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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.	**DIVISION OF ENFORCEMENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to the January 9, 2017 Post-Hearing Order entered by the Administrative Law Judge in this matter, the Division of Enforcement submits its Proposed Findings of Fact and Conclusions of Law. A Glossary of Terms is also included herein.

Glossary of Terms to Accompany Post-Hearing Brief and Proposed Findings of Fact and Conclusions of Law

2009 Criteria or criteria article	U.S. CMBS Rating Methodology and Assumptions for Conduit/Fusion Pools dated June 26, 2009 (JE 2)
Analytics Policy Board ("APB")	The APB oversees the review of all criteria on an ongoing, at least annual basis. An analytic issue and its related criteria should be escalated to the Chief Credit Officer or the APB in accordance with Section 3.26 of the CPG in certain enumerated instances, including if they "carry meaningful franchise or reputational risk." JE 10 at 7, 13.
CMBS	Commercial Mortgage Backed Securities. CMBS are certificates of beneficial ownership in a trust containing one or more mortgage loans on commercial properties such as retail centers, office buildings, hotels, industrial buildings, warehouses, and multifamily properties. Div. Ex. 335, ¶ 1 n.1 & ¶¶ 22-25.
CMBS Ratings Group	S&P's CMBS analytical ratings function was divided into two groups: (1) a group of analysts who formulated ratings regarding new CMBS issuances ("New Issuance"), and (2) a group of analysts who formulated ratings relating to existing securities ("Surveillance"; together with New Issuance, the "CMBS Group"). JE 85 at 1-2; Div. Ex. 335, ¶ 1 n.1.
Criteria Process Guidelines ("CPG")	S&P's CPG provided guidance for the entire criteria development and review process, including the conceptualization, research, approval, dissemination of criteria, and the on-going reviews of their continued applicability and robustness. When a proposed methodology constituted not an interpretation but a change in criteria, the CPG set forth a five-step process of Initiation, Research, Approval, Dissemination, and Periodic Review to implement a proposed criteria change. JE 85 at 4; JE 10.
Conduit/fusion	A CMBS that is backed by numerous commercial loans that are diverse as to property type, location, and borrower. Div. Ex. 335 at 8. Conduit/fusion CMBS comprise approximately 85% of the CMBS market. *See* JE 1 at 3.
Credit enhancement ("CE"), also called credit support or subordination	A term describing the subordinate bonds that absorb losses before the senior class(es) of bonds. The subordinate bonds are at the bottom of the "loss waterfall," which allocates principal losses in a specific order, from riskiest to least risky (AAA) bonds. The more CE a bond has, the more losses the underlying loans can suffer before that particular bond will suffer losses. *See* Div. Ex. 335 at 15.
Criteria	Analytical procedures or methodologies used for determining Credit Ratings, including all fundamental quantitative and qualitative elements,

	analytic principles, methodologies, and assumptions used to produce Credit Ratings. JE 85 at 2.
Div. Ex.	Exhibit admitted during the hearing by the Division of Enforcement.
DSCR	Debt service coverage ratio – together with LTV, one of the key metrics used in rating CMBS transactions. DSCR is the net cash flow generated by the property securing the loan, divided by the annual debt service paid on the loan, *i.e.*, NCF ÷ debt service. If DSCR is less than 1.0, the loan is more likely to default. Div. Ex. 335 at 25.
Feedback email	An email sent by S&P's CMBS Ratings Group to an issuer with CE levels and other metrics on a CMBS deal. *See, e.g.*, JE 20, 24, 32, 39, 46, 55, 62, 70, 79.
JE	Joint / Stipulated Exhibit admitted at the hearing.
Loan constant	A number which, when multiplied by the original face amount of a loan, produces the periodic fixed (annual) payment required on the loan. The formula for a loan constant, assuming an amortizing loan with equal monthly payments, is: Loan Constant = (annual interest rate / 12) / (1 – (1 + annual interest rate / 12)$^{-n}$), where n is the term of the loan in months. Div. Ex. 335 at 2.
LTV	Loan to value – together with DSCR, one of the key metrics used in rating CMBS. LTV is a ratio comprised of the face amount of the loan divided by the value of the underlying property as adjusted by the analysts. If LTV is greater than 1.0, the loan is more likely to default. Div. Ex. 335 at 25-26.
Model Quality Review Group ("MQR")	A group within S&P that independently assessed and validated the quality of models used in S&P's Ratings Services Analytical processes in order to determine whether a model is suitable for its intended use. MQR was tasked with periodic reviews of models, including CMBS models. JE 85 at 3.
Net Cash Flow or "NCF"	Net cash flow or "NCF" is a conservative measure of income produced by a property securing a commercial loan, which reduces the total income by estimates of future outlays needed for leasing commissions, tenant improvements, major repairs, and capital improvements, all on an annualized basis. *See* Div. Ex. 335, ¶ 52(i).
NRSRO	Nationally Recognized Statistical Ratings Organization, e.g. S&P, Moody's or Fitch. – *See* JE 85 at 1.

Presale report	A presale report is a publicly available document issued by a rating agency during the initial offering process that lists the ratings the rating agency expects to issue on the securities being offered and explains the rationale for the ratings. *See, e.g.*, JE 18, 22, 30, 37, 46, 53, 60, 68, 77.
Quality Group	A group within S&P – distinct from MQR – responsible for ensuring compliance by S&P's analysts with criteria and internal ratings processes. JE 85 at 3.
RAMP	Ratings Analysis and Methodology Profile – The RAMP should outline the key assumptions used in the model and the reasons for their use (e.g., stress test assumptions). *See*, Div. Ex. 319, § 4.19; *see also*, JE 19, 23, 31, 38, 47, 54, 61, 69, 78.
Resp. Ex.	Exhibit admitted at the hearing by Respondent.
RMBS	Residential Mortgage Backed Securities.
S&P	Standard & Poor's Ratings Services.
"Stress" or "Stressed"	Stress is used extensively in the 2009 Criteria as both a noun and a verb. The Criteria do not specifically define stress, but generally, as a noun, the Criteria describe "stress" as the losses suffered, or expected to be suffered, in commercial real estate during an economic downturn, such as the Great Depression. As a verb, "to stress" means to employ hypothetical values to metrics such as LTV and DSCR to evaluate how commercial property loans can be expected to perform during an economic downturn. *See generally* JE 2, *passim*. Ratings agencies commonly apply "stress" in the analysis of CMBS transactions to simulate negative economic conditions, and S&P's decision to use a stressed loan constant lies at the heart of this case. *See* Div. Ex. 335, ¶ 52(i)

Division of Enforcement's Proposed Findings of Fact

1	At all times relevant to this case, Standard & Poor's ("S&P") was a nationally recognized statistical ratings organization ("NRSRO" or "rating agency") that issued credit ratings, which were "forward-looking opinions about the creditworthiness of issuers and obligations."
	From 2009 through 2011 (the "Relevant Period"), Standard & Poor's ("S&P") was a nationally recognized statistical ratings organization ("NRSRO") that issued publicly available credit ratings, which were "forward-looking opinions about the creditworthiness of issuers and obligations."[1] During the Relevant Period, S&P published credit ratings regarding commercial mortgage-backed securities ("CMBS"). Joint Ex. 85 (Stipulation of the Parties) at 1.
2	Like its competitors, S&P published credit ratings for various financial instruments, including commercial mortgage-backed securities ("CMBS").
	Joint Ex. 85 at 1 (see above).
3	Commercial mortgage-backed securities, often simply called CMBS, are certificates of beneficial ownership in a trust containing one or more mortgage loans on commercial properties such as retail centers, office buildings, industrial buildings, warehouses, and multifamily properties. Ratings on newly issued CMBS are referred to as "new issue" or "NI" CMBS ratings, whereas ratings on existing CMBS are referred to as " surveillance" CMBS ratings.
	Div. Ex. 335 (Expert Report of Dr. Peter Rubinstein), ¶1 n.1; *see also* ¶¶22-25.
4	S&P – like all NRSROs – was paid for its ratings by the banks issuing the securities that S&P rated, including CMBS.
	33. The size of each class offered is set by the issuer, but with feedback from the rating agencies who supply the issuer with indicative ratings levels on the transaction well in advance of the issuance date. The indicative ratings indicate the rating agencies' opinions of the class sizes needed in order to obtain bonds with the typical spectrum of ratings found in new issue deals. The indicative ratings are used by issuers to decide which rating agencies to hire.[29]

Div. Ex. 335 at 15.

5 In 2011, S&P earned approximately $7 million for rating six of the eight CMBS transactions at issue, excluding the two deals pulled from the market.

TABLE 4 CE required for AAA

Deal Rated by S&P (Bloomberg Ticker)	Blended Constants	Criteria Constants	Difference (BP)	Percentage increase in CE	Rating Based on Criteria Loan Constants	Ratings Fee [138]
MSC 2011-C1	23.29%	29.11%	582	24.99%	AA-	$1.968.560
FREMF 2011-K701	14.59%	22.09%	750	51.41%	A+	$710.000
JPMCC 2011-C3	16.42%	21.57%	515	31.36%	AA-	$1.450.000
FREMF 2011-K11	12.03%	16.40%	437	36.33%	AA-	$710.000
FREMF 2011-K13	10.00%	15.49%	549	54.90%	A+	$710.000
JPMCC 2011-C4	18.83%	23.77%	494	26.23%	AA-	$1.450.000

Div. Ex. 335 at 50; Div. Ex. 367 at 3.

6 CMBS were rated by a group within S&P led by Respondent Barbara Duka. Duka's CMBS group had two functions: rating newly-issued CMBS and surveillance of existing CMBS to determine whether ratings needed to be changed. At all times relevant to this case, Duka oversaw new issuance ratings; in early 2011, Duka began supervising surveillance.

S&P's CMBS analytical ratings function was divided into two groups: (1) a group of analysts who formulated ratings regarding new CMBS issuances ("New Issuance"), and (2) a group of analysts who formulated ratings relating to existing securities ("Surveillance"; together with New Issuance, the "CMBS Group").

During the Relevant Period, Barbara Duka was a Managing Director and Analytical Manager at S&P, and was primarily responsible for overseeing CMBS New Issuance. The

JE 85, at 1-2.

7 Ratings help CMBS investors to gauge from deal to deal whether the CMBS' potential return is worth the risk, since investors count on the rating agencies to apply their methodology consistently across deals.

A .... There [are] some standards associated with the rating agency rating that allows them to essentially delegate a large degree of the underwriting responsibility that had, up until CMBS, been the burden of the lender but now is centralized by the rating agencies to a larger extent.

	Tr. 681:14-19 (investor-witness Ethan Penner) Q So how does the rating agency's assessment of the CMBS offering impact your investment decision? A … [T]he ratings matter. Obviously it drives price in the market. So we're looking at the rating … that the rating agencies provide relative to our internal view on value. Tr. 883:20-884:1 (investor-witness Douglas Weih). Q Is it important to you as a CMBS investor that the ratings be comparable as between transactions? A Absolutely. We always talk about wanting consistency and transparency from the rating agencies, you know, knowing that they're applying their methodology consistently across all the deals that they rate and that they rate subsequently. And as much transparency as they can give us on how they've come up with those methodologies. Q Meaning, you don't want to just know the rating, you want to know how they got there? A Exactly. Tr. 885:9-21 (investor-witness Douglas Weih).
8	Many investors are only able to invest in CMBS rated by S&P or another particular rating agency under their firm's guidelines, or are limited to investing in only CMBS at or above a certain rating, *e.g.*, "AAA" or "BBB."
	A Different organizations have different investor guidelines. Certain agencies such as S&P and Moody's and Fitch are written into guidelines whereby investment buyers can only purchase securities if they are rated by one of those three agencies. Tr. 72:1-6 (former CMBS surveillance head Eric Thompson) Q Is there any requirement at Aegon that the purchase be rated by particular agencies, or is any rating agency okay? A We follow, I think, internally -- or did at that time -- the Barclays methodology. So we would put an internal rating on everything. And it would be the middle of three ratings or the lower of two ratings. But we would normally want to see one of the big three -- I'll call it, Moody's, Fitch or S&P – at least one of those on a transaction. It's kind of what we would like to see. Q Why is that helpful to you as an investor?

	A It's -- those entities were, you know, probably -- had greater recognition in the marketplace. So when going to sell a bond, other investors would place probably a higher reliance on having at least one of those three rating agencies on the transaction. And mainly because the Barclays methodology did not recognize some of the other rating agencies. So if it was rated by, you know, some of the -- what I'll call smaller rating agencies, it may not be recognized in the Barclays methodology. So some purchasers that needed a – you know, a AAA rating, for example, whatever rating they're looking at, they may not get that if it wasn't rated by -- if it didn't have at least one of the big three on the transaction. Q Meaning, if it's not AAA, from one of the big three, it doesn't count? A Yeah, that's correct. At least that's our perception why more -- investors that we may be looking to sell at some point in time would want to see a rating from one of the bigger three. Tr. 879:3-880:13 (Weih). Q And you would agree with me that there are clients whose mandates may include particular minimum ratings for bonds? A That's correct. Generally speaking, most of the investment guidelines that I adhere to had a minimum rating stipulation, duration stipulation or an average life stipulation. Q So when you're investing CMBS, there are clients for whom if a rating does not rise to the level of AAA, say, that investment is out of reach for you as the portfolio manager? A I can't recall -- I don't think I had any clients that were AAA only. I may have. But generally speaking, the investment guidelines had some rating stipulation, either on an average portfolio basis or on a security-specific basis as well. There were -- guidelines generally had those sorts of stipulations. Tr. 2048:8-25 (Respondent's expert witness John Richard)
9	S&P's profitability slumped after the financial crisis. Former S&P head of structured finance David Jacob testified that when he was hired in 2008, S&P's revenues had dropped from 1 billion in 2007 to about $300 million, resulting in profits plummeting from approximately $700 million to zero.
	Q Were you familiar with the amount of revenue Standard & Poor's structured finance group took in in 2007, the year before you got there? A I became aware of it once I was there. And, yes. Q And what was that?

	A My recollection would be about a billion dollars. Q Okay. And how about the first year you were there in 2008? A To put that in perspective, perhaps for those in the audience, this can be an extraordinarily profitable business with no real capital investment. The only investment is the people. I believe the expense base was about 300 million. So we would be talking about $700 million profitability. Q That's in 2007? A Before I arrived. Q Okay. A So it was a pretty sad state of affairs being handed the business, and then revenue was more like 300 million, pretty close to the expense base, as I started. Q And that was in 2008, 300 million in revenue? A Yeah, it could be. Yeah, it was -- it had to be 2008, yes. Tr. 518:24-520:1 (Jacob).
10	In the wake of the financial crisis in 2008, after rating agencies received public criticism for their perceived lack of integrity in rating mortgage-backed securities, S&P hired new management, and among other things, revamped the methodology (or "criteria") used to rate CMBS.
	Q And if we could go to page 3, please. And in the Introduction, the last line of the first paragraph, do you see where it says "We are publishing this article to help market participants better understand our approach to rating U.S. conduit/fusion CMBS transactions"; do you see that? A Yes. Q And in your view, was it important for market participants to be able to understand S&P's approach to rating these transactions? A Yes, that's actually a very big question, because what it goes to is what we were trying to do strategically, which was restore the firm's credibility and reputation. So what I had discussed with senior management before they hired me, which is I think part of why they hired me, was having a strategy around the ideas of comparability and transparency. Tr. 272:15-272:7 (Adelson).

	Q And what position did you assume at Standard & Poor's? A It was a little fuzzy to start out, because Standard & Poor's was going through some changes and terminating people and went under investigation and so on. But it became clear that it was -- we had a structured finance business. Structured finance business of all securitizations -- remember, at this time, they are reeling in the marketplace and the press, because many -- it became known that many of the residential securities that were rated AAA were failing, failing miserably. And they were under the gun by just about everybody, and their reputation had been really hurt. And I felt, and I believe Mark Adelson felt as well, that part of our reason for being hired there was to help -- help them, maybe with their reputation, but also with the standards that were there in place. In retrospect, I have a different picture now than perhaps when I had accepted the position. Tr. 514:22-515:17 (Jacob).
11	In June 2009, S&P published its newly revised ratings methodology for conduit/fusion CMBS transactions, after receiving numerous responses to a May 2009 "request for comment" from CMBS investors.
	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. JE 2 at 3.
12	Conduit/fusion CMBS, unlike single-borrower CMBS, are backed by numerous commercial loans, and are diverse as to property type, location, and borrower.
	23. This case, and therefore this report, focuses on a specific part of the CMBS market called the conduit market or, sometimes, the conduit/fusion market. About 85% of all CMBS fall into this category.[9] Transactions in the conduit market are generally backed by many loans, secured by many different types of commercial properties, in many different locales, and made to many different borrowers. In other words, each transaction is backed by a well-diversified pool of collateral. While there is no hard definition of exactly how many loans are needed before a CMBS is considered to be a conduit transaction, the rule of thumb listed in Div. Ex. 335 at 8.
13	S&P's Criteria Article explicitly announced that S&P was "publishing th[e] article to help

	market participants better understand our approach to rating U.S. conduit/fusion CMBS transactions."
	Div. Ex. 335 at 8.
14	Conduit/fusion CMBS comprise approximately 85% of the CMBS market.
	This RFC is intended only for transactions that are commonly referred to as "conduit," or "conduit/fusion," which, as of the end of April 2009, accounted for about 85% of the outstanding CMBS market. That is, the scope of the following proposed criteria refers to deals that include a geographically diversified pool of at least 20 loans, which may or may not contain several relatively larger-sized loans. Additionally, we assume that on average, the Joint Ex. 1 at 3 ("Standard & Request for Comment: U.S. Rating Methodology and Assumptions for Conduit/Fusion Pools").
15	As a practical matter, the impact of S&P's June 2009 Criteria was that S&P would rate AAA only those bonds with enough subordinate bonds (*i.e.*, riskier bonds that would suffer losses first, but could generate higher yields) to absorb *all* of the losses if an economic depression occurred, leaving the AAA bonds unharmed.
	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. JE 2 at 4. Q First of all, there is a reference to "credit enhancement." Could you explain what "credit enhancement" means in this context? A In this context, it means in order for that -- in order for a AAA in that archetypical pool to suffer a loss, you have to effectively have 19 percent of the pool balance effectively experience realized losses. Q So is that essentially a cushion that prevents the AAA class from experiencing losses? A Yes. Tr. 59:4-14 (Thompson).
16	The DSCR and the LTV ("loan to value") ratios are important numbers that investors and ratings agencies use to analyze whether a borrower will default on a loan.

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

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.

....

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% ≤ LTV ≤ 100% and DSC ≤ LTV**

JE 2 at 16-17.

Q All right. But you did testify yesterday that loan to value and debt service coverage were important numbers that people would look at, right?

A Some people do look at debt service coverage and LTV ratios, yes.

Tr. 1451:15-16 (Duka).

Q So let me focus you on this. I asked you about this sentence that includes references to numbers for debt service coverage, loan constants and LTV ratio. Are these metrics that are important to you in making a CMBS investment decision?

A Yes, yeah. We will look at the pool, LTV, DSCR, those are metrics that we are looking at when looking at a deal and looking at how the rating agencies -- the numbers that the rating agencies are coming up with, yes.

Tr. 888:21-889:6 (Weih).

JUDGE GRIMES: Mr. Penner, did you testify that there is a correlation – a correlation between loan-to-value ratio and debt service coverage?

THE WITNESS: Yeah.

JUDGE GRIMES: Would you say there is some correlation from loan-to-value ratio and

	credit enhancement, in your mind? THE WITNESS: Yeah, there should be some correlation. JUDGE GRIMES: What is the correlation? THE WITNESS: Well, I think that the lower the loan to value, the lower the credit enhancement, the safer the loan. And so the lower the loan to value … anything that makes a loan safer … JUDGE GRIMES: I just want to make sure I understood what you said. THE WITNESS: Right. So anything that implied the loan was safer should translate into less subordination or less credit risk. Tr. 724:7-25 (Penner).
17	Annual debt service can either be calculated using the actual loan amount and interest rate to determine actual debt service or calculated by multiplying the original face amount of the commercial loan by a "loan constant" to produce an approximated, and often "stressed", annual payment for the borrower.
	[5] A loan constant is a number which, when multiplied by the original face amount of a loan, produces the periodic fixed payment required on the loan. The formula for a loan constant, assuming an amortizing loan with equal monthly payments, is: Loan Constant = (annual interest rate / 12) / (1 – (1 + annual interest rate / 12)$^{-n}$), where n is the term of the loan in months. For interest only loans, the loan constant is the (monthly) interest rate. Div. Ex. 335 at 2, n.5.
18	S&P's conduit/fusion methodology applied stress to the loans underlying CMBS transactions in order to establish CE levels.
	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. JE 2 at 4.
19	Numerous S&P documents available to the public described the Table 1 constants as "stressed," including the eight presales that are the focus of this case and a commentary on a 2010 CMBS transactions.
	See, e.g., Joint Ex. 22 at 23, Table 20 (MSC 2011-C1 Presale stating that DSC was

calculated "based on a Standard & Poor's stressed constant of 8.25%"; the same language, along with similar references to "Standard & Poor's loan constants," appears in multiple places throughout the presale). *See also* Joint Exs. 30, 37, 46, 53, 60, 68, and 77 (presales for seven other 2011 CMBS transactions containing same disclosure); Joint Ex. 18 (JMPCC 2010-C2 presale with same language); Div. Ex. 230 (JPMCC 2010-C1 commentary). The constants were also described as "stressed" in internal documents. *See, e.g.*, Div. Ex. 103 ("she [Duka] wants us to show both the dsc using the stressed constant and the dsc using the actual constant").

20 S&P's 2009 Criteria contained a table of loan constants (the "Table 1" constants)applicable to different property types.

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

JE 2 at 5.

21 From the inception of the 2009 Criteria, the Table 1 constants were used in rating CMBS transactions.

Q What was your understanding of how these loan constants were to be used going forward in analyzing ratings or new issuance and surveillance transactions?

A My understanding was that we would use them to determine debt service where we were applying this criteria.

Tr. at 66:8-14 (Thompson);

Q How do you go about calculating the debt service to arrive at a DSC number?

A Debt service was calculated using the constants that are on the page, which would effectively be applied to the loan balance to determine the debt service by property type.

	Q When you say the loan constants on the page, are you referring to the loan constants on the left-hand side of Table 1? A Yes. Q And could you explain how you derive a debt service amount using a loan constant? A Effectively it's the loan count constant times the balance of the loan. Q And the result of multiplying the loan constant by the balance of the loan gives you a periodic amount that has to be made to service the debt? A It actually would be the annual amount that has to be. Q The annual amount that has to be paid to service the debt? A Yes. Q The loan constants listed here in Table 1, where did those come from? A They came from one of our Criteria Committees. Q And when you say "they came from one of our Criteria Committees," how did the Criteria Committee arrive at the loan constants that are reflected here in Table 1? A There was discussion around which constants would be appropriate to use. At the time we were trying to think about where we were in regard to the interest rate cycle and just what was going on in regard to commercial real estate lending, and effectively we discussed them, put them on a whiteboard, there were some revisions, but ultimately we decided that these were the constants that we would employ. Q What was your understanding of how these loan constants were to be used going forward in analyzing ratings or new issuance and surveillance transactions? A My understanding was that we would use them to determine debt service where we were applying this criteria. Tr. 64:18-66:14 (Thompson); Q I would also like to clarify your testimony about the Table 1 constants. The memory that you have of the committee considering those Table 1 constants, do you recall that the committee considered those constants in connection with the construction of the archetypical pool? A To the best I can recall, it was more than the archetypical pool, it was how they would also be used in terms of the tests

	121:22-122:5 (Thompson); Q Mr. Thompson, thank you for your testimony here. I have a couple of topics I want to cover with you, hopefully briefly. First is with reference to Joint Exhibit No. 2, which is the June 2009 criteria article, we have already looked at this today, but at page 5, do you see Table 1 there, and at the risk of asking you an obvious question, the loan constants depicted in Table 1, those were published as part of the criteria article, correct? A Yes. Q And do you have an understanding of why those loan constants were included in the criteria article? A I believe that they were published so that industry constituents knew what constants were applied in the archetypical pool and arriving at the credit enhancement. 193:9-194:1 (Thompson); Q In arriving at the numbers reflected in Section IV, Rating Implications, did the analysts use the criteria constants that we were looking at in Table 1 in performing their analysis? A Yes, they were coded into the model that was used to arrive at the watch placements. Q I would like to shift gears a little bit right now and talk about how rating agencies get engaged to rate CMBS deals. We have talked a bit about the methodology to derive credit enhancement levels under the 2009 criteria. My question is, how do credit enhancement levels proposed by rating agencies factor into whether the agency gets hired to rate the deal? A Generally speaking, when an agency is approached to rate a transaction, it is to provide preliminary ratings or an indication of where there credit enhancement would be given rating levels, and they will post all the information in a 17D5 site, at which time the analysts that are assigned to the deal will determine what those answers are. There will be a Credit Committee. ... 68:21-69:17 (Thompson); Q Did you have an understanding in 2009 and 2010 of how these constants were to be used in deriving debt service coverage ratios for actual CMBS transaction ratings? A My understanding was that, just as you've described, you would take this percentage, apply it to the loan balance and that would determine the – in this case, the annual -- I'm sorry -- annual debt service. Tr. 1498:16-24 (Parisi).

22	On July 31, 2009, S&P's most senior management reaffirmed that the 2009 Criteria called for the use of the Table 1 loan constants to rate ***all*** CMBS transactions, including new issuance transactions.
	From: Milano, Patrick **Sent:** Thursday, July 30, 2009 6:31 PM **To:** Jacob, David; Adelson, Mark; Gillis, Tom; Thompson, Eric; Manzi, James; Palmisano, James; Sharma, Deven **Cc:** Santiago, Erica; Calvoni, Laura; Schuman, Adam **Subject:** CMBS - IMPORTANT MEETING 9:45 FRIDAY MORNING Everyone, Deven and I would like to meet with you at 9:45 tomorrow morning to discuss: (1) CMBS Criteria Application Questions – specifically debt constants (2) Game plan for moving forward with surveillance of CMBS We just want to make sure we are all on the same page as we move forward. If there is anyone else you feel needs to attend, please invite them. Div. Ex. 45; Q What was the outcome of the meeting on July 31st, 2009? A The outcome of this particular meeting would be that we would go ahead and use the constants in both the term and maturity test. Q And when you say "use the constants in both the term and maturity test," which constants are you referring to? A We were using the ones that were put forth in the methodology. Q And when you say "the methodology," you are referring to the 2009 criteria article? A Yes, the ones we used before. Q The loan constants set forth in Table 1 of that document? A Yes. Q Did that represent any change in how you, your group, had been applying the methodology up until that point? A To my knowledge, no. Tr. 80:25-81:19 (Thompson); Q Was there any decision made in this meeting that changed the way that the Table 1 constants in the June 2009 criteria were being used by the CMBS Group?

	A No, the decision was to continue using them the way we had been when we were determining the CreditWatch placements and resolutions. Tr. 197:3-9 (Thompson)
23	The 2009 CMBS Criteria published by S&P was widely criticized by investors, in part because S&P's conservative approach to ratings meant that many CMBS were immediately downgraded.
	See, e.g., Resp. Ex. 140 (May 29, 2009 Commercial Mortgage Alert front page article headlined "S&P Rating Plan Sparks Industry Firestorm," describing the proposed CMBS methodology as having been met "with near-universal condemnation from bondholders, lenders, and traders alike."); **The initial reaction came fast and furious, with near-universal condemnation from bondholders, lenders and traders alike. Market participants said they were** Resp. Ex. 154 (investor Douglas Weih response asking S&P to "reconsider some of the stress assumptions as they appear severe and inconsistent"); **at sustainable solutions. If you are unable to do this, I at least ask that you reconsider some of the stress assumptions stated above as they appear severe and inconsistent with the environment to which other (non-CMBS) securities are rated.** Div. Ex. 343 (investor Marc Peterson criticizing 2009 CMBS proposed methodology as "arbitrary" and suggesting that if it were applied to CMBS as proposed, "credibility, reasonableness and relevance all come into question [for S&P.]"). **If S&P decides to anchor this methodology to a seemingly arbitrary number without providing the market with data to help support that number then credibility, reasonableness and relevance will all come into question.** Resp. Ex.'s 94 (June 26, 2009 publication by S&P, listing the 1,584 ratings on 209 conduit/fusion transactions put on "watch negative") **The following tables list the issuers, classes, and CUSIPs for the U.S. commercial mortgage-backed securities (CMBS) transactions affected by the June 26, 2009, criteria update. For more information, see "1,584 Ratings On 209 U.S. Conduit And Fusion CMBS Transactions Put On Watch Negative; 1,394 'AAA' Ratings Affirmed," published June 26, 2009.** Resp. Ex. 165 (June 2009 internal e-mail circulating "frequently asked questions" and proposed answers to anticipated hostile reactions).

	From: Thompson, Eric **Sent:** Monday, June 29, 2009 8:15 AM **To:** Brundage, Craig; Carrington, Gary; Catania, Roseann; Cheung, Della; Chu, Carenn; Cicerchia, Louis; Crater, Douglas; Defalco, Adria; Diamond, Kim; Digney, James; Duka, Barbara; Fisher, Lucienne; Henschke, David; Hoeltz, Barbara; Kay, Larry; Levy Avinir, Sue; Manzi, James; Mollin, David; Moy, Christina; Palmisano, James; Pandya, Deegant; Pollem, Kurt; Prabhakar, A.K; Ramkhelawan, Gregory; Roger; Roldan, Ivy; Sim, Dennis; Snow, Brian; Trifon, Harris; Trisarnsri, Donna; Williams, Eric **Subject:** FW: CMBS Criteria - published **Attachments:** CMBS Media FAQs -tg jp.doc; CMBS RFC FAQs - Internal.doc To all, As per Friday's staff, please refer inquiries to Barbara, Jim, and myself over the next few days. The attached is how FAQs are being answered. Please familiarize yourself with them.
24	After June 2009, S&P's CMBS conduit/fusion ratings business remained stagnant, even after the market began to improve. While S&P had 91.3% market share for conduit/fusion CMBS in 2008, its market share plummeted to 20.5% in 2010 and 18.1% in 2011.
	82. CMBS issuance started to revive in 2010 and the S&P CMBS new issue group began applying the new model, based on the 2009 Criteria, to new transactions. The Division alleges that the new Criteria and model produced credit enhancement requirements that were usually not competitive, and that S&P was losing market share as a result.[120] Indeed, up through the end of 2010, S&P rated only one conduit/fusion transaction: JPMCC 2010-C2.[121] Six other conduit/fusion deals were rated by other rating agencies in 2010 leaving S&P with a 3rd place ranking behind both Moody's and Fitch, and only a 20.5% market share by dollar volume.[122] In comparison, S&P had been the top ranked rating agency in the U.S. CMBS market in 2008, 2007, 2006, and 2005 with market shares of 91.3%, 73.3%, 82.8% and 85.9% respectively:[123] Div. Ex. 335 at 45 (summarizing Table 2).
25	CMBS issuers generally prefer lower levels of credit enhancement, because "the more AAA bonds you could produce in a deal, the more profitable the deal … because AAA bonds sell at a lower yield[.]"
	Q How did that work from your perspective? A From my perspective, it was very simple. If you could get a rating agency to agree to a lower amount of credit enhancement, the -- you would rather go there, because your deal was more profitable. To put this the way -- for maybe – for those of you who are not familiar with this to understand, is the more AAA bonds you could produce in a deal, the more profitable the deal. And the reason for that is because AAA bonds sell at a lower

	yield; yields lower, price higher or more proceeds. Tr. at 510:7-19 (Jacob); Q Now, I want to follow up on two comments that you made. Can you explain why lower credit enhancement levels are more economically advantageous? A If you have lower credit enhancement levels, particularly at the higher rating categories, you can effectively issue more debt at lower coupons or spreads than what's being paid by the underlying loans or what rate the underlying loans are on a weighted average basis, and generally that's more cost effective. The excess interest is sold off on an interest-only strip by the banks. Tr. at 71:10-21 (Thompson); Q Now, before we get into phase 2, do you have an understanding of how issuers decide which rating agencies to select based on the preliminary feedback? A Yeah, I think -- yeah, I do. Q What is your understanding? A I mean, I think at the end of the day they are trying to optimize the economics of the deal, so I think the main factor for them is going with the lowest credit enhancement levels. Tr. 425:5-14 (Digney).
26	Because issuers typically hire the agency with the lowest credit enhancement levels, and S&P's 2009 Criteria drove CE levels substantially higher, S&P struggled to compete for business.
	Div. Ex. 61 (December 2010 activity report noting that S&P's enhancement levels were too high); Q If you look at No. 1 there, it says, "I expect issuance next year to increase and the number of deals we rate to increase. This year I expect maybe 10 to 15 deals to get done, and I expect to rate half of them." "This year" is 2010, correct? A Yes. Q And how many deals did you actually rate in 2010? A I think one. MR. MCKENNA: Can we pull up Respondent's 210, please. THE WITNESS: One conduit/fusion deal, just to –

	BY MR. MCKENNA: Q Right. So this is an email that you sent on August 17, 2010. Let me see what I'm looking for. Yes. Mr. Pollem's email in the middle there where it says, "Now that we're so busy." Do you see that? A I do. Q And you weren't actually busy rating deals at this time, were you? A We were. They just weren't conduit/fusion deals. Q Okay. But not conduit. But as far as conduit/fusion deals, they were coming back online, but at this point nobody had retained you to rate a conduit/fusion deal, correct? A My recollection is there were seven conduit/fusion deals done in -- there weren't a lot of deals done. There were between six and seven done between the middle and the end of 2010. So nobody was rating conduit/fusion deals --or a lot of them. Q Okay. Including your group? A Including my group. Tr. 1455:24-1457:12 (Duka); *see also* Resp. Ex. 272 (11/12/10 e-mail from Duka to David Jacob complaining that Moody's had 42 CMBS analysts, while S&P had 12).
27	Both Duka and David Jacob testified that the dearth of newly issued CMBS deals resulted in layoffs and other disruptions within the CMBS group.
	Q All right. Let's back up a little bit and just talk about the CMBS new issuance group or the group, in general, at Standard & Poor's. Do you recall the size of the CMBS group in 2007? A You're just talking about new issuance? You're talking about surveillance as well? Q I think we're talking about both. A I don't exactly recall the size, but I think it was probably somewhere between 40 and 50 people. Q And 2007, that was the peak of the commercial mortgage-backed securities market as far as new issuance, would you agree? A 2006 and 2007, yes.

	Q Okay. Thank you. And do you recall what S&P's market share was with respect to new issuance in 2006-2007? A I don't. Q Did the size of the CMBS group at Standard & Poor's change in 2008-2009? A My recollection is it changed a little bit, but it largely shifted resources from new issuance to surveillance. Q Okay. And as far as people reporting to you, did it go down to five or six people? A It did by 2009. Tr. 1162:14-1163-14 (Duka); Q And you mentioned that you considered letting people go. Did you actually let people go after you took over structured finance? A Some people were let go. Some people were given -- I guess they were given packages to go. Tr. at 520:2-6 (Jacob).
28	The first CMBS deal issued after S&P published its 2009 Criteria was JPMCC 2010-C1, a transaction S&P was not hired to rate but nonetheless published commentary on "[a]s part of its continuing efforts to provide insight to investors on structured finance transactions."
	As part of its continuing efforts to provide insight to investors on structured finance transactions, Standard & Poor's Ratings Services has chosen to comment on J.P. Morgan Chase Commercial Mortgage Securities Trust Series 2010-C1 (JPMCC 2010-C1), a $716.3 million U.S. commercial mortgage-backed securities (CMBS) transaction slated to close on June 24, 2010. We chose to comment on this transaction—which appears to be the first conduit/fusion U.S. CMBS transaction since the publication of our new criteria discussed in "U.S. CMBS Rating Methodology And Assumptions For Conduit/Fusion Pools" on June 26, 2009—because we believe the transaction is important to the marketplace and that our views can add value for investors. Standard & Poor's may, from time to time, choose to provide its views on structured finance transactions across various asset types and geographies, even if it did not rate the transaction, if it considers the transaction to be important to the marketplace and believes that its opinions would provide value to investors. Div. Ex. 230, at 1.
29	In its commentary on JPMCC 2010-C1, S&P publicly stated: Standard & Poor's 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-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%. The stressed DSCs based on the issuer's NCFs and our stressed constants, ranged from 1,20x-2.73x, with a weighted average DSC of 1.50x. The DSCs shown in table 5 are based on the issuer's NCF at issuance and Standard & Poor's stressed constants.
	Div. Ex. 230, p. 5 (emphasis added).
30	For the single newly-issued CMBS that S&P was hired to rate in 2010 (JPMC 2010-C2), it used Table 1 constants to calculate credit enhancement levels and disclosed those constants and the resulting DSCRs throughout the presale.
	geographic and property type diversity. In our analysis, we determined that, on a weighted average basis, the pool has a debt service coverage (DSC) of 1.34x, based on a weighted average Standard & Poor's loan constant of 8.28%, a beginning loan-to-value (LTV) ratio of 82.4%, and an ending LTV ratio of 70.4%. *See, e.g.,* JE 18 at 6; Q So for this deal, for the 2010-C2 deal, the indicative feedback, the pre-sale and the RAMP all listed criteria loan constants and debt service coverage ratios based on those criteria loan constants, correct? A Is your question that all of the three documents have the same debt constant and debt service coverage number related to it, and those are related to the Table 1 constant? Is that your question? Q Yes. A Yes. Tr. at 1211:11-21 (Duka).
31	"At S&P, CMBS were rated by two groups: (1) analysts who formulated ratings for newly issued CMBS (New Issuance), and (2) analysts who monitored the ratings of outstanding securities … in the ongoing course of [S&P's] business. (Surveillance; together with New Issuance, the "CMBS Group")."
	JE 85 at 1-2; A The Surveillance Group would monitor the ratings of outstanding securities that Standard & Poor's assigned in the ongoing course of its business. Tr. at 37:23-38:1 (Thompson).
32	"At all times relevant to this case, the Respondent, Barbara Duka, was primarily responsible for overseeing New Issuance, and in early 2011, began supervising the Surveillance group."

	JE 85 at 2
33	While New Issuance had many responsibilities, drafting and publishing presale reports for newly issued CMBS, generated through the collective efforts of the entire group, led by Duka, was among the most important.
	It's technically not my pre-sales; it's ours. It's Standard & Poor's pre-sale. It's approved by all of the committee members and other participants... Tr. at 1786:18-21 (Snow). Q Can you explain the process of drafting a pre-sale report? A Sure. I guess in the context of a conduit transaction. Q That's correct. In 2011. A The primary analyst is more or less doing the organization of the document and a lot of the, I guess, heavy lifting and writing. They do farm out some of the individual loan write-ups to various analysts within the group that had done the -- the underwriting and analysis of those loans. So it's, you know, a lot of people involved at the end of the day, though, it's the primary analyst's responsibility to pull it together into a cohesive draft. And then it gets reviewed, you know, by a number of -- number of folks; the analytical manager, editorial, in some cases legal, if, you know, there's some risk or something that needs to be looked at. And then it's ultimately, you know, published in conjunction with a press release when the prelim ratings are issued. Q And does the primary analyst use the prior pre-sale as a template? A Generally, yes. Tr. at 764:12-765:12 (Digney)
34	By reviewing presales in tandem with S&P's published methodology – here, the 2009 Criteria – investors can gain an understanding of S&P's analysis of a CMBS transaction.
	Inherent in the pre-sale is that it follows criteria. So you don't necessarily have to disclose the 65 pages of criteria with every pre-sale and whatever other criteria is used to look at the loan. So inherent in an outside party reading the document, they must understand criteria. So – and it's criteria that helps them understand the different pieces of the pre-sale as well. Tr. 1213:1-8 (Duka).
35	Many S&P employees who rated CMBS were not enthusiastic proponents of the new methodology, including Duka.

	Q Did Ms. Duka ever express to you her belief that the 2009 criteria were generating credit enhancement levels that were too high to get the ratings engagements? A Yes. Q When did she express that to you? A As co-heads of the group, we had to meet with our supervisors. We also had to prepare activity reports. Particularly in 2009/2010, as the market started to gain traction, there were several engagements we did not win or get assigned, and the belief it was attributable to the enhancement levels. Tr. 72:7-18 (Thompson); Did Ms. Duka indicate to you her belief that you lost, you, meaning S&P, lost ratings engagements because the criteria were too conservative? A Yes. Q And is that the basis for your testimony a moment ago? A Yes. 73:9-16 (Thompson); Q Did Ms. Duka ever express an opinion to you about S&P's rating criteria that came out in June of 2009? A Yes. As many other people of the firm did. Q What – A Many people outside the firm did. Q Okay. Specifically as to Ms. Duka, what opinion did she express to you? A I don't -- I thought -- I don't remember the exact words, but that they were conservative and not going to be so accepted by the marketplace. Tr. 525 15-25(Jacob); Q Do you have any examples of that you can share [re: attempts to end run the criteria development process]? A Sure. One was on the CMBS criteria where Kim Diamond went upstairs to try and say

	they didn't want to have higher credit enhancement levels, which were part of the criteria article that we were working on around mid 2009. I should say that when we were doing that article, the idea was to restore the credit enhancement levels to where they ought to have been, but not to basically overhaul the methodology itself. It was, rather, to just describe it, codify it, if you will. Tr. 262:21-263:8 (Adelson).
36	Duka provided feedback on numerous occasions to her supervisors that S&P was losing deals because of the more-conservative criteria.
	US CMBS: **Issuance activity is largely centered on meeting with issuers and originators interested in starting up their CMBS or CRE programs. This month we met with the securitization teams at GE, Sandler O'Neil and CSFB. Significant inquiries continue to center on single-borrower, conduit / fusion, small balance and re-remic transactions. We were not mandated on 2 conduit transactions that came to market in June: the Freddie Mac 2010-K7 transaction and the JP Morgan 2010-1 transaction. 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. We are in the process of publishing a commentary on the JP Morgan transaction – the first conduit transaction issued in more than 2 years. In addition, we are exploring the merits of publishing a commentary on the Freddie Mac transaction, which is not** Div. Ex. 51 Q Let's look at Division's Exhibit 51, please. Is this an activity report that you and Mr. Thompson sent to Ms. Diamond in June of 2010? ... Q And under U.S. CMBS, about halfway down, it says, "We were not mandated." MR. MCKENNA: Can you highlight that, Mr. King? Or blow it up. Third line. And a little more, down to the end of the two years. BY MR. MCKENNA: Q Do you see it says there, Ms. Duka, "We were not mandated on two conduit transactions that came to market in June; the Freddie Mac 2010-K7 transaction and the JPMorgan 2010-1 transaction"? A I do. Q Okay. Then it goes on: "Freddie would not sign the revised engagement letter. And JPMorgan deemed the combination of our model output/criteria application and business terms to be the least competitive. "We are in the process of publishing a commentary on the JPMorgan transaction, the first conduit transaction issued in more than two years." Do you see that? A I do. Q And the phrase "model output criteria application," that means S&P's credit

enhancement levels, right?

A Correct.

Tr. 1166:16-1168:4 (Duka).

> **Morgan transactions). The conduit transaction is notable as we were not asked to rate their first transaction, partly for criteria reasons. We published a commentary on that transaction in June. We were recently engaged to rate a reremic transaction for**

Div. Ex. 54

Q Okay. Let's go to Division Exhibit 54, please. Ms. Duka, is this an activity report that you and Mr. Thompson sent to Mr. Jacob and Ms. Osborne in August of 2010?

A That's what it looks like, yes.

MR. MCKENNA: Move to admit?

JUDGE GRIMES: Is this 54?

MR. PETRILLO: I think it's in already.

JUDGE GRIMES: It is.

MR. MCKENNA: Oh, it is. My apologies.
Blow up the whole paragraph.

BY MR. MCKENNA:

Q In the middle there, it says, after the parenthetical, "The conduit transaction is notable as we were not asked to rate their first transaction, partly for criteria reasons." If you look ahead there, they're talking about the JPMorgan transaction. Do you see that?

A Yes.

Q And is it right that S&P was not asked to rate the first JPMorgan conduit/fusion new issuance transaction partly for criteria reasons?

A That's how I would read this, yes.

Tr. 1168:15-1169:15 (Duka).

> - **–Feedback was provided on a Deutsche Bank (DB) conduit/transaction with a balance of approximately $1.1B. DB did not retain us to rate the transaction and indicated that we were more conservative than other agencies – Moody's / Fitch will likely be retained to rate the deal.**

Div. Ex. 56

MR. MCKENNA: And if we could pull up Exhibit 56, please.

BY MR. MCKENNA:

Q Is this another activity report -- or excuse me. No. No, it is an email. Is this an email that looks like you sent to Mr. Thompson, and below that an email from Mr. Thompson to you, copying Ms. Osborne?

A You're going to have to blow it up a little bit.

MR. MCKENNA: Can you blow it up, Mr. King?

THE WITNESS: I'm sorry. Can you ask me that question again?

BY MR. MCKENNA:

Q Is this an email that you believe you wrote?

A It looks that way, yes.

MR. MCKENNA: Move to admit.

JUDGE GRIMES: Any objection?

MR. PETRILLO: No.

JUDGE GRIMES: Division Exhibit 56 is admitted.

(Division Exhibit No. 56 was received in evidence.)

BY MR. MCKENNA:

Q This is dated September 13 of 2010.

MR. MCKENNA: Mr. King, if we can go down to the bullet that says "Feedback was provided." Right there. Yeah. Blow it up. There you go.

BY MR. MCKENNA:

Q It says, "Feedback was provided on a Deutsche Bank conduit transaction with a balance of approximately 1.1 billion. DB did not retain us to rate the transaction, and indicated that we were more conservative than other agencies. "Moody's/Fitch will likely be retained to rate the deal." Do you see that?

A I do see that.

	Q Now, do you believe that you wrote that language? A I do. Q And is this saying that S&P's credit enhancements were too high to get the Deutsche Bank business? A That's how I would interpret it. I'm sorry, can you repeat that question? I want to make sure I understood it right. Q Sure. And is this saying that S&P's credit enhancement levels were too high to get the engagement, the Deutsche Bank engagement? A Yes. If you're limiting it to this deal, yes. Tr. 1169:16-1171:18 (Duka). **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.** Div. Ex. 57 Q Now, Ms. Duka, you understood that in Deutsche Bank's view, feedback could be deemed much more conservative even if it was a relatively small change in credit enhancement of, say, 25 to 50 basis points; is that right? A I don't think I had an understanding of what the magnitude of a difference mattered to the issuer. I understood the issuer considered credit enhancement levels as part of their decision. I understood I lost deals because my credit enhancement level was higher. How high? I don't know. I don't know if it differs. I don't know how it differs. I don't know when it differs. Q Okay. MR. MCKENNA: Can we play Ms. Duka's investigative testimony, page 292, lines 14 to 24. (Portion of Ms. Duka's testimony played.) BY MR. MCKENNA: Q So by way of example, a 50 basis point change to a 20 percent credit enhancement would change it to either 19.5, if it went down, or 20.5, if it went up, correct? A Correct.

Q And the change from a 20 percent credit enhancement level to a 15 percent credit enhancement level would be a 500 basis point change, wouldn't it?

A Yes.

Tr. 1172:20-1173:21 (Duka).

Key Challenges:

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).**

Div. Ex. 58

JUDGE GRIMES: Division 58 is admitted.

(Division Exhibit No. 58 was received in evidence.)

MR. MCKENNA: Mr. King, if you could blow up under "Key challenges." Just blow up 1 through 4 under the heading "Key challenges."

BY MR. MCKENNA:

Q Ms. Duka, in November of 2010, did you write to Ms. Osborne and others that one of the key challenges that your group was facing was, under No. 4, More conservative criteria particularly on conduit/fusion transactions and probably counterparty criteria depending on whether the banks' ratings mitigate to -- and that it could impact the business?

A That seems to be what I'm saying. But I'm also saying that it ultimately depends on investors. Investors can choose if they want more conservative ratings. And as the market grows and the investor base grows, it's really up to them.

Q Sure. That's really an important point, right? The investors on the one hand, they're looking for conservative ratings, aren't they?

A I think they're looking for appropriate ratings is what they're looking for.

Tr. 1174:6-1175:6 (Duka).

- **We provided feedback on the Freddie 2011-K10 transaction in November. JP Morgan is the lead on the current transaction. We lost the $1.2 billion deal because of criteria. This deal will likely be issued in February.**

	Div. Ex. 61 at 3, first bullet. Q Did Ms. Duka ever express to you her belief that the 2009 criteria were generating credit enhancement levels that were too high to get the ratings engagements? A Yes. Q When did she express that to you? A As co-heads of the group, we had to meet with our supervisors. We also had to prepare activity reports. Particularly in 2009/2010, as the market started to gain traction, there were several engagements we did not win or get assigned, and the belief it was attributable to the enhancement levels. Q I want to pull up Division Exhibit No. 61. MR. PETRILLO: I didn't hear the last part of what the witness said, "the belief"? JUDGE GRIMES: Could you repeat what you said? THE WITNESS: It was attributable to the enhancement levels. MR. PETRILLO: Objection, move to strike. JUDGE GRIMES: What's the basis? MR. PETRILLO: The passive voice. It provides no evidentiary value to the last comment. JUDGE GRIMES: Do you know who said that? THE WITNESS: I'm not clear. BY MR. DAY: Q Let me ask the question a different way. Did Ms. Duka indicate to you her belief that you lost, you, meaning S&P, lost ratings engagements because the criteria were too conservative? A Yes. Q And is that the basis for your testimony a moment ago? A Yes. Q Division Exhibit 61, could you take a moment to review this document. Do you recognize this document? A It looks like an e-mail cover page for one of our activity reports.

Q What was an activity report in the 2010, December 2010 time frame?

A It would essentially summarize all the group's activities. And when you say "the group," you are referring to the CMBS Ratings Group?

A Yes.

Q And this is an e-mail from Barbara Duka to Grace Osborne. We touched on this earlier, but could you just reiterate, who was Grace Osborne at this time?

A Barbara and I reported to Grace, she was our supervisor.

Q You are copied on this e-mail; do you see that?

A Yes.

Q Do you have any reason to believe you didn't receive this e-mail?

A I have to assume I received it.

Q Was it an ordinary activity or part of your responsibilities to provide activity reports to Ms. Osborne?

A Yes.

Q Now, if we take a look at page 2, which is the first page of the attachment, you see this is a memorandum from Barbara Duka and Eric Thompson to David Jacob and Grace Osborne; do you see that?

A Yes.

Q Who is David Jacob?

A David was Grace's supervisor. He headed up Structured Finance, a business role.

Q And is this typical of an activity report that you would have created to keep Ms. Osborne and Mr. Jacob informed of activity within the CMBS Group?

A Yes.

Q I want to draw your attention to the first bullet point on the next page of this document. You see where it says "We provided feedback on the Freddie 2011-K10 transaction in November. J.P. Morgan is the lead on the current transaction. We lost the $1.2 billion deal because of criteria." I want to focus on that comment, "we lost the $1.2 billion deal because of criteria." Do you have an understanding of what that means?

	A Yes. Q What is your understanding of what that sentence was conveying to Ms. Osborne and Mr. Jacob? A I believe it was conveying that we lost the deal because of the criteria, meaning where our enhancements were. Q When you say "meaning where our enhancements were," that the enhancements were relatively high as compared to the other ratings agencies? A I don't know the specifics of this transaction, but that's what I would assume from doing these types of reports. Tr. 72:7-76:3 (Thompson).
37	Thompson testified that the December 14, 2010 meeting that he attended along with Duka and Dr. Parisi involved a general discussion of the circumstances that might allow the use of different constants and that Dr. Parisi stated that there was room for analysts' judgment on specific loans or specific transactions, provided that such judgment was vetted by the rating committee.

	A The substance was, again, about the applicability of the constants and under what circumstances they may or may not be appropriate from an analytical perspective, and under what circumstances could we potentially use different constants in the analysis. Tr. 91:1-6 (Thompson); A I don't recall documents being provided. I remember it being a general discussion about the appropriateness of when and how we applied the constants and whether or not it still made sense to do so given the environment we were in, and essentially, you know, did we still have the appropriate approach and under what conditions could we vary that approach. 93:3-10 (Thompson); Q Did Frank Parisi indicate to you that analysts' discretion could always be had to potentially average constants? A My recollection was he said that analysts could apply their judgment, so yes. Q And was it your view at the time yourself that analysts always had some discretion in applying the criteria? A I think that there was a level of – that was my assumption at the time, but it doesn't lend itself to a yes/no answer. I think that there's the level of discretion, but it should be vetted by the committee, by the Credit Committee, as well as documented somewhere. Tr. 183:23- 184:11(Thompson).
38	Dr. Parisi agreed with Thompson's testimony that Dr. Parisi was not asked to approve anything at the December 14, 2010 meeting.
	Q To the best of your recollection, were you asked to formally approve anything in the course of the discussion with Ms. Duka and her colleague? A No, I did not -- I was not asked to approve anything. I don't recall being asked to approve anything. And I did not believe I was making any criteria approvals or approving any criteria. Tr. 1516:13-19 (Parisi).
39	Dr. Parisi and Thompson also both testified that they had no recollection of Duka bringing any research materials to the meeting.
	Q Then the follow-up question, maybe I will ask it in a slightly different way, do you recall any materials, documents, spreadsheets, being given to Dr. Parisi during this meeting? A I don't.

	Q Do you have a recollection one way or another? A I don't recall documents being provided. I remember it being a general discussion about the appropriateness of when and how we applied the constants and whether or not it still made sense to do so given the environment we were in, and essentially, you know, did we still have the appropriate approach and under what conditions could we vary that approach. Tr. 92:21- 93:10 (Thompson). Q In the course of the discussion we've just been talking about, did Ms. Duka or her colleague provide you, to the best of your recollection, with any written materials such as an analysis of the impact of the change that she was proposing on the loan transaction? A I don't remember any analysis. Q Do you not recall whether she gave you anything, or do you just have no memory one way or another? I think that was the same question – A Yeah, I don't think – Q -- stated two different ways. I apologize. What I was getting at: Do you recall that she did not provide you with any materials? Or do you just not have any recollection one way or another? A I just don't remember whether she did or did not. Tr. 1518:14-1519:6 (Parisi).
40	Parisi testified that he simply gave his opinion at the December 14, 2010 meeting that averaged constants would be reasonable under the specific circumstances of a Freddie Mac offering.
	A And the reason for -- or the rationale behind that was, as I recall it, was a Freddie Mac transaction. And given Freddie Mac's underwriting standards, loan quality standards, sole servicer guidelines and so on, to me, you know, that seemed like a mitigating factor, you know, because the loans were typically better quality than the average type of loan you would see. Tr. 1514:1-9 (Parisi), A Yes, it was -- it would be reasonable to make that kind of adjustment on a specific case rather than across the board. 1516:9-11 (Parisi).

41	Thompson testified that the discussion related to "specific loans and/or transactions, as opposed to being programmatic," while Dr. Parisi testified that if Duka proposed a programmatic change, he would have recommended "to go to criteria committee and follow the process."
	A To the best of my knowledge, it was the appropriateness as it related to specific loans and/or transactions, as opposed to being programmatic. Tr. 94:20-23 (Thompson); Q .... Did you understand Ms. Duka to be proposing a programmatic change to the way loan constants would be calculated for all conduit/fusion deals going forward? A No, I did not understand it to – understand that to be the question. Q If she had proposed such a programmatic change, do you think you would recall that? A I would have recalled it, yes. Because I would have -- what would have followed would have been a recommendation to go to criteria committee and follow the process. Tr. 1516:23-1516:9 (Parisi).
42	All three attendees agreed that Dr. Parisi directed Duka to make full disclosure about any change to the loan constants "so that the rating committee would know the approach that was applied and also serve as a record for S&P[, a]nd it would also be best practice to put it in a pre-sale report so that, you know, an investor and people in the market would understand how the rating was done."
	Q And when you say "you should document it," what did you mean by that? A To me, that meant making it clear or putting it in the rating methodology profile, also known as the RAMP, so that the rating committee would know the approach that was applied and also serve as a record for S&P. And it would also be best practice to put it in a pre-sale report so that, you know, an investor and people in the market would understand how the rating was done. Tr. 1517:18-1518:3 (Parisi): A The outcome, as I can recall it, is that Frank was open to using different constants provided that they were documented and you put them forth. He indicated that there was room for analysts' judgment in regard to the work or the assumptions as the analysis was being conducted. Q And when you say "provided that they were documented," what do you mean by that? A Whether it be the committee memo or the publications that you put forth for the ratings action or assignment.

	Q When you say "committee memo," are you referring to the RAMP? A Yes. Q And then you also said for the publications that you put forth for the ratings action or assignment. Is that a reference to a pre-sale report? A Yes, or surveillance report, whichever is applicable. Tr. 93:13-94:7 (Thompson). "Duka told Parisi that CMBS would document the use of the 'Blended Constant' in applicable Presale reports and Ramps." Duka's Prehearing Brief at 21.
43	Duka argues that the across-the-board change for which she purportedly sought and obtained Dr. Parisi's approval was merely an "interpretation" of criteria, not a change.
	Q So using a criteria constant or a Table 1 constant is not correct? Is that true? A No. Because the process allows for criteria interpretations. There are instances that come up that the criteria doesn't address. They -- it's usually instances where risks are addressed that are otherwise silent in criteria. I understood this to be one of those instances in July of 2010. And the process allows for an analyst to identify such an instance and develop a solution, and to implement that solution even if it's not required by criteria. Q And you can implement that solution across the board, all loans going forward, as a policy of the new issuance group? A I think that's up to the criteria officer to determine. Tr. at 1147:7-24 (Duka).
44	Barbara Duka directed the CMBS Ratings Group to switch to using a 50/50 blend of actual and Table 1 constants in December 2010.
	Q Now, just to be clear, it was you that directed the change to the model to switch to start using the 50/50 blend from the higher of, correct? A I don't recall doing that. But, yes, I would think that I would have done that. MR. MCKENNA: Can we just play 489, lines 10 through 21, please, Mr. King. MR. PETRILLO: I object. Just before we do this, I assume this is a lead-up to refreshing

recollection?

JUDGE GRIMES: Is there something that was -- did she agree with your question?

MR. PETRILLO: I think she doesn't remember.

MR. MCKENNA: She said she didn't remember.

JUDGE GRIMES: So this is about not remembering?

MR. MCKENNA: Yeah.

JUDGE GRIMES: Okay. Go ahead.

MR. MCKENNA: Mr. King, 489, 10 through 21.

(Portion or Ms. Duka's testimony played.)

BY MR. MCKENNA:
Q Does that refresh your recollection as to whether, in fact, you did direct the change to using a blended constant?

MR. PETRILLO: Objection.

JUDGE GRIMES: Basis?

MR. PETRILLO: Withdrawn.

JUDGE GRIMES: Go ahead.

THE WITNESS: I don't recall it as I sit here today, but it makes sense.

Tr. 1242:8-1243:12 (Duka);

MR. LEIDENHEIMER: How did the model get changed to include the blended constant instead of the worse of?

THE WITNESS: My recollection is that David Henschke basically made the change and it was checked by Kurt Pollem.

MR. LEIDENHEIMER: Did you direct Mr. Henschke to make that change?

THE WITNESS: Did I direct him?

MR. LEIDENHEIMER: Yes.

THE WITNESS: I suppose I did after my meeting with Frank. Yes.

Div. Ex. 338 at 489:10-21;

Q Let me just make sure I understand that. So what you're saying is Ms. Duka directed you to make the change. You may have actually done it yourself, or you may have had somebody else actually make the change in the model? Is that what you're saying?

A That's correct

Tr. at 1709:17-23 (testimony of former CMBS analyst David Henschke).

45 The switch to using a 50/50 blended constant from using Table 1 constants had the effect of increasing the DSCR, by reducing the stress level of the loan constants, and thus making CE levels more attractive to issuers.

87. To determine the impact of switching from Criteria Constants to blended constants, I performed the following analysis. First, I examined how the change affects a single loan. Then I examined how the change impacted all the deals S&P rated during this time period.

88. To fully appreciate the impact of the change in the model, it is useful to first look at how the change impacted the default estimation of a single loan, for example, the "Park Place Mall" loan in the GSMS 2011-GC4 transaction. This loan's facts are summarized in Table 3 below. The loan would have been treated as a default under the original, unmodified model which used only the Criteria Constants.134 This can be seen in the bottom row of Table 3 (row 10) where the annual loan payment of $16,463,953 (using the Criteria specified stressed loan constant of 8.25%), cannot be supported by the S&P AAA Net Cash Flow of only $15,486,846 (row 3).135 Dividing this S&P NCF by the S&P loan payment yields the DSCR of 0.94 shown in row 10, which is less than 1.0, causing the model to treat the loan as a default.

134 As noted above, the original model as amended in March 2010 used the "higher of" the actual loan constant and the criteria constant. As a practical matter, however, the actual loan constant was very rarely higher than the criteria constant so for the sake of simplicity I will refer to the original model as using stressed or Criteria loan constants.

135 The LTV for this loan is less than 100% under a triple-A level of stress.

Table 3:

Park Place Mall Portfolio Loan in GSMS 2011-GC4

1.	Amortization Term (years):	30
2.	Loan Balance (Cutoff Date)	$ 199,563,061
3.	**S&P AAA Stress Net Cash Flow**	**$ 15,486,846**
4.	S&P BBB (base stress) Net Cash Flow	$ 17,425,456
5.	Issuer NCF	$ 18,272,261
6.	Term Loss Projected in Model	$ (31,864,649)

7. Property Type:				Retail
Loan Constant Method	**Loan Constant**	**Loan Payment (annual)**	**S&P AAA DSCR**	**Result**
8. Actual	6.59%	13,149,025	1.18	No Default
9. Blended	**7.42%**	**14,806,489**	**1.05**	**No Default**
10. Stressed	8.25%	16,463,953	0.94	Default

Overall Pool Default Rate Considering All Loans
16.5% using Actual Loan Constant
32.8% using Blended Loan Constant
58.3% using Stressed Loan Constant

89. Under the modified model, once the stressed Criteria Constant is blended with the actual loan constant of 6.59% (row 8, column 2), the blended loan constant drops to 7.42% (row 9, column 2), causing the loan payment to drop to only $14,806,489 (Row 9, column 3), which in turn causes the S&P DSCR to rise to 1.05 (row 9, column 4), which is a little more than needed to avoid default under the Criteria tests. So under the blended loan constant, the property's net cash-flow covers the loan payment and the loan is no longer projected to default. Overall, the change from using purely stressed Criteria loan constants in this transaction to blended loan constants drops the total term default rate from 58.3% to 32.8% (see bottom section of Table 3). This is a dramatic decline in projected defaults and therefore a dramatic decline in required credit support, from 20.625% to only 14.875% as measured using the model's raw enhancement numbers (and 20.5% to 14.5% based on final adjusted credit support numbers).[136]

90. The decline in defaults and, therefore, the credit support required as demonstrated in the preceding paragraph was not limited to just a single loan in the GSMS 2011-GC4 transaction. In fact, the change to using blended constants had a similar impact on credit support requirements for every CMBS conduit deal S&P was hired to evaluate, and almost every Freddie Mac deal S&P was hired to evaluate.[137] Table 4 below quantifies the changes in triple-A credit enhancement levels caused by the switch from using the stressed loan constants to using a blend of the stressed loan constants and actual loan constants for all but one of the deals S&P rated in 2011. The sixth column (far right) of the table also shows the likely rating each senior bond would have received from S&P (instead of AAA) had the Criteria stressed loan constants been used instead of the blended loan constants and assuming the bonds were issued with their actual credit enhancements levels.

TABLE 4 Deal Rated by S&P (Bloomberg Ticker)	CE required for AAA Blended Constants	Criteria Constants	Difference (BP)	Percentage increase in CE	Rating Based on Criteria Loan Constants	Ratings Fee[138]
MSC 2011-C1	23.29%	29.11%	582	24.99%	AA-	$1,968,560
FREMF 2011-K701	14.59%	22.09%	750	51.41%	A+	$710,000
JPMCC 2011-C3	16.42%	21.57%	515	31.36%	AA-	$1,450,000
FREMF 2011-K11	12.03%	16.40%	437	36.33%	AA-	$710,000
FREMF 2011-K13	10.00%	15.49%	549	54.90%	A+	$710,000
JPMCC 2011-C4	18.83%	23.77%	494	26.23%	AA-	$1,450,000

	136 See Exhibit 111, email from Lucienne Fisher on July 25, 2011, last page, for an internal S&P analysis of GSMS 2011-GC4 based strictly on stressed loan constants. 137 The support levels for one FREMF transaction did not change using blended loan constants. 138 Bates numbers SP-CMBS SUPP 056, 057, 058, 059, 060, and 062 91. The decline in credit support, and concomitant inflation of ratings, caused by the switch to blended constants were huge—and worth millions of dollars of additional profit per deal to the issuers for normal sized deals (*i.e.*, over $1 billion)—when compared to the credit support levels that would have been required using Criteria Constants. Based on my experience in the CMBS industry, the switch to blended constants would unquestionably alter the investment decisions made by investors evaluating a CMBS transaction had they been informed of the change in the rating process. Indeed, several witnesses noted the substantial change in credit enhancement wrought by the switch to blended constants in testimony, including Mr. Jacob (S&P's Executive Managing Director of Structured Finance), and at least two prominent, outside CMBS experts who questioned S&P about the low credit support levels caused by this (unknown to them) change when the Goldman deal GSMS 2011-GC4 was first exposed to the market.[139, 140] Further, S&P's decision to withdraw two of its ratings in July 2011 underscores how significantly the switch to blended constants compromised the ratings. 92. Rating market share data also supports my opinion that the change in credit support requirements due to the switch in the use of loan constants was substantial: S&P began to win CMBS conduit rating assignments once the change was made, going from a 20.5% share (based on dollars) in 2010 (one out of seven conduit deals by count) to a 30.3% share over the first six months of 2011, at which time S&P was effectively sidelined from the market due to the market's reaction to the GSMS 2011-GC4 transaction.[141] 139 See Exhibit 112, Bates number SP-CMBS 00561332 for comments by Penner. See also Exhibit 105, Bates number SP-CMBS 00561895 for comments by Parkus. 140 Investigative testimony of David Jacob. June 9, 2014. 111:1-12 and 108:1-16. 141 Commercial Mortgage Alert. https://www.cmalert.com/rankings.pl?Q=78 Technically, S&P's share in 2011 by midyear was higher, around 40% rather than 30.3%, since the statistics do not include GSMS 2011-GC4 but in fact S&P was hired to rate this transaction. Div. Ex. 335, ¶¶87-92. See also Div. Ex. 367 at 3; Div. Exs. 365 and 366 (demonstrative exhibits summarizing Digney testimony regarding impact of using blended constants to rate JPMCC 2011-C4 transaction; Div. Exs. 355-364 (models used to rate 2011 CMBS transactions).
46	Duka claimed that she did not recall noticing that the eight presales were littered with loan constants and debt service coverage ratios that were based on the 2009 Criteria – not the blended constants actually used to rate these deals.
	Do you recall noticing that the pre-sales included criteria constants and debt service

	coverage ratios that were based upon those criteria constants? A I don't. Q Okay. Is it that you may have noticed, and you just don't recall? A I don't think so, but I don't remember noticing. *See* Tr. 1450:23-1451:5 (Duka).
47	However, Duka also acknowledged that, as the head of New Issuance, she would review all presales "from a big picture standpoint ... "at some level" and would at times make comments on them."
	A My general involvement was that I would review it from a big picture standpoint. So I could review certain sections. I could review some of them. But at this particular time, I was reviewing them at some level. Q Okay. Would you make comments at times on pre-sales? A I don't remember, but, yes, I think I would. Tr. 1204:7-14 (Duka); Q Mr. Digney, two more topics I would like to cover with you, hopefully briefly. One has to do with RAMPs. You were asked a number of questions about RAMPs, and we've already talked about it in the course of my questions for you. I gather, based on your answers, that there was nothing in the RAMPs that you reviewed that would alert a subsequent reviewer to the fact that the blended constant had been used to rate the transaction; is that correct? A Yeah, I guess not. Q Now, is it your view that the methodology used to calculate the DSCR should have been calculated in the RAMPs? A Yeah, it probably should have. Q Now, you referred to the committee that reviewed preliminary and final ratings, as I think you used the word "group effort"; is that right? A Yeah. Q Now, if you were on a rating committee and you realized that something in the RAMP was wrong or inaccurate, you'd say something about that even if you weren't the primary analyst who wrote the RAMP, right?

	A Yeah. Q And that's part of the point of having the committee, right? A Right. Q Now, Ms. Duka participated in the rating agency committees for a number of the transactions in.2011, right? A I think so. Q Well, we can take a look at Division Exhibit -- I'm sorry, Joint Exhibit 63, just for an example. The chart, first line below says, "Managing director." Do you see that? A Yes. Q Does that show that she participated in the committee for this RAMP? A Yeah. Q So she was part of that group effort, right? A Yeah. Tr. 823:8-824:25 (Digney).
48	Duka further conceded that she would "probably" look at the "Strengths" section of presales, which included – in 2011 – misrepresentations and omissions concerning loan constants and debt service coverage ratios.
	Q How about the strengths section? Would you ordinarily look at that? A Probably. Q Probably, okay. And the strength section included disclosure of criteria constants and debt service coverage ratios based on those criteria constants, correct? A I don't know for sure, but I'm going to go with -- let's assume that what you're saying is true. Q Okay. I won't bother pulling up the document then that can easily – A It makes sense, is what I will say. That makes sense.

	See Tr. 1451:25-1452:12 (Duka).
49	Duka testified that she and her CMBS group paid a lot of attention to the portion of the presale describing information around the top 10 loans of the deal; a section that comprised 2/3 of the presale and that included multiple tables showing a DSCR based upon a S&P stressed (i.e. Table 1) constant for the relevant property type.
	Q So why are you publishing data on the Christiana Mall loan? A Any data or that particular data? Q Any data. A It's a large loan in the transaction. I think investors read the large loan summaries. So we would pay a lot of attention to this particular section in describing information around the loan or the top 10 loans. Q Okay. And is the "1" next to Christiana Mall, does that indicate that it's the largest loan in this pool? A Yes. Q And here in Table 20 where you publish the S&P DSC, that's based on -- if you look at the footnote or the asterisk at the bottom of the table, that's based on the S&P's stressed constant of 8.25, correct? A That's what it says, yes. Q Does this Table 20 show a debt service coverage ratio based upon blended loan constants? A It does not. Q Has anything that we've looked at in this pre-sale show a debt service coverage based upon a blended constant? A No. Tr. 1226:8-1227:8 (Duka); JUDGE GRIMES: So do you mean that if you want it to be internally consistent and then consistent with other pre-sales so they look similar in appearance? THE WITNESS: I want it to be consistent within the pre-sales. Because the top 10 loans are not written by just those two analysts. They can be written by 10 different analysts. So I

	want to make sure that they are all presenting the information the same way. And just to -- the pre-sales are 65 pages long. They're not short. And I would say 2/3 of that is a top 10 analysis. So I'm just looking to make sure that every office property kind of has the same format, presents information the same way, describes the underwriting in the same way, both in the way it's described and --that they line up. Because they could be using different formats. So I'm just making sure that it's all consistent, consistent within the pre-sale. And I might look outside the pre-sale, if there's an odd property type that I'm just not used to seeing, to make sure that we're picking up all of the things that would be important to somebody. 1470:22-1471:21 (Duka).
50	Between February and July 2011, S&P published presale reports for eight CMBS transactions.
	JEs 22, 30, 37, 46, 53, 60, 68, 77.
51	For all eight transactions, S&P's New Issuance group used blended constants to calculate DSCRs and the resultant credit enhancement levels.
	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. Duka's Answer ¶ 28. Q Okay. Do you recall whether or not the formula in the loan constant column was a 50/50 blend in all circumstances? A I think it was. Tr. 830:17-20 (Digney).
52	None of the eight Presale reports published by S&P explicitly disclosed blended loan constants or DSCRs based on blended loan constants.
	Q You pointed us to this last line in the second paragraph of conduit/fusion methodology. And I want to know if there's any place else in the pre-sale that you believe you disclose that you were using a 50/50 blend of the actual and the criteria constant. A That I disclosed it? Q Yeah.

A No. I thought you asked me if there was a place that I would have disclosed it.

Tr. 1229:13-22 (Duka).

53 Each of the eight presale reports published by S&P disclosed in both the "Rationale" and "Strengths" sections an average weighted S&P stressed loan constant based on the stressed loan constants published in the Criteria article.

Rationale

The preliminary ratings assigned to Morgan Stanley Capital I Trust 2011-C 1 's (MSC 2011-Cl 's) $1.55 billion commercial mortgage pass-through certificates reflect the credit support provided by the subordinate classes of certificates, the liquidity provided by the trustee, and the underlying loans' economics, geographic diversity, and property type diversity. In our analysis, we determined that, on a weighted average basis, the pool has a debt service

coverage (DSC) of 1.20x based on a weighted average Standard & Poor's Ratings Services loan constant of 8.46%, a beginning loan-to-value (LTV) ratio of 88.9%, and an ending LTV ratio of 78.5%. To calculate the number of loans, we considered each group of cross-collateralized and cross-defaulted loans as one loan.

Strengths

This transaction exhibits the following strengths:

• As a whole, the transaction reflects economics that are comparable to the archetypical pool based on Standard & Poor's stressed beginning and ending LTV ratios of 88.9% and 78.5%, respectively, for the pooled trust. The beginning and ending LTV ratios based on appraisal values are 61.6% and 54.5%, respectively.

• The transaction has a weighted average DSC of 1.20x based on a Standard & Poor's loan constant of 8.46%, which is in line with the archetypical pool. Standard & Poor's DSCs range from 0.94x to 1.57x and are based on stressed loan constants ranging from 8.25% to 10.00%, depending on the property type.

JE 22, p. 5; *see also* JE 30, pp. 4-5; JE 37, p. 5, JE 46, pp. 4-5; JE 53, pp. 4-5; JE 60, pp. 4-5; JE 68, pp. 4-5; JE 77, pp. 4-5.

54 Each of the eight presale reports published by S&P between February and July 2011 disclosed DSCRs based on the S&P stressed loan constant in numerous places, including tables covering each of the top 10 loans in the deals being rated.

Table 16

DSC range (x)	No. of loans	Loan balance ($)	% of pool
Greater than 1.35	3	257,159,945	16.6
1.3D to 1.34		82,185,DDD	5.3
1.25 to 1.29	4	168,554,781	1D.9
1.2D to 1.24	5	224,6D5,856	14.5
1.15 to 1.19	4	168,361,195	1D.9

1.1D to 1.14	9	233,684,96D	15.1
1.D5 to 1.D9	6	215,789,861	13.9
1.DD to 1.D4	3	144,24D,D72	9.3
Less than 1.DD	2	53,818,761	3.5

Table 16

Total	37	1,548,4DD,431	IDD

DSC--Debt service coverage (based on Standard & Poor's constant).

Table 20

	Amount (mil. $)	Amount per sq. ft. ($)	S&P beginning LTV ratio (%)	S&P DSC*
A	235.0	539.9	68.7	1.41x
B	N/A	N/A	N/A	N/A
Total first mortgage	235.0	539.9	68.7	1.41x
Mezzanine	N/A	N/A	N/A	N/A
Total	235.0	539.9	68.7	1.41x

*Calculated based on a Standard & Poor's stressed constant of 8.25% and a 30-year amortization schedule. **Calculated based on the actual constant, a 30-year amortization schedule, and the isuer's NCF. LTV--Loan to value. DSC--Debt service coverage. NCF--Net cash flow. N/A--Not applicable.

JE 22, pp. 21-22, 23-69; *see also* JE 30, pp. 24-60; JE 37, pp. 22-71, JE 46, pp. 26-65; JE 53, pp. 26-64; JE 60, pp. 24-73; JE 68, pp. 24-79; JE 77, pp. 27-70; see further, Ex. C to the Division's Prehearing brief (highlighted version of presale for MSC 2011-C1).

55 While Duka testified that the presale "should reflect the numbers that were actually used," because of her change to blended constants, they did not.

Q Okay. And I believe you said that the pre-sale should reflect the numbers that were actually used, right?

A That's correct.

Q And this pre-sale is reflecting numbers that are based on the Table 1 constants, correct?

A Correct.

Q And the numbers used to reach the credit enhancement level were the blended -- 50/50 blended constants, correct?

A Correct.

Tr. 1222:12-21 (Duka).

56 Despite having multiple meetings and spending hundreds of hours in connection with the RAMP the switch to blended constants was never raised or discussed.

	Q Okay. Fair enough. Now, Mr. Petrillo just asked you about the RAMP process and your role there. And prior to the break, you had testified that there were multiple meetings about the RAMP and that hundreds of hours went into it. Do you recall that? A Yes. Q Wouldn't that have created lots of opportunities for discussion about the switch to blended constants? A I don't recall that being the case. Q But wouldn't it present lots of opportunities if you're having lots of meetings, spending hundreds of hours? But your testimony is that despite all that, the switch to blended constants just never came up? A The hundreds of hours of meetings are around the entire process. That includes the loan-level analysis, the transaction-level analysis. The transaction-level analysis probably takes up the shortest period of time. I don't know if that answers the question. So there were opportunities to discuss it. I just don't recall it being discussed. Tr. 1422:20-1423:19 (Duka).
57	Transparency is a guiding principle in preparing RAMPs.
	When preparing a RAMP, analysts should follow these guiding principles: • Transparency • Clarity • Relevance • Opinion • Criteria Support • Brevity. *See, e.g.*, JE 20 at 2.
58	Under S&P's Model Use Guidelines effective 7 September 2010, RAMPs were supposed to outline the key assumptions used in the ratings model.

<table>
<tr><td></td><td>4.19 Outline Model key assumptions. The RAMP should outline the key assumptions used in the model and the reasons for their use (e.g., stress test assumptions). When key assumptions may be selected from several alternatives in accordance with our Criteria or may be selected as a point within a range, the RAMP should provide the Analyst's rationale for the selection.

Div. Ex. 196 at 5.</td></tr>
<tr><td>59</td><td>Under S&P's Model Use Guidelines, effective as of September 7, 2010, RAMPs were supposed to prominently indicate all modifications to a model that provide significant input to the Rating Committee decision.</td></tr>
<tr><td></td><td>4.21 Document modifications to a model. All modifications to a model that provide significant input to the Rating Committee decision or to the model's approved assumptions, including their rationale and, where appropriate, their impact on the analysis, should be documented, prominently indicated in the RAMP, and discussed by the rating committee.

Div. Ex. 196, at 5.</td></tr>
<tr><td>60</td><td>Under S&P's Model Use Guidelines effective as of September 7, 2010, when Criteria Officer concurrence is required, RAMPs were supposed to document such concurrence.</td></tr>
<tr><td></td><td>4.22 Additional documentation. When Criteria Officer concurrence is required, his/her approval should also be documented in the RAMP or an attachment thereto.

Div. Ex. 196 at 5.</td></tr>
<tr><td>61</td><td>Barbara Duka was a committee voting member listed on each of the eight RAMPs at issue.</td></tr>
<tr><td></td><td>
<table>
<tr><td>Solicited</td><td>[X]</td><td>Unsolicited</td><td>[ ]</td><td></td></tr>
<tr><td colspan="3">Voting members (Full Name/Title):</td><td></td><td></td></tr>
<tr><td>Barbara Duka / Managing Director</td><td>X</td><td></td><td></td><td></td></tr>
<tr><td>Kurt Pollem / Senior Director</td><td>X</td><td></td><td></td><td></td></tr>
<tr><td>Michael Nelson / Associate Director</td><td>X</td><td></td><td></td><td></td></tr>
<tr><td>Brian Snow / Director</td><td>X</td><td></td><td></td><td></td></tr>
</table>
See, e.g., JE 21 at 3; JE 31 at 3; JE 38 at 3; JE 47 at 3; JE 54 at 3; JE 61 at 3; JE 69 at 3; JE 78 at 3.</td></tr>
</table>

62	The RAMPs, like the Presales, disclosed debt service coverage ratios based on criteria or Table 1 loan constants in their Rationale sections.
	RATING RATIONALE: The ratings assigned to **J.P. Morgan Chase Commercial Mortgage Securities Trust 2011-C4's** (JPMCC 2011-C4's) $1.45 billion commercial mortgage pass-through certificates reflect the credit support provided by the subordinate classes of certificates; the liquidity provided by the trustee; and the underlying loans' economics, geographic diversity, and property type diversity. In our analysis, we determined that, on a weighted average basis, the pool has a debt service coverage (DSC) of 1.26x based on a weighted average Standard & Poor's Ratings Services loan constant of 8.22%, a beginning loan-to-value (LTV) ratio of 88.2%, and an ending LTV ratio of 79.0%. (Note: Standard & Poor's excluded the Sheraton Chicago Hotel and Towers loan ($68.0 million, 4.7% of the pool balance), which is secured by the fee interest on the land beneath the hotel, all from all of our calculated DSC and LTV ratios. We analyzed this loan separately from the general pool.) *See, e.g.*, JE 23 at 6; JE 31 at 6; JE 38 at 6; JE 47 at 6; JE 54 at 6; JE 61 at 6; JE 69 at 6; JE 78 at 6. Q And should the RAMP reflect the relevant factors that were considered in the analysis that led to the credit rating? A I think that's what the RAMP guidelines require. So I would say yeah. Q Okay. MR. MCKENNA: If we could go to page 7, please, Mr. King under "Rationale." BY MR. MCKENNA: Q Do you see there it has a very similar sentence to one we looked at in the pre-sale? "In our analysis, we determined that on a weighted average basis, the pool has a DSC of 1.34x based on a weighted average S&P loan constant of 8.28." Do you see that? A I do. Q And would you agree those are the same numbers published in the pre-sale? A Yes. Q And those are based on the criteria or Table 1 constants? A Yes.

	Tr. 1208:4-1209:1 (Duka).
63	The RAMPs did not disclose the blended loan constants that were actually used to rate the relevant CMBS transactions.
	JE 23; JE 31; JE 38; JE 47; JE 54; JE 61; JE 69; JE 78.
64	In some cases, the issuers of the CMBS (who were paying S&P) were provided with the blended loan constants used to rate the transaction, while investors were given Table 1 loan constants and DSCRs based thereon in the presales.
	Q So I just want to ask you: Would you agree that in several -- it's not in all of them, but in several of the indicative feedback emails, what was disclosed were debt constants, debt service coverage ratios and credit enhancement levels that were based on blended constants? A I've seen a few exhibits that show that. I can't represent all of the feedback did that. But I can -- I've seen a few deals that did do that, yeah. 1233:12-20 (Duka); Q So is it fair to say that the weighted average debt constant and the DSC reported back to the issuer as part of the final feedback was based on the blended constant? A Yes. Tr. 450:21-25 (Digney).
65	Both Digney and Duka testified, the CMBS New Issuance group had to run the models two (and "sometimes three") times for each of the presales in order to generate ratings based on blended constants alongside the stressed Table 1 constants and DSCRs published throughout the presale.
	Q But for each pre-sale you would agree with me that whoever put those numbers into the pre-sale had to go into the model and essentially run the model twice to get the numbers that were included in the pre-sale versus the ones that went out in the final feedback to the issuer and were actually used to rate the transaction; is that correct? A Yeah. I guess. And I think in some cases maybe three times, right? Because it was using -- some of the them had the DSCs using the Table 1 constant and then the DSC using the actual, and then it was rated using a blend. So I guess it would have been three. 820:9-21 (Digney); Q Did you know in the period, January 2011 and going forward, at any time through July of 2011, that the modelers were doing that?

	A I think Jim [Digney] actually correctly pointed out that there would be three versions. There is an actual, a Table 1, and then a blend. Now that you say it, it makes sense. Because how else could they have populated it? But I don't recall knowing it at the time. JUDGE GRIMES: Can I interrupt just for one second? I just want to know what the "it" is in that sentence. You said, "I don't recall knowing it at the time." What is the "it"? THE WITNESS: That they were using three separate models to populate the pre-sale. 1398:2-17 (Duka).
66	Even Duka herself acknowledged that this practice was not consistent with her expectations.
	Q You would have expected them to be – the numbers to be the same in the pre-sale as in the preliminary feedback memo? A I would have expected that if these were the numbers we were providing to issuers, and that was helpful, then we should be providing the same numbers to the investors. That's what I would have expected. Tr. 1222:2-8 (Duka).
67	Preliminary ratings are the ratings that investors use in their investment decisions. Final ratings appear after the transactions close.
	Q From the model, okay. And when you look at the S&P rating there, it says AAA, and then there's a small E at the end? What does that mean, in your experience? A If I recall, that is a preliminary rating until the bond settles. Tr. 1030:25-1031:5 (Peterson); Q And in the course of that eight to nine-week process, there is a preliminary rating and a final rating, and I gather both of those are subject to a Rating Committee vote? A Right. Tr. 430:3-7 (Digney).
68	Duka had no recollection of why a 50/50 blend of actual and Table 1 constants was chosen and could cite to no analysis supporting that ratio.
	Q And, Ms. Duka, is it true that you don't remember how you came to use a 50/50 blend as

	opposed to some other ratio, say, 70/30, 80/20? A I don't recall what the discussion was, but I do recall that we arrived at the 50/50 blend. Q Now, if the criteria called for the use of the actual loan constant, why didn't you just use that? A At what point in time are we talking about? Q When you made the switch. Why switch to a 50/50 blend – A In 2010. Q -- which you don't even recall where you came up with the blend? Why not just use what you say is analytically correct? A I don't know what the discussion was. I recall we had a discussion. And I recall arriving at a decision to use a 50/50 blend. I can't tell you why. I don't know. Tr. 1145:13-1146:6 (Duka); Q Ms. Duka, can you point to any documents that reflect an analysis of why you chose the 50/50 blend over actual, criteria or some other blend? A I don't recall any analysis that would help me recall that, no. Tr. 1151:7-11 (Duka).
69	Duka's subordinates were hazy on the details of how they came to understand that the blended constants should be applied but not disclosed.
	JUDGE GRIMES: Go ahead. BY MR. DAY: Q You were asked the question. "QUESTION: Was 50 percent used on this model for rating JPM's 2011-C4?" And your answer was: "ANSWER: I believe so." Do you see that? A Yeah. Q And then you were asked the question: "QUESTION: Why 50 percent?" And your answer was: "ANSWER: My understanding was we were doing everything at 50 percent when I moved over to new issuance." Do you see that? A Yeah.

	Q And if you go over to page 216 at line 7, you were asked a question: "QUESTION: Can you think of any analytical reason for using 50 percent versus 75 percent or 25 percent?" And you see your answer is: "ANSWER: I can't think of one"? A Right. Q And that testimony was under oath? A That's right. Q Now, if hypothetically you believed in 2011 that the use of blended constant was analytically sound, then I gather there would have been no reason [not] to disclose that practice to the investing public; is that correct? A Yeah, that's correct. Q And we looked at the pre-sale report for the 2011-C4 transaction. And I believe also today you looked at the pre-sale report for the Goldman Sachs deal for which the preliminary rating was withdrawn, right? A Right. Q And neither of those pre-sale reports – and I'm happy to put them in front of you, if you would like to, but neither of those pre-sale reports make any mention of using blended constants to arrive at credit enhancement levels for those deals, do they? A No. Q In fact, none of the pre-sale reports for the eight transactions in 2011 make any reference to using blended constants to derive credit enhancements, do they? A I don't think so. Tr. at 815:1-816:25 (Digney); My question is: Would there be any reason not to disclose the change in methodology that you viewed as analytically justified to the model quality review group? A No. Tr. 1724:11-15 (Henschke); Q Did Ms. Duka ever tell you that she discussed with Frank Parisi and committed to disclose the use of blended constants in the RAMPs?

	A I do not recall. Q Okay. Do you recall whether Kurt Pollem told you that the CMBS group, new issuance, needed to disclose the use of blended constants in the pre-sales? A No. Q Same question for the RAMPs. Did Mr. Pollem ever tell you that you were obligated to disclose use of blended constants in the RAMPs? A No. Q Did anyone in the CMBS new issuance group or otherwise tell you that you needed to disclose the use of blended constants in the pre-sales? A I do not recall. Q Did anyone in the CMBS new issuance group tell you that you needed to disclose the use of the blended constants in the RAMPs? A I do not recall. Q Let me put the question somewhat differently. With regard to this specific transaction, with the Morgan Stanley transaction, one of the first conduit/fusion deals that was rated by S&P post-crisis, did anyone direct you that you needed to disclose the use of blended constants in the pre-sale for the Morgan Stanley transaction? A I do not recall. Q And you did not direct anyone under your supervision on that deal as the primary analyst to ensure that blended constants were disclosed? A I don't believe so. Tr. 1784:2-1785:11 (Snow).
70	On July 11, 2011, prior to publishing the GSMS 2011-GC4 presale, Digney and Lucienne Fisher, another Duka subordinate, exchanged emails, in which Fisher asked Digney: "Did you ever find out if BD [Barbara Duka] wants us to report the [debt service coverage ratio] based on the blend as well as the stressed constant?"

From: Fisher, Lucienne
To: Digney, James
Sent: Mon Jul 11 20:16:22 2011
Subject: DSC for presale

Did you ever find out if BD wants us to report the DSC based on the blend as well as the stressed constant?

Thanks.

Lucienne Fisher
Associate Director
Structured Finance Department
55 Water Street, 40th Floor
New York, NY 10041
Phone: 212-438-4719
lucienne_fisher@standardandpoors.com

Div. Ex. 103;

Q Do you see that?

And you see the date on this is July 12th, 2011?

A Yes.

Q So if we go back to Division Exhibit 103, is the pre-sale being discussed in this e-mail exchange the Joint Exhibit 68, Goldman Sachs pre-sale that we were just looking at?

A Yeah, I think most definitely.

Q I want to start with the first e-mail in the chain, which is the bottom-most e-mail, it is an e-mail from Ms. Fisher to you on July 11th at approximately 8:16 p.m.; do you see that?

A Yes.

Q And, again, the subject is DSC for Pre-sale. Do you have an understanding of what DSC refers to?

A Yeah, the debt service coverage ratio.

Q And is that the same DSC number we were looking at before in the pre-sale documents and the RAMPs and all?

A Yeah.

Q Now, Ms. Fisher writes to you, "Did you ever find out if BD wants us to report the DSC based on the blend as well as the stressed constant?" Do you see that?

A Yeah.

	Q Who does BD refer to? A Barbara. Q Barbara Duka? A Yeah. Q And you see Ms. Fisher writes "the DSC based on the blend." Do you have an understanding what Ms. Fisher was referring to when she said "the DSC based on the blend"? A Yeah, the blended constant. Q So the DSC that results on that output page of the model using blended constant? A Right. Q And then she refers to "the stressed constant" as well. Do you have an understanding of what Ms. Fisher meant by "the stressed constant"? A Yeah, that would be the criteria constant. Tr. at 457:3 – 458:21 (Digney).
71	Digney replied approximately 45 minutes later, advising Fisher: "I spoke with her [Duka], and she wants to show both the DSC using stressed constant and the DSC using actual constant."
	Q You respond to Ms. Fisher at 8:58 p.m., so about 45 minutes later, and you write "I spoke with her, and she wants to show both the DSC using stressed constant and the DSC using actual constant." Do you see that? A Yes. Q And when you say "I spoke with her," who are you referring to? A Barbara. Q Barbara Duka? A Yeah. Q To the best of your recollection, when you spoke with Ms. Duka, was it to pose the question that Ms. Fisher had sent to you by e-mail 45 minutes or so earlier?

	A Yeah. I mean, I'm assuming -- I don't remember a specific conversation around it, but, you know, just based on this e-mail, I'm assuming that I did speak with her about it. Q Do you have a recollection of speaking with Ms. Duka about this issue? A Not really. Q You write back to Ms. Fisher that "she wants to show both the DSC using stressed constant and the DSC using actual constant." Do you see that? A Yeah. Tr. at 458:22-459:24.
72	Duka admitted in an internal meeting that "she hadn't published the blended constant or explained the blended constant, so she didn't want to have to explain why new issue was different from surveillance[.]"
	Q Did you hear anything specifically from Barbara Duka about the switch in blended constants? A Well, at the downstairs meeting, we were talking about it, and the issue of publication was getting discussed, and Barbara had said that she hadn't published the blended constant or explained the blended constant, so she didn't want to have to explain why new issue was different from surveillance, and to me that's going against transparency. Tr. 300:18-301:2 (Adelson). [redacted] **When asked why those DSCs were omitted, Duka told a quality officer (Susan Barnes) that the DSCs were omitted because the group did not want to have to explain why it used different calculations for new deals and surveillance (TPER ¶ 26). Duka repeated that statement at a meeting on July 26 (or possibly 25) at which I was present.** [redacted] Div. Ex. 209 at 2. Q Okay. And on what basis did you conclude that -- your previous opinion, your view, expressed to Mr. Sharma as to the reasonable interpretation of criteria no longer held? On what basis – disclosure aside -- A Yeah. Sure, absolutely. The basis was the meetings that we would hold, you know, with Barbara present and others present, it just seemed the story would keep on changing. And the calculations that were presented kept on changing. And as it just kept on changing, I'm saying, like, Gee whiz, this isn't what I heard at the

	last meeting; this isn't what I heard at the last meeting. So it wasn't so much on the basis of the actual technical result; it was just that things kept on changing. And saying that, Well, why did it change? And I'm here, and I don't remember whether I heard it in a meeting myself or it was brought back to me that it was not disclosed, because we didn't want to have to explain this to the public. And when I heard statements like "I don't want to have to explain this stuff," I just got to wash my hands of it. Tr. 665:19-666:18 (Jacob). **From:** Ramkhelawan, Gregory **Sent:** Monday, March 21, 2011 10:22 AM **To:** Duka, Barbara; Hu, Haixin **Cc:** Digney, James; Pollem, Kurt; *MQR; Hansen, Lisa **Subject:** RE: Request for Model Owner Approval on model # 253 Good Morning Haixin, Hope all's well. As a point of clarification related to the below, CMBS Surveillance generally employs the higher of the pre-defined stress constants, and the actual in-place constants. Div. Ex. 20 p. 1.
73	While the investors acknowledged that they did not "rely solely" on the pre-sale reports published by rating agencies, the majority testified that they would review the presales in making an investment decision, and many investors emphasized that the rating agency's assessment mattered in "trying to make a relative value decision" in buying CMBS.
	So we're looking at our assessment of value versus what the rating agencies are looking at it; and we're trying to, you know -- trying to make a relative value decision. Q Is it important to you as a CMBS investor that the ratings be comparable as between transactions? A Absolutely. We always talk about wanting consistency and transparency from the rating agencies, you know, knowing that they're applying their methodology consistently across all the deals that they rate and that they rate subsequently. And as much transparency as they can give us on how they've come up with those methodologies. Tr. at 885:5-18 (investor-witness Douglas Weih);

	Q And you said you send [Principal's underwriters] all the publicly available information. Can you give us a sense of what that is comprised of? A So typically it's the -- like, so it's the data tape, so the information from the -- from the issuer. It's also the term sheet. So the issuer provides a term sheet, which provides more detailed information on most -- in most terms, use the top 10 loans. So that provides rent roll information, rollover, historical financials on the property, more detail on the owner -- or on the borrower, and more detail on the tenants. So that information is provided as well. And then if and when we -- when we receive the rating agency pre-sale reports, that information would be provided to our underwriters as well. Q Does your team also review all that information you just described: pre-sales, the -- you know, the loan tape -- or are there certain pieces of it that your team focuses on? A My analysts would be more focused on the term sheet and the pre-sales. Q Okay. About what time frame do you have to make this investment decision? A We have roughly five to seven business days. Q And to the – MR. GOLDMAN: Just, can you direct your questions to 2011? I think that's what you're talking about, but – MS. KELLY: Oh, sure. BY MS. KELLY: Q To the extent I haven't been clear, my questions are focused on the 2010-2011 time frame. To the extent my questions have not been as specific as to time frame, are you doing things in a way that's a little different now in 2016 than you were in 2010-2011? A No. Tr. at 1027:6-1028:21 (Peterson); Q All right. But you did testify yesterday that loan to value and debt service coverage were important numbers that people would look at, right? A Some people do look at debt service coverage and LTV ratios, yes. Tr. 1451: 12-16 (Duka); You testified a little bit yesterday with Mr. Petrillo about investor reaction to the 2009

	criteria that Standard & Poor's came out with. Do you recall that? A Yes. Q In your opinion, does that show that investors paid attention to S&P's criteria? A I think so, yes. 1453:16-23 (Duka); Q Is it fair to say that your role in the CMBS group, you fielded calls from investors who wanted to get additional information about the ratings process, right? A Yes. Q And there were occasions where you directed them to look at the pre-sale to get further information about what Standard & Poor's rating process was? A Yes. MS. KELLY: And, in fact, if you turn to page 3 of this document, Mr. King. BY MS. KELLY: Q Do you see that this section documents a call with another investor? A Yes. Q And in this summary of the meeting, you indicate here that where an investor called with questions about S&P's rating process, you directed the investor to page 40 of the pre-sale that provides the ratings methodology, right? A Yes. Q Now, if we can turn back to Joint Exhibit 22, which is the Morgan Stanley pre-sale. And, Mr. Snow, I don't want to mischaracterize your testimony previously. Am I right that you testified that it is important to you as the primary analyst that the reader understand S&P's rating process for this CMBS? A Yes. Tr. 1778:13-1779:17 (Snow).
74	Investor Douglas Weih described rating agencies as "another set of eyes" in making his investment decision, and noted that unlike investors, S&P had access to proprietary materials about the quality of the underlying collateral of the deal, such as environmental

	reports, seismic reports, or loan files.
	Q I just want to follow up on something that you said in your previous answer when you were describing the due diligence process. And you said that -- you described the pre-sale as another set of eyes. Did you mean the rating agency itself is another set of eyes? A We always viewed it that way. They certainly had more time than we did. We always said that we would never outsource our due diligence, but that was one -- certainly one tool that we would rely on. Because, again, they had four to six weeks to look at a transaction. They had boots on the ground oftentimes meeting with the management. So they generally -- you know, they generally, as a firm in rating this transaction, they saw a lot more than we were able to see. Q I want to ask you to elaborate on that a little bit. What information would a rating agency get about this new issuance that you as an investor might not get? A I think they got appraisals, full -- I think they got everything -- everything at a loan level. They got the loan file, is my understanding, I think. I don't know specifically, but I know that we're working off a term sheet where there's probably more information on the top 10 loans than there are, you know, the other 90 loans. I think they had available to them, you know, loan files, appraisals for all of -- all of the -- you know, hundred or -- however many loans were in the -- in a given conduit transaction. Q Would you get -- you wouldn't have, for example, your environmental reports – A No. Q -- on sites? A No. Seismic reports. I mean, they're going to get stuff like that, that we're just not going to get to have. That's exactly right. Q And it sounds like when you were describing your decision about, you know, when a rating is a AAA or a AA, it sound like those distinctions are meaningful to you as a CMBS investor. Is that fair to say? A Absolutely. Any investment. But, yeah, particularly CMBS. Tr. 871:4-873:1 (Weih).
75	S&P had a lot more time and information available to it to analyze CMBS transactions than investors.
	Q I just want to follow up on something that you said in your previous answer when you were describing the due diligence process. And you said that -- you described the pre-sale as another set of eyes. Did you mean the rating agency itself is another set of eyes?

A We always viewed it that way. They certainly had more time than we did. We always said that we would never outsource our due diligence, but that was one -- certainly one tool that we would rely on. Because, again, they had four to six weeks to look at a transaction. They had boots on the ground oftentimes meeting with the management. So they generally -- you know, they generally, as a firm in rating this transaction, they saw a lot more than we were able to see.

Tr. 871: 4-21 (Weih);

Q And is it fair to say that both the issuer and rating agencies assigned to the deal typically have a much longer period of time to evaluate the underlying collateral and size up the deal?

A You said the rating agencies and who?

Q And the issuer.

A Yes, that's fair.

Tr. 1986:21-1987:2 (Reidy);

Q Okay. About what time frame do you have to make this investment decision?

A We have roughly five to seven business days.

Q And to the –

MR. GOLDMAN: Just, can you direct your questions to 2011? I think that's what you're talking about, but –

MS. KELLY: Oh, sure.

BY MS. KELLY:

Q To the extent I haven't been clear, my questions are focused on the 2010-2011 time frame. To the extent my questions have not been as specific as to time frame, are you doing things in a way that's a little different now in 2016 than you were in 2010-2011?

A No.

Tr. 1028:6-1028:21 (Peterson);

Q So in the course of the process that you have just described from start to finish, about how long does it take to get from engagement to final rating, typically?

	A About two months, I would say, eight weeks, eight, nine weeks. Tr. 429:22-430:2 (Digney); A No. As I state in my report, investors generally would look at the pre-sale report. Tr. at 2060:6-7 (Richard).
76	While the rating agency's assessment of the CMBS did not, standing alone, determine whether the investor would buy a particular CMBS, investors uniformly described the rating agency analysis as a measuring stick, or a "sanity check," that helped to evaluate whether the potential return outweighed the risk of buying the bond.
	Q Every fixed rate conduit deal? A Yes. Q So when you say that S&P is seeing deals or the rating agencies are seeing deals – A They're seeing the same deals. Q Got it. A So it's just getting a feel for what their opinions are of quality and credit volume, and we can compare that to what our opinion is. Q So is it fair to describe it as -- just a --like a metric or a yardstick that you use to compare your thinking to their thinking? A Yeah. Tr. at 1022:22-23:9 (Peterson); Q And is it your expectation that rating agencies generally applied consistent approach in arriving at ratings for CMBS? A Yes. Q And is it fair to characterize your use of pre-sales when you do use them as essentially a sanity check for your investment decision? A Yes. Q In other words, you want a yardstick by which you can compare your thinking about the bonds to the rating agency or another sort of educated resource?

	A That's fair, yes. Q And you said transparency is also important; is that right? A Yeah, I think so. Tr. 1988:23-1989:13 (Reidy).
77	Investors testified that it was important to "know that [rating agencies are] applying their methodology consistently across all the deals that they rate and that they rate subsequently."
	Q Is it important to you as a CMBS investor that the ratings be comparable as between transactions? A Absolutely. We always talk about wanting consistency and transparency from the rating agencies, you know, knowing that they're applying their methodology consistently across all the deals that they rate and that they rate subsequently. And as much transparency as they can give us on how they've come up with those methodologies. Tr. at 885:9-18 (Weih); Q As a CMBS investor, what, if anything, is important about the methodology that's used by the rating agencies? A I think it's just understanding how the ratings are going to be applied. Q Is consistency something that's important to you? A We would -- yeah, we would expect that to be consistently applied. Q And why is that? A Well, I think as we -- you know, as – as you're assuming what a AAA means and what a AA means and an A as defined, you would hope that the same assumptions are being used on every deal. Q Meaning that as an investor you want to know that you're comparing apples-to-apples when you see two bonds rated AAA? A Correct. Tr. at 1040:14-41:6 (Peterson).
78	Matthew Reidy, for example, noted that his company preferred reviewing publications from Moody's because Moody's methodology "remained more consistent and more

	comparable" and was thus more relevant to the CMBS investment decision-making process.
	Q And which rating agency, if any, would you -- did you use in connection with that review? A Typically if we were doing that, we were usually looking at Moody's, DSCR and LTV metrics. Q And is there a particular reason that Moody's was the rating agency that was relevant there? A Their methodology remained more consistent and more comparable between that period and, actually, frankly, the current period, and what was done prior to the financial crisis in kind of the 2006, '7, '8 time frame. Tr. at 1976:6-1976:16 (Reidy); Q Why would consistency be important to you in looking at Moody's and looking at how they approach rating a CMBS? A As I said, more for trend data and to determine where we are at in the underwriting cycle. I think you'll commonly hear CMBS professionals compare current underwriting to, you know, 2006 and '7 underwriting. And Moody's used -- has kept the methodology consistent. And so the loan to value that we're looking at on a 2013 deal would be comparable to the LTV on a 2006 originated deal. Q So is it fair to say when you're looking at Moody's in particular, that the way that they approach deal A in rating it is the same as the way they approach deal B in rating it? A Again, from the standpoint of knowing the overall trend in the underwriting, yes. Q Right. Meaning, you want to make sure that if something is rated AAA on deal A, that they're applying the same methodology to deal B. So that you're comparing apples to apples as a CMBS investor? Tr. 1979:23-1980:20 (Reidy); *see also* Tr. 1988:12-22 (Reidy testimony that it was his expectation that rating agencies generally applied a consistent approach in rating CMBS, and would have expected Standard & Poor's to advise investors if the methodology published in 2009 changed)
79	Antony Wood and Kent Born echoed the need for consistency in CMBS ratings.

	Q And are you generally familiar with the methodology that was used by Standard & Poor's for rating CMBS starting in 2009? A Yes. Q If that methodology had changed, would you have expected S&P to publish the change to the investing community? A Yes. Q And is it your expectation that rating agencies are at least consistent in their approach to rating CMBS regardless of what methodology they use? A I wish that was the case. Q Okay. You would -- you're looking for consistency – A Yes. Q -- from rating agencies? A Yes. Q But based on your direct testimony, it's fair to say that you -- after the financial crisis, you maybe had a more jaundiced view – A Correct. Q -- of the rating agencies? But is it fair to say that what you're looking for is consistency across deals so that you're comparing apples to apples in how the rating agencies arrive at their ratings? A Yes. Tr. 2117:3-2118:4 (Wood); Q Okay. Is it fair to say that the reason that you were commenting on the request for comment was that you cared about S&P's rating methodology? A I cared -- it is fair to say I cared from the perspective that I thought what they were suggesting at the time was going to [roil] the CMBS markets when it was in a very tenuous state. BY MR. DAY:

	Q And that's because it's important for the rating agencies to be consistent in the way they rate CMBS; is that right? A It is important that they be consistent. And the other thing that I would say about this was they were suggesting a radical change when loan level delinquencies and average losses at the time would not seem to merit the change. Tr. 2010:6-21 (Born)
80	Investors also testified uniformly that they expected the presales published by S&P to be truthful and accurate.
	Q Mr. Weih, was it important to you as a CMBS investor that Standard & Poor's pre-sale reports were accurate and truthful? A Yes. Tr. 910:16-19 (Weih); In reviewing pre-sales in connection with your investment decision, was it important to you that the rating agency pre-sale disclosures were truthful and accurate? A We would expect it to be truthful and accurate. Tr. 1046:22-1047:2 (Peterson); Q Do you have an expectation that those pre-sales would be truthful and accurate? A Yes. Tr. 1988:9-11 (Reidy); Q Do you expect that the -- if your team was to review the S&P pre-sales, would you expect that they would at least be truthful and accurate? A Yes. Tr. 2116:24-2117:2 (Wood).
81	Investors testified that if there was a deviation from the published methodology, they would have expected S&P to publish it to investors.
	Q So you wouldn't expect to see – you referenced knowing their methodology. Are you referring to the 2009 criteria that S&P came out with?

	A Yes. Q Okay. And so is it fair to say -- I think you just said if they change the methodology, you would have expected it to be published in the pre-sale, but just more generally? A Right. They would have made an announcement and highlighted to the investment community that they're making a [change] in their methodology. Tr. 887:10-20 (Weih).
82	S&P's Code of Conduct was the overarching set of rules applicable to all ratings personnel.
	[B]efore we get there, I wanted to bring up Division Exhibit 269. Do you recognize this document? A Yes. Q What is it? A It's the Rating Services Code of Conduct. Q To the best of your recollection, was this the version of the code of conduct that was in place from June 2010 until the time you left Standard &Poor's for McGraw-Hill Companies in 2011? A Based on the date on it, I would say yes, these documents are revised from time to time. I couldn't recall when the next revision would have occurred. Q Turning to page 3 of this document, I would like to direct your attention to the fifth paragraph that begins "Rating Services." I just want to read the first line into the record. "Rating Services expects all Rating Services employees to comply with this Code and the related policies, procedures and guidelines." Is it a fair statement that the code of conduct applied to all S&P employees? A Yes. Tr. 210:25-211-23 (Milano).
83	The Code of Conduct required ratings personnel "to conduct the rating and surveillance processes in a manner that is transparent and credible and that also maintains the integrity and independence of such processes in order to avoid any compromise by conflicts of interest, abuse of confidential information, or other undue influences."
	Ratings Services endeavors to conduct the rating and surveillance processes in a manner that is transparent and credible and that also maintains the integrity and independence of such processes in order to avoid any compromise by conflicts of interest, abuse of confidential information, or other undue influences.

	Div. Ex. 269 at 1.
84	The Criteria group "had overall responsibility for oversight of the criteria, which included updating it, changing it."
	A The Criteria Group had overall responsibility for oversight of the criteria, which included updating it, changing it. Tr. 213:14-16 (Milano).
85	S&P had formal, written Criteria Process Guidelines ("CPG") which mandated that certain processes and procedures had to be followed in the creation of or changes to existing criteria.
	JE 10 (Criteria Process Guidelines); Q And then the next paragraph states "Failure to comply with this Code and the related policies, procedures and guidelines may result in disciplinary action, up to and including termination of employment." Is it a fair statement that failure to comply with the code of conduct could result in disciplinary action as stated in the document? A Yes. Q To your knowledge, did that occur during your tenure, that individuals who were found to have violated the code of conduct were disciplined? A I recall disciplinary action taken. I don't recall any terminations. Tr.211:24-212:12 (Milano); A The criteria process guidelines outlined the steps -- outlined a few things, but primarily served as the steps that a committee or analyst would go through in order to develop and propose criteria, get the criteria approved. So it covered, you know, process. It covered the kinds of documentation that you would make available in a criteria presentation. It discussed the levels of approval and the approval process. It covered things like escalation, you know, if there were issues that would get escalated to chief credit officers. Some things may go as high as the president. I thought it was fairly comprehensive as providing guidance on -- or guidance to anyone who was involved in criteria development. Tr. 1495:4-21 (Parisi).
86	The CPG provided that criteria may be modified so long as the ratings personnel advocating for the change followed the five-step process outlined in Section 3.2 of the CPG: 1) initiation of a criteria idea, 2) research of the idea, 3) presentation to and approval of the idea by a criteria committee, 4) publication and dissemination of the new criteria to

	the public, and 5) periodic ongoing review of the new criteria.
	3.2 *Criteria Process is divided into five sub-processes.* 1. *Initiation.* The initiation sub-process includes: (i) identifying the criteria issue (starting with a review of existing criteria), (ii) determining the materiality/applicability of the envisioned criteria, and (iii) obtaining input from knowledgeable sources (which may include management). The initiation sub-process ends with the allocation of resources for researching the issue. 2. *Research.* The research sub-process includes: (i) researching the issue, including soliciting further input from both internal and external sources, as deemed necessary, (ii) formulating recommendations (which includes evaluating the potential ratings impact, determining additional resource requirements, and developing plans for implementation and dissemination), and (iii) writing documentation for internal vetting and approval. The research sub-process ends with bringing documentation to the relevant practice criteria committee for approval.

3. *Approval.* The approval sub-process includes discussion of the documented proposal at the practice criteria committee (subject to additional approvals as described in Sections 3.9 – 3.15) and a vote or other approval mechanism. The sub-process can result in approval, rejection, or request for modifications.

4. *Dissemination.* The dissemination sub-process includes publication of approved criteria internally and externally, and when appropriate, the distribution of training materials to analysts on how to apply the new criteria.

5. *Periodic Review.* The APB oversees the review of all criteria on an ongoing, at least annual, basis as set forth in the Criteria Review Schedule. The periodic review sub-process includes the review and validation of existing criteria on a systematic as well as ad hoc basis. When existing criteria is determined to require amendment, the process typically commences with the initiation sub-process.

Joint Ex. 10 § 3.2;

Q Now, I want to talk a little bit about the criteria process guidelines.

MR. DAY: Can we pull up Joint Exhibit 10.

BY MR. DAY:

Q Dr. Parisi, do you recognize this document?

A Yes, I do.
Q And on the left-hand side, it lists a publication date of September 7, 2010. Do you see that?
A Yes.

Q Recognizing that there may have been subsequent versions of this, would this be the version of the criteria process guidelines that was in place as of September 7, 2010?

A Yes.

MR. DAY: Can we go to Section 3.2?

BY MR. DAY:

Q This carries over to the next page, but we can start here. Section 3.2 is entitled "Criteria process is divided into five subprocesses."

Do you see that?

A Yes.

Q And it lists "Initiation" first. Can you briefly describe what is meant by initiation under the criteria process guidelines?

A I mean, just generally, initiation would --or refers to the introduction or the idea to -- or the need to revise or create sub-criteria. So it could come out of analysts seeing different types of structure, you know, maybe analysts identifying an area of improvement or an area of the criteria that could be improved. So it's just -- sort of starting the process, raising the question to look at the criteria again.

Q The next step is titled "Research." And just again at a very high level, what is meant by research in this criteria process?

A Well, the analyst working on the criteria --or the primary person working on the criteria had a responsibility to put together -- conduct research and put together whatever information they could to support whatever proposed change they were making.

MR. DAY: Can we go to the next page, Mr.King.

BY MR. DAY:

Q And then there are three more steps here: Approval, dissemination and periodic review. Can you describe for the Court briefly what is meant by these three steps.

A Yes. Well, before any criteria can be applied, it would need to be approved; again, whether it was a criteria change or introduction of new criteria. And the approval process included – or consists of us going through various committees; the practice level criteria committee and the structured finance criteria committee, in the case of structured criteria. And then depending on the potential impact of the criteria or whether the criteria crossed multiple sectors, it may sometimes need to go to the analytics policy board.

Q And would the level at which approval needed to be obtained be set forth in the escalation provisions of the criteria process guidelines?

A Generally, yes.

Q Dissemination, what does that mean?

A Once a criteria change or a new criteria were developed, it would -- the intent of dissemination was to publish a criteria article to say, you know -- whatever it is, to say this is how S&P now rates or -- you know, this type of security or something like that. So publish the criteria.

	Q And periodic review is fairly self-explanatory, but I gather there would occasionally be some formal review of any criteria to see if any updates needed to be made? A That's correct. Tr. 1499:6-1502:10. (Parisi).
87	Dr. Frank Parisi and Mark Adelson testified that the switch to blended constants and the withdrawal of S&P's preliminary ratings on two CMBS deals in July of 2011 damaged S&P's reputation.
	Q Dr. Parisi, Judge Grimes was asking you about the franchise or reputational risk and an example of that. Would a change in methodology that resulted in preliminary ratings being pulled constitute the kind of franchise and reputational risk contemplated by this paragraph? A Yes. Tr. 1592:4-11 (Parisi); Q If you go down to the middle of page 12, you see the text amidst the numbers, "an analytical issue and its related criteria should be escalated to the chief credit officer or the APB," the Analytics Policy Board, "in accordance with Section 3.25, if one or more of the following conditions apply." Do any of those conditions apply, Mr. Adelson, to a switch from a blended constant from a criteria constant? A I think also here, number 3, inasmuch as loosening the criteria on the back of what had come before would have been something that the market might view askance, and, in fact, as we saw, the results that came out on the Goldman deal did generate a measure of consternation in the market and inbound calls. You know, I received a press call, so that goes right to franchise and reputational risk. Q Just for the record, I'm going to read that number 3. It says "they carry meaningful franchise or reputational risk." Tr. 289:22-290:16 (Adelson).
88	The CPG thus required, for numerous reasons, the switch to blended constants to follow the five-step criteria change process, and the proposed change should have been elevated to the Chief Credit Officer (Mark Adelson) and/or the APB.
	See FOF 85, above; Q With respect to the proposal to switch from using a 50/50 blend to using actual loan constants for the term default tests, you didn't think you could just do that without going through the criteria process guidelines, did you?

A No.

Q That's why you prepared the memo and sent it up to Mr. Geramian, correct?

A Yeah.

Q Do you know whether the CMBS new issuance group prepared a memo like this to start the – a criteria process guidelines process for the change from using criteria constants to using the 50/50 blend?

A Not that I know of.

Tr. 826:3-11 (Digney).

Q As a result of the conversation with Dr. Parisi, did you have a view one way or another on whether other S&P personnel should have been consulted about the subject matter of the meeting?

A My view was that although Frank was in charge of structured finance criteria, given the sensitivity around the criteria development process and launch, that it should be socialized either with Mark, who was involved, who was Frank's boss, and/or with Quality, to discuss the best path of documentation moving forward.

Q Now, you mentioned Mark. Who were you referring to when you said Mark?

A Mark Adelson.

Q And Mark Adelson, just to reiterate, what was his position at S&P at the time?

A He was the head of all Criteria.

Q And you also mentioned Quality. What was your reference to Quality?

A The Quality organization would routinely review the work that we put forth in the analytical groups. They would pull files and determine if the appropriate procedures were followed and/or methodology.

Q And I think you touched on this, but I just want you to expand, why did you think that the issue that was discussed with Dr. Parisi should have been elevated to Mark Adelson and/or the Quality Group?

A Well, I thought it should be elevated not so much as an obligation or a requirement per se, but from the standpoint of there was a lot of sensitivity around the methodology, and Mark was a very opinionated person with a strong personality, and I didn't want to get to a place where the group was brought down a path and then potentially he may have disagreed in the future or something along those lines.

Tr. 94:24-96:10 (Thompson);

Q And let's turn to page 11 of this Joint Exhibit 9, the criteria process guidelines, please, and you see Section 3.13 there, Mr. Adelson?

A Yes.

Q Is that the escalation provision of the criteria process guidelines?

A Yes.

Q And looking at this page and the next one, the top of page 12, it is talking about when an analytical issue and its related criteria should be escalated in accordance with Section 3.25, which deals with how you escalate, and it says it should be escalated if one or more of the following conditions apply. Do any of those following conditions apply in your opinion to switch to the blended constant?

A Well, yes. The one that matters really is 3, "they represent a loosening of criteria assumptions or removal of a specific area of analytical review." So that's two concepts rolled into one numbered item, but really the key here is a loosening of criteria assumptions.

Q And why does that apply to the switch to the blended constant from the use of criteria constant?

A Because when you go to the blended constant, you are making it easier to pass the tests to get a higher rating.

Tr. 288:19-289:21 (Adelson).

Q What is your understanding of the difference between an interpretation on one hand to which the criteria process guidelines don't apply versus the -- an analytic issue to which the criteria process guidelines do apply?

A An interpretation really applied to a unique circumstance and would most often come into play where perhaps the criteria are not 100 percent clear. So it would require some interpretation as to the intent of the criteria.

Q And on the other hand, an analytical issue to which the criteria process guidelines would apply, can you give an example of something that the criteria process guidelines would apply to?

A The guidelines would apply to changes or introduction of criteria that were intended to apply to, you know, across-the-board sector or the entire class of securities or debt in that

	sector. Tr. at 1502:12-1506:3 (Parisi).
89	Ms. Duka testified in both investigative testimony and at the hearing that if the CMBS ratings group wanted to use a different constant than the criteria constant that they would have to jump through organizational hoops, and during the hearing said that those organizational hoops "would include running through the five-step process" set forth in the Criteria Process Guidelines.
	Q Sure. Let me -- let me draw that out for you a little bit more. It looks to me like there was a meeting of some of the most senior people at S&P as a result of which, in your terms, they continued – the surveillance folks continued to use the published constant. It would seem to me that, given the involvement of very senior people in that decision, one would have to think very carefully about having surveillance do something else with the constant than do what they were doing both before and after that meeting. And my question to you is: Did it occur to you that given that meeting that surveillance should be using the published constant and that you would have to -- to jump through some organizational hoops to get permission for surveillance to use some other constant? A Well, I think you would have had to jump through organizational hoops for anybody to use a different constant. Q What hoops? A Starting with talking to criteria about what -- what the change in constant meant and what the appropriate way to -- to approve it, to document it, and to make it official is. Q And that goes for new issue constants as well as surveillance constants, right? A Yes. Tr. 1125:5-17 (Duka); *see also* Div. Ex. 338 at 46-47 (page 180, line 12, to page 181, line 16 of Duka's prior investigative testimony, Oct. 22, 2013).
90	S&P witnesses testified that a criteria interpretation is a "one off" situation and that an across-the-board change in methodology, like Duka's switch to using blended constants, could not be considered an interpretation.
	Q What is your understanding of the difference between an interpretation on one hand to which the criteria process guidelines don't apply versus the --an analytic issue to which the criteria process guidelines do apply? A An interpretation really applied to a unique circumstance and would most often come into play where perhaps the criteria are not 100 percent clear. So it would require some interpretation as to the intent of the criteria.

	Q And on the other hand, an analytical issue to which the criteria process guidelines would apply, can you give an example of something that the criteria process guidelines would apply to? A The guidelines would apply to changes or introduction of criteria that were intended to apply to, you know, across-the-board sector or the entire class of securities or debt in that sector. Tr. 1506:17-1507:9 (Parisi); Q This switch in loan constants from the higher of the actual or the criteria constant or the Table 1 constant or the stress constant to a 50/50 blend of the two, or technically I think it was a higher of the 50/50 blend or the actual, would you consider that a criteria interpretation or a change? A That's a change. Q Why? A Because it affects how you are assigning ratings to all the CMBS. It is a very big deal. Q Can you be more specific? A It has to be documented and published for transparency. Tr. 286:1-13 (Adelson);
91	Duka personally participated in a much less significant criteria modification in March 2010—the decision to use the "higher of" the actual or Table 1 loan constants—which largely followed the CPG process.

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).

....

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.**

....

Signatures:

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

Div. Ex. 48 at 2, 3;

Q And is it correct, Ms. Duka, that you perceived this change, the change to using the higher of the actual or the criteria constant, as a very minor change?

A I remember reading that in my testimony, but I'm not sure why I said it. I don't recall what I was referring to. I'm not sure that I was necessarily referring to -- I don't know.
I guess, let me ask, what do you mean by "minor" first of all? Or "major"?

Q My question is: Do you? Because that's the term you used.
In your testimony, as you just noted, which you obviously reviewed, you referred to this as a very minor change.

	A I do recall saying that in my testimony. I just don't remember what I was referring to. Q Okay. Well, in your testimony you also said that -- let me just get this right. I suspect with respect to No. 2, versus what we just looked at there about the higher of, the constants, it was just very minor. You had several loans out of hundreds or thousands that you looked at where the constant was higher than what you would have used? Might that be why you thought it was very minor; because it only applied to several loans out of hundreds or thousands of loans? A It sounds like what I'm saying. At thetime, it would have -- it would have appeared minor, yes. Tr. 1129:4-1130:9 (Duka).
92	In May 2011, several months after making the switch to blended constants, Duka and her group proposed to switch again from blended constants to actual constants.
	2) STRESSED LOAN CONSTANTS **Issue:** We are currently using a 50/50 blend of actual loan constants and the stressed loan constants set forth in Table 1 of the criteria (unless the actual loan constant is higher), which may be overstating term defaults. **Proposal:** We think it makes more sense to use the actual loan constants for our term default tests, since those are in fact the loan constants in place during the loan term. In conjunction with this change, however, we'd like to look at incorporating our stressed loan constants with our maturity default test. The current maturity test is simply LTV > 100% using our AAA Value and balloon balance. We'd like to consider a slightly tougher test, for example LTV > 75% **OR** DSC < 1.20x (using stressed loan constant). Losses would still be calculated as they are now, but loans that default under this test would be subject to a minimum 1% loss to account for special servicing fees, etc. Resp. Ex. 517 p. 4 (May 20, 2011 memo titled: Proposed enhancements to CMBS conduit/fusion criteria);
93	The switch to blended constants proposed in May 2011 was explained in a memorandum and elevated to the Criteria Officer for structured finance, Majid Geramian, with a cover email asking about how to proceed with "Frank [Parisi] and/or Mark [Adelson]."

	-----Original Message----- From: Digney, James Sent: Fri 5/20/2011 9:53 AM To: Geramian, Majid Cc: Duka, Barbara; Pollem, Kurt; Hoeltz, Barbara; Carrington, Gary; Pandya, Deegant Subject: Conduit/Fusion Criteria Memo Majid, Attached is the memo that I gave you yesterday. Let us know how you think we should proceed with Frank and/or Mark. Thanks, Jim Resp. Ex. 517 p. 2.
94	The MQR group, which was part of the Criteria group, was responsible for reviewing models that were used in the ratings process to ensure that the model accurately implemented applicable criteria.
	Q And what is the MQR report, as you best recall? A I believe it was the Model Quality Repository, but I can't recall what it exactly stood for. There was a Model Quality Group, and you would have to upload the models to a repository. Folks from that group I believe would vet the models and provide reports on what their findings were and how the report complied to the criteria being used or if there was errors in it. Tr. 179:20-180:4 (Thompson); Q Now, I want to now turn to the Model Quality Review, MQR, I will refer to it as MQR. That was part of the Criteria Group; is that correct? A Yes. Q What was MQR's charge within the organization? A The MQR Group was responsible for reviewing models that were used in the ratings process, and their role was to ensure that whatever outcomes the analytical process required from that model, that they were indeed producing those outcomes. Tr. 215:6-16 (Milano); Q A couple of more topics and then I will turn you over to Mr. Petrillo. But, first of all, I want to talk a little bit about MQR, Model Quality Review. You were in charge of that division; is that correct? A Yes. Q And were they involved in the investigation of what happened with the ratings with

	respect to the Goldman deal? A At some point they were brought in, yes. Q And is one of their functions to analyze ratings models? A Their function is to analyze models. I should go back to what I said a moment ago. When I say they were brought in, I'm not sure they were brought in to investigate it, but they were definitely brought in to be asked what they had to do with the model. Q And actually I asked the question a little differently. I just want to ask, do they review models, does Model Quality Review review models? A Yes, they review models. 328:19-329:15 (Adelson); Q What is the MQR Group? A That is the Model Quality Review Group. Q Can you explain, do you have an understanding of the process by which -- does MQR approve models, is that their function? A Yeah, I believe so. It is just the model review processes changed a lot from over the years, but yeah, I think that was the primary function. Q Was there dialogue with what I will call the rating practice prior to -- in connection with the MQR's review of the model? A Yeah, I think it was -- yeah, it was them, if they had questions about certain formulas or how things were being done in the model. Q Was it important to be transparent with MQR? A Yes. 479:15-480:6 (Digney).
95	MQR was charged with reviewing both the "Criteria application" and "assumptions" embedded in a ratings model.

	Model Quality Reviews shall consider relevant aspects of a model, including a review of Criteria application, assumptions, governance including documentation and development testing, data inputs, model theory, implementation, and usage of model outputs. Any conclusions or recommendations shall be clearly identified in the MQR report. Joint Ex. 12 at 2.
96	Duka did not disclose the switch to blended constants to MQR, which was conducting a review of the CMBS model at the time that Duka caused the model to be changed to using blended constants, and during the time of the six transactions rated with the use of blended constants.
	The CMBS Framework Model (the model) has been reviewed by the Model Quality Review Group (MQR) based on the information provided as of September 21, 2010 on behalf of the model owner, including the stand-alone Excel version of the model ('AAA Framework Model Template.xls') provided by Eric Thompson of Structured Finance CMBS Surveillance Group on November 11, 2009 and the 'Framework model optimized for New Issuance.xls' provided by David Henschke of Structured Finance CMBS Group on October 22, 2010. MQR concludes that subject to the minor qualifications and limitations outlined in this report, the model is an appropriate computer implementation of the S&P Criteria [1], and is suitable for its intended analytical use. Div. Ex. 19 at 1 (Model Quality Review Report dated June 16, 2001, describing review of CMBS) (p. 5 of .pdf).
97	Duka, as the most senior analytical manager in the CMBS group, was responsible for making sure MQR received accurate information.
	Q With respect to MQR's review of models used by the new issuance group to derive ratings, is it fair to say that Ms. Duka was ultimately responsible for providing whatever information MQR needed to perform its assessment? MR. GOLDMAN: Objection. Your Honor. JUDGE GRIMES: Basis? MR. GOLDMAN: I don't know what it means "ultimately responsible." MR. DAY: She was the head of the group.

	JUDGE GRIMES: Hold on, hold on. I'm just going to re-read the question. Overruled. Go ahead. So the question is: "Is it fair to say that Ms. Duka was ultimately responsible for providing whatever MQR needed to perform this assessment? Is that fair?" THE WITNESS: I guess so. I don't know if there's anything specific in that about -- in the policy and procedure document that says who does. But I guess that makes sense. Tr. 810:12-811:7 (Digney).
98	MQR reviewed only a version of the CMBS ratings model that employed the "higher of" approach.
	Q And in connection with the investigation, let's look at Division Exhibit 300. In connection with the investigation, did you have occasion to ask the Model Quality Review Group if they had reviewed the model that was actually used to give the ratings? And without looking at the document, you should just answer my question whether you know, yes or no. A Well, I think so. Q Then go ahead and look at this document and let me just lay a foundation for it, first of all. The first one is from you to Dina Moskowitz, but I actually want to ask about a second one from a Ms. Haixin Hu to yourself dated August 12, 2011. Do you see that? A Yes. Q Any reason to believe you didn't receive that e-mail in connection with your work at S&P? A No reason. MR. McKENNA: Move to admit. MR. PETRILLO: No objection. JUDGE GRIMES: Division 300 is admitted. (Division Exhibit No. 300 was received in evidence.) Q I just want to ask you about the first line there that Ms. Hu writes to you where she says "Mark, I double-checked the only official version we had in the inventory, and would like to confirm that loan constant in that version is specified in Table 6." What do you understand the loan constant she is referring to in that sentence to be? A I'm taking that to be from criteria.

	Q So the criteria constant, not the 50/50 blend? A Right. Tr. 329:16-331:2 (Adelson); Based on their feedback and what we I observed in the sample deal they provided, I later revised the report to "the higher the actual loan constant and those depicted in Table 6" (also posted below). Div. Ex. 300.
99	Duka admitted that MQR needed to be aware of new issue's actual practice, but that she never provided them with a version of the model that used blended constants.
	Q And model quality review needed to be advised of new issuance's actual practice, right? A "Advised." They needed to be aware so that they could look at the model and see if that is what the model was doing, yes. Q Okay. So they needed to be aware of new issuance's actual practice? A Correct. Q Okay. And, yet, MQR was not provided with the version of the model that new issuance was actually using in 2011; that is the version that incorporated the blended constant, correct? A That's my understanding, yes. Tr. 1194:19-1195:6 (Duka); Q Now, based on what Ms. Hu wrote here, is it fair to assume that she was looking at a version of a model that had the formula that took the higher of the actual or the criteria constants? A Yeah, that's -- I would say that is likely. Q Do you know if Ms. Hu ever saw a model like the 2011-C4 model in Division Exhibit 362 that had the blended constant and the S&P blend on the assumptions page? Do you know if she ever saw that version of the model? A I'm not sure. Q Do you have any reason to believe that she ever saw a version of the model that used the blended constant?

	A I just don't know when that cell was put into the model, if that was after she had already been sent a version of the framework model. So I'm not sure just based on the timing. Q But, in any event, at least as of March 21, 2011, based on what she wrote here in this email to Ms. Duka, it appears that she is looking at a model that takes the higher of the actual criteria constant; is that correct? A That looks right. Tr. 809:12-810:11 (Digney);
100	Duka told the MQR reviewer that "new issuance [is] using the actual if higher but look at both if the actual is lower," which James Digney testified was not sufficient to alert the MQR reviewer about the switch to blended constants.
	From: Duka, Barbara **Sent:** Monday, March 21, 2011 11:59 AM **To:** Ramkhelawan, Gregory; Hu, Haixin **Cc:** Digney, James; Pollem, Kurt; *MQR; Hansen, Lisa **Subject:** RE: Request for Model Owner Approval on model # 253 **Haixin, New Issuance would use the actual (if higher) but look at both if the actual constant is lower than the Table 6.** Div. Ex. 20 at 1; Q I'm happy to ask that question, actually: Do you believe that this language was clear to alert Ms. Hu that new issuance was using a blended constant to rate transactions across the board? A It's not as -- I guess, it's not as explicit as saying 50/50 blend and saying look at both, so maybe not entirely clear. Q Did Ms. Hu ever communicate to you her understanding that new issuance was using a blended constant across the board to rate all new issuance transactions in 2011? A Communicate to me that she understood? Q Yes. A I don't recall, like, an affirmative statement or anything like that. Tr. 804:3-17 (Digney);

<table>
<tr><td></td><td>I asked you a few minutes ago. Is it your belief, as you sit here today, that an alternate debt constant, this language here, was sufficient to alert Ms. Hu that new issuance had used a blended constant to rate all new issuance transactions starting in or about December or January of 2011?

A It's probably not as clear as it could have been.

Tr. 806:2-11 (Digney).</td></tr>
<tr><td>101</td><td>Ultimately, Duka's efforts to lower the credit enhancement levels through the application of blended constants were exposed – as a result of questions raised by the same investors who were in the dark about her undisclosed change to S&P's methodology for rating CMBS.</td></tr>
<tr><td></td><td>The dealers initially shopped the benchmark $753.7 million triple-A class in the area of swaps plus 150 bp, but investors immediately pushed back, questioning why the deal didn't have more credit enhancement to protect bond buyers against potential losses in the collateral pool.
Div. Ex. 146 (front page article in Commercial Mortgage Alert entitled "Bond Buyers Balk at Drop in Subordination);

—— Original Message ——
From: Penner, Ethan @ CBREInv NY <EPenner@cbreinvestors.com>
To: Jacob, David
Sent: Fri Jul 15 13:17:27 2011
Subject: GS 2011-GC4 deal

Dear Dave,

I hope this email finds u doing well. I'm in nY most of summer so let's get together. I'm perusing your writeup of the above-referenced deal and have a question. On P5 of the writeup your analyst says the beginning LTV is 87%, which I'm sure is the S+P assessment and not the loan appraisers'. Seemingly incongruously, you grant investment grade status to 98.25% of the deal, implying that you equate 84% LTV with investment grade risk. We both know this cannot be true, so I'm left to wonder whether you really believe the actual LTV is significantly lower.

Either way, this seems damn confusing. Thoughts?

Best,

Ethan
Div. Ex. 106;</td></tr>
</table>

	-----Original Message----- **From:** Parkus, Richard [mailto:Richard.Parkus@morganstanley.com] **Sent:** Thursday, July 14, 2011 09:40 AM Eastern Standard Time **To:** Esaki, Howard **Subject:** **Howard,** **The subordination levels S&P allowed on the GSMS 2011-GC4 deal are simply stunning. Makes me wonder about David Jacob's previous statements in the press about the worrisome slippage in underwriting quality.** **Regards,** **Richard Parkus, Executive Director** **Morgan Stanley | Research** **1585 Broadway, 2nd Floor | New York, NY 10036** **Phone: +1 212 761-1444** **Richard.Parkus@morganstanley.com** Div. Ex. 105; *see also* Div. Ex. 368 (Goldman Sachs spreadsheet summarizing investor feedback, with many comments reflecting concern about the low CE levels, including "insufficient CE," "not a fan of the enhancement levels," "14.5 CE not sufficient," etc.).
102	After receiving investor comments questioning the ratings, and after learning that the ratings were reached by applying loosened criteria, S&P decided to pull the ratings for the GSMS-2011-GC4 transaction, along with another Freddie Mac transaction rated with blended constants in approximately the same timeframe.
	Q Why was that decision made, again, your personal knowledge as to why that decision was made? A What I recall is that the preliminary ratings had been determined using the blended constant, which was not part of the criteria, and therefore we couldn't -- we couldn't stand behind them, we had to follow our criteria when we made ratings, and it left us with the issue of the number of deals that had been rated earlier in the year with the blended constant. So the Goldman ratings got pulled and then we had to confront the next issue. Tr. 308:10-21 (Adelson); Q And I'm going to ask you about that as well. But was -- I mean, had you ever had something like this happen before as a CMBS investor; i.e., having a new issuance withdrawn from the market? A No, no. And this did cause a lot of market disruption; sprints definitely moved during this time. There was a lot of uncertainty, you know, on the heels of, you know, what we had just come through. Kind of in 2009, the market felt like it was starting to gain its footing, and then this happened. And I think actually shortly thereafter, there may have been a resolve. I do think deals started to have -- again have the super-senior class introduced into transactions, which to my -- it would have been a sign of maybe lack of confidence in the rating agencies. Tr. 906:21-907:11 (Weih);

	Q And they were tasked, just so I'm clear, with determining whether the ratings that had been issued already were consistent with Standard & Poor's ratings definitions? A Right. Q Is that the same as saying they had been generated by following criteria? A No, it's not. Q What's the difference? A The difference is when you follow criteria, you are not looking directly at the rating definitions. The idea is that the criteria is calibrated to the rating definitions, so the ratings that it produces will be comparable across different sectors. Here I knew that if we just followed the criteria, you know, we would be producing a result that, you know, might be what we don't really intend, because we are announcing that we are going to look at the criteria and possibly change it. So I asked him to do this other thing, it made me uncomfortable doing it, you know, I'm not glad, you know, that we had to do something like this, which really in itself is a violation of, you know, how you make ratings properly, which is by following criteria, but I also don't lose sleep over it, because I think of it as, the analogy in my own mind is it would be like you are driving and a bee stings you, and you swerve into oncoming traffic, and of course you are supposed to get back into your proper lane as fast as you can, but you are not supposed to run anyone off the road or kill someone while you are doing it. You are supposed to do it carefully and properly. So here I was trying to do something without getting anyone hurt. Tr. 316:20-318:5 (Adelson).
103	The Division's expert demonstrated that the credit enhancement levels for seven of the eight CMBS[1] would have risen by 24.99% to 54.90% if the Table 1 constants were used to rate these transactions.

[1] The credit enhancement levels for the eighth CMBS, a Freddie Mac-issued bond, did not change as a result of the application of blended loan constants due to a 10% CE floor built into the model. *See* Div. Ex. 335 at 50, note 137.

TABLE 4 <u>CE required for AAA</u>

Deal Rated by S&P (Bloomberg Ticker)	Blended Constants	Criteria Constants	Difference (BP)	Percentage increase in CE	Rating Based on Criteria Loan Constants	Ratings Fee [138]
MSC 2011-C1	23.29%	29.11%	582	24.99%	AA-	$1.968.560
FREMF 2011-K701	14.59%	22.09%	750	51.41%	A+	$710.000
JPMCC 2011-C3	16.42%	21.57%	515	31.36%	AA-	$1.450.000
FREMF 2011-K11	12.03%	16.40%	437	36.33%	AA-	$710.000
FREMF 2011-K13	10.00%	15.49%	549	54.90%	A+	$710.000
JPMCC 2011-C4	18.83%	23.77%	494	26.23%	AA-	$1.450.000

Div. Ex. 335 at 50, Table 4; Div. Ex. 367 at 3-4.

104 Accordingly, the ratings for the highest tranches of these seven CMBS would have declined significantly if the Table 1 constants were applied, with the AAA rating sliding to anywhere from AA- to A+, *i.e.*, three to four notches lower than AAA.

Id.

105 Both David Jacob and Dr. Parisi testified that a change of several hundred basis points would be significant.

Let me ask you this question: If new issuance group at CMBS rated one deal in 2010 that used a certain type of loan constant and then switched to using another type of loan constants in the deals they rated in 2011, and that switch resulted in a change of credit enhancement levels of several hundred basis points, would that be a consistent application of methodology?

A That would be [an] unbelievably huge change. That's humongous in terms of the value to the transaction.

Tr. at 659:23-660:8;

Oftentimes, escalations went to the analytics policy board, but not necessarily always.

Q And then there's another condition, No. 7, which refers to a change in criteria or an analytical issue in criteria that may impact existing ratings by more than three notches. Can you explain what that means?

A Yes. The purpose of this was to monitor any potential criteria change that would result in – a significant rating change of three notches is a full category. And according to the escalation section here, any potential change like that would have to, at the very least, be escalated to chief credit officer Mark Adelson. And oftentimes if it would have that broad -- or that deep and possibly broad impact on outstanding ratings, it might also go to the president.

	Tr. 1503:7-25 (Parisi)
106	The RAMP was the official record of the methodology used to rate a particular CMBS transaction.
	According to S&P's RAMP Guidelines, a RAMP was an S&P "template that analysts use to present financial, structural, and other information to a rating committee [that] ... outlines the analyst's rating recommendation."[5] The objective of the RAMP "is to explain the rating recommendation to voting committee members through the application of criteria," capturing "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, as well as the committee's final decision and the rationale for the rating."[6] The RAMP Guidelines directed that the primary analyst of a transaction complete the RAMP and that the chairperson of the Rating Committee review and approve the RAMP upon its completion. JE 85 at 4; *see also* Order dated July 1, 2015 at 7 ("The RAMP Guidelines referred to the RAMP as the 'definitive record of the rating' and directed that the RAMP capture '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, as well as the committee's final decision and the rationale for the rating.").
107	Duka testified that she "expected [the RAMP] to contain" adequate disclosure about blended constants.
	Q Do you believe that you and your group complied with that promise with regard to the RAMPs? A I think we did in part. Q How did you comply "in part"? How did you disclose the 50/50 blend in the RAMP? A Not in the RAMP. I think we partially complied in the pre-sale in the language that I pointed out. Q Okay. A But the RAMP does not contain any language. So the RAMP theoretically does not -- does not contain the type of language that I would have expected it to contain.

	Tr. 1232:13-22 (Duka).
108	Dr. Rubinstein testified that the language added by Duka to the presales – *i.e.*, "Standard & Poor's will *consider both* the loan's actual debt constant and a stressed constant" – was meaningless to him.
	Q Based on your experience in the CMBS industry, is this language sufficient to alert the reader that S&P was using a simple average of the actual and criteria constants to rate the deal? A I would have no idea that that's what was happening. And when I look at a statement like this, it says it's further detailed in our conduit/fusion criteria. Well, I went and looked in the conduit/fusion criteria. I could not find any mention of using a blend in the conduit/fusion criteria. So the statement in and of itself didn't mean anything to me. And the reference that it made to the criteria didn't help me at all. Tr. 1624:18-1625:7 (Rubinstein); *see also* Tr. 892:14-893:3 (investor Douglas Weih testifying that the "consider both language" would not have told him anything about whether S&P had changed its existing methodology for rating CMBS).
109	Ms. Duka testified that in her disclosure "as further detailed in our conduit/fusion methodology" in the presale reports "[she is] pointing the reader to the stressed constant in Table 1."
	Q You pointed us to this last line in the second paragraph of conduit/fusion methodology. And I want to know if there's any place else in the pre-sale that you believe you disclose that you were using a 50/50 blend of the actual and the criteria constant. A That I disclosed it? Q Yeah. A No. I thought you asked me if there was a place that I would have disclosed it. Tr. 1229:13-22 (Duka); Q So that's the sentence that you approved being added to the pre-sales, correct? A Yes. Q When it refers to, "As further detailed in our conduit/fusion criteria," what are you referring to there? A The stressed constant in Table 1. Q The stressed constant in Table 1. But I thought you weren't supposed to use a stress

	constant in Table 1? A What that's saying is that I'm using – in determining a loan's debt service, I'm using the actual constant and a stressed constant, which is the constant in Table 1 that's based upon property type in the conduit/fusion criteria. That's what that is saying. Q So in the pre-sale you're pointing the reader to the stressed constant in Table 1? A That's correct. Tr. 1429:12-1430:2 (Duka).
110	Duka testified that she had no reason to disagree that a single presale (JE 22) contained over 60 references to the Table 1 loan constants, and DSCRs based thereon, that were not used to reach the credit ratings assigned.
	Q But I'm just going to, you know, represent to you that by my time -- by my count, at least, there's some -- you know, over 60 times in the pre-sale that it mentions a debt service coverage based on the stressed loan constant. And you watched me flip through this pre-sale highlighted during the opening. Do you have any reason to disagree with that? A No. Tr. 1230:23-1231:7 (Duka); *see also* FOF 53-55, *supra*.
111	As the Division's expert opined, it is unlikely that S&P would have been hired to rate any of these eight transactions if the Table 1 constants had been applied, because the credit support levels would have been too high.
	93. In my opinion, it is likely that S&P would not have been hired to rate any of the deals summarized in Table 4 had they continued to rate transactions with the original model that used only stressed loan constants. With conduit CMBS rating fees at this time typically ranging *See* Div. Ex. 335 at 52 (Rubinstein).
112	Indeed, even applying the blended constants, S&P struggled to get business in light of how high the CE levels continued to be.
	Both will be Fitch / Moody's – most of the reason is that our feedback was significantly higher. However, Wells does want to speak to a business person about business terms. (Scott, I left you a vmail about this. Jim Barnard is who you want to speak with). *See, e.g.*, Resp. Ex. 470 (April 13, 2011 email from Duka to David Jacob and others, noting that S&P was not asked to rate deals with Wells Fargo and Morgan Stanley; "most of the reason is that our [preliminary feedback] was significantly higher."); *See also* FOF __, *supra*.

113	Investors testified that credit enhancement levels are important to the CMBS investment decision.
	Q What -- can you just talk a little bit about why credit enhancement is an important factor in your investment decision, if it is? A It absolutely is. You know, we're looking at the underlying real estate and trying to determine with our commercial real estate group and through our process what the likelihood of underlying defaults are at a loan level. The credit enhancement gives us a cushion against defaults. So the more credit enhancement there is, it's essentially the percentage of the deal that sits below you that is subordinate to us as a purchaser of a bound that has 22.875 percent credit enhancement -- it's basically saying that 22.875 percent of the deal would have to -- well, there would have to be that much in losses, which would probably mean that even a higher percentage of the underlying loans would have to default, because you're going to usually get something back when a defaulted property is sold. So it's basically saying that a very good percentage -- a high percentage of the pool would have to default before we would incur a principal loss on our transaction. So the credit enhancement serves as a cushion against loss. And we are looking for as much credit enhancement as we -- we're looking at two things: the underlying real estate -- we're also looking at the amount of cushioning we have against loss. Tr. 880:19-881:24 (Weih); *See also* Div. Ex. 368 (Goldman Sachs spreadsheet summarizing investor feedback on GSMS 2011-GC4, noting that numerous investors declined to participate in the offering because of concerns about low CE levels); Q I'd like to have you look at a spreadsheet that we emailed to your counsel yesterday. It doesn't have an exhibit number, but it is labeled GS 1132. A All right. Bear with me one second. I'm going to get it off a laptop here. All right. I believe I got it here. Q And I'll represent to you that this is a document that was produced by Goldman Sachs. And if you look in the upper left-hand corner, it relates to the GSMS 2011-GC4 transaction. Do you see that? A I do. Q Are you familiar with that transaction? A I am familiar with that transaction, yes. Q Okay. I would like to focus your attention on cell B 72. Hopefully I got that right -- or, actually –

	A Hold on. Q -- rather, 72 – A We'll find it. All right. I got that. Thank you. Q And you see there's a reference in Column B to PPM. Do you understand that to be – A Yes – Q -- your employer? A -- yes. Tr. 2011:4-2013:1 (testimony of investor-witness Kent Born acknowledging that his firm told Goldman Sachs that they would pass on GSMS 2011-GC1 because, *inter alia*, "14.5 [credit enhancement is] not sufficient.")
114	While investors might have reached the same decision about investing in a particular CMBS rated with blended constants, the fact that S&P was providing the "real" loan constants used to derive CE levels to the issuers, while giving the published, but irrelevant, numbers to the investors in the presales, would have in and of itself given investors pause about S&P's analysis.
	Q So let me focus you on this. I asked you about this sentence that includes references to numbers for debt service coverage, loan constants and LTV ratio. Are these metrics that are important to you in making a CMBS investment decision? A Yes, yeah. We will look at the pool, LTV, DSCR, those are metrics that we are looking at when looking at a deal and looking at how the rating agencies -- the numbers that the rating agencies are coming up with, yes. Q And as the person who is the manager of the CMBS desk, would you expect your team to review this portion of the pre-sale with some care? A Yeah. They would be looking at this portion of the pre-sale. I'm sure it was read, you know – it could have been -- it's -- I very well could have read this or certainly somebody on the team and/or commercial real estate group would have read this. Q And if the information that was in this section was not correct, would you have wanted to know that as a CMBS investor? A Yes. Q And if that -- if the different information was provided to the issuer than was provided to

	the investor, would you have wanted to know that? A Absolutely. Q Why? A Because that would give us -- it wouldn't be very -- candidly, very confidence-inspiring to have two sets of numbers. We would want to know, you know, why there were two sets of numbers. It would worry us a little bit going forward in purchasing this deal on what set of numbers a rating agency was going to use when they were looking at surveillance. Meaning, that that may increase the probability of downgrade. It may. I mean, if there's two sets of numbers, that doesn't give us a lot of confidence on what number will be -- or method will be applied going forward, which could raise the probability of downgrade, which we're trying obviously -- that's one of the risks that we're trying to avoid. Q In other words, there could be a discrepancy between the way CMBS new issuance is looking at it versus CMBS surveillance or Standard & Poor's? A Right. Tr. 888:21-890:18 (Weih); Q Would it have concerned you as a CMBS investor if different numbers were provided to the issuer than were provided to the investors in this deal? A It would have been concerning to know they were using a different set of assumptions . Q And why is that? A It goes to -- you know, why would they publish one set of assumptions that the market is using as -- you know, as -- as far as -- this would be a basis for their ratings. I guess we would be concerned and want to know why -- if that was the case, why they were using a different set of numbers with the issuer. Tr. 1047:10-23 (Peterson).
115	Interstate commerce was utilized in that the presales were published by Standard & Poor's in New York, and the CMBS investors were from various other states.

	Presale: # Morgan Stanley Capital I Trust 2011-C1 **Primary Credit Analyst:** Brian Snow, CFA, New York (1) 212-438-3249; brian_snow@standardandpoors.com Q Can you tell us where you currently work? A I work at Aegon USA Investment Management. And I'm located in Cedar Rapids, Iowa. Tr. 848:25-849:2 (Weih); *see also* Tr. 1015:132-23 (investor Marc Peterson testifying that his firm, Principal Financial Group, is located in Des Moines, Iowa); Tr. 1996:6-7 (investor Kent Born testifying that his firm, PPM America, is located in Chicago).
116	When Duka was asked if by promising Dr. Parisi that she would disclose any change in methodology in both the presale and the RAMP she assumed any responsibility to ensure that such disclosure was in fact made, Ms. Duka claimed not to know what the word "responsibility" meant.
	Q But my question is: By making that promise, did you assume any responsibility to make sure that what was supposed to happen in the ordinary course actually did? A I don't know what you mean by "responsibility." Tr. 1473:23-1474:3 (Duka).
117	S&P CMBS analyst Brian Snow testified that had Duka directed him to disclose the blended constants – rather than conceal them (*see* Div. Ex. 103) – he would have done so.
	Q Mr. Snow, is it fair to say that you don't have a specific recollection as to whether you knew at the time that blended constants were used in the pre-sale that you were the primary analyst on? A I do not recall. Q Okay. Is it fair to say that if you were directed to disclose the use of blended constants by your supervisor, you would have done so? A If I was told to do so, yes. Q Were you told to do so?

	A I don't believe so. Tr. 1799:14-24 (Snow).
118	Q: . . . When you say that they would have been skeptical of the reason for the change, are you assuming that the Division's allegations that the change was commercially motivated are true? A: I'm assuming that if they [S&P] announced a change in criteria from a stressed constant to a blended constant, if that was announced, I think people would look at it carefully and wonder, and maybe even think – I would have thought it – that they are trying to get their credit support numbers down so that they can get business. In other words, people would think it was commercially motivated. Or they would be concerned. Some people would probably think it. Some people would probably just be concerned about it. Because of the terrible, terrible, terrible history of rating shopping and its impacts on the markets. Q: So people would have been concerned about it, because even if it was disclosed, people would think that S&P's disclosing that we're switching to a blended constant in order to rate more deals, right? A: I think it – I think it would be obvious to most people, given the interest rate environments, that [the switch to blended constants] would cause a decline in credit support numbers. And I think they would be concerned about the motivation, yes. Q: By "concerned about the motivation," you mean – A: That it might be commercially motivated. Tr. 1914:3-1915:8 (Rubinstein).

Division of Enforcement's Proposed Conclusions of Law

1	The Division bears the burden of proof by preponderance of the evidence.
	Steadman v. SEC, 450 U.S. 91, 96 (1981) (footnote omitted); *SEC v. Rorech*, 720 F. Supp. 2d 367, 404 (S.D.N.Y. 2010) (citations omitted).
2	"[A] fact has been proved by a preponderance of the evidence if . . . 'the scales tip, however slightly, in favor of the party with the burden of proof,' as to that fact."
	Ostrowski v. Atlantic Mut.Ins. Cos., 968 F.2d 171, 187 (2d Cir.1992) (citing Sand, Model Federal Jury Instructions ¶ 73.01 at 73-74 (1992)).
3	A finding of aiding and abetting liability under Exchange Act Section 20(e) 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).
4	"The requisite scienter for liability under Section 20(e) is knowledge."
	SEC v. China Northeast Petroleum Holdings Ltd., 27 F. Supp. 3d 379, 395 (S.D.N.Y. 2014) (citations omitted).
5	To meet this burden, evidence of Duka's "general awareness" of her overall role in S&P's unlawful conduct is sufficient knowledge for aiding and abetting liability."
	SEC v. Espuelas, 905 F. Supp. 2d 507, 518 (S.D.N.Y. 2012) (citation and internal quotation marks omitted).
6	To demonstrate substantial assistance, "the SEC must show that the defendant in some sort associated himself with the venture, that he participated in it as in something that he wished to bring about, and that he sought by his action to make it succeed."
	SEC v. Apuzzo, 689 F.3d 204, 206 (2d Cir. 2012) (citation, internal quotation marks, and alterations omitted).
7	The Commission has held that causing liability under Exchange Act Section 21C(a) requires a finding 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.
	Robert M. Fuller, Exchange Act Release No. 48406, 2003 WL 22016309, at *4 (Aug. 25, 2003) footnote omitted); *Erik W. Chan*, Exchange Act Release No. 45693, 2002 WL 507022, at *4 (April 4, 2002) (footnote omitted).

8	Negligence is sufficient to establish liability for causing a primary violation that does not require scienter.
	KPMG Peat Marwick LLP, Exchange Act Release No. 43862, 2001 WL 47245, at 19 (Jan. 19, 2001).
9	A respondent who aids and abets a violation is also a cause of the violation.
	Zion Capital Mgmt. LLC, Exchange Act Release No. 48904, 2003 WL 22926822, at *7 (Dec. 11, 2003) (footnote omitted).
10	Exchange Act Rule 17g-6(a)(2)) prohibits "issuing ... 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 . . . will purchase the credit rating[.]"
	17 C.F.R. § 240.17g-6(a)(2).
11	Exchange Act Rule 17g-2(a)(6) provides in relevant part that "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).
12	A respondent may be liable for aiding and abetting recordkeeping violations when the respondent knew or recklessly disregarded fact that reporting requirements were not being followed by subordinates.
	Geman v. SEC, 334 F.3d 1183, 1195-96 (10th Cir. 2003).
13	Exchange Act Section 15E(c)(3), which provides that "[e]ach 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).
14	Rule 10b-5, which implements Exchange Act Section 10(b), makes it unlawful for any person to use interstate commerce or the mails: (a) to employ any device, scheme or artifice to defraud; (b) to make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the

	circumstances under which they are made, not misleading, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.
	15 U.S.C. § 240.10b-5(a)-(c).
15	Section 17(a) of the Securities Act makes it unlawful for any person, in the offer or sale of any security, to use interstate commerce or the mails: (1) to employ any device, scheme or artifice to defraud, or (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.
	15 U.S.C. § 77q(a)(1)-(3).
16	For the purposes of Section 17(a)(2) "it is sufficient . . . for the SEC to allege that [the defendant] obtained money or property for his employer while acting as its agent, or, alternatively, for the SEC to allege that [the defendant] personally obtained money indirectly from the fraud."
	SEC v. Stoker, 865 F. Supp. 2d 457, 463 (S.D.N.Y. 2012).
17	For its claim under Securities Act Section 17(a)(2) and (3), the Division need only show that the respondent acted negligently.
	Dennis J. Malouf, Exchange Act Release No. 78429, 2016 WL 4035575, at *11 n.74 (July 27, 2016); *see SEC v. Ginder*, 752 F.3d 569, 574 (2d Cir.2014) (citations omitted).
18	Negligence requires a showing that the respondent failed to exercise reasonable care.
	Ira Weiss, Exchange Act Release No. 52875, 2005 WL 3273381, at *12 (Dec. 2, 2005); *SEC v. Goldsworthy*, 2008 WL 8901272, at *12 (D. Mass. June 11, 2008) ("the SEC [is] not required to present evidence of an alternative standard of care in order to support its claim of negligence").
19	The reasonableness of a respondent's conduct is assessed "in light of what [the respondent] knew or should have known[.]"

	Goldsworthy, 2008 WL 8901272, at *12; *see SEC v. Hughes Capital Corp.* 124 F.3d 449, 453-54 (3d Cir. 1997) (defendant negligent in formulating and editing press releases containing false statements making the stock "appear more attractive to prospective purchasers").
20	Exchange Act Section 10(b) and Rule 10b-5, and Securities Act Section 17(a)(1), require a finding that the respondent acted with scienter, which may be established by showing "an intent to deceive, manipulate, or defraud."
	Malouf, 2016 WL 4035575, at *7 n.34 (quotation omitted).
21	Scienter "includes recklessness, defined in this context as 'an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the [respondent] or so obvious that the [respondent] must have been aware of it.'"
	Gregory O. Trautman, Exchange Act Release No. 61167A, 2009 WL 6761741, at *16 (Dec. 15, 2009) (quoting *Makor Issues & Rights, Ltd. v. Tellabs Inc.*, 513 F.3d 702, 704 (7th Cir. 2008)).
22	"Scienter may be inferred from circumstantial evidence."
	Christopher M. Gibson, Release No. 1106, 2017 WL 371868, at *30 (Jan. 25, 2017) (citation omitted).
23	Direct evidence of scienter is unnecessary; circumstantial evidence is sufficient.
	Herman & MacLean v. Huddleston, 459 U.S. 375, 390 n.30 (1983) ("the proof of scienter required in fraud cases is often a matter of inference from circumstantial evidence. If anything, the difficulty of proving the defendant's state of mind supports a lower standard of proof. In any event, we have noted elsewhere that circumstantial evidence can be more than sufficient.").
24	The Division need not prove motive to prove scienter.
	SEC v. Egan, 994 F. Supp. 2d 558, 565 (S.D.N.Y. 2014) (quoting *Kalnit v. Eichler*, 264 F.3d 131, 142 (2d Cir. 2001)).
25	Evidence of concealment is strongly indicative of scienter.
	Brown v. China Integrated Energy, Inc., 875 F. Supp. 2d 1096, 1124 (C.D. Cal. 2012).
26	Failure to correct omissions and misstatements "demonstrates, at a minimum, a reckless disregard of the risk of misleading investors."
	Malouf, 2016 WL 4035575, at *16.
27	A fact is material if a reasonable investor would view its disclosure (or omission) as significantly altering the "total mix" of information made available in evaluating the merits

	of an investment.
	Matrixx Initiatives, Inc. v. Siracusano, 563 U.S. 27, 28 (2011).
28	A fact is also material if it "may affect the desire of investors to buy, sell, or hold the ... securities," or if it "in reasonable and objective contemplation might affect the value of the ... securities."
	SEC v. Texas Gulf Sulphur Co., 401 F.2d 833, 849 (2d Cir. 1968).
29	Materiality is judged objectively – it asks what a reasonable investor would consider material – and not what any particular investors believed, or only the facts that an underwriter or issuer of securities personally found to be dispositive.
	Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 643 (D.C. Cir. 2008).
30	"[D]ifferent investors make very different decisions" based on the same facts. *Id.*
	Dolphin & Bradbury, Inc. v. SEC, 512 F.3d 634, 643 (D.C. Cir. 2008).
31	The "maker" of a statement for the purposes of Exchange Act Rule 10b-5(b) is the person or entity with ultimate authority over a statement.
	Janus Capital Group v. First Derivative Traders, 564 U.S. 135, 142 (2011) ("the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it").
32	Securities Act Section 17(a)(3) broadly prohibits engaging in "any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."
	15 U.S.C. § 77q(a)(3).
33	Section 17(a)(3) "quite plainly focuses upon the *effect* of particular conduct on members of the investing public, rather than upon the culpability of the person responsible."
	Aaron v. SEC, 446 U.S. 680, 697 (1980) (emphasis in original).
34	Section 17(a)(3) applies when "as a result of a defendant's negligent conduct, investors receive misleading information about the nature of an investment . . . ."
	Malouf, 2016 WL 4035575, at *12; *see also id.* at *10 (no requirement that conduct underlying Section 17(a) claim must itself be "manipulative or deceptive").
35	Under Securities Act Section 17(a)(1), and Exchange Act Section 10(b) and Rules 10b-5(a) and (c), "to employ a 'deceptive' device or to commit a 'deceptive' act is to engage in conduct that produces a false impression."

	Malouf, 2016 WL 4035575, at *6.
36	"[Deceptive] conduct encompasses 'making' a misrepresentation; it also encompasses, among other things, drafting or devising a misrepresentation."
	Malouf, 2016 WL 4035575, at *6.
37	Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act authorize the Commission to impose civil monetary penalties against any person where such penalties are in the public interest and the person has violated certain provisions of the securities laws.
	15 U.S.C § 77h-1(g).
38	Six factors may be considered in determining whether a penalty is in the public interest. These include: (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the resulting harm to other persons; (3) any unjust enrichment and prior restitution; (4) the respondent's prior regulatory record; (5) the need to deter the respondent and other persons; and (6) such other matters as justice may require.
	15 U.S.C. § 78u-2(c).
39	For the time period at issue, the maximum first, second, and third-tier penalty for each violation for a natural person is $7,500, $75,000 and $150,000, respectively.
	15 U.S.C. §§ 77h-1(g); 17 C.F.R. § 201.1004 & Subpt. E, Table IV (adjusting the statutory amounts for inflation).
40	A maximum third-tier penalty is appropriate where (1) the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and (2) such acts or omissions directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the acts or omissions.
	15 U.S.C. § 77h-1(g)(2)(C)
41	Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, the Commission has authority to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of those acts or rules promulgated thereunder.
	15 U.S.C. § 77h-1; 15 U.S.C. § 78u-3.
42	In deciding whether to issue a cease-and-desist order, courts consider: (1) whether future violations are reasonably likely; (2) the seriousness of the violations at issue; (3) whether the violations are isolated or recurrent; (4) respondents' state of mind; (5) whether respondents recognizes the wrongful nature of their conduct; (6) the recency of the

	violations; (7) "whether the violations caused harm to investors or the marketplace"; (8) "whether [respondents] will have the opportunity to commit future violations"; and (9) the "remedial function [a] cease-and-desist order would serve in the overall context of any other sanctions sought in the same proceeding."
	Gordon Brent Pierce, Securities Act Release No. 9555, 2014 SEC LEXIS 4544, at *82-83 (Mar. 7, 2014); *KPMG Peat Marwick LLP*, Administrative Proceeding File No. 43862, 2001 WL 47245, at *23-24 (Jan. 19, 2001), *recon. denied*, Exchange Act Release No. 44050, 2001 SEC LEXIS 422 (Mar. 5, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).
43	"Absent evidence to the contrary," a single past violation ordinarily suffices to establish a risk of future violations.
	KPMG Peat Marwick LLP, 2001 WL 47245, at *24.
44	The showing necessary to demonstrate the likelihood of future violations is "significantly less than that required for an injunction."
	KPMG Peat Marwick LLP, 2001 WL 47245, at *26.
45	Pursuant to Section 15E(d) of the Exchange Act and Section 9(b) of the Investment Company Act, the Commission may permanently bar a respondent from (i) associating with a nationally recognized statistical rating organization and (ii) serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser.
	15 U.S.C. 78o-7(d)(1); 15 U.S.C. 80a-9(b).

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CERTIFICATE OF SERVICE

On February 17, 2016, the foregoing Division's PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW was sent to the following parties and other persons entitled to notice as follows:

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