

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

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

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

ADMINISTRATIVE PROCEEDING  
File No. 3-16348

**In the Matter of**

**STANDARD & POOR'S  
RATINGS SERVICES,**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS, PURSUANT  
TO SECTION 8A OF THE SECURITIES  
ACT OF 1933 AND SECTIONS 15E (d)  
AND 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, MAKING  
FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A  
CEASE-AND-DESIST ORDER**

I.

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

II.

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

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

### III.

On the basis of this Order and S&P’s Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

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

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

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

#### **Respondent**

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

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<sup>1</sup> The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## Facts

### **A. S&P's CMBS ratings.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. As a result of its internal actions described above, including decisions and model implementation, the published commentary on JPMCC 2010-C1, and the published Presale for JPMCC 2010-C2, S&P established that it used the “higher of” the actual loan constants or Table 1 loan constants to calculate DSCRs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33. The internal controls failures included:

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



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

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

### **Violations**

34. As a result of the conduct described above, S&P willfully violated Section 17(a)(1) of the Securities Act, which prohibits fraudulent conduct in the offer and sale of securities.

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

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

### **Undertakings**

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

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

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

#### IV.

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

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

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

B. S&P is censured.

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

- (1) S&P may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) S&P may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

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

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

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

By the Commission.

Brent J. Fields  
Secretary

## ANNEX A

S&P admits to the facts set forth below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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