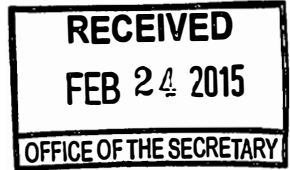


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**UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION**



**ADMINISTRATIVE PROCEEDING
File No. 3-16349**

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In the Matter of :
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BARBARA DUKA :
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Respondent. :
:
----- X

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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