I was not involved with

that.
Q Was -- was your -- were your views or, was any work from you solicited in order to determine whether those ratings should be left alone?
A I don't think so. I don't remember being asked about that.
Q Let's take a little break. We'll go off the record.
A Okay.
THE VIDEOGRAPHER: The time is 4:26 p.m. We are going off the record.
MR. SMITH: 4:26. We are off the record.
(Recess.)
THE VIDEOGRAPHER: This is tape 5, Volume II in the Investigative Testimony of James Digney. The time is 4:33 p.m. We are back on the record.
BY MR. SMITH:
Q We are on the record at 4:33. Mr. Digney while we were off the record, did we have any conversations about this matter?
A No.
BY MR. LEIDENHEIMER:
Q A question or two about Exhibit 200. In what sense are the constants specified in the criteria stressed if you assume that the actual

constants are the same as the stressed constants?
A Well, they are -- they are not actually described as stressed constants, I don't think in the criteria. That's part of I think what's causing so much confusion around it, but I mean, we don't know what the assumed actual constants are.
Q I'm sorry.
A No. So it just says loan constants, right, so it doesn't distinguish between that constant and any other constant, so --
Q I may be confused or have not paid close enough attention yesterday but I thought you testified that the common understanding at S&P was that the constants and the criteria were intended to be stressed constants?
A Yes. That's typically how we describe them. Right. Because they are much higher than what an actual loan constant would be. I'm just saying that in the criteria when it describes the archetypical pool, it only describes those constants. It doesn't distinguish between those and maybe some lower actual number. It's just vague on that.
Q Right. Absolutely.
A Yeah.
Q But you'd agree with me, I take it, that if

PROOFREADER'S CERTIFICATE

In The Matter of: STANDARD & POOR'S CMBS RATINGS
Witness: James Digney
File Number: D-03302-A
Date: April 2, 2014
Location: Washington, D.C.

This is to certify that I, Nicholas J. Wagner, (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

____________________ ____________________

(Proofreader's Name) (Date)

EXCERPT

EXHIBIT N

S&P CMBS Ratings

Pollem, Kurt - 2-27-14

2/27/2014

Condensed Transcript

Prepared by:

SEC

Thursday, March 13, 2014

EXHIBIT N

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. D-03302-A
STANDARD & POOR'S CMBS RATINGS)

WITNESS: Kurt Pollem
PAGES: 1 through 217
PLACE: Securities and Exchange Commission
Testimony Room 4
100 F Street, N.E.
Washington, D.C. 20549
DATE: Thursday, February 27, 2014

The above-entitled matter came on for hearing, pursuant to notice, at 9:21 a.m.

Diversified Reporting Services, Inc.
(202) 467-9200

APPEARANCES:

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APPEARANCES (CONT.)

On behalf of the Witness and Standard & Poor's:
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On behalf of Standard & Poor's:
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Standard & Poor's
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New York, New York 10041
(212)438-2071

C O N T E N T S

Grace Osborne at the time?
A She was -- the nature of my relationship. She got -- primarily, I did not interact with her a great deal. At that time, it was she primarily interacted with her -- with her direct reports.
Q Okay. Was there something about your relationship with her that would have precluded you with taking a concern to her about what your boss was doing?
A I -- I don't think so. No. I guess I just didn't think about it.
Q Was there anybody else superior to Barbara Duka that you had a relationship with such that you could have taken that to them, such as David Jacob or Mark Adelson or Pat Milano?
A No.
Q Did you discuss this with Brian Snow? His name's on the report, as well.
A Right. He was -- he wrote the presale. I -- I don't recall having a specific conversation with him about it.
Q To your knowledge, was Mr. Snow aware of your concerns about -- that the presale should be disclosing information about the blended constants or derived from the blended constants, rather than derived from the criteria constants?

A Was --
Q Was -- was Mr. Snow aware of your concern about that to your knowledge?
A I mean, he may have been. But again, I -- in just looking at how it was communicated after speaking with Barbara, I -- I don't recall whether I went into great detail with analysts about that decision.
Q Okay.

BY MR. LEIDENHEIMER:
Q What do you mean by how it was communicated by Barbara?
A Because it was communicated verbally to me in her office. It's not as if an email or -- or some other broad communication went out the everybody stating, "This is how we report this."
Q And am I understanding correctly that there was originally a draft presale for this transaction that had the math based on the market?
A Is that true?
Q Yeah. I'm asking you, is that --
A I don't know.
Q Okay. So this, the conversation with Ms. Duka didn't come about because she saw a draft presale with the blended math in it?

A It was me bringing the issue up and asking the question and talking about the -- the -- I suppose in part because of the disclosure issue and just stating that -- the -- the number that was actually used to arrive at credit enhancement levels.
COURT REPORTER: At credit?
THE WITNESS: Credit enhancement levels.
BY MR. LEIDENHEIMER:
Q Your view was the number that was used to use -- used to derive the credit enhancement levels should have been in the presale?
A If you're looking at delivering as much transparency as you think is necessary to the marketplace, then you -- you could make the argument that you should include that number.
Q I -- I'm just asking you -- you wanted it included, right?
A Yes.
Q Why? What was your reason for wanting it included?
A Because I thought it was the right thing to do.
Q Why did you think it was the right thing to do?
A Because if we're determining credit enhancement levels based upon these constants and coverage ratios in the model, then that should be -- we should at least disclose

that. And it was not -- it was in my view in line with what we'd done in the past on past presales as far as going back before the new model and all of that.
Q In the -- the old presales, you disclosed the numbers there is actually used?
A Well, we have -- I mean, it's a different approach. I can't -- not apples to oranges, but just looking at sort of, okay, what -- what do we calculate as the debt service coverage ratio? What's in the S&P D,SC right? And so if you look at what that is in the model -- and again, going to what you did point out was provided to Morgan Stanley that was determined and in arriving at the levels, then why not -- why not disclose it?
BY MR. SMITH:
Q And going to hand you what I need to mark.
(SEC Exhibit No. 234 was marked for identification.)
This is Exhibit 234. Exhibit 234 is an email from you to Barbara Duka and Natalka Peri dated Wednesday February 2nd, 2011. It's SP-CMBS 626714 with an attachment which is 66715 and 716.
A Yes.
Q And also going to hand you Exhibit 82 and 83 which is a email back from Ms. Duka to you and to Ms. Peri.
A Um-hm.

Q Which seems to be on the same subject. And I would like to ask you how you came to write this email and the attachment to -- to Ms -- Ms. Duka. And actually, the first question is, why did you include Natalka Peri on this? What's -- let's -- let's -- who's she? I don't know who she is. And what does she have to do with this?

A I honestly don't know why she was included in this.

Q Who is she?

A And I commend you on -- you get her last name mostly right. It's Peri, I believe.

Q Okay.

A But a lot of people say "Peerage," so.

She was relatively new at the time. I'm trying to remember when we hired her.

But she must have been -- I think Barbara must have involved her in writing sort of the general methodology section right here that we were going to insert into presale reports. And that's why she was being copied on this.

Q Was she a rating analyst?

A Yes, she is a rating analyst. Yes.

Q So anyway, with particular focus on the underlying section which you identified an underlined section in your email?

A Yes.

Q And then she included an underlined section in her email which looks the same.

So -- so why -- why did you write in this text and send it to Ms. Duka and Ms. Peri?

A Well, first of all, I don't -- okay. Why? I think there was, in looking at this again, an issue with how to describe how we arrived at the DSC. That was used to determine the term default test. And so this language was based upon my recollection, Barbara's request that it be reworded.

COURT REPORTER: Barbara's request that it be?

THE WITNESS: Reworded.

COURT REPORTER: Thank you.

BY MR. SMITH:

Q Okay. So -- so the underlying sentence, let me -- let me read it from -- from page 626715.

A Um-hm.

Q In determining a loan's DSC, Standard & Poor's will consider both loan's actual debt constant and a stress constant based upon property type as further detailed in your conduit/fusion criteria.

A Um-hm.

Q So -- so did you write that? Or did -- did Ms. Duka write that or say that and you copied it down? How -- how did that exact wording get to be in -- in your version of this memo that you sent to Ms. Duka?

A Because part of this description's focused around -- well, what -- what do we -- how do we describe how we arrive at the DSC and then what -- what do we -- what -- what do we consider?

Q Okay. Now, now, truthfully, what you considered was a blended constant, a 50 percent blended constant, between the actual constant or the criteria constant, whichever was higher?

A Right.

Q And a 50 percent blend between that and the actual constant?

A Right.

Q Right. And that was policy, and that was the way it was done from mid-December 2010 up until July 2011, correct?

A Yes.

Q Okay. And so do you consider that this sentence that I've just read to you says that?

A No. I mean, it's -- it's written to be vague about it.

Q Okay. And why -- why would you write it to be vague?

A I can't -- I can't tell that I actually wrote this.

Q Okay.

A And if I did, it was in -- in my recollection based upon input from Barbara which is why these emails were being exchanged. I -- I really wish I had a prior version of this.

Q I'd be happy to look at one if you --

A No, I just don't. I don't know if there was similar language in here prior to that or if there was anything. But that's the way it was worded.

Q Okay. So it was worded vaguely?

A Yes.

Q And was that your decision to word it vaguely? Was that Ms. Duka's instruction to you to word it vaguely?

A I -- I -- I would -- to my recollection say that it was based upon her instruction.

Q Okay. And -- and why would one want to write something vaguely, especially when you believed you had a very clear, straightforward thing you were doing?

A Right.

Q Why would -- why would you not want to clearly, straightforwardly say, "Here's what we're doing?" Why would you choose a vague approach?

A I -- well, my -- my view is that Barbara in particular had sensitivity to describing exactly what we were doing. And that possibly stemmed from the -- the entire -- again, going back to just differences that Criteria with this interpretation that she wrote of the piece which is, is it actual or do you go off of these constants in the -- criteria? And in that discussion or however it was memorialized with Frank Parisi and Criteria, and although we were doing it, as you say, 50/50 blend which is easy enough to describe, there seemed to be sensitivity in actually showing what that result was.

Q Barbara Duka had sensitivity about that?

A To me, it seemed that way.

Q Did -- did you get any sense of why she had sensitivity? Dr. Parisi had, as far as you know, said --

A Yeah.

Q -- go forth and do this.

A Yes.

Q What -- what -- what's the issue?

A I -- I don't know. I mean, I think there was still -- I mean, from my point of view, yeah, you -- I -- I think disclosing this as, okay, not just considering, but we're doing this and that. And arriving at this was a -- was a best approach. And that's why I had the conversation about putting that -- putting this constant that we're actually using in the presale.

Q All right. Now, if you go back to the presale,

Exhibit 80?

A Yes.

Q I think on about page 18 of that, there's a section called Conduit/Fusion Methodology.

A Eighteen, yes.

Q Okay. And the sentence that you and Ms. Duka agreed upon, is that, in fact, in that presale?

MS. WINDLE: I -- I just have to object because he said clearly he didn't agree on it with them.

THE WITNESS: It's --

BY MR. SMITH:

Q The -- the sentence that is -- the sentence that is written here in Exhibit 234 that you didn't agree on maybe -- maybe you didn't. Did -- did -- so did you agree on this with -- with Ms. Duka?

A This --

Q This sentence?

A Yes. I mean, that's what's in there. It's -- the -- okay.

Q So it's in there. Do you agree that the sentence that -- that we're looking at from Exhibit 234 made it into the presale?

A Yes.

Q And your name is on the presale?

A Yes.

Q And her name isn't. Is that correct?

A Correct.

Q So -- so how did that get in the presale? Did you -- did you agree to put it in the presale?

A Well, I -- the answer is yes, I put it -- I put it in -- I mean, I'm take -- taking orders.

Q You put it in the presale?

A Yes.

Q You followed Ms. Duka's orders?

A Yes.

Q And if you had your own choice to make, what would you have done?

A At the very least, I would have -- I would have at least had the kind of a DSC that we used, the weighted average one, so that one could tell that it was a 50/50 blend. This was meant to --

COURT REPORTER: Fifty-fifty?

THE WITNESS: A 50/50 blend.

COURT REPORTER: Thank you.

THE WITNESS: I think you can read the sentence and say, "Well, we disclosed that we were actually considering both." But it's clearly -- it's vague enough to where you don't know the exact blend for consideration.

BY MR. SMITH:

Q And in fact, if you're taking the higher of the

actual constant or the criteria constant, you're considering both; are you not?

A Yeah. Going back to -- you mean, going to higher-of constants?

Q Literally, if you're -- if you're following the -- the -- the procedure of taking the higher of the actual constant or the criteria constant --

A Um-hm.

Q -- are you not literally considering both the loan's actual debt constant and stress constant based on property type?

A Yes.

Q Let's take a quick break. We'll go off the record.

VIDEOGRAPHER: Off the record at 3:57 p.m.

MR. SMITH: Off the record at 3:57. And let's take five or ten minutes' break, and then we'll let you know how much further we think we need to go.

(A recess was taken from 3:57 p.m. to 4:08 p.m.)

VIDEOGRAPHER: The time is 4:08 p.m. We are back on the record.

MR. SMITH: We're are back on the record at 4:08.

BY MR. SMITH:

Q Mr. Pollem, while we were off the record, did you have a discussion with the SEC staff about this matter?

it appears there's some urgency for -- the people that are writing these emails are wanting to get this done. And that also suggests to me that this is part of the response to the Goldman K14 situation where people are figuring things out. That's why it occurred to me that maybe this was taking the -- the -- the data from transactions that had been rated and running it through an old MQR model to see what it would look like. Does that ring any bells?

A No.

Q Okay. I don't have any more questions on this subject, so is there anything that's -- that has come to mind?

A No. This was -- other than the -- the time period.

MR. SMITH: Okay. Then at this point, I think we're going to adjourn for the day, so I very much appreciate you coming in and testifying. We will start up again at 9:00 o'clock tomorrow morning.

MS. WINDLE: Do you have a fairly high level of confidence that in adjourning today, we're not going to cause anybody to miss a 6:00 Acela tomorrow? No, seriously, it's a Friday. People have been away from their families all week. And I mean, I'll talk to the witness, and it's in my view up to him. But are you fairly certain we're going to be done by some time between --

MR. SMITH: I -- I -- for -- for my part, I have a -- a handful of additional questions that will take us some time tomorrow morning. Mr. Leidenheimer has some questions.

MS. WINDLE: Yeah. I'm not asking for hard-and-fast guarantees.

MR. SMITH: Yeah.

MS. WINDLE: I just don't want to --

MR. SMITH: Right.

MS. WINDLE: -- give up a little time that we have now --

MR. SMITH: Yes.

MS. WINDLE: -- if -- if it's going to mean --

MR. SMITH: Yeah. I mean, I'm -- I'm far away from home and family, too.

MS. WINDLE: I understand.

MR. SMITH: And it's my intention to go home tomorrow night.

MS. WINDLE: But since I know you can leave when you want to, and I can't --

MR. SMITH: It's -- it's my intention to go home tomorrow night.

MS. WINDLE: Okay.

MR. SMITH: And obviously we -- we need to got what we need to get. But I'll -- I'll -- we'll do our best.

MS. WINDLE: Well, I'll just put on the record

that I think everyone on this side of the table, not speaking for Cathryn, would like to be on the 6:00 clock train tomorrow, hopefully. I can't think of a reason that shouldn't work out, and that's our expectation.

MR. SMITH: Thank you. We'll -- we'll do our best.

MS. WINDLE: Okay.

MR. SMITH: Okay. And so --

VIDEOGRAPHER: The time is 4:48 p.m. We're going off the record.

MR. SMITH: Off the record.

(Whereupon, at 4:48 p.m., the examination was adjourned.)

* * * * *

PROOFREADER'S CERTIFICATE

In the Matter of: STANDARD & POOR'S CMBS RATINGS
Witness: KURT POLLEM
File Number: D-3302
Date: Thursday, February 27, 2014
Location: Washington, D.C.

This is to certify that I, Nicholas Wagner, do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

__________________ __________________
(Proofreader's Name) (Date)

REPORTER'S CERTIFICATE

I, Cathryn Bauer, RPR, reporter, hereby certify that the foregoing transcript of 217 pages is a complete, true and accurate transcript of the testimony indicated, held on Thursday, February 27, 2014 at Washington, D.C. in the matter of: STANDARD & POOR'S CMBS RATINGS. I further certify that this proceeding was recorded by me and that the foregoing transcript has been prepared under my direction.

Date:

Official Reporter: ________________________

Diversified Reporting Services, Inc.

EXHIBIT O

GOVERNMENT EXHIBIT
58
D-03302

From: Duka, Barbara
Sent: Thursday, November 11, 2010 3:01 PM
To: Osborne, Grace; Thompson, Eric; Cao, Becky; Gutierrez, Michael
Subject: Grace....some quick thoughts from me for October BU

Key Accomplishments:

1. Investor & Issuer Outreach efforts. We met/ spoke to Oppenheimer, Morgan Stanley, NY Life, Macquarie, Goldman, Lone Star & FHFA. This is in addition to the issuers and investors we speak to in the course of our daily work, including meetings and calls relative to specific deals. Daily work would also involve fielding general inquiries about the analysis, the models, criteria, regulatory issues or processes / procedures / contacts from issuers or originators. We spend about 2-3 hours a day doing this between KP, DH & I.
2. Responding to numerous internal initiatives around regulation & organizational objectives (i.e. revise Procedures Document, revising procedures and establishing processes as needed to meet new policies, training for Level 2 and new policies, closeout of outstanding issues from QRB review of CMBS, educating SAS on the presale process+, reviewing Reps & Warr's with Legal and CREFC, developing procedures for Ancillary Services, rollout of Ratings Gateway, new RAMP template & guidelines, publish large loan MID and document in document repository, reconcile NI and Surviellience conduit / fusion model + document and save in document repository, work with Legal & Criteria to publish a SPE article that will be published this week, etc.)
3. Published commentary on the Goldman pooled transaction we were not shown (T&C's). Raised some questions with Compliance and Legal around what information do we consider public. Have 2 more in the works: COMM and Wells. COMM we looked at but our feedback was very conservative relative to others. Wells did not show us deal (T&C's). These commentaries would be relatively toothless without the ability to use the offering documents, because the other public information is not as detailed as what was available for the Goldman deal.
4. Issuance volume has been creeping up and we have managed to stay ahead of it, while balancing our many other priorities. JPM 2010-C2 ($1.1 billion) closed in October and JPMCC 2010-ESH ($2 billion) issued preliminary ratings in October (closing in Nov.). We also gave indicative feedback on Americold ($615million) and were engaged to rate the transaction (closing December). We are also engaged to rate a new MS 2010-HQ4 reremic ($176million). Preliminary ratings issued, closing expected in November. We are also engaged to provide indicative levels for Freddie 2010-K10 ($1.2 billion). That feedback is due early next week. Preliminary levels will be scheduled for January, close in February. Also on the horizon, we will see JPM 2011-C3 next week. We also expect to see the following deals between now & Thanksgiving: Morgan Stanley conduit deal ($1 billion +/-) and JPMorgan 2010 - Golden State portfolio ($1.3 billion +/-). Also, we're hearing about other deals we will likely see by year end: GGP ($3billion), CVS ($500 million -$1billion) CTL deal and up to two nursing home transactions.
5. Working with other groups on initiatives that cross SF: helping C&G with rating of 4 WTC, helping Structured Products with assessing collateral for deal secured by car dealerships, assisting Criteria group in various global or cross-sector initiatives (RFC for CDO criteria, Counterparty Criteria, SPE Criteria for CMBS transactions, Large Loan Criteria, etc.)

Key Challenges:

1. Regulatory Initiatives and Internal Response to Regulatory Initiatives. Internally, we commit the business to a significant amount of work (often with insufficient notice) to digest the changes. Also, creates complications with normal business activities (i.e. site visits, management meetings, deal specific commentaries, etc.). Also, inability to use OM's or other offering documents on 144A deals to publish commentaries puts us at a significant disadvantage, particularly for deal specific commentaries when we consider what we are trying to accomplish (i.e. distinguishing ourselves from the other rating agencies and providing a somewhat consistent product).
2. Instability in the property markets. Hotel & multi may be at bottom (assuming no double-dip), but other property sectors have not yet hit bottom.
3. Lack of criteria officer and CBM to support the business. Also, criteria, while better than in the past, still fails to consider the business (i.e. give sufficient notice or consider the infrastructure needed to implement changes) to potentially digest huge changes that could impact resources. Also, our position on T&C's has been a disadvantage.
4. More conservative criteria, particularly on conduit / fusion transactions and probably counterparty criteria (depending on where bank ratings migrate to). Could impact the business. May depend on investors and volume (i.e. the more volume, the more of an investor base that will be needed to buy....giving potentially more balance of power to investors than what exists today).
5. Balancing competing initiatives.....potential growth expected in market which has been estimated between $20 – 40 billion. This will make balancing resources through the competing initiatives and this growth spurt very challenging.

Barbara Duka
Managing Director
Structured Finance
Standard & Poor's

55 Water Street, 40th Floor
New York, New York, 10041-0003
[redacted]

From: Osborne, Grace
Sent: Thursday, November 11, 2010 11:12 AM
To: Duka, Barbara; Thompson, Eric; Cao, Becky; Gutierrez, Michael
Subject: Key October accomplishments
Importance: High

Everyone,
I need to update the BU October slide deck SOON.
Could each of you give me 5 key accomplishments/challenges for each of your teams by this afternoon?

Grace M. Osborne, CPA
Standard & Poor's
Managing Director and Business Leader
of Structured Finance U.S. Mortgages

[redacted]

EXHIBIT P

GOVERNMENT EXHIBIT
57
D-03302

From: Duka, Barbara
Sent: Monday, October 11, 2010 09:14:29 AM
To: Osborne, Grace; Mason, Scott
Subject: RE: Cmbs

Grace

....Sure

I just caught up with Scott on a few things and we went through these deals. The answer is as follows:

1. The Deutsche deal we looked at and lost because our feedback was much more conservative than the other rating agencies. That is the deal which had a lot of storied assets in the Top 10: including a ground lease on a retail center under construction, a Secaucus office building with tenant concentration that was very vacant, etc.
2. Wells / Wachovia would not sign our engagement letter because of T&C's. They really wanted to work with us but could not get the ok from their counsel. We did not see that deal.
3. There was another Freddie deal that recently came out, as well. They would not sign our engagement letter because of T&C's.
4. The Credit Suisse deal, I was not even shown. I believe it is a reremic. I have not gotten calls from CS on any of their reremics. It may be related to either our criteria or T&C's or the fact that this deal may be related to other issues which we have not rated or some combination of factors.
5. The Citi / Goldman deal – I have not heard anything about it yet, but they wouldn't contact me on a 17G deal – they would contact Scott first. Everyone is super sensitive about 17G and will literally refrain from any / all conversations with the rating agencies until they go through the 17G process....sometimes it is hard to get even minimum levels of information. Scott is going to reach out to both Goldman & Citi and see what he can find out. I gave him a bunch of new contacts at Goldman, as we have both been trying to reach Leah (just as a coincidence since she reached out to followup on the progress of the engagement letter) and have been largely unsuccessful.

Hope that helps

Barbara Duka
Managing Director
Structured Finance
Standard & Poor's
~~55 Water Street, 40th Floor~~
[redacted]

-----Original Message-----
From: Osborne, Grace
Sent: Monday, October 11, 2010 7:18 AM
To: Mason, Scott; Duka, Barbara
Subject: FW: Cmbs

Can you help me respond?
Gtace

Sent by GoodLink (www.good.com)

-----Original Message-----
From: Jacob, David
Sent: Sunday, October 10, 2010 07:04 PM Eastern Standard Time
To: Osborne, Grace
Subject: Re: Cmbs

Also, are we being asked to look at the Goldman/citi transaction, or is too early. How about BofA/ Wells Fargo

----- Original Message -----
From: Jacob, David

To: Osborne, Grace
Sent: Sun Oct 10 19:03:28 2010
Subject: Cmbs

Grace,
Could u let me know if we looked at either the Deutsch Bank transaction or the Credit Suisse transaction.

GOVERNMENT EXHIBIT 61 D-03302

EXHIBIT Q

From: Duka, Barbara
Sent: Monday, December 13, 2010 9:12 AM
To: Osborne, Grace
Cc: Thompson, Eric
Attachments: December2010Activityfinal.doc

Grace
Here is our piece. It's longer than we hoped it would be. Perhaps we could briefly talk about what gets cut out, so we're not doing unnecessary work?

Barbara Duka
Managing Director
Structured Finance
Standard & Poor's
55 Water Street, 40th Floor
New York, New York 10041-0003
[redacted]

eventually fill it, and be able to remove some data oriented responsibilities from our analysts.

- Issuance volume in CMBS will increase exponentially in the 1st quarter. It is likely that total issuance in the 1st quarter alone, will exceed total 2010 issuance by 30% or more. Most of this growth will be in conduit / pooled transactions, where our criteria has historically been somewhat more conservative than the other agencies. It is likely we will require more resources in the upcoming year to keep up with the rating activities and those activities needed to support the rating process (criteria development, commentaries, outreach, policies and procedures). Other rating agencies and issuers have been increasing their New Issuance staffs significantly this past year to prepare for the increased volume.
- The CMBS criteria officer spot has been filled. The candidate is expected to start 12/13. There has been a promising candidate identified to fill the MBS CBM spot and we expect an offer to be made shortly.
- We completed the CMBS standard setting for the Level II Exam.

Project Management

- We have staff engaged on numerous departmental projects, including SAS. Other projects include efforts to transition RDR to RatingsGateway (which isn't feasible until adjustments are made to allow us to view and retrieve our documents); an FDR project that is similar to the Analytical Service Unit concept; and a project that Peter Kambeseles is championing to expand the breadth of our offerings of data and analytics.
- In regard to SAS, a global team has been setup to capture CMBS global requirements, which meets on a weekly basis to discuss the US and EMEA business and technical needs. The efforts of the group will result in a master mapping document for all Global CMBS data which will be leveraged in future state CMBS systems. We also successfully launched the coded version of the deterministic model on the Grid environment, and have designed new deal and cusip level exception reports to leverage the model in the future. Finally, by year end the DSO should have all the OSAR raw data files (provided by Zenta) loaded into a Samba directory, and individual financial statement data loaded into a database staging area - where it can be better leveraged for analytical and research needs.
- In anticipation of being able to implement several initiatives, we have begun to design some New Issuance templates that can later be used to develop some of the platforms we have requested. These include: a property sheet to track comparable property data and a conduit / fusion model which produces statistics critical for publishing. We are also developing property evaluation templates, a deal tracking sheet which will be tied to an analyst rotation tracking sheet . Also, we have met with SAS to review in more detail the analytic process in an effort to pursue the development of an automated presale template and / or RAMP. We are currently utilizing our CRISIL resource to upload documents into RPM and Ratings Gateway, until this process can be automated or moved to a centralized unit.

Compliance

- CMBS New Issuance received the appropriate exceptions to the Management Meeting Policy to attend the Management Meeting and subsequent site visits related to the rating of the Americold transaction.
- CMBS recently met with Compliance to discuss 17G and any deals that have not yet been rated but are not required to comply with 17G5 (because they met the conditions before 17G-5 went into effect).

EXHIBIT R

STANDARD
&POOR'S

MODEL QUALITY REVIEW GROUP

For Internal Use Only - Not For External Distribution

MODEL QUALITY REVIEW REPORT

CMBS FRAMEWORK MODEL

MQR Inventory # 253

Haixin Hu, New York (1) 212-438-6843

Martin Goldberg, New York (1) 212-438-0222

June 16, 2011

GOVERNMENT
EXHIBIT
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Brief summary of model review results

Subject to the qualifications and limitations in this report the model is an appropriate computer implementation of the S&P Criteria [1], and is suitable for its intended analytical use. However, some of the implementations within model may need to be revisited. Specially, the application of the defeased loan adjustment in 'AAA'-stressed credit enhancement calculation may lead to a lower credit enhancement benchmark than an alternative approach. In addition, the defeased loan adjustment does not appear to be applied consistently across all rating levels. The model does not have the explicit built-in capacity to stress the 'B' CE for 'negative' forecast in addition to those implied by the inputs such as estimated losses for specially serviced and credit-impaired loans, and loan-level property valuation.

Brief summary of recommendations

Based on the documentation reviewed and tests performed, MQR recommends that the model owner:

1. **[Low]** revisit the defeased loan adjustment in 'AAA'-stressed credit enhancement calculation, and evaluate the impact on the final 'AAA' credit enhancement benchmark of the different approaches of applying the adjustment;
2. **[Low]** incorporate the defeased loan adjustment to other rating levels in addition to 'AAA' scenario;
3. **[Low]** revisit the derivation of 'BBB' credit enhancement benchmark, and consider using the final 'AAA'-stressed credit enhancement benchmark as the starting point;
4. **[Low]** revisit the derivation of 'B' credit enhancement benchmark, and consider the possibility to incorporate forecasts of declining rents in 'negative' markets;

From: Duka, Barbara
Sent: Sunday, December 12, 2010 6:54 PM
To: Henschke, David; Digney, James; Pollem, Kurt; Ramkhelawan, Gregory; Thompson, Eric
Subject: RE: Comments on Draft MQR Report - CMBS Framework Model.doc
Attachments: Comments on Draft MQR Report - CMBS Framework Model v3.doc

EXHIBIT S

GOVERNMENT EXHIBIT 69 D-03302

Here are my comments. I black-lined to Henschke's.

From: Henschke, David
Sent: Thursday, December 09, 2010 11:59 AM
To: Digney, James; Duka, Barbara; Pollem, Kurt; Ramkhelawan, Gregory; Thompson, Eric
Subject: Comments on Draft MQR Report - CMBS Framework Model.doc

My comments on JD's document.

CMBS Framework Model – Comments on Draft Model Quality Review Report

The CMBS Surveillance Group has reviewed the Model Quality Review Report on the CMBS Framework Model, dated November 8, 2010. We have the following comments on the report:

- On page 1 and 2 and throughout document, there is a reference to rent declines being applied at the NCF level. That is not accurate????
- (p.3, "Brief summary of model review results") In the last sentence, we would like to point out that the 'B' credit enhancement does incorporate declining rents in negative market conditions. For instance, we estimate losses for specially serviced and credit-impaired loans, which may be the driver of the 'B' credit enhancement. When doing so, we incorporate current and projected performance for select loans in our loss estimates. Further, the 'B' floor is based on the 'BBB' credit enhancement, which may be derived from the AAA, which includes pretty severe rental forecasts. Also, it should be noted that implicit market condition forecasts are incorporated at the loan level through the use of our property evaluation criteria. Additionally, the criteria notes that a stochastic model may be used to establish a BBB and B credit enhancement levels, if it produces a more conservative result. The stochastic model is intended to further incorporate forward looking forecasts and supplement the deterministic model.
- (p.4, "Brief summary of recommendations") Some of the above comments are also applicable here. Also, on point #2, we only make the defeasance adjustments to the 'AAA' credit enhancement levels as we incorporate other factors into our analysis (such as actual performance), which would otherwise make us uncomfortable with applying the credit for the 'BBB' and 'B' credit enhancement levels, where we believe the benefit of the defeased loans would be offset by the poor performance of the underlying loans which would be borne by those more subordinate certificateholders. On point #3, we are using the final 'AAA' credit enhancement when calculating the 'BBB' floor, as opposed to the raw 'AAA' credit enhancement.
- **(p.5, "Introduction") The model only derives the 'AAA' stressed NCF for loans that S&P does not analyze. For those loans, S&P derives the 'AAA' stressed NCF by using the revenue declines on the actual property revenues and expenses. We do not derive rent stresses to the NCF. We derive to revenue and it filters down. Comments here are same as below, otherwise. So, I will put below.**
- (p.5, "Model Inputs") Bullet #3 should note that we evaluate an appropriate sample set of properties, which generally includes the top 10 assets in each pool (at a minimum). It is our procedure, at issuance, to include a larger sample set given the lack of performance data. In any case, such evaluation is in accordance with our property evaluation criteria (which addresses the NI methodology). The Surviellience methodology is explicitely included in the Conduit / Fusion criteria piece. Bullet #4 should note that the S&P cap rates used are in accordance with our property evaluation criteria. Bullet #5 should also list the actual debt constant.
- (p.6, "Assumption 1") This section should note that for the assets which we evaluate, we also manually calculate the 'AAA' NCF and the Alternate 'AAA' NCF. We may also extrapolate the results for the properties we evaluated to the properties we did not evaluate (by property type) in accordance with the property evaluation criteria. See bullet point below where we may extrapolate actual results to override broad assumptions.

- (p. 8, "Table 3") This NCF decline is the starting point, but when we analyze loans in the transaction we may use the actual declines and may extrapolate to those loans of the same property type that we did not analyze. If these results differ from Table 3 or 4 or 5 or 8, which are broad assumptions, we will use the actual results. This is generally the procedure where we evaluate a sample set which is greater than 60-65% of the pool and also include a representative sample of all property types and issuers. **We also need to address the rental index here. I need to think about that.**
- (p.8, "Assumption 2") In the second sentence, the loan constants were not derived based on the archetypical pool, they were vetted in a criteria committee. Further, we use the higher of the actual debt constant or the S&P debt constant. Henschke's starting to convince me that we should rethink this, as it doe not have the intended result.
- (P9 Assumptions): should reference property evaluation criteria. The Table 7 are generic cap rates by property type that we apply to loans that have not been evaluated or where we believe we have not evaluated appropriate sample set whereby we could extrapolate the results of our analysis.
- (p9 and 10) NCF is determined as follows: (1) for the sample set evaluated, it is based on S&P's analysis in accordance with the property evaluation criteria; (2) If the sample set represents a majority of the pool (typically, 60-65% minimum) and a representative sampling of each property type and contributor is evaluated, we may use the actual results to extrapolate against the appropriate subset of properties and (3) If the sample set of properties evaluated is less than the above, we make the adjustments described in your explanation which is based on a more generic sampling
- (p.10, "Table 7") This table is inaccurate. The full capitalization rate list is set forth in our property evaluation criteria. In the paragraph below Table 7, it should be noted that we typically evaluate a subset of the loans in the deal. At minimum, this includes the top 10 assets in each pool to derive NOI and NCF. It also includes evaluating defeased loans and nonperforming loans.
- (p.12) In the last sentence of the first paragraph, the cap rate formula is incorrect. In many cases, we use the same cap rate that was used at issuance, but in other cases we choose a new cap rate based on our property evaluation criteria.
- (p.12) In the last paragraph, the explanation of why we do what we do is a little unclear. For debt service, we use a partially declined cash flow as history has shown that typically rents fall cumulatively over a 3 year term. As we have assumed a 5 year term for AAA, assuming even long term tenants renegotiate their leases, rents begin stabilizing after 3 years so properties that survived the worst should be able to survive in a recovery. The value portion assumes a buyer will assume the worst in a bad market and that includes assuming rents continue to fall in a weak market.
- (p. 14) Last paragraph above 3.4.3. What does that mean?
- (p.17, "Concentration Factor") In your discussion of the formulas used to calculate the concentration factor, we want to make sure you're using the "U.S. CMBS 'AAA' Concentration Adjustment For Conduit/Fusion Pools With Fewer Than 100 Loans" published November 30, 2009.
- I think it's ok to take this out, since we don't have specially serviced loans in NI and so we don't look at them.
- (p.23, "'BBB' Credit Enhancement") In the first full paragraph on this page, we would note that the model does not explicitly include aproaches 2 and 4. However, the criteria

EXHIBIT T

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Subject: Updated: Review MQR Report on CMBS Framework Model
Location: 40-1

Start: Thu 12/9/2010 11:00 AM
End: Thu 12/9/2010 12:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Digney, James
Required Attendees: Digney, James; Thompson, Eric; Duka, Barbara; Ramkhelawan, Gregory; Pollem, Kurt; Henschke, David; NY 40/1 Conf Room (SF Seats 10) - For Ratings Only

When: Thursday, December 09, 2010 11:00 AM-12:00 PM (GMT-05:00) Eastern Time (US & Canada).
Where: 40-1

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

Attached are comments on the MQR Report from surveillance. Feel free to add new issuance comments before our meeting tomorrow. We can send the combined comments to the MQR Group in an email after we meet.
Thanks,
Jim

CMBS Framework Model – Comments on Draft Model Quality Review Report

The CMBS Surveillance Group has reviewed the Model Quality Review Report on the CMBS Framework Model, dated November 8, 2010. We have the following comments on the report:

- (p.3, "Brief summary of model review results") In the last sentence, we would like to point out that the 'B' credit enhancement does incorporate declining rents in negative market conditions. When we estimate losses for specially serviced and credit-impaired loans, the driver of the 'B' credit enhancement, we incorporate current and projected market conditions in our loss estimates. Further, the 'B' floor is based on the 'BBB' credit enhancement, which also includes implicit market condition forecasts through the use of our property evaluation criteria.
- (p.4, "Brief summary of recommendations") On point #2, we only make the defeasance adjustments to the 'AAA' credit enhancement levels - we've found that the 'BBB' and 'B' credit enhancement levels are too low if adjusted for defeasance. On point #3, we are using the final 'AAA' credit enhancement when calculating the 'BBB' floor, as opposed to the raw 'AAA' credit enhancement.
- (p.5, "Model Inputs") Bullet #3 should note that we underwrite the top 10 assets in each pool in accordance with our property evaluation criteria. Bullet #4 should note that the S&P cap rates used are in accordance with our property evaluation criteria. Bullet #5 should also list the actual debt constant.
- (p.6, "Assumption 1") This section should note that for the top 10 assets which we underwrite, we also manually calculate the 'AAA' NCF and the Alternate 'AAA' NCF.
- (p.8, "Assumption 2") In the second sentence, the loan constants were not derived based on the archetypical pool, they were vetted in a criteria committee. Further, we use the higher of the actual debt constant or the S&P debt constant.
- (p.10, "Table 7") This table is inaccurate. The full capitalization rate list is set forth in our property evaluation criteria. In the paragraph below Table 7, it should be noted that we underwrite the top 10 assets in each pool to derive NOI and NCF.
- (p.12) In the last sentence of the first paragraph, the cap rate formula is incorrect. In many cases, we use the same cap rate that was used at issuance, but in other cases we choose a new cap rate based on our property evaluation criteria.
- (p.17, "Concentration Factor") In your discussion of the formulas used to calculate the concentration factor, we want to make sure you're using the "U.S. CMBS 'AAA' Concentration Adjustment For Conduit/Fusion Pools With Fewer Than 100 Loans" published November 30, 2009.
- (p.23, "'BBB' Credit Enhancement") In the first full paragraph on this page, we would note that the model does not explicitly include aproaches 2 and 4. However, we would manually adjust the levels should we decide to use either approach.
- (p.23, "'B' Credit Enhacement") We updated our conduit/fusion criteria on November 3, 2010 to slightly adjust the discussion of our use of a "stochastic model."