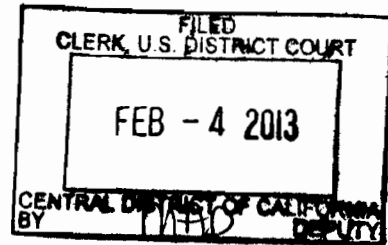


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19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA,

22 Plaintiff,

23 v.

24 MCGRAW-HILL COMPANIES, INC.,
and STANDARD & POOR'S
25 FINANCIAL SERVICES LLC,

26 Defendants.
27
28

CASE NO.

CV 13-00779-DAC
-GCG

COMPLAINT FOR CIVIL MONEY
PENALTIES AND DEMAND FOR
JURY TRIAL

[12 U.S.C. § 1833a; 18 U.S.C. §§ 1341,
1343 & 1344]

COMPLAINT FOR CIVIL MONEY PENALTIES

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1 Plaintiff, United States of America ("United States"), alleges and complains
2 against defendants: (1) McGraw-Hill Companies, Inc. ("McGraw-Hill"); and
3 (2) Standard & Poor's Financial Services LLC, a wholly owned subsidiary of
4 McGraw-Hill, ("S&P LLC") (collectively "defendants"), as follows:

5 **I. INTRODUCTION**

6 1. The United States brings this action pursuant to the Financial Institutions
7 Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1833a, to recover civil
8 money penalties from defendants for: (a) mail fraud affecting federally insured
9 financial institutions; (b) wire fraud affecting federally insured financial institutions;
10 and (c) financial institution fraud.

11 2. From 2004 through 2007, defendant McGraw-Hill, acting through
12 Standard & Poor's Ratings Services ("S&P Ratings"), a unit within an unincorporated
13 division of defendant McGraw-Hill (S&P Ratings and defendant McGraw-Hill
14 hereafter collectively referred to as "S&P"), issued credit ratings for Residential
15 Mortgage Backed Securities ("RMBS") and Collateralized Debt Obligations
16 ("CDOs"). RMBS were structured debt securities that were collateralized by pools of
17 residential mortgage loans. CDOs were structured debt securities that were
18 collateralized by pools of existing debt securities, often including structured debt
19 securities, and/or in some instances credit derivatives. The pooled structured debt
20 securities underlying many CDOs consisted primarily of RMBS.

21 3. Issuers of RMBS and CDOs typically pooled residential mortgages or
22 debt securities, structured different classes of notes, commonly referred to as
23 "tranches," securitized by the pools, and then engaged S&P and/or one or more other
24 credit rating agencies to provide credit ratings for the various tranches.

25 4. S&P rated RMBS and CDO tranches using a letter-grade scale ranging
26 from AAA, the highest rating, to D, the lowest. S&P represented that its credit ratings
27 reflected its current opinion of the creditworthiness, that is, the ability to timely pay
28 interest and principal, of the different tranches. S&P announced its credit ratings to

1 the public and published them on S&P's website.

2 5. RMBS and CDO tranches were marketed and sold primarily to financial
3 institutions, including federally insured financial institutions, and other qualified
4 institutional investors.

5 6. S&P knew that its credit ratings of RMBS and CDO tranches were
6 material to and relied upon by financial institutions, including federally insured
7 financial institutions, to identify and compare credit risks among the different RMBS
8 and CDO tranches. Unless the credit ratings for particular tranches were sufficiently
9 high – typically a credit rating of BBB- or higher – most financial institutions would
10 not invest in those tranches.

11 7. As detailed more fully herein, beginning at the latest in or about
12 September 2004 and continuing through at least in or about October 2007, within the
13 Central District of California and elsewhere, S&P, knowingly and with the intent to
14 defraud, devised, participated in, and executed a scheme to defraud investors in
15 RMBS and CDO tranches, including federally insured financial institutions, as to
16 material matters, and to obtain money from these investors by means of material false
17 and fraudulent pretenses, representations, and promises, and the concealment of
18 material facts.

19 8. In carrying out the scheme to defraud, S&P falsely represented that its
20 credit ratings of RMBS and CDO tranches were objective, independent, uninfluenced
21 by any conflicts of interest that might compromise S&P's analytic judgment, and
22 reflected S&P's true current opinion regarding the credit risks the rated RMBS and
23 CDO tranches posed to investors.

24 9. As S&P knew, these representations were materially false, and concealed
25 material facts, in that S&P's desire for increased revenue and market share in the
26 RMBS and CDO ratings markets led S&P to downplay and disregard the true extent
27 of the credit risks posed by RMBS and CDO tranches in order to favor the interests of
28 large investment banks and others involved in the issuance of RMBS and CDOs who

1 selected S&P to provide credit ratings for those tranches. In particular, to maintain
2 and grow S&P's share of the market for credit ratings of RMBS and CDOs and the
3 high fees and profits those ratings generated:

4 a. Beginning at the latest in or about September 2004 and continuing
5 through at least in or about October 2007, S&P limited, adjusted, and delayed updates
6 to the ratings criteria and analytical models S&P used to assess the credit risks posed
7 by RMBS and CDO tranches, thereby weakening those criteria and models from what
8 S&P analysts believed was necessary to make them more accurate; and

9 b. Beginning at the latest in or about March 2007, and continuing
10 through at least in or about October 2007, knowing that the credit risks of certain non-
11 prime RMBS tranches were increasing, were expected to continue to increase, and
12 were anticipated to result in negative Rating Actions, S&P knowingly disregarded the
13 true extent of the credit risks associated with those non-prime RMBS tranches in
14 issuing and/or confirming ratings for CDOs with exposure to those non-prime RMBS
15 tranches, which ratings S&P knew did not accurately reflect those CDOs' true current
16 credit risks because they failed to account for the increased credit risks posed by those
17 non-prime RMBS tranches.

18 10. S&P's scheme to defraud caused investors, including Western Federal
19 Corporate Credit Union ("WesCorp"), a federally insured financial institution based in
20 the Central District of California, and other federally insured financial institutions, to:

- 21 a. invest in RMBS and CDO tranches rated by S&P;
22 b. be exposed to actual losses and increased risks of losses on the
23 RMBS and CDO tranches S&P rated;
24 c. accept lower rates of return for RMBS and CDO tranches receiving
25 higher ratings from S&P in exchange for the supposedly lower
26 risks such ratings purportedly represented; and
27 d. pay for S&P's CDO ratings through the incorporation of S&P's
28 rating fees into the costs of CDOs.

II. FIRREA

11. Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), which included the provision codified at 12 U.S.C. § 1833a, as part of a comprehensive legislative plan to reform and strengthen the federal deposit insurance system and to enhance regulatory and enforcement powers relating to the operations of financial institutions.

12. One of FIRREA's stated purposes was to provide "enhanced enforcement powers and increase criminal and civil money penalties for crimes of fraud against financial institutions and depositors." H.R. Rep. 101-54(I), 101st Cong., 1st Sess. 1989 at 18; *reprinted at* 1989 U.S.C.C.A.N. 86 at 118.

13. FIRREA authorizes the Attorney General to recover civil penalties from whoever violates certain specified provisions of law. *See* 12 U.S.C. § 1833a(a). Among the violations for which FIRREA civil penalties may be sought are: (a) mail and wire fraud, in violation of 18 U.S.C. §§ 1341, 1343, "affecting a federally insured financial institution"; and (b) financial institution fraud, in violation of 18 U.S.C. § 1344. 12 U.S.C. § 1833a(c)(1) & (2).

14. For purposes of the violations for which FIRREA civil penalties may be sought: (a) the term "financial institution" includes federally insured financial institutions, as well as branches and agencies of foreign banks; and (b) the term "federally insured financial institution" includes banks whose deposits are insured by the Federal Deposit Insurance Corporation and credit unions whose accounts are insured by the National Credit Union Share Insurance Fund. 18 U.S.C. § 20(1), (2) & (9). As used herein, these terms shall have the meaning attributed to them for purposes of FIRREA, as set forth above.

15. FIRREA provides for a maximum civil penalty of \$1,100,000 for each violation, or in the case of a "continuing violation," the lesser of \$1,100,000 per day or \$5,500,000. 12 U.S.C. § 1833a(b)(1)-(2); 28 C.F.R. § 85.3. FIRREA also provides that "[i]f any person derives pecuniary gain from the violation, or if the violation

1 results in pecuniary loss to a person other than the violator,” including, but not limited
2 to, the Deposit Insurance Fund and the National Credit Union Share Insurance Fund,
3 the amount of the civil penalty may be increased up to “the amount of such gain or
4 loss.” 12 U.S.C. § 1833a(b)(3)(A).

5 **III. JURISDICTION AND VENUE**

6 16. This Court has jurisdiction over the subject matter of this action pursuant
7 to 28 U.S.C. §§ 1331 & 1345.

8 17. Venue is appropriate in this judicial district pursuant to 28 U.S.C.
9 § 1391(b)(1), (b)(2), (c) & (d), because defendants transact significant business within
10 this district and therefore are subject to personal jurisdiction in this district and
11 because a substantial part of the events giving rise to the claims alleged occurred in
12 this district.

13 **IV. PARTIES**

14 18. Plaintiff is the United States of America.

15 19. Defendant McGraw-Hill is a New York corporation with its principal
16 place of business at 1221 Avenue of the Americas, New York, New York 10020.
17 Defendant McGraw-Hill is registered to do business in the State of California. From
18 at least 2004 through 2008, S&P Ratings was a unit within an unincorporated division
19 of defendant McGraw-Hill, and maintained an office at 1100 Glendon Avenue, Los
20 Angeles, California 90024.

21 20. Defendant S&P LLC is a Delaware limited liability company, with its
22 principal place of business at 55 Water Street, New York, New York 10041.
23 Defendant S&P LLC is registered to do business in the State of California and
24 maintains an office at 1100 Glendon Avenue, Los Angeles, California 90024. As of
25 January 1, 2009, defendant S&P LLC was created as a wholly owned subsidiary of
26 defendant McGraw-Hill and took over the ratings business previously conducted by
27 S&P Ratings. Defendant S&P LLC is sued as the successor to S&P Ratings.
28

V. BACKGROUND

A. RMBS

21. At all relevant times, RMBS were structured debt securities collateralized by pools of residential mortgages. Payments on the underlying mortgage loans provided funds to pay RMBS investors their investments plus interest.

22. To issue RMBS, an arranging entity and/or an investment bank representing an arranging entity bundled large numbers of residential mortgage loans, typically several hundred to several thousand individual mortgage loans, into a loan pool held by a trust. (The term “issuer” is used herein to refer collectively to the entities that created and marketed a structured debt security; for an RMBS, these entities were the arranging entity, the investment bank, and the trust.) The issuer typically issued different classes of notes, commonly referred to as “tranches,” collateralized by the mortgage loan pool. The different tranches paid different interest rates corresponding to the different levels of credit protection afforded each particular tranche.

23. The primary source of credit protection was “subordination,” which created a hierarchy of cash flows and loss absorption among tranches. Investors who purchased the most senior tranche, which generally had the highest credit rating and paid the lowest interest rate, were the first to be paid from the cash flow of the underlying collateral. Investors who purchased more junior tranches, which generally had lower credit ratings and paid higher interest rates, were typically paid only after investors in the more senior tranches. Conversely, defaults and losses on underlying collateral affected first the more junior tranches; only to the extent defaults and losses could not be absorbed by more junior tranches would they affect the senior tranches.

24. Other common sources of credit protection included “over-collateralization,” which was the amount that the principal balance of the mortgage loan pool exceeded the principal balance of the notes issued by the trust, and “excess spread,” which was the amount by which the total interest expected to be received on

1 the underlying mortgage loans exceeded the total interest payments to be made to
2 RMBS investors plus the administrative expenses of the trust.

3 25. S&P categorized RMBS according to the different types of mortgage
4 loans contained in their underlying loan pools. Prime RMBS generally carried the
5 least risk. Non-prime RMBS, including RMBS containing Alt-A, second-lien, and
6 subprime loans, generally presented more risk than prime RMBS.

7 26. The loan pools underlying prime RMBS were typically comprised of
8 first-lien mortgage loans that generally satisfied traditional credit guidelines with
9 borrowers considered good credit risks, that is, borrowers with high credit scores
10 indicating that they were likely to pay back their loans.

11 27. The loan pools underlying Alt-A RMBS were typically comprised of
12 first-lien mortgage loans that satisfied some of the traditional credit guidelines, but
13 had aspects that indicated greater credit risk, for example, less loan documentation or
14 self-employed borrowers.

15 28. The loan pools underlying second-lien RMBS were typically comprised
16 of second-lien mortgage loans, which were riskier than first-lien mortgage loans. If
17 the borrower did not pay on the loans and a lender had to sell the residence to collect
18 on the loans, the second mortgage was subordinate to the first, meaning that it was not
19 repaid unless and until the first mortgage was paid in full. Some second-lien RMBS
20 were comprised in large part of closed-end second-lien mortgage loans, which were
21 second mortgages taken out to enable borrowers to qualify for their first mortgages,
22 for example, to fund, either partially or entirely, a down payment required by the first-
23 lien mortgage lender.

24 29. The loan pools underlying subprime RMBS were typically comprised of
25 mortgage loans made to borrowers who had histories of delinquency, limited credit
26 histories, or other credit problems such that they posed greater credit risks.

1 **B. CDOs**

2 30. At all relevant times, CDOs were structured debt securities collateralized
3 by pools of other debt securities, often including other structured debt securities,
4 and/or in some instances credit derivatives.

5 31. To issue CDOs, an arranging entity, and/or an investment bank
6 representing an arranging entity, typically created a special purpose vehicle ("SPV")
7 that, through a trust acting at the direction of the SPV, purchased collateral and issued
8 CDO notes. (As noted in paragraph 22 above, the term "issuer" is used herein to refer
9 collectively to the entities that created and marketed a structured debt security; for a
10 CDO, these entities were the arranging entity, the investment bank, the SPV, and the
11 trust.) The issuer typically issued different classes of notes, often referred to as
12 "tranches," collateralized by the underlying asset pool. The different tranches paid
13 different interest rates corresponding to the different levels of credit protection
14 afforded each particular tranche. As with RMBS, typical sources of credit protection
15 were subordination, over-collateralization, and excess spread.

16 32. S&P typically rated three types of CDOs: cash CDOs (also referred to as
17 cash flow CDOs), synthetic CDOs, and hybrid CDOs. Cash CDOs were collateralized
18 by pools of existing debt securities, including but not limited to RMBS. Synthetic
19 CDOs were collateralized by credit derivatives, including in many instances credit
20 default swaps, which were insurance contracts in which investor funds and
21 commitments for investor funds were used to insure third parties against the default of
22 an underlying asset in exchange for premium payments. Hybrid CDOs were
23 collateralized by combinations of debt securities, including but not limited to RMBS,
24 and credit derivatives.

25 33. In many cases, the debt securities providing collateral for cash CDOs
26 included different tranches from multiple RMBS. In many cases, the debt securities
27 that were the subject of credit default swaps providing collateral for synthetic and
28 hybrid CDOs included different tranches from multiple RMBS.

1 34. Between September 2004 and October 2007, many of the RMBS
2 tranches that were pooled and resecuritized into cash and/or hybrid CDOs rated by
3 S&P, or that were the subject of credit default swaps that were pooled and
4 resecuritized into synthetic and/or hybrid CDOs rated by S&P, were riskier, more
5 junior, non-prime RMBS tranches.

6 **C. The Central Role of S&P's Credit Ratings in Purchases of RMBS**
7 **and CDOs by Financial Institutions**

8 **1. S&P's NRSRO Status**

9 35. S&P was a credit rating agency that was in the business of providing
10 credit ratings, for which it charged substantial fees. S&P was the largest credit rating
11 agency in the world and held a dominant position in the United States credit rating
12 market.

13 36. Prior to September 24, 2007, pursuant to the no-action letter process of
14 the United States Securities and Exchange Commission ("SEC"), S&P was identified
15 as a Nationally Recognized Statistical Rating Organization ("NRSRO") based, in part,
16 on the SEC staff's determination that S&P was recognized nationally by the
17 predominant users of credit ratings as issuing credible and reliable ratings.

18 37. Following passage of the Credit Rating Agency Reform Act of 2006, P.L.
19 109-291, 120 Stat. 1327 (Sep. 29, 2006), in accordance with the directives of that Act,
20 the SEC implemented rules establishing a formal process for a credit rating agency to
21 apply for and be registered as an NRSRO.

22 38. On or about June 25, 2007, S&P submitted to the SEC its application for
23 registration as an NRSRO. In this application, in response to the SEC's request for
24 "[p]olicies and procedures to address and manage conflicts of interest," S&P
25 provided, among other things, the June 2007 version of its Code of Conduct, the
26 contents of which are discussed in more detail in paragraph 115 below.

27 39. Effective September 24, 2007, based on S&P's application, the SEC
28 granted S&P registration as an NRSRO.

2. S&P's Letter Grade Rating Scale

40. S&P used a scale of letter grades, from AAA to D, to denote its credit ratings of long-term investments such as RMBS and CDOs.

41. S&P represented to investors that its AAA rating of a debt security indicated an "EXTREMELY STRONG capacity to meet its financial commitments" and was "the highest issuer credit rating assigned by Standard & Poor's." Traditionally, debt securities bearing AAA ratings were considered the safest, roughly comparable in risk to federal treasury bills, with a less than 1% probability of incurring defaults over the life of the debt security. S&P represented that AAA rated debt securities should, on average, be able to withstand economic conditions similar to those of the Great Depression.

42. Each grade level down from AAA – for example, ratings of AA, A, BBB, BB, B, CCC, CC, SD ("Selective Default"), and D ("Default") – indicated a decrease in creditworthiness and an increase in risk of default.

43. S&P also modified its credit ratings between "AA" and "CCC" by attaching a plus (+) sign, indicating an incrementally higher credit rating, or a minus (-) sign, indicating an incrementally lower credit rating.

44. S&P defined investments rated by S&P as BBB- and higher as "investment grade." S&P defined those with ratings below BBB- as "non-investment grade" or "speculative grade." S&P commonly referred to those with ratings from A through BB, or some subset within that range, as "mezzanine."

3. S&P Knew the Importance of its Ratings to Financial Institutions Investing in RMBS and CDOs

45. RMBS and CDOs were marketed and sold primarily to financial institutions (including federally insured financial institutions) and other qualified institutional investors.

46. A key step in the process of creating and selling RMBS and CDOs to financial institutions and other qualified institutional investors was obtaining credit

1 ratings for each RMBS or CDO tranche (with the exception of the most junior
2 “equity” tranche, which typically did not receive a rating and provided credit
3 protection to all of the more senior tranches). To sell a particular RMBS or CDO
4 tranche to a financial institution, it was typically necessary for that tranche to receive
5 an “investment grade” credit rating, that is, a rating of BBB- or higher.

6 47. Federal statutes and regulations required certain financial institutions to
7 hold only securities with credit ratings that qualified them as “investment grade.” For
8 instance, long term investments in structured debt securities by credit unions that were
9 members of the National Credit Union Administration were limited by regulation to
10 those with a rating from at least one NRSRO that was no lower than “AA-.” 12
11 C.F.R. § 704.6(d).

12 48. As a result, financial institutions, including some that were required to do
13 so by law, relied on credit ratings issued by NRSROs, including those issued by S&P,
14 in making investment decisions relating to purchasing and holding RMBS and CDOs,
15 including assessing compliance with diversification and capital requirements.

16 49. S&P knew that financial institutions considered S&P’s ratings of RMBS
17 and CDOs to be material to their investment decisions. Thus, for example:

18 a. In its January 5, 2006 CDO Strategic Plan, S&P listed “Financial
19 Buyers” as one of “three fundamental revenue drivers for [CDO] ratings” and
20 estimated that they represented “70% of the driving force behind the growth of the
21 CDO ratings business.” S&P explained:

22 These are investors or counterparties who for any number of reasons
23 require the tranche of the transaction they invest in to have a credit rating.
24 The most common reason for the requirement is that a rating is required
25 under the investment guidelines of the institution. A second reason is
26 that the counterparty/investor in the transaction is relying on the rating
27 agency to interpret and identify the credit risk of the instrument being
28 offered by the dealer/arranger.

1 b. In its January 5, 2006 CDO Strategic Plan, S&P further stated:
2 Fundamentally, investors and counterparties rely on S&P for review of
3 the transaction, and for S&P to identify the credit risk (ratings) associated
4 with the tranches they intend to purchase. They also rely on S&P to
5 ensure that the ratings assigned remain consistent with the credit quality
6 of the underlying portfolio and the credit enhancement afforded by the
7 CDO structure throughout the lifetime of the rated debt.

8 c. In a February 16, 2007 publication titled, "25 Years of Credit: The
9 Structured Finance Market's Accumulated Wisdom," S&P referenced the original
10 issuance of RMBS that were not guaranteed by the government and observed:

11 This created a quandary for investors looking for reliable ways to assess
12 the creditworthiness of the privately issued securities. The value of the
13 underlying assets became paramount, as did the strength of the cash
14 flows they produced and the stability of the transaction's legal structure
15 created to properly assess the issuer's ability to pay its debts. Enter the
16 credit rating agencies, such as [S&P], which began to scrutinize these
17 elements and assign ratings to the securitizations. This enabled
18 conservative investors, such as pension funds and insurance companies,
19 to gauge the risk of structured finance investments without tying up
20 valuable resources by having to analyze the underlying assets themselves.

21 d. In an August 23, 2007 publication titled, "The Fundamentals of
22 Structured Finance Ratings," S&P stated:

23 [S]ecuritization works by providing buyers of risk with the risk they seek.
24 But how can they know this complex structured finance tranche carries a
25 level of credit risk with which they are comfortable? By providing an
26 objective and independent assessment and a universal scoring system that
27 allows like for like comparisons of credit risk, rating agencies assist in
28 this process. . . . [T]he arrangers are selling to investors in each tranche a

1 specific type of risk and . . . investors compare these tranches using the
2 universal scoring system of the rating agency. . . .

3 50. S&P also recognized that investor perception that S&P's ratings
4 accurately reflected credit risk was crucial to S&P's business, including its
5 competition with other ratings agencies for market share, which was often described
6 internally at S&P as market or ratings "penetration" or "relevance," to reflect that
7 frequently more than one rating agency would be hired to rate the same security.
8 Thus, for example, in its January 5, 2006 CDO Strategic Plan, S&P stated:

9 On a fundamental level, their reliance on ratings as a
10 translator/explanation of credit risk ensures that rating agencies continue
11 to play a critical role in the market. Additionally, to the extent they place
12 a higher value on S&P ratings, as compared to those of other agencies,
13 they play a key role in ensuring that S&P continues its high ratings
14 penetration and leading position in the ratings market. To that extent a
15 large portion of the CDO group's market outreach and publication effort
16 is targeted to this customer group.

17 51. To the extent S&P's credit ratings underestimated credit risks of RMBS
18 or CDOs, S&P harmed investors, including financial institutions, by understating the
19 risks of their investments. Such underestimation of credit risks, however, benefitted
20 issuers by making it possible for them to issue deals with less credit protection,
21 thereby typically making deals more profitable for them. This, in turn, could result in
22 issuers bringing more ratings business to S&P.

23 52. From in or about September 2004 through in or about October 2007,
24 S&P issued credit ratings on over \$2.8 trillion worth of RMBS and nearly \$1.2 trillion
25 worth of CDOs. During this time, financial institutions, in the Central District of
26 California and elsewhere, invested billions of dollars in RMBS and CDOs rated by
27 S&P, including billions of dollars in CDOs with exposure to non-prime RMBS.
28

1 **D. S&P's Credit Rating Business for RMBS and CDOs**

2 **1. S&P's Structured Finance Department**

3 53. At all relevant times, S&P's business of rating structured financial
4 products, including RMBS and CDOs, was conducted by S&P's Structured Finance
5 department ("Structured Finance").

6 54. From June 1999 until the end of 2007, Joanne Rose was the Executive
7 Managing Director in charge of Structured Finance. Rose also led the Structured
8 Finance Leadership Team ("SFLT"), which was a management team that included
9 business executives who ran the different groups within Structured Finance. Rose
10 reported to Senior Executive A, the S&P Executive Vice President for Global Ratings.

11 55. Within Structured Finance, initial ratings for RMBS, in the United States
12 and abroad, were issued by the Global ABS/RMBS/New Assets group ("Global
13 ABS"). From 2005 through August 2008, Global ABS was headed by Senior
14 Executive B, a Managing Director who supervised personnel responsible for rating all
15 new RMBS issuances, was a member of the SFLT, and reported to Rose.

16 56. Within Global ABS, initial ratings for United States RMBS were issued
17 by the U.S. Residential Mortgage Group ("US RMBS"). From January 2006 through
18 December 2007, Executive C was the Managing Director in charge of US RMBS and
19 reported to Senior Executive B.

20 57. Within Structured Finance, initial ratings for most CDOs were issued by
21 the Global CDO group ("Global CDO"). From February 2005 through 2007, Global
22 CDO was headed by Managing Director Patrice Jordan. Jordan supervised personnel
23 responsible for rating all new CDO issuances (other than CDOs composed primarily
24 of commercial real estate assets) in the United States and abroad. Jordan was a
25 member of the SFLT and reported to Rose. Before becoming the head of Global CDO
26 in February 2005, Jordan served within Global ABS as a Global Practice Leader for
27 RMBS ratings for fifteen years.

1 58. From in or about 1999 until February 2005, Senior Executive D headed
2 Global CDO and was a member of the SFLT. From February 2005 until in or about
3 November 2006, Senior Executive D led the quantitative analytics group within
4 S&P's "Center of Excellence." In that capacity, Senior Executive D supervised
5 quantitative analysts who provided modeling and statistical support for all S&P
6 ratings divisions, including supporting the models used by Global CDO. Senior
7 Executive D left his employment with S&P in or about November 2006.

8 59. Within Global CDO, at all relevant times, David Tesher was the
9 Managing Director in charge of the Cash CDO group ("Cash CDO"), and Andrea
10 Bryan was the Managing Director in charge of the Synthetic CDO group ("Synthetic
11 CDO"). As the heads of Cash CDO and Synthetic CDO respectively, Tesher and
12 Bryan supervised the ratings of CDOs, including CDOs with exposure to non-prime
13 RMBS. Tesher and Bryan both reported to Jordan.

14 60. Within Structured Finance, monitoring of existing RMBS and CDO
15 ratings was the responsibility of the Global Surveillance/Service Evaluations group
16 ("Global Surveillance"), which, from 1999 through August 2008, was headed by
17 Senior Executive E, who reported to Rose and was a member of the SFLT. Within
18 Global Surveillance, at all relevant times, Executive F was in charge of the RMBS
19 Surveillance Group ("RMBS Surveillance") and Executive G was in charge of the
20 CDO Surveillance Group ("CDO Surveillance"). Executives F and G reported to
21 Senior Executive E.

22 61. Within Structured Finance, ratings criteria were the responsibility of the
23 Research and Criteria group ("Research and Criteria"), which, at all relevant times,
24 was headed by Thomas Gillis. As head of Research and Criteria, Gillis had authority
25 over criteria decisions affecting RMBS and CDO ratings. Gillis reported to Rose and
26 was a member of the SFLT.

2. S&P's RMBS and CDO Ratings Fees

62. S&P charged a fee for each RMBS it rated. S&P typically charged a fee up to \$150,000 for each non-prime RMBS it rated.

63. S&P charged a fee for each CDO it rated. S&P typically charged a fee up to \$500,000 for each cash CDO it rated and up to \$750,000 for each synthetic CDO it rated. S&P imposed additional surcharges for ratings that were issued on compressed timetables or required additional analysis or legal research.

64. S&P also charged and collected in advance additional fees for future surveillance of the CDOs that it rated. S&P received up to \$50,000 in surveillance fees for each CDO it rated.

65. If the rating process was not completed (for example, because the issuer believed the proposed rating was too low and withdrew the rating request), S&P usually received only a fraction of the rating fee it otherwise would earn.

66. Typically, the issuer (commonly the investment bank representing an arranging entity) made the decision to retain S&P to provide ratings of CDOs. As a result, S&P executives and staff viewed issuers as S&P's primary customers and as the source of S&P's rating business. Thus, for example, S&P's January 5, 2006 CDO Strategic Plan stated:

The primary customers of the CDO group today are the **deal arrangers** (bankers/intermediaries). This customer group continues to be responsible for the vast majority of revenue, including all initial deal rating fees paid to S&P. (emphasis in original)

67. Although S&P typically was retained by – and charged its CDO ratings fees to – CDO issuers (that is, the arranging entities, the investment banks representing those entities, and/or the SPVs), those issuers ordinarily did not bear the cost of the CDO ratings fees. Instead, as S&P knew, the costs of those fees were passed through to the investors who purchased CDO tranches. Thus, for example:

1 a. Documents implementing the issuance and sale of the various
2 tranches of Novastar ABS CDO I, Ltd., made clear that S&P's rating fee was one of
3 the "organizational and structuring fees and expenses" to be paid by the SPVs
4 involved in the deal out of the proceeds of the sales of those tranches to investors.
5 Indeed, the Purchase Agreement entered into between the SPVs and the investment
6 bank involved in the issuance of the CDO specified that the SPVs would "pay from
7 the proceeds of issuance of the Notes all of their expenses incident to the performance
8 of their obligations" in connection with issuance of the CDO, including, in particular,
9 "any fees charged by investment rating agencies for the rating of the Notes." In
10 accordance with these provisions, on or about February 8, 2007, the SPVs issued
11 instructions to pay S&P a rating fee of \$243,040 out of the gross proceeds from the
12 sale to investors of Novastar I tranches.

13 b. Documents implementing the issuance and sale of the various
14 tranches of Charles Fort CDO I, Ltd., contained similar provisions. In accordance
15 with these provisions, on or about March 29, 2007, the SPV involved in this deal
16 issued instructions to pay S&P a rating fee of \$268,100 out of the gross proceeds from
17 the sale to investors of Charles Fort I tranches.

18 c. On or about October 24, 2007, Rose made remarks at a meeting of
19 the Structured Finance Investor Council, a group of institutional investor
20 representatives with whom S&P periodically met to discuss issues related to
21 structured finance investments, in which she stated: "Investors need to publicly voice
22 their opinions on issues like the issuer pay model – investors ultimately *do* pay – since
23 all deal fees including rating fees are netted out of the total deal proceeds."

24 **3. The Profitability of S&P's RMBS and CDO Ratings**

25 68. At all relevant times, S&P considered Structured Finance to be a profit
26 center and recognized the ratings business conducted by Global CDO and Global ABS
27 as growing areas of revenues and profits.
28

1 69. In 2005, 2006, and 2007, Global CDO generated revenues of
2 approximately \$96 million, \$182 million, and \$203 million, respectively.

3 70. In 2006 and 2007, Global ABS generated revenues of more than \$278
4 million and \$243 million, respectively.

5 71. In its 2005 annual report, McGraw-Hill recognized the large increases in
6 revenue and operating profit from S&P's structured finance ratings from 2004 to
7 2005:

8 The Financial Services segment's revenue and operating profit
9 experienced double-digit growth in 2005, increasing 16.8% and 21.4%,
10 respectively, over 2004 results. The Financial Services segment's
11 increase in revenue and operating profit in 2005 is due primarily to the
12 strong performance of structured finance and corporate finance
13 (corporate finance and financial services) ratings, which represented
14 approximately 40.3% and 17.0% of the growth in revenue respectively.
15 Growth was experienced in all asset classes within structured finance.

16 72. In its 2006 annual report, McGraw-Hill recognized the large increases in
17 revenue and operating profit from S&P's structured finance ratings from 2005 to
18 2006:

19 The Financial Services segment continued to experience double-digit
20 growth in revenue and operating profit in 2006, increasing 14.4% and
21 18.0%, respectively, over 2005 results. The increases in revenue and
22 operating profit were due to the performance of structured finance and
23 corporate (industrial and financial services) and government ratings,
24 which represented approximately 55.4% and 33.7%, respectively, of the
25 growth in revenue.

26 **E. S&P's Credit Rating Process for RMBS**

27 73. S&P's rating process for RMBS typically began when an RMBS issuer
28 contacted S&P to discuss a proposed RMBS. The RMBS issuer typically emailed to

1 S&P an electronic file containing statistical information on the underlying pool of
2 residential mortgage loans, which typically ranged in size from several hundred to
3 several thousand loans.

4 74. To rate RMBS, S&P used a model known as the "Loan Evaluation &
5 Estimate of Loss System" ("LEVELS"). S&P quantitative analysts ran each RMBS
6 pool through LEVELS, which generated summary information for the pool as well as
7 subordination levels for each rating category. The LEVELS results were shared with
8 the RMBS issuer. Often the RMBS issuer would modify the submitted pool in an
9 effort to decrease the level of subordination or other forms of credit support required.

10 75. The results of the LEVELS analysis were taken to a committee of S&P
11 analysts for sign-off. After the committee accepted the LEVELS analysis, on
12 occasion with slight modifications, it was passed along to a lead rating analyst, who
13 then prepared a confidential rating committee presentation addressing the credit and
14 structural aspects of the transaction. The lead rating analyst also prepared a brief deal
15 write-up that was intended for publication once the deal closed.

16 76. The lead rating analyst made the presentation to an RMBS rating
17 committee, which consisted of a rating chair and the presenting analyst. The
18 presentation would then be passed on to a second senior analyst for a second read,
19 after which both the chair and second reader would sign off on the rating presentation.
20 Most rating committees took less than 15 minutes to complete. Numerous rating
21 committees were conducted simultaneously in the same conference room.

22 77. On the RMBS closing date, the lead rating analyst sent a rating letter to
23 the RMBS issuer. The rating letter typically provided the credit ratings issued by S&P
24 to the different RMBS tranches and authorized the recipient of the rating letter to
25 disseminate S&P's credit ratings to interested parties. On the RMBS closing date,
26 S&P also published the ratings on its website.

27 78. On occasion, rating requests were withdrawn during the rating process.
28 This was usually because another credit rating agency permitted lower credit support

1 levels, which generally made the RMBS riskier to investors but more profitable for the
2 RMBS issuer. Any time that a rating request was withdrawn, in whole or part, the
3 rating analyst was required to submit to the head of Global ABS a “lost deal” memo
4 that explained why S&P had lost the rating business.

5 **F. S&P’s Credit Rating Process for CDOs**

6 **1. CDO Evaluator and Genesis**

7 79. S&P’s rating process for CDOs typically began when a CDO issuer
8 contacted S&P to discuss a proposed CDO. The CDO issuer typically supplied
9 information to S&P regarding the pool of assets to be included in the CDO and the
10 proposed structure of the deal. There were often significant adjustments of the asset
11 pool and the deal structure throughout the rating process.

12 80. S&P represented to investors that, to achieve a certain rating, each CDO
13 tranche had to survive a “specific default probability” that, “regardless of the different
14 asset types in the pool,” was “a function of the desired rating and maturity of the CDO
15 tranche,” making it “easier for investors to compare equally rated CDO tranches
16 backed by different asset types.”

17 81. To rate CDOs, S&P used a model known as “CDO Evaluator,” which
18 determined whether the pool of assets could support the deal’s proposed structure.
19 S&P’s CDO ratings were typically conducted by a lead rating analyst and a
20 quantitative analyst. These analysts ran information provided by the CDO issuer
21 through CDO Evaluator and determined whether any changes to the assumptions and
22 outputs of CDO Evaluator were required based on the particular assets underlying the
23 CDO. The analysts then prepared a Rating Analysis Methodology Profile report
24 (“RAMP”) that summarized the key rating issues relating to the CDO. For cash and
25 some hybrid CDOs, analysts would also generate the results of S&P’s CDO Evaluator
26 and Genesis cash-flow (“Genesis”) models in a summary form referred to as a
27 “Quantitative Ramp” or “Q-Ramp.”
28

1 82. Genesis modeled how payments from the assets underlying the CDO
2 would be converted into payments to investors who purchased the CDO's tranches.
3 The Q-Ramp determined if a CDO had sufficient cash flow to meet the obligations of
4 the CDO tranches being rated. The Q-Ramp did this by comparing a break-even
5 default rate ("BDR") with the scenario default rate ("SDR") generated by CDO
6 Evaluator. The BDR determined how many defaults a CDO tranche could withstand
7 and still make all required payments to investors, while the SDR projected how many
8 defaults in the CDO collateral pool would occur for a given rating level. The ratings
9 of the underlying collateral in a CDO, as well as the correlation between the assets
10 (how likely it was that the different assets would default at the same time), were the
11 primary components of the SDR.

12 83. For tranches with higher rating levels, CDO Evaluator assumed greater
13 SDRs. Thus, for example, for a tranche to be rated AAA, which was supposed, on
14 average, to be able to survive economic conditions similar to the Great Depression,
15 CDO Evaluator assumed the greatest SDR.

16 84. If a CDO tranche's BDR was higher than the SDR, S&P deemed the
17 tranche "able to withstand the level of default stress at the desired rating category,"
18 and the tranche passed the Q-Ramp. If not, the CDO tranche failed the Q-Ramp. A
19 Q-Ramp failure indicated that S&P's own models predicted the tranche would not be
20 able to meet its cash-flow obligations based on S&P's default assumptions.

21 85. S&P analysts generally understood, consistent with the training S&P
22 provided them, that for S&P to rate a cash CDO, every tranche had to pass the Q-
23 Ramp. Sometimes there would not be a passing Q-Ramp when a CDO went before
24 the CDO rating committee. When this happened, however, analysts expected that, if
25 S&P were to rate the CDO, it would have a passing Q-Ramp before the deal closed.

26 86. The analysts presented the RAMP and Q-Ramp for discussion to a CDO
27 rating committee that consisted of at least three voting members. Rating committees
28 often made comments requiring the analysts to return to the CDO issuer to clarify

1 issues or have changes made to the deal documents or structure. The analysts then
2 discussed the rating committee's comments with the CDO issuer and attempted to
3 complete the rating.

4 87. Only under rare circumstances were the analysts required to reconvene a
5 CDO rating committee to discuss the resolution of the committee's comments. This
6 would occur primarily when the CDO issuer refused to make the rating committee's
7 recommended changes or proposed a unique alternative way to address issues the
8 rating committee had identified.

9 88. For cash CDOs, disputes that arose with CDO issuers regarding rating
10 committees' recommended changes were typically brought to the attention of Teshar.
11 There could be "management override" – an exception to S&P's criteria authorized by
12 one of the business heads – to allow a CDO to be rated notwithstanding that one or
13 more tranches failed the Q-Ramp. Jordan and Teshar were the primary S&P
14 executives with this override authority.

15 89. Prior to the release of S&P's CDO rating, the analysts customarily
16 prepared and issued a Pre-Sale Report that summarized the deal. The Pre-Sale Report
17 was intended to provide comfort to potential CDO investors that S&P's rating was
18 forthcoming.

19 90. On the CDO closing date, a rating letter was prepared, signed by an
20 analytical manager, and transmitted to the CDO issuer. The rating letter typically
21 provided the credit ratings issued by S&P to the different CDO tranches and
22 authorized the recipient of the rating letter to disseminate S&P's credit ratings to
23 interested parties. A press release was also issued and posted by S&P on its website
24 to officially announce the ratings.

25 2. The Importance of Ratings of a CDO's Underlying Assets

26 91. As S&P knew, the ratings on the assets underlying a CDO were the most
27 important factor in the CDO rating and were a primary input into CDO Evaluator.
28

1 92. Beginning in or about 2006, if a CDO's underlying assets had been rated
2 by S&P, as was often the case, it was standard practice for S&P CDO analysts when
3 rating the CDO to simply accept the ratings of the underlying assets at face value.
4 S&P was aware of and endorsed this standard practice.

5 93. In particular, beginning in or about 2006, with respect to CDOs exposed
6 to the credit risks of RMBS that had been rated by S&P, it was standard practice for
7 S&P CDO analysts to accept S&P's ratings of the underlying RMBS and neither
8 "notch" those RMBS ratings (that is, treat the ratings as if they were lower than they
9 were) nor contact RMBS Surveillance to check on the status of the RMBS ratings.
10 S&P was aware of and endorsed this standard practice.

11 94. It was crucial to the validity of their analysis that CDO rating analysts
12 know if the ratings of RMBS assets underlying the CDOs they were rating were being
13 considered for possible downgrade. S&P CDO analysts and executives knew that
14 potential downgrades of the ratings on underlying RMBS assets were an important
15 indicator of additional credit risk, ignoring that additional credit risk could and likely
16 would lead to inflated CDO ratings, and considering this additional credit risk could
17 and likely would cause analysts to give CDOs exposed to such RMBS lower credit
18 ratings, or to not rate those CDOs.

19 95. If CDO analysts did not know about, or failed to consider, potential
20 downgrades to the RMBS underlying the CDOs they were rating, they could and
21 likely would issue CDO ratings that were too high, thereby misrepresenting the credit
22 risks of the rated CDO tranches and deceiving investors who purchased the CDO
23 tranches. S&P CDO analysts, however, typically were not told that RMBS
24 surveillance was considering downgrading RMBS tranches underlying the CDOs they
25 were rating unless S&P had already placed the RMBS tranches on a public list known
26 as CreditWatch Negative that publicly identified RMBS tranches being considered for
27 possible downgrade.
28

3. Effective Date Rating Agency Confirmations

96. For cash and hybrid CDOs, another part of S&P's CDO rating process was S&P's issuance of an additional credit rating determination known as an "Effective Date Rating Agency Confirmation," commonly referred to as an "Effective Date RAC."

97. Cash and hybrid CDO deals often closed prior to all of the underlying assets being purchased. These CDO deals typically had a three to six-month window post-closing for all the underlying assets designated at closing by the issuer to be purchased and identified. This period was known as the "Ramp-Up Period." The date for completion of purchase of the underlying assets was typically set forth in the CDO's trust indenture and referred to as the CDO's "Effective Date." It was the exception, not the rule, that cash and hybrid CDOs were "fully ramped," that is, all underlying assets purchased, at the time of closing. Most cash and hybrid CDOs specified an Effective Date that defined a Ramp-Up Period to complete the purchase of underlying assets.

98. Ratings for cash and hybrid CDOs that were not fully ramped at the time of closing were issued based on a portfolio of underlying assets that included both assets that had already been purchased and potential assets that were designated by type, rating, maturity date, and size, but had not yet been purchased by the issuer (known as "dummy assets"). For these CDOs, S&P ratings analysts were required to reaffirm the ratings after the Ramp-Up Period was completed, that is, after all "dummy assets" had been replaced by appropriate purchased assets. Letters from S&P to issuers confirming CDOs' ratings after post-closing ramp-up was completed were known as "Effective Date RAC letters."

99. An Effective Date RAC letter confirmed that CDO tranches continued to receive S&P's original ratings after the CDO was fully funded and all of the CDO's underlying assets had been purchased. The Effective Date RAC letter indicated that, with all underlying assets actually purchased, the CDO tranches continued to satisfy

1 S&P's criteria for the ratings those tranches had previously been given at closing.

2 100. To determine whether a post-closing fully-ramped CDO still warranted
3 the ratings S&P had issued its tranches at closing, S&P ratings analysts ran the fully-
4 ramped CDO, with all assets actually purchased, through CDO Monitor, an S&P
5 model that essentially combined CDO Evaluator and Genesis into a single application,
6 customized for each transaction.

7 101. If every tranche of the fully-ramped CDO passed CDO Monitor, S&P
8 sent out an Effective Date RAC letter confirming S&P's ratings of the CDO tranches
9 based on review of the CDO's fully-ramped asset portfolio. If any tranche of the
10 CDO failed CDO Monitor, then S&P could not properly issue an Effective Date RAC
11 letter confirming its prior ratings. In such circumstances, in order to obtain an
12 Effective Date RAC letter, the CDO issuer could change the payout structure to give
13 priority to the higher-rated tranches at the expense of the lower ones or make
14 adjustments to the underlying asset portfolio or the structure of the CDO. If, despite
15 such changes, S&P remained unwilling to provide an Effective Date RAC letter, it
16 could result in the CDO being unwound and the investors' money refunded.

17 **G. S&P's Surveillance of RMBS and CDO Credit Ratings**

18 102. S&P assured investors that after a rating was assigned by S&P, the rating
19 continued to be monitored through S&P's surveillance process. S&P represented that
20 the "purpose of surveillance is to ensure that the rating continues to reflect the
21 performance and structure of the transaction as it was analyzed at transaction closing"
22 and that S&P's "surveillance process encompasses monitoring issue performance and
23 identifying those issues that should be considered for either an upgrade or a
24 downgrade."

25 103. S&P's Code of Professional Conduct ("Code of Conduct"), which S&P
26 issued in October 2005, published on its website, and, as updated in June 2007,
27 submitted to the SEC as part of S&P's June 25, 2007, NRSRO application,
28 represented that S&P would monitor and timely update its ratings where appropriate:

1 [O]nce a rating is assigned Ratings Services shall monitor on an ongoing
2 basis and update the rating by:

- 3 a. regularly reviewing the issuer's creditworthiness;
- 4 b. initiating a review of the status of the rating upon becoming
5 aware of any information that might reasonably be expected
6 to result in a Rating Action (including withdrawal of a
7 rating) consistent with the applicable rating criteria and
8 methodology; and,
- 9 c. updating on a timely basis the rating, as appropriate, based
10 on the results of such review.

11 104. "Rating Action" was defined by S&P to mean "any initial rating, any
12 change, withdrawal, or suspension of an existing rating, any CreditWatch action or the
13 assignment of a new Outlook." S&P assured investors that once a credit rating was
14 public, S&P would publicly disclose any subsequent Rating Action, generally with a
15 short explanation of the basis for the action.

16 105. "CreditWatch" was defined by S&P to mean a public indication that
17 highlights "the potential direction of a short- or long-term rating. It focuses on
18 identifiable events and short-term trends that cause ratings to be placed under special
19 surveillance by Standard & Poor's analytical staff." With respect to CreditWatch
20 designations, S&P explained, "The 'positive' designation means that a rating may be
21 raised; 'negative' means a rating may be lowered; and 'developing' means that a
22 rating may be raised, lowered, or affirmed." S&P represented that under its
23 guidelines, "we place ratings on CreditWatch when, in our analysts' opinion, there is
24 at least a 50% likelihood that we will change the rating in the near term."

25 106. S&P represented that its own studies indicated that placements on
26 CreditWatch "strongly signal future rating changes" in that "[s]ixty-six percent of
27 CreditWatch listings with positive implications resulted in an upgrade; 59% of
28 CreditWatch listings with negative implications resulted in a downgrade."

1 107. As part of its surveillance of RMBS ratings, S&P received from the
2 entities that serviced the loans in the underlying mortgage loan pools monthly reports
3 that provided information regarding the performance of the loans. Based on review of
4 these reports and other information, RMBS Surveillance set certain parameters that
5 identified RMBS tranches that were flagged for closer scrutiny for positive or negative
6 Rating Action. These parameters were used to generate what S&P referred to as
7 "exception reports," which were internal, non-public lists of RMBS tranches that
8 RMBS Surveillance monitored more closely for possible Rating Action.

9 108. An important metric that RMBS Surveillance used to determine which
10 RMBS tranches were likely to need negative Rating Action was the comparison of
11 severe delinquencies to available credit support, a comparison known as "SD versus
12 CS." "Severe delinquencies" referred to underlying mortgage loans that were in
13 foreclosure, for which payments were more than 90 days delinquent, or that were
14 "REO", that is, "Real Estate Owned," meaning that the residence was owned by the
15 lender after an unsuccessful attempt to sell it at a foreclosure auction. RMBS that
16 were collateralized by such loans were more likely to sustain losses. "Credit support"
17 referred to the amount of losses a tranche could withstand and still be able to make all
18 of the required payments to investors. The comparison between "severe
19 delinquencies" and "credit support" was used by RMBS Surveillance to predict
20 whether likely losses might exceed the ability of an RMBS tranche to withstand them,
21 thereby causing the tranche to default.

22 109. CDO Surveillance monitored several parameters regarding the
23 performance of CDOs to identify CDOs that required closer monitoring for possible
24 Rating Action. When CDOs were identified that required this attention and possible
25 Rating Action, CDO Surveillance would re-run S&P's rating models for new CDOs,
26 that is, CDO Evaluator and, for cash and some hybrid CDOs, Genesis.

1 **VI. S&P'S SCHEME TO DEFRAUD**

2 **A. S&P Repeatedly Represented that its Ratings Were Objective,**
3 **Independent, Uninfluenced By Any Conflicts of Interest That Might**
4 **Compromise S&P's Analytic Judgment, and Reflected S&P's True**
5 **Current Opinion Regarding Credit Risks**

6 110. S&P recognized the potential conflict of interest inherent in S&P being
7 selected and retained by the issuers whose RMBS and CDOs S&P rated. Beginning
8 well before 2004 and continuing through at least October 2007, however, S&P
9 repeatedly reassured investors, including financial institutions, and other participants
10 in the financial markets, that its credit ratings, including those of RMBS and CDOs,
11 were objective and independent, and that this potential conflict of interest, and the
12 resulting incentives to favor issuers in order to maintain and increase S&P's ratings
13 market share and profits, would not influence those ratings.

14 111. In September 2004, S&P gathered and restated "established policies and
15 procedures that are relevant to the rating and surveillance processes of Ratings
16 Services" in a "Code of Practices and Procedures" that S&P made "freely available to
17 the public on [S&P's] public website." In its Code of Practices and Procedures, S&P
18 made several representations regarding its ratings' objectivity, independence, and
19 freedom from influence by any conflicts of interest:

20 a. In the Introduction, S&P stated that its "mission has always
21 remained the same – to provide high-quality, objective, independent, and rigorous
22 analytical information to the marketplace" and that S&P "endeavors to conduct the
23 rating and surveillance processes in a manner that is transparent and credible and that
24 also ensures that the integrity and independence of the ratings and surveillance
25 processes are not compromised by conflicts of interest, abuse of confidential
26 information or other undue influences."

27 b. Section 3.1.1 stated:

28 Conflicts of interest or other undue influences if not managed properly

1 could undermine Ratings Services' independence, objectivity and
2 credibility. Ratings Services is aware of the significant role it plays in
3 the global securities markets and understands the public's concern about
4 conflicts of interest and how such conflicts may affect the rating and
5 surveillance processes. Ratings Services endeavors to avoid conflicts of
6 interest and, where this is not possible, has established policies and
7 procedures to address the conflicts of interest through a combination of
8 internal controls and disclosure.

9 c. Section 3.1.2 stated:

10 In all analytic processes, Ratings Services must preserve the objectivity,
11 integrity and independence of its ratings. In particular, the fact that
12 Ratings Services receives a fee from the issuer must not be a factor in the
13 decision to rate an issuer or in the analysis and the rating opinion.

14 d. Section 3.1.4 stated:

15 Ratings Services' criteria and methodology shall be determined solely by
16 [S&P's] Analytics Policy Board and Analysts.

17 e. Section 3.1.5 stated:

18 Ratings assigned by Ratings Services shall not be affected by an existing
19 or a potential business relationship between Ratings Services (or any
20 Non-Ratings Business) and the issuer or any other party, or the non-
21 existence of such a relationship.

22 112. S&P reaffirmed and further codified its representations regarding its
23 ratings' objectivity, independence, and freedom from influence by any conflicts of
24 interest in October 2005, when S&P adopted and published on its website its Code of
25 Conduct. The Code of Conduct assured investors, including financial institutions, that
26 S&P "endeavors to conduct the rating and surveillance processes in a manner that is
27 transparent and credible and that also ensures that the integrity and independence of
28 such processes are not compromised by conflicts of interest, abuse of confidential

1 information, or other undue influences.” The Code of Conduct also noted:

2 [S&P] fully supports the essential purpose of the IOSCO Code
3 [International Organization of Securities Commissions Code of Conduct
4 Fundamentals for Credit Rating Agencies], which is to promote investor
5 protection by safeguarding the integrity of the rating process. [S&P]
6 believes that the [Code of Conduct] is consistent with the IOSCO Code
7 and appropriately implements IOSCO’s Statement of Principles
8 Regarding the Activities of Credit Rating Agencies published in
9 September 2003.

10 113. One of the key principles set out in the IOSCO Code, which was first
11 published in December 2004, was the need for credit rating agencies to maintain
12 independence from the issuers that selected the rating agencies to rate their securities,
13 and were therefore the primary source of the agencies’ ratings business. In particular,
14 the IOSCO Code set forth the principle that:

15 [T]he essential purpose of the Code Fundamentals is to promote investor
16 protection by safeguarding the integrity of the rating process. IOSCO
17 members recognize that credit ratings, despite their numerous other uses,
18 exist primarily to help investors assess the credit risks they face when
19 making certain kinds of investments. Maintaining the independence of
20 [credit rating agencies] vis-à-vis the issuers they rate is vital to achieving
21 this goal. Provisions of the Code Fundamentals dealing with CRA
22 [Credit Rating Agency] obligations to issuers are designed to improve the
23 quality of credit ratings and their usefulness to investors.

24 114. The IOSCO Code also emphasized that “[r]ating analyses of low quality
25 or produced through a process of questionable integrity are of little use to market
26 participants,” and that “[w]here conflicts of interest or a lack of independence is
27 common at a credit rating agency and hidden from investors, overall investor
28 confidence in the transparency and integrity of a market can be harmed.”

1 115. Consistent with these principles, S&P's Code of Conduct made several
2 representations about the manner in which S&P maintained its objectivity and
3 independence and avoided conflicts of interest posed by its relationships with issuers.
4 These representations were part of the Code of Conduct S&P adopted in October
5 2005, and remained part of the Code of Conduct when S&P updated and reissued it in
6 June 2007. In particular:

7 a. The Introduction stated that it was S&P's "mission" to:
8 provide high-quality, objective, independent, and rigorous analytical
9 information to the marketplace. In order to achieve its mission, Ratings
10 Services strives for analytic excellence at all times, evaluates its rating
11 criteria, methodologies and procedures on a regular basis, and modifies
12 or enhances them as necessary to respond to the needs of the global
13 capital markets.

14 b. Section 2.1 stated:
15 Ratings Services shall not forbear or refrain from taking a Rating Action,
16 if appropriate, based on the potential effect (economic, political, or
17 otherwise) of the Rating Action on Ratings Services, an issuer, an
18 investor, or other market participant.

19 c. Section 2.2 stated:
20 Ratings Services and its Analysts shall use care and analytic judgment to
21 maintain both the substance and appearance of independence and
22 objectivity.

23 d. Section 2.3 stated:
24 The determination of a rating by a rating committee shall be based only
25 on factors known to the rating committee that are believed by it to be
26 relevant to the credit analysis.

27 e. Section 2.4 stated:
28 Ratings assigned by Ratings Services to an issuer or issue shall not be

1 affected by the existence of, or potential for, a business relationship
2 between Ratings Services (or any Non-Ratings Business) and the issuer
3 (or its affiliates) or any other party, or the non-existence of such a
4 relationship.

5 116. S&P's November 2005 Analytic Firewalls Policy, published on S&P's
6 website, reaffirmed S&P's representations that its credit ratings would remain free
7 from improper influences from issuers or other third parties:

8 No employee of Standard & Poor's/McGraw-Hill shall attempt to exert
9 improper influence on the opinions of an Equity Analyst or a Ratings
10 Analyst. In no circumstances shall an employee of Standard &
11 Poor's/McGraw-Hill try to influence the opinion of an Equity Analyst or
12 a Ratings Analyst by referring to the commercial relationship between
13 Standard & Poor's/McGraw-Hill and any third party.

14 117. In a February 2006 "Report On Implementation of S&P's Rating
15 Services Code of Conduct," also published on S&P's website, S&P reaffirmed its
16 representations regarding its ratings' objectivity, independence, and freedom from
17 influence by any conflicts of interest posed by its relationships with issuers, stating:

18 a. "[S&P] recognizes its role in the global capital markets and is
19 committed to providing ratings that are objective, independent and credible";

20 b. "It is a central tenet of [S&P] that its ratings decisions not be
21 influenced by the fact that [S&P] receives fees from issuers. To reinforce this central
22 tenet, commencing in 2004, [S&P] separated in a more formal manner its commercial
23 functions from its rating analytical functions"; and

24 c. "[S&P's Code of Conduct] represented further alignment of its
25 policies and procedures with the IOSCO Code of Conduct."

26 118. McGraw-Hill's Annual Reports also made repeated representations
27 regarding S&P's objectivity and independence. In particular:

28 a. McGraw-Hill's 2002 Annual Report described S&P as "the

1 world's leading provider of independent opinions and analysis on the debt and equity
2 markets," and noted that "securitization, disintermediation and privatization create a
3 growing demand for our independent ratings and analysis."

4 b. McGraw-Hill's 2003 Annual Report emphasized that S&P "enjoys
5 a preeminent position in the world's financial architecture" and the company's
6 "ongoing commitment to improving transparency facilitates the global capital-
7 formation process." Similarly, the 2003 Annual Report noted that S&P was
8 responding to new challenges created by the structured finance market "by building on
9 its market leadership as the world's foremost provider of independent credit ratings
10 and risk evaluation."

11 c. McGraw-Hill's 2004 Annual Report stated that S&P "provides
12 investors with the independent benchmarks they need to feel more confident about
13 their investment and financial decisions."

14 d. McGraw-Hill's 2005 Annual Report described S&P as "the
15 world's foremost provider of independent credit ratings, indices, risk evaluation and
16 investment research," adding that, as "[a]n essential part of the global financial
17 infrastructure, [S&P] provides investors with the independent benchmarks they need
18 to feel more confident about their investment and financial decisions."

19 e. McGraw Hill's 2006 Annual Report stated that "[m]any investors
20 know [S&P] for its respected role as an independent provider of credit ratings. . . . As
21 financial markets grow more complex, the independent analysis, critical thinking,
22 opinions, news and data offered by [S&P] are an integral part of the global financial
23 infrastructure."

24 f. McGraw Hill's 2007 Annual Report emphasized that "[s]ince
25 1916, markets across the globe have relied on the independent analysis and integrity
26 of [S&P's] credit ratings," and further stated that "S&P is highly valued by investors
27 and financial decision-makers everywhere for its analytical independence, its market
28 expertise and its incisive thought and leadership."

1 119. S&P repeatedly made public representations regarding its ratings'
2 objectivity, independence, and freedom from influence of any conflicts of interest to
3 regulatory and legislative bodies as well:

4 a. On July 28, 2003, in a letter to the SEC, S&P stated, "Over almost
5 a century, S&P Ratings Services' mission has remained the same - to provide high-
6 quality, objective, rigorous analytical information to the marketplace." The letter
7 continued:

8 Underlying the credibility and reliability . . . of S&P Ratings Services'
9 rating opinions is the market's recognition of the independence, integrity,
10 objectivity and quality of S&P Ratings Services' credit ratings, rating
11 process and reputation

12 The letter also stated that S&P believed "that a critical factor in the success of the
13 credit rating industry is the independence of the rating and analytic processes . . . from
14 issuers and investors"

15 b. On June 23, 2004, S&P Executive H, at the time the head of US
16 RMBS, testified at a United States House of Representatives hearing, "Standard &
17 Poor's believes that over the last century credit ratings have served the U.S. securities
18 markets extremely well, providing an effective and objective tool in the market's
19 evaluation and assessment of credit risk."

20 c. On February 8, 2005, the then-President of S&P Ratings stated at a
21 United States Senate hearing, "S&P Ratings Services has a longstanding commitment
22 to ensuring that any potential conflicts of interest do not compromise our analytical
23 independence." She also stated, "Critical to a credit rating agency's ability to serve
24 this role in the market is its commitment to, and achievement of, the highest standards
25 of independence, transparency and quality."

26 d. On April 17, 2007, in testimony at a United States Senate hearing,
27 Executive C, at the time the Managing Director in charge of US RMBS, stated that
28 S&P's credit ratings were "grounded in the cornerstone principles of independence,

1 transparency, credibility, and quality. These principles have driven our long-standing
2 track record of analytical excellence and objective commentary.”

3 120. In August 2007, S&P reaffirmed its representations regarding its ratings’
4 objectivity, independence, and freedom from influence by any conflicts of interest
5 posed by its relationships with issuers, and reacknowledged the importance of these
6 representations to investors:

7 a. In an August 23, 2007 publication titled “The Fundamentals of
8 Structured Finance Ratings” that S&P posted on its website, S&P acknowledged the
9 conflicts inherent in S&P being selected and retained by the issuers whose securities it
10 rated, but reiterated:

11 We are intensely aware that our entire franchise rests on our reputation
12 for independence and integrity. Therefore, giving into ‘market capture’
13 would reduce the very value of the rating, and is not in the interest of the
14 rating agency.

15 b. In the same publication, S&P denied that it weakened its criteria to
16 get more business and acknowledged that doing so would be inconsistent with its
17 internal rules:

18 [S&P] is paid by the issuers we rate Clearly, since there is a choice
19 of rating agencies, the potential exists for a conflict of interest. In theory,
20 one way to increase revenue would be for us to weaken our criteria to
21 ensure that we are selected as the agency to rate a transaction or to
22 ensure that a transaction that would not have been economically viable
23 can take place. This would, of course, violate our internal rules

24 [W]e do not engage in such behavior.

25 c. In an August 31, 2007, OpEd piece published in the Wall Street
26 Journal titled “Don’t Blame the Rating Agencies,” Senior Executive A similarly
27 reiterated S&P’s representations regarding its objectivity and independence and
28 recognized their importance to investors:

1 Rating agencies such as ours often are criticized for being paid by the
2 issuers of the bonds we rate [T]his approach does not affect how we
3 assign our ratings. Our criteria are publicly available, non-negotiable and
4 consistently applied. In fact, we do not rate financial instruments that do
5 not meet our criteria. Like newspapers and other media, we maintain a
6 separation between the analytical and commercial activities associated
7 with any given rating, to ensure the independence of our opinions.

8 121. At all relevant times, S&P represented to investors, including financial
9 institutions, and other participants in the financial markets that its credit ratings of
10 structured finance securities, including RMBS and CDOs, reflected its true current
11 opinion of the credit risks posed by those securities. Thus, for example:

12 a. S&P attached to its rating letters for structured finance securities
13 “Terms and Conditions” that stated that “an issue rating reflects [S&P’s] current
14 opinion of the likelihood that payments of principal and interest will be made on a
15 timely basis in accordance with the terms of the obligations.”

16 b. In its October 2005 Code of Conduct, S&P stated, “Ratings are
17 current opinions regarding the future creditworthiness of issuers or issues.”

18 c. On or about June 8, 2007, in a publication titled “An Introduction
19 to CDOs and [S&P’s] Global CDO Ratings,” S&P stated, “A [S&P] rating represents
20 our opinion of the future creditworthiness (that is, the likelihood of default) of either
21 an obligor in general or a particular financial obligation.”

22 d. On or about September 26, 2007, Senior Executive A testified
23 before the United States Senate, “At their core, S&P’s credit ratings represent our
24 opinion of the likelihood that a particular obligor or financial obligation will timely
25 repay owed principal and interest. Put another way, we assess the likelihood, and in
26 some situations the consequences, of default – nothing more or less.”

27 122. Beginning in late 2006 and continuing throughout 2007, S&P repeatedly
28 reassured investors that it had an integrated surveillance process that would ensure

1 that S&P's ratings of both RMBS and CDOs would continue to reflect S&P's most
2 current view of their true credit risks. Thus, for example:

3 a. On or about November 15, 2006, Executive G gave to the
4 Structured Finance Investor Council, a group of institutional investor representatives
5 with whom S&P periodically met to discuss issues related to structured finance
6 investments, a presentation titled "RMBS in CDO of ABS [Asset Backed Securities],"
7 in which he recognized that "[l]ater vintage CDO of ABS transactions collateralized
8 predominantly by mezzanine structured finance assets have significant exposure to
9 RMBS assets," but represented that "S&P has an integrated surveillance process to
10 ensure that RMBS assets in CDOs of ABS are appropriately monitored and reflect
11 [S&P's] most current credit view."

12 b. On or about February 15, 2007, Executives F and G, a senior
13 analytical manager in US RMBS ("Senior Analyst A"), and an S&P RMBS
14 Surveillance analyst conducted a teleconference in which they reassured investors that
15 "[S&P] has an integrated surveillance process to ensure the ratings on our rated
16 RMBS bonds and CDO transactions reflect our most current credit view."

17 c. On or about March 29, 2007, Jordan participated in an investor
18 conference call in which she reassured investors that:

19 [S&P's] CDO Surveillance group is informed by the RMBS Surveillance
20 group's current credit opinion, as well as outlook for ratings transactions,
21 and really just as importantly, [S&P's] RMBS Surveillance group is
22 aware of the RMBS exposure within CDO transactions that we have
23 rated. So we have a complete move [sic] as far as information flow and
24 rating decisions.

25 d. On or about April 16, 2007, in a rewritten version of an article
26 originally published April 2, 2007 titled "Standard & Poor's Weighs In On The U.S.
27 Subprime Mortgage Market," S&P represented that, with respect to RMBS
28 surveillance, S&P was "taking a proactive approach to assess them earlier than we

1 have historically because of the current environment,” and that with respect to CDOs:

2 We integrate our RMBS surveillance with our CDO surveillance, so
3 performance issues and rating actions that we’re experiencing or taking
4 on the RMBS side are integrated into our monitoring of CDOs that
5 contain RMBS. And just as [S&P’s] CDO surveillance group is
6 informed by the RMBS surveillance group of its current credit opinions,
7 and our outlooks on rated transactions, our RMBS surveillance group is
8 aware of the RMBS exposure within CDO transactions that we have
9 rated. So we have a complete loop when it comes to information flow
10 and rating decisions. The result is that prior to the release of any RMBS
11 rating actions we’re fully aware of the exposures within our rated CDO
12 transactions and have made at least a preliminary assessment of any
13 potential CDO rating impact.

14 e. On April 17, 2007, in testimony at a United States Senate hearing,
15 Executive C stated:

16 After a rating is assigned, S&P monitors or ‘surveils’ the ratings to adjust
17 for any developments that would impact the original rating. The purpose
18 of this surveillance process is to ensure that the rating continues to reflect
19 our credit opinion based on our assumption of the future performance of
20 the transaction.

21 f. On or about June 8, 2007, in a publication titled “An Introduction
22 to CDOs and Standard & Poor’s Global CDO Ratings,” S&P represented that S&P
23 “has an integrated surveillance process to ensure the ratings on RMBS bonds and
24 CDO transactions reflect our most current credit view.”

25 **B. S&P’s Representations Were False**

26 123. As S&P knew, contrary to its representations to the public, S&P’s desire
27 for increased revenue and market share in the RMBS and CDO ratings markets, and
28 its resulting desire to maintain and enhance its relationships with issuers that drove its

1 ratings business, improperly influenced S&P to downplay and disregard the true
2 extent of the credit risks posed by RMBS and CDO tranches in order to favor issuers
3 in its ratings of those tranches.

4 124. In particular, to maintain and increase its share of the market for credit
5 ratings of RMBS and CDOs and the high fees and profits those ratings generated:

6 a. Beginning at the latest in or about September 2004 and continuing
7 through at least in or about October 2007, S&P limited, adjusted, and delayed updates
8 to the ratings criteria and analytical models S&P used to assess the credit risks posed
9 by RMBS and CDO tranches, thereby weakening those criteria and models from what
10 S&P analysts believed was necessary to make them more accurate; and

11 b. Beginning at the latest in or about March 2007 and continuing
12 through at least in or about October 2007, knowing that the credit risks of certain non-
13 prime RMBS tranches were increasing, were expected to continue to increase, and
14 were anticipated to result in negative Rating Actions, S&P knowingly disregarded the
15 true extent of the credit risks associated with those non-prime RMBS tranches in
16 issuing and/or confirming ratings for CDOs with exposure to those non-prime RMBS
17 tranches, which ratings S&P knew did not accurately reflect those CDOs' true current
18 credit risks because they failed to account for the increased credit risks posed by those
19 non-prime RMBS tranches.

20 **1. Considerations Regarding Fees, Market Share, Profits, and**
21 **Relationships with Issuers Improperly Influenced S&P's**
22 **Rating Criteria and Models**

23 a. Decisions On Rating Criteria

24
25 125. On or about April 20, 2004, a meeting of S&P executives was held to
26 discuss a new process for implementing changes to S&P's rating criteria. In
27 attendance at the meeting were, among others, Jordan and Senior Executive B (who
28 attended by phone). Circulated at the meeting was a draft document setting out the

1 new process, which required consideration of “market insight” and “rating
2 implications” and the polling of both “3 to 5 investors in the product” and “an
3 appropriate number of issuers and investment bankers for a full 360-market
4 perspective.”

5 126. Executive H objected to these new criteria procedures, and sent an email
6 to, among others, Gillis, Executive C, and a senior analyst in Ratings and Criteria
7 (“Senior Analyst B”):

8 What do you mean by “market insight” with regard to a proposed criteria
9 change? What does “rating implication” have to do with the search for
10 truth? Are you implying that we might actually reject or stifle “superior
11 analytics” for market considerations? Inquiring minds need to know.
12 (As an aside, we also didn’t know there was a “political” dimension to
13 our ratings until we tried to publish our revised Predatory Lending
14 Criteria, who’d a thought with our touted independence) What is
15 “market perspective”? Does this mean we are to review our proposed
16 criteria changes with investors, issuers and investment bankers? . . .

17 [W]e NEVER poll them as to content or acceptability!

18 127. Executive H’s concerns were ignored, and he never received a response
19 to his email. On July 1, 2004, Rose and Gillis circulated a memorandum titled
20 “Global Structured Finance Criteria Process” that adopted many of the criteria
21 procedures to which Executive H had objected. The memorandum recognized a role
22 for S&P Client Value Managers (“CVMs”), who had “responsibility for managing the
23 commercial relationship with clients,” in “criteria discussion,” and indicated that the
24 CVMs should be “consulted for client information and feedback” and their input
25 should be included in seeking “market perspective.” The memorandum required
26 consideration of “market perspective” and “rating implications” and the polling of
27 “three to five investors in the product” and “an appropriate number of issuers and
28 investment bankers for a full 360-market perspective.”

1 128. Rose and Gillis's July 1, 2004 memorandum also specified that
2 "concerns with the objectivity, integrity, or validity" of the criteria process should be
3 communicated in person rather than by email, stating, "If it is not practical to speak
4 with the person, only then should these concerns be expressed in an email or written
5 memorandum," and requiring any such email to be addressed to an S&P attorney or
6 S&P's general counsel.

7 129. S&P proceeded to reach out to investors, issuers, and investment bankers
8 for their perspectives on S&P's rating criteria. The feedback S&P received resulted in
9 S&P – based on its desire to preserve market share and profits – limiting, adjusting,
10 and delaying updates to the ratings criteria and analytical models it used to assess the
11 credit risks posed by RMBS and CDO tranches, thereby weakening those criteria and
12 models from what S&P analysts believed was necessary to make them more accurate.

13 130. On or about August 17, 2004, the head of S&P's Commercial Mortgage
14 Backed Securities ("CMBS") group sent an email to, among others, Senior Executive
15 D, Jordan, Gillis, and Tesher, in which she stated, "We are meeting with your group
16 this week to discuss adjusting criteria for rating CDOs of real estate assets this week
17 because of the ongoing threat of losing deals." On or about August 18, 2004, Senior
18 Executive D responded in an email that went also to, among others, Jordan, Gillis, and
19 Tesher, that "SFLT is aware of the competitive threats that Moody's is taking in
20 CDOs and has authorized us to take certain actions."

21 131. On or about June 27, 2005, the members of the SFLT, including Rose,
22 Jordan, and Gillis, received S&P's "Credit Market Services Global Structured Finance
23 Ratings 2006 Strategic Plan." In this document, marked "Privileged & Confidential,"
24 S&P acknowledged that competition for business among the different credit rating
25 agencies had affected S&P's ratings:

26 Competition among rating agencies has helped drive down support levels
27 in deals -- this will create more ratings volatility and put more pressure
28 on surveillance resource needs.

1 132. S&P's January 5, 2006 CDO Strategic Plan, marked "Private &
2 Confidential," confirmed that S&P considered its ratings criteria and models to be
3 central to S&P's ability to attract ratings business:

4 Criteria is one of the key competitive elements among the main rating
5 agencies globally and regionally and for S&P the analytical rigor is one
6 of it [sic] most important strategic pillars. Criteria will directly impact
7 the economics of any transaction, and while the investor may have some
8 say in which rating agency (ies) they want on the transaction, the
9 banker/arranger will usually make that decision – especially in one-rating
10 markets such as synthetics. Additionally, for new transaction types, the
11 rapid development of criteria and analytical tools to rate the transaction
12 becomes a critical competitive advantage, as arrangers will go with the
13 agencies that are able to (1) meet their transaction schedule, and (2) use
14 criteria that provide them with favorable economics for the transaction.

15 The January 5, 2006 CDO Strategic Plan continued:

16 *Continuing to encourage and increase the need for ratings overall, is*
17 *important as it ensures transactions will continue to be rated, however,*
18 *having criteria and analytical tools that enable us to rate the*
19 *transactions and meet the needs of the players in them [sic] market will*
20 *ensure that S&P will continue to be the one agency rating the largest*
21 *share of transactions. (italics in original)*

22 b. Development and Updating of LEVELS

23 133. S&P used LEVELS to, among other things, analyze credit risks
24 associated with proposed RMBS and determine the credit protection requirements
25 necessary to obtain a given S&P rating for each rated RMBS tranche.

26 134. S&P successfully marketed LEVELS as the industry standard for cradle-
27 to-grave rating, from mortgage initiation to securitization.
28

1 135. As of 1999, LEVELS calculated default probabilities based on a database
2 comprised of 166,000 almost exclusively first-lien, fixed rate, prime mortgage loans.

3 136. Over the next several years, the mortgage lending market began
4 aggressively creating ever more risky non-prime mortgage loans, including Alt-A and
5 subprime mortgage loans. These non-prime mortgage loans were included in pools of
6 mortgage loans that served as underlying collateral for certain RMBS. Certain CDOs,
7 in turn, were exposed to the credit risks of these RMBS.

8 137. In November 2003, S&P assured investors, including financial
9 institutions, that it regularly updated its RMBS models to reflect the changing and
10 riskier underlying collateral. In particular, in a publication posted on its website on
11 November 5, 2003, S&P represented:

12 As the U.S. RMBS market continues to grow in issuance and complexity,
13 the use and precision of mortgage risk assessment models [such as
14 LEVELS] takes on greater importance. In such an environment,
15 refinements and innovations to these models are an ongoing challenge.
16 By regularly updating its mortgage risk assessment models, Standard &
17 Poor's adjusts to the many intricacies that characterize this evolving
18 market.

19 138. In truth, however, S&P did not regularly or timely update LEVELS to
20 incorporate relevant loan data S&P possessed that S&P knew would make its RMBS
21 ratings more accurate.

22 139. By 2002, S&P had acquired a data set of 642,000 residential mortgages
23 originated between 1971 and 2001, which included many riskier mortgage loans. As
24 of 2004, however, S&P had failed to incorporate this more relevant loan data into
25 LEVELS version 5.6 ("LEVELS 5.6") to more accurately calculate loan default
26 probabilities for RMBS. Instead, as of 2004, LEVELS 5.6 continued to calculate
27 default probabilities based on the database comprised of 166,000 almost exclusively
28 prime loans that were originated prior to 2000 and were not comparable to the types of

1 riskier loans being pooled to create RMBS.

2 140. By in or about mid-2004, S&P had incorporated the 642,000 loan data set
3 into a proposed LEVELS version 6.0 ("LEVELS 6.0"). Because the proposed
4 LEVELS 6.0 was based on analysis of a larger, more current data set than that used by
5 LEVELS 5.6, the proposed LEVELS 6.0 constituted a more accurate analytical model
6 for rating RMBS. S&P executives, including Rose and Jordan, knew that the larger
7 and more representative the loan data set used, the more accurate the result when
8 rating RMBS.

9 141. S&P planned to release the proposed LEVELS 6.0 in the fourth quarter
10 of 2004, for use on all deals effective January 1, 2005.

11 142. In April 2004, S&P publicly announced the planned changes to LEVELS
12 by posting on its website a document titled "Taking U.S. Mortgage Analytics to New
13 LEVELS" that described in detail the increased accuracy of S&P's soon to be released
14 LEVELS 6.0. Sometime after S&P posted this document, S&P deleted it from its
15 website.

16 143. The proposed LEVELS 6.0 would have required issuers of Alt-A and
17 subprime RMBS to provide higher loss coverage enhancements to obtain S&P's
18 investment grade ratings. Consequently, Alt-A and subprime RMBS rated with
19 proposed LEVELS 6.0 would generally have been less profitable for issuers.

20 144. On or about May 25, 2004, an S&P analyst sent Rose and Jordan an
21 email advising them that S&P was losing a deal because S&P was more conservative
22 than other rating agencies and that the analyst and her team leaders believed that S&P
23 would need to change its stance on future deals. Specifically, the analyst wrote, "We
24 just lost a huge Mizuho RMBS deal to Moody's due to a huge difference in the
25 required credit support level." The analyst explained, "What we found from the
26 arranger was that our support level was at least 10% higher than Moody's." The
27 analyst continued, "Losing one or even several deals due to criteria issues, but this is
28 so significant that it could have an impact on future deals. There's no way we can get

1 back on this one but we need to address this now in preparation for the future deals.”

2 145. By July 2004, S&P had prepared draft press releases announcing the
3 release of the proposed LEVELS 6.0 in late 2004.

4 146. The proposed LEVELS 6.0, however, was not released in late 2004 as
5 scheduled, and, in fact, was never released by S&P. Instead, S&P issued slightly
6 updated versions of LEVELS 5.6 in December 2004, April 2005, and March 2006.
7 None of these versions of LEVELS 5.6 significantly increased the loss coverage for
8 RMBS.

9 147. In February 2005, at an offsite meeting of S&P Analytical Managers,
10 existing LEVELS 5.6 and proposed LEVELS 6.0 were discussed. At the meeting, a
11 PowerPoint presentation was shown to the SFLT. The PowerPoint presentation
12 detailed why, for several reasons, proposed LEVELS 6.0 was more accurate than
13 existing LEVELS 5.6 in assessing the credit risks posed by non-prime RMBS.

14 148. Prior to March 2005, Executive H had suggested to Structured Finance
15 executives that proposed LEVELS 6.0 should be released as soon as possible, because
16 it did a better job of assigning RMBS ratings than the model S&P was running, had
17 better coverage on some new products, had more information on some more mature
18 products, and was simply a better model. During his discussions with Structured
19 Finance executives, Executive H informed them that proposed LEVELS 6.0 would
20 require higher loss coverage levels for subprime loans and that S&P was underpricing
21 risk on RMBS deals by having loss coverage levels that were too low.

22 149. The response Executive H received from Structured Finance executives
23 was that if proposed LEVELS 6.0 was not going to result in S&P increasing its market
24 share or gaining more revenue, there was no reason to spend money putting it in place.

25 150. On or about March 23, 2005, a CVM in US RMBS who was responsible
26 for overseeing S&P's business relationships with RMBS issuers (“Executive I”) sent
27 an email to, among others, Executive C and Senior Analysts A and B discussing a
28 proposed LEVELS version 5.7 (“LEVELS 5.7”) that would not increase loss coverage

1 levels as high as would the proposed LEVELS 6.0. In this email, Executive I
2 acknowledged, "We have known for some time (based upon pool level data and
3 LEVELS 6.0 testing)" that loss coverage levels for subprime "B and BB levels need to
4 be raised" and that loss coverage levels for Alt-A "B, BB and BBB levels need to be
5 raised (we have had a disproportionate number of downgrades)." Executive I asked if
6 there was a "temporary fix we could put in to move the levels up a bit, while we are
7 waiting for 6.0?"

8 151. On or about March 23, 2005, Senior Analyst B responded to Executive I,
9 with copies to, among others, Executive C and Senior Analyst A, as follows:

10 When we first reviewed [proposed LEVELS] Version 6.0 results **a
11 year ago** we saw the sub-prime and Alt-A numbers going up and that
12 was a major point of contention which led to all the model tweaking
13 we've done since. Version 6.0 could've been released months ago and
14 resources assigned elsewhere if we didn't have to massage the sub-prime
15 and Alt-A numbers to preserve market share.

16 152. On or about June 1, 2006, S&P announced the release of LEVELS 5.7,
17 effective for RMBS rated after July 1, 2006, that S&P claimed used a more "seasoned
18 and robust data set." A consequence of implementing LEVELS 5.7 was an increase in
19 required loss coverage for RMBS tranches. For example, the average loss coverage
20 for BBB rated tranches rated in the second half of 2006 using LEVELS 5.7 was more
21 than 60% greater than the average loss coverage for BBB rated tranches in the first
22 half of 2006 rated using LEVELS 5.6.

23 153. In 2006, Executive I, who continued to be responsible for business
24 relationships with RMBS issuers, caused a change to be made in an assumption
25 underlying the soon-to-be-released LEVELS 5.7 in order to prevent S&P from issuing
26 RMBS ratings using the new LEVELS 5.7 that were more conservative, that is lower,
27 than the ratings given by Moody's to these securities. The change had no analytical
28 justification and was contrary to data S&P possessed at the time.

1 154. S&P scheduled the next update of LEVELS, labeled "6.0" but different
2 and more favorable to issuers than the proposed LEVELS 6.0 under consideration
3 from 2004 to 2006, for release in March 2007, to be effective for deals closing in
4 May. Prior to the March 2007 release, S&P was concerned about the impact the new
5 LEVELS 6.0 would have on its market share. In a February 14, 2007 monthly report
6 to Senior Executive B, Executive C noted that "LEVELS 6.0 is substantially more
7 accurate at both the pool and loan level than the current model," and then stated:

8 The [updated LEVELS 6.0] model requires more credit enhancement for
9 loans with high probabilities of early payment default, but we do not
10 anticipate a significant change to market share.

11 We are working closely with our colleagues in surveillance and CDO to
12 gauge the effect if any on these associated markets. At this time no
13 significant effect is anticipated.

14 155. On or about February 21, 2007, Senior Executive B passed this
15 information about the new LEVELS 6.0 on to Rose in a monthly report.

16 156. On March 1, 2007, S&P announced the release of the next update of
17 LEVELS, labeled 6.0, to be effective for deals closing in May. On average, the loss
18 coverage required for BBB tranches calculated using this LEVELS 6.0 increased by
19 35% compared to LEVELS 5.7.

20 157. In April 2007, Executive C submitted to Senior Executive B a monthly
21 report noting, under the heading "RMBS Business Development Report," that with
22 respect to LEVELS 6.0, S&P "continued to receive positive feedback about the
23 changes from 5.7." In part, this was because LEVELS 6.0 treated some pools more
24 favorably. As Executive C explained:

25 RMBS released a new version (Version 6.0) of the LEVELS model on
26 March 1, 2007. In general, the market continues to reply favorably. We
27 are finding that our clients are running pools using 5.7 and 6.0 to
28 determine best execution. Our bet is that deals whose pools receive

1 favorably [sic] treatment under 6.0 will push deals to close after April for
2 a June first pay.

3 c. Development and Updating of CDO Evaluator

4 158. On or about November 16, 2004, an internal email that was copied to,
5 among others, Teshar and Bryan, specified the following chain of command for the
6 development of the new CDO default table, the foundation for S&P's CDO Evaluator
7 rating model:

- 8 • "Overall Approver" – Senior Executive D, at the time the business
9 head responsible for the profits and losses of Global CDO.
- 10 • "Decision Makers" – "Practice Leaders," which included Teshar
11 and Bryan, the business heads responsible for the profits and losses
12 of, respectively, Cash CDO and Synthetic CDO.
- 13 • "Consulted Participants" – "The Criteria, Quantitative and
14 Surveillance Groups," that is, the analytical staff.

15 159. Contrary to S&P's public representations regarding its ratings'
16 objectivity, independence, and freedom from influence by any conflicts of interest
17 posed by its relationships with issuers, S&P business executives who served as
18 approvers and decision makers over the updates to CDO Evaluator caused S&P to
19 limit, adjust, and delay those updates in order to favor issuers and so maintain and
20 grow S&P's market share and profits.

21 (i) Delays and Limitations of Updates

22 160. In or about 2003, S&P began the process of updating CDO Evaluator,
23 which S&P used to rate cash, synthetic, and hybrid CDOs. S&P initiated this process
24 because its quantitative analysts recognized that the key assumptions underlying CDO
25 Evaluator, including the default assumptions, were inaccurate and not consistent with
26 historical data.
27
28

1 161. At the time, S&P enjoyed dominant market share in the non-investment
2 grade cash CDO market, but had a smaller market share in the investment-grade
3 synthetic CDO market. A core goal of the CDO Evaluator update was to revise the
4 underlying assumptions, while: (a) preserving S&P's market share in the highly
5 lucrative non-investment grade cash CDO business by not negatively affecting the
6 current model's ratings of these CDOs; and (b) improving S&P's market share in the
7 investment-grade synthetic CDO business by making the model's ratings of these
8 CDOs more competitive with other rating agencies.

9 162. To achieve this goal, S&P executives, led by Senior Executive D and
10 Tesher, directed the quantitative rating analysts to update CDO Evaluator in a way
11 that minimized the impact to ratings on non-investment grade deals, and made it more
12 competitive with respect to ratings on investment grade deals.

13 163. In or about the first half of 2004, two teams of S&P quantitative analysts
14 developed competing updates to CDO Evaluator, including proposed changes to the
15 default matrix assumptions.

16 164. One of the competing proposals would have resulted in higher ratings on
17 the investment grade deals, but negatively impacted ratings on non-investment grade
18 deals. Senior Executive D and Tesher rejected this proposal because it would have
19 damaged S&P's market-share position in the non-investment grade cash CDO
20 business, which was an enormous source of ratings revenue for S&P.

21 165. The other proposal failed to raise the ratings on the investment grade
22 deals. This proposal was also rejected by Senior Executive D, because it, too,
23 threatened the market share goals set by S&P.

24 166. By mid-2004, S&P analysts had reached an impasse in their efforts to
25 update CDO Evaluator and had failed to develop proposals that would achieve the
26 market share goals set by S&P executives.

27 167. In an effort to break this impasse and achieve S&P's market share goals,
28 Senior Executive D took matters into his own hands by developing his own default

1 matrix. In particular, Senior Executive D fused together the two competing proposals,
2 choosing default assumptions that would better achieve S&P's ratings business market
3 share goals. Senior Executive D then named the default matrix after himself, and, in
4 an email sent on May 27, 2004 to, among others, Gillis, Teshar, and Bryan, directed
5 the CDO group to begin testing it with S&P's customers, subject to any proposed
6 changes that would "improve the results relative to the goal of small impacts to NIG
7 [non-investment grade] deals and 2-3 notch improvements for IG [investment grade]
8 and small basket deals."

9 168. The goals cited by Senior Executive D for the revised default matrix were
10 market share and profit, as opposed to analytic, goals. Moreover, at the time, S&P
11 quantitative analysts viewed Senior Executive D's proposed default matrix as
12 indefensible, because it was cobbled together based on considerations of market share
13 and profits, not analytics. Nevertheless, S&P moved forward in testing Senior
14 Executive D's proposed default matrix with S&P's CDO issuer clients.

15 169. Ultimately, S&P executives decided not to use Senior Executive D's
16 proposed default matrix, because testing revealed not only that it was analytically
17 indefensible, but also that it had a negative impact on rating deals and would not
18 achieve S&P's market share goals.

19 170. The version of CDO Evaluator that S&P ultimately released later in 2004
20 had the same historically inaccurate default matrix as the previous version, but was
21 nonetheless used by S&P to rate CDOs through 2006.

22 171. S&P's goals of maintaining and increasing revenues and market share
23 continued to play a central role in future CDO Evaluator updates. S&P continued to
24 poll CDO issuers to determine their tolerance levels with respect to proposed updates
25 to CDO Evaluator. S&P also continued to test proposed changes to CDO Evaluator
26 against existing ratings to make sure the proposed changes would not negatively affect
27 market share.
28

1 172. In an email sent on or about February 15, 2005, Bryan stressed the need
2 to poll a subgroup of CDO issuers to understand their tolerance for proposed revisions
3 to CDO Evaluator that might make it more difficult for them to obtain desired ratings:

4 We cannot understand the cost/benefit analysis that the dealer will
5 perform [on CDOs collateralized in part by other CDOs]. So we may
6 have to put this beta model in the hands of a few trusted souls and let
7 them help us understand their tolerance level.

8 173. On or about June 10, 2005, an S&P analyst stated in an email that new
9 CDO criteria would “be meaningless unless we can compare them to either where the
10 clients [CDO issuers] would expect the numbers to be or where our competitors
11 were.” This analyst went on to observe that:

12 Thus this data is essential to move this on. In the absence of this data, the
13 only way I can see to move this forward is to approach our clients and
14 ask them for pools and levels, but this looks too much to me as though
15 we are publicly backing into a set of levels driven by our clients.

16 174. After receiving this email, on or about June 17, 2005, a London-based
17 S&P senior analyst who previously led one of the competing proposals to update CDO
18 Evaluator (“Senior Analyst C”), responded:

19 I agree that we should talk about E3 [CDO Evaluator version 3.0] asap.
20 Remember the dream of being able to defend the model with sound
21 empirical research? The sort of activity a true quant CoE [Senior Analyst
22 C’s job title at the time] should be doing perhaps? If we are just going to
23 make it up in order to rate deals, then quants are of precious little value. I
24 still believe that people want the model to be consistent with history, and
25 that the impact of the model will not destroy the business. If I’m wrong,
26 then so be it.

27 175. In July 2005, Senior Analyst C prepared a memorandum describing the
28 evolution of the “CDO Credit and Cash Flow Methodologies,” in which he discussed

1 “Understanding the Business Impact” of the update to E3, noting that the model
2 revisions in E3 would have the biggest impact on the high-yield cash CDO business
3 that was run by Teshar.

4 176. Senior Analyst C concluded this memorandum with a section titled
5 “Balancing Risks & Rewards of E3,” in which he recognized that the current CDO
6 Evaluator was “not analytically sound, given that it contains PD [Probability of
7 Default]/correlation assumptions that are inconsistent with historical data.” He then
8 stated:

9 So how do we balance these risks and rewards to achieve our business
10 objectives? For example, if our objectives were solely based on market
11 share, then one solution might be to create a different, more “favourable”
12 model for each type of transaction. This solution might be detrimental to
13 other business needs, such as customer service (imagine the confusion
14 this would cause over the “right” model to use!) and analytical integrity
15 (for example assuming different PDs for the same firm in different
16 models).

17 This is of course hypothetical, as I do not believe that market share is our
18 only objective. However, we cannot ignore the real risk of losing
19 transaction revenue. My proposal would be to look carefully at the
20 different risks and rewards of E3, and attempt to create a balance based
21 on our “best guess” of the negative and positive impact of the model in
22 each business objective. For example, the balance between market share
23 and analytical integrity is complex, as one needs to consider both “short-
24 term” and “long-term” market share. In the short term, it may be
25 beneficial to use modelling assumptions that are more favourable to
26 transactions in the pipeline. In the long term, however, it may be
27 beneficial to have a more robust model that can be quickly adapted to
28 new transactions (such as long/short, etc.), so that we don’t lose new

opportunities to our competitors.

177. S&P scheduled E3 to be released in July 2005. Prior to the release, however, S&P received feedback from issuers indicating that the new E3 rating model would hurt S&P's market share. For example, a CVM in the CDO group who was a member of the CDO Leadership Team and also a former analyst ("Executive J") described negative feedback from Bear Stearns in an email with the subject line "RE: Bear NY E3 feedback" that was sent to, among others, Jordan, Tesher, and Bryan on or about July 19, 2005. In the email, Executive J summarized Bear Stearns' feedback as follows: S&P's ratings generated using CDO Evaluator 2.4.3 had been the "best" (by comparison to Moody's and Fitch) with respect to "more lowly rated" pools; S&P would be giving up its advantage with respect to these pools by moving to E3; and S&P would not make up for this with any increase in business in "the high quality sector," because with respect to this sector, "Moody's and Fitch can do better than E3 already."

178. Based on negative market feedback, including that from Bear Stearns, S&P decided to delay the release of CDO Evaluator 3.0. This decision was discussed in a July 20, 2005, "Global CDO Activity Report" that Jordan sent to Rose:

Due to the not insignificant impact on lowly rated (BBB and down) synthetic reference pools, where parallel cash flow and recovery assumptions could not be tailored towards lessening rating pressure, we have toned down and slowed down our roll out of E3 to the market, pending further measures to deal with such negative results.

We have received controlled testing from various cash and synthetic dealers. Our first response from a major synthetics dealer, Bear Stearns, has just materialized and as expected, E3 would not be conducive towards rating low credit quality pools. Importantly, Bear Stearns pointed out that the potential business opportunities we would miss by effectively having to walk away from such high yield structures

1 would NOT be compensated for by any increase in rating volume for
2 highly rated collateral pools. This is because Moody's and Fitch have
3 been far more competitive in this area well before the roll-out of E3. Our
4 subordinations would improve. But it would not be anywhere near
5 enough to pick up the slack.

6 179. In a section titled "Key Operational Highlights," the July 20, 2005 Global
7 CDO Activity Report further stated: "Because of some complicated issues regarding
8 the business impact of the new CDO Evaluator 3.0, the CDO Business has elected to
9 delay the release until at least mid September."

10 180. Throughout the summer of 2005, S&P continued to beta-test the business
11 impact of E3, both on pending deals already at S&P and with its CDO issuer
12 customers. For example, on or about August 18, 2005, Bryan sent Jordan, Teshler,
13 Executive J, and Senior Analyst C an email in which she stated:

14 As promised [sic] following our Tuesday meeting, here are the results of
15 another pending HY [High Yield] deal (Criver) that we have in house.
16 Note that under the new Eval. [E3] we have gone **from 3 notches better**
17 **than Moody's to 2 notches worse.** (emphasis in original)

18 (ii) The E3 Transition Period and E3 Low

19 181. In or about September 2005, S&P began to implement further measures
20 to deal with the negative business effects of the updated E3. In particular, S&P
21 developed an alternative version of E3 called "E3 Low" that had less demanding
22 assumptions than E3, thereby making it easier for a CDO issuer to achieve higher
23 CDO ratings. E3 Low was not based on historical research or analytical data. Rather,
24 the rationale behind this weaker model was to achieve the goal of preserving S&P's
25 market share.

26 182. On December 19, 2005, S&P publicly released E3. The public release
27 made no mention of the existence of E3 Low or of the fact that S&P would use this
28

1 less stringent version of the model to rate certain CDOs.

2 183. With respect to synthetic CDOs, S&P's public release indicated that for a
3 three-month transition period S&P would use E3 in conjunction with the earlier
4 model, CDO Evaluator version 2.4.3, in order to rate synthetic CDOs.

5 184. Despite this public assertion, and because of E3's potential negative
6 effect on S&P's synthetic CDO business, in or about the first half of 2006, S&P rated
7 certain synthetic CDOs using E3 Low instead of E3. S&P instructed analysts to use
8 the following procedure for rating synthetic CDOs:

- 9 • For new transactions, the dealers are encouraged to use E3, the model
10 that was released on Dec. 19, 2005.
- 11 • For all transactions in house and those that are "pipelined/transitional
12 until March 31, 2006," the deal will be first run through E3.
- 13 • If the transaction passes E3.0, GREAT!! The deal is modeled, rated
14 and surveilled with E3.0. . . .
- 15 • If the transaction fails E3, then use E3Low.

16 185. S&P's December 19, 2005 public release also stated that E3 would not be
17 used to rate cash CDOs until later in 2006. In a FAQ prepared to provide S&P public
18 representatives with talking points, S&P directed its representatives to tell the public
19 that the delay in applying E3 to cash CDOs was due to "the complexity of the cash
20 flow transactions," and further that "there are other criteria changes that need to be
21 fully implemented that are separate from CDO Evaluator, such as improvements to
22 our break-even default rate methodology."

23 186. In fact, S&P exempted cash CDOs from E3 because of E3's potential
24 negative effect on S&P's cash CDO business. Moreover, S&P used the weaker E3
25 Low to rate some cash CDOs during the first few months of 2006.

26 (iii) Bending the Model to Suit Business Needs

27 187. In 2006, at a meeting attended by, among others, Teshar, S&P loosened
28 to zero its correlation assumptions (a key measure of default risk) between "a CDO of

1 ABS asset” and “an RMBS asset in a CDO/ABS transaction.” Tesher and other
2 business personnel were in favor of this decision, which was made without the benefit
3 of any data and would lead to S&P’s rating models arriving at lower estimates of
4 credit risks for CDOs collateralized by such assets. Commenting on this change on or
5 about April 2, 2007, a CDO analyst indicated to a former coworker that it resulted in a
6 loophole in S&P’s rating model big enough to drive a Mack truck through. When the
7 former coworker asked, “[w]ho was the genius who came up with this,” the analyst
8 replied:

9 PL [Jordan] / cash flow cdo team leader [Tesher] clearly knew. . . Pat
10 [Jordan] is ultimately resp. [¶] I am interested to see if any career
11 consequences occur. Does company care about deal volume or sound
12 credit standards?

13 188. Beginning in or about June 2006, S&P analysts again embarked on an
14 effort to fundamentally revise the assumptions underlying its CDO rating model. This
15 effort involved an outside consultant who would assist S&P in developing the updated
16 model. Executive J was the project manager.

17 189. On May 10, 2007, Executive J sent an email to Jordan, Tesher, Bryan,
18 Gillis and others attaching a PowerPoint presentation that summarized the
19 consultant’s work on the project. Under the heading “A Better Mousetrap,” this
20 presentation summarized S&P’s old ways and new ways of updating its rating models.
21 Satisfying S&P’s “business needs” by settling on “business friendly” as opposed to
22 “business unfriendly” models was a central component of both ways.

23 190. “The Old Way,” characterized as a “One Way Street,” worked as follows:
24 “To come up with PDs [Probabilities of Default] and asset correlations in [CDO
25 Evaluator] 2.4.3, we look at our raw data and come up with a statistical best fit. When
26 this does not meet our business needs, we have to change our parameters ex-post to
27 accommodate.” The presentation added a graph that stated: “Does this work [for] our
28 rating business? If it does not, need to tweak PDs.”

1 191. The “New Way,” characterized as a “Two Way Street,” worked as
2 follows: S&P “came up with a new methodology emphasizing on flexibility. We
3 decide on a number of business friendly PD matrices first.” Then S&P used
4 hypothesis testing to determine whether the business friendly matrices were
5 “reasonable.”

6 192. An explanation of the new approach compared the business-friendly
7 matrices to coins in a coin toss: if one matrix that was “great for business” turned out
8 not to be “plausible,” S&P could just select another “business friendly” matrix, just as
9 if flipping a different coin, until it found a result that was both “business friendly” and
10 “plausible.” The presentation added: “In contrast, our old methodology gave us one
11 single ‘best coin’ that is data driven. But if it turns out to be business unfriendly, we
12 are stuck.”

13 193. The presentation also explained how the new approach had been applied
14 to a hypothesized “ABS default matrix” that was “just one of many hypothesis [sic]
15 we can test!” The presentation reported that this hypothesized matrix was determined
16 to be “plausible” based on a statistical comparison to default data from the 1990 to
17 2003 vintage RMBS. In contrast, the presentation noted that the “E3.2 ABS matrix” –
18 a reference to CDO Evaluator 3.2, which S&P was using at the time as the basis for its
19 CDO ratings – was determined to be implausible based on a statistical comparison to
20 the same data.

21 194. On or about May 14, 2007, Executive J, together with the coauthor of the
22 “Better Mousetrap” PowerPoint, met with Jordan, Gillis, Senior Analyst B, and
23 others. At the meeting, Executive J and his coauthor went through every page of the
24 PowerPoint, explaining each slide. The meeting’s attendees were generally pleased
25 with the presentation, which was not viewed as controversial. Neither Teshler, Jordan,
26 Gillis, Senior Analyst B, nor anyone else who received the PowerPoint and/or
27 attended the May 14, 2007 meeting took issue with or criticized any part of the
28 PowerPoint.

1 195. On or about June 20, 2007, Executive J sent to Jordan an email proposing
2 three stages for a “rating transition project” that would follow up on the approach set
3 forth in the “Better Mousetrap” presentation. The third stage was described as “Data
4 testing and deal testing (make sure new stuff doesn’t kill our business).”

5 196. On or about August 2, 2007, Executive J sent to Jordan (with copies to,
6 among others, Teshner and Bryan) an email seeking funding for the rating transition
7 project. In this email, Executive J described the consultant’s initial project, which had
8 been set forth in the “Better Mousetrap” presentation, as an effort to develop a set of
9 assumptions that would “buy us the operational freedom to defend multiple business
10 friendly default matrices.” The new project, to develop a “transition matrix,” was
11 described in roughly the same way: develop a hypothetical “transition matrix,”
12 “‘bend’ this transition matrix to suit our business needs,” and “[r]efine hypothesized
13 matrix so that it is business friendly.” Executive J added: “How reasonable or
14 defensible we are will now once again be gauged by Hypothesis Testing.”

15 197. Executive J’s August 2, 2007 email again referenced the E3.2 default
16 matrix, which S&P had used as the foundation for many of the CDO ratings it issued
17 in 2007, stating: “Hypothetical default matrix to be tested (i.e. where do we begin)
18 itself is based on Maximum Likelihood Estimation (i.e. [an S&P analyst] couldn’t
19 really pull it out of thin air like we did with CDO E 3.2).”

20 198. Jordan approved the requested funding. The revised model was not
21 implemented, however, because, by late 2007, the CDO market had collapsed.

22 d. Failing to Account for Increased Credit Risks of Non-Prime
23 RMBS

24 199. As alleged in paragraphs 200 through 269 below, contrary to S&P’s
25 public representations regarding its ratings’ objectivity, independence, and freedom
26 from influence by any conflicts of interest posed by its relationships with issuers,
27 beginning at the latest in or about March 2007 and continuing through at least in or
28

1 about October 2007, in order to favor issuers and so maintain and grow its market
2 share and profits, in issuing and/or confirming ratings for CDOs exposed to the credit
3 risks of non-prime RMBS, despite knowing that the credit risks of certain non-prime
4 RMBS tranches were increasing, were expected to continue to increase, and were
5 anticipated to result in negative Rating Actions, S&P failed to account for the
6 increased credit risks posed by those non-prime RMBS, instead continuing to require
7 that the existing ratings of those non-prime RMBS be taken at face value as inputs to
8 CDO Evaluator.

9 **2. Considerations Regarding Fees, Market Share, Profits, and**
10 **Relationships with Issuers Led S&P to Issue CDO Ratings that**
11 **Failed to Account for Substantially Increased Credit Risks of**
12 **Non-Prime RMBS to Which the CDOs Were Exposed**

13 a. In Late 2006, S&P Became Aware that the Performance of
14 Non-Prime RMBS Was Demonstrating Unprecedented
15 Deterioration

16 200. In 2006, analysts in RMBS Surveillance began noticing rising
17 delinquencies in the mortgages underlying non-prime RMBS that S&P had rated. By
18 late summer or early fall of 2006, S&P analysts from RMBS Surveillance and S&P
19 analysts who rated new issue RMBS held a meeting to try to determine an approach to
20 reflect the credit risk posed by these non-prime RMBS. The meeting was led by
21 Senior Analyst A, and attendees included Executives C, F, and I.

22 201. At the meeting, S&P analysts discussed how they would develop new
23 surveillance criteria to deal with rising delinquencies. The RMBS new issue analysts
24 – led by Senior Analyst A – determined that they would develop new criteria by
25 testing multiple assumptions, and then picking the assumptions that led to the results
26 they wanted, that is, fewer and less severe downgrades.

27 202. At the meeting, a member of RMBS Surveillance protested this results-
28 oriented approach, telling the group that they were using the ends to justify the means.

1 The same group of S&P analysts continued to meet throughout 2006 to discuss ways
2 to revise the surveillance criteria. The RMBS Surveillance member who had raised
3 these objections, however, after attending one further such meeting, was no longer
4 invited to the meetings.

5 203. By in or about Fall 2006, S&P recognized that subprime mortgages
6 underlying recent vintage RMBS, in particular 2006 RMBS, were severely
7 underperforming. Analysts in RMBS Surveillance who were reviewing the
8 performance of the mortgage loans underlying these RMBS viewed the numbers as
9 unbelievable. Indeed, the performance of the mortgage loans underlying the 2006
10 subprime RMBS was so bad that analysts initially thought the data contained
11 typographical errors.

12 204. The delinquencies in mortgage loans underlying 2006 subprime RMBS
13 that S&P observed in Fall 2006 were so great that, in some instances, S&P was seeing
14 realized losses in those mortgage loans. To see such losses in the first six to ten
15 months of a loan rated for a 30-year maturity was unprecedented.

16 205. On or about September 24, 2006, Gillis sent to Rose a memorandum
17 titled "Rating Quality & Knowledge Management Activity Report." The
18 memorandum advised Rose that S&P needed to watch the RMBS ratings and their
19 impact on CDO ratings. The memorandum stated, "Our first priority is the RMBS
20 exposure in CDO transactions. Those RMBS classes held by CDOs that are
21 determined to have the highest risk factors will be placed on quarterly review cycle."
22 The memorandum also noted:

23 [T]he largest category of RMBS held by far is sub-prime RMBS
24 (accounting for 59% of the overall RMBS exposure in cash flow CDOs),
25 and the deals have more than \$26.3 billion in exposure to BBB and NIG
26 [Non-Investment Grade] tranches from higher risk types of RMBS deals
27 (those ranked 3/5 or worse by [an S&P RMBS surveillance analyst]).
28

1 206. In or about Fall 2006, Executive F told Senior Executive E about the poor
2 performance of the 2006 subprime RMBS approximately four to five days a week.

3 207. In or about Fall 2006, Executive G expressed concern that Global CDO
4 was taking 2006 subprime RMBS ratings at face value – in other words, taking the
5 existing ratings without any analysis to account for the likelihood of negative Rating
6 Action in the near-term – when issuing new CDO ratings. During this time, CDO
7 Surveillance was aware of and deeply concerned about the poor performance of
8 subprime RMBS.

9 208. In or about Fall 2006, RMBS Surveillance applied a standard under
10 which RMBS with 10% severe delinquencies compared to available credit support
11 typically required further analysis for the possibility of being placed on CreditWatch
12 Negative or downgraded, while RMBS with 50% severe delinquencies versus
13 available credit support typically required some negative Rating Action.

14 209. On or about November 14, 2006, Executive F sent an email to Executives
15 C and I and Senior Analyst A that stated:

16 [A]s a follow up to our brief 2006 performance discussion, I have
17 attached a report that shows that more than 50% of the sub prime deals
18 rated in 2006 have severely delinquent loans that represent 25% or more
19 of credit enhancement for the lowest rated [class]. Many have realized
20 losses already.

21 210. Attached to Executive F's November 14, 2006 email was a spreadsheet
22 titled "Subprime_Trouble.XLS" that listed over 770 S&P-rated RMBS tranches for
23 which severe delinquencies totaled more than 25% of available credit support. Those
24 770 tranches came from 133 subprime RMBS deals, or more than half of the total
25 subprime RMBS deals rated by S&P in the first half of 2006.

26 211. Beginning in or about Fall 2006 and continuing through in or about
27 Spring 2007, Executive F regularly expressed frustration to her colleagues that,
28 notwithstanding the dire performance of subprime RMBS, she was prevented by Gillis

1 and other S&P executives from downgrading the ratings of subprime RMBS because
2 of concern that S&P's ratings business would be affected if there were severe
3 downgrades.

4 212. On or about December 11, 2006, in his "Confidential Working Notes,"
5 Teshar observed: "On a separate issue, this market is a wildly spinning top which is
6 going to end badly."

7 b. By February 2007, RMBS Surveillance Staff Recommended
8 Negative Rating Actions on Large Numbers of Non-Prime
9 RMBS

10 213. On or about January 11, 2007, RMBS Surveillance held a meeting to
11 discuss the subprime situation. The agenda for the meeting described the objective as,
12 "Establish a unified response to what we see happening in the residential mortgage
13 sector." The agenda was circulated in advance of the meeting via an email dated
14 January 10, 2007, that stated, "Please try to organize your thoughts so we can form an
15 opinion that is not easily swayed."

16 214. At the meeting, RMBS Surveillance recognized that a "Housing Bubble"
17 existed, that there was a "slowdown," that the "Bubble is deflating," and that the
18 projection was for "20% default this year." RMBS Surveillance concluded that there
19 were "Issues with Subprime, some AltA," and that RMBS rated "A and below are in
20 trouble for 80% of the deals." RMBS Surveillance recommended that 2006 subprime
21 RMBS be handled as follows: "Identify all the worst pools for 2006 (decide a cutoff
22 for delinquencies 20-30%) and put all on CreditWatch."

23 215. On or about January 23, 2007, Jordan sent Rose a "Global CDO Activity
24 Report," which, in discussing "CDO Performance Outlook," stated:

25 For later-vintage mezzanine SF CDOs, the rating outlook will be closely
26 linked to the rating performance of mezzanine ('BBB' and 'BB' rated)
27 tranches of Subprime RMBS transactions, which makes up the majority
28 of collateral for these transactions. If the number of downgrades taken

1 on 'BBB' and 'BB' rated tranches of RMBS transactions increases
2 during 2007, we expect a significant increase in negative rating activity
3 affecting tranches issued by mezzanine SF CDOs of ABS.

4 216. On or about January 26, 2007, in a publication titled "CDO Spotlight:
5 U.S. Cash Flow CDO Rating Performance Hit New Highs In 2006, While Synthetics
6 Showed Mixed Results; Outlook For 2007 Varies By Deal Type," S&P recognized
7 that across "different types of CDO of ABS transactions," "subprime RMBS
8 dominated the collateral at the end of 2006, accounting for 43.1% of the overall
9 assets," while "RMBS Alt-A followed with 12.1% exposure." The publication
10 recognized the connection between performance of CDOs and BBB and BB rated
11 subprime RMBS tranches, noting that for "later vintage mezzanine SF CDOs (those
12 rated in late 2002 or after), the rating outlook is closely linked to the performance of
13 mezzanine ('BBB' and 'BB' rated) tranches of subprime RMBS transactions, which
14 are the predominant collateral type for these deals" and that, "given the high
15 concentration of 'BBB' and 'BB' rated subprime RMBS tranches found in later-
16 vintage mezzanine SF CDO collateral pools, if subprime RMBS ratings perform
17 worse than expected, it will have a major impact on the CDO ratings."

18 217. On or about February 3, 2007, Executive F sent Senior Executive E an
19 email stating: "My group [RMBS Surveillance] is under serious pressure to respond to
20 the burgeoning poor performance of sub-prime deals." Executive F complained that
21 RMBS Surveillance was "really falling behind" after losing an analyst, and continued:
22 "We need to talk about getting more resources in general. I am seeing evidence that I
23 really need to add to staff to keep up with what is going on with sub prime and
24 mortgage performance in general, NOW."

25 218. Later on or about February 3, 2007, Executive F sent Senior Executive E
26 an email in which she stated: "I talked to Tommy [Gillis] yesterday and he thinks that
27 the ratings are not going to hold through 2007. He asked me to begin discussing
28 taking rating actions earlier on the poor performing deals."

1 219. As indicated in Executive F's November 14, 2006 email, more than 770
2 RMBS tranches met the criteria proposed by RMBS Surveillance for placement on
3 CreditWatch Negative. Based on these criteria, RMBS Surveillance staff
4 recommended at the February 7, 2007 RMBS Surveillance Committee meeting that 50
5 of these RMBS tranches be placed on CreditWatch Negative or Internal Watch –
6 S&P's internal, non-public list of securities to be closely reviewed for possible rating
7 action. This was intended to be the first wave of what would ultimately be
8 significantly more negative Rating Actions. The RMBS tranches at issue were
9 primarily those rated BBB and below.

10 220. As confirmed by the agenda of the February 7, 2007 RMBS Surveillance
11 Committee meeting, the proposal was based on data showing that these tranches were
12 experiencing "higher than expected delinquency and loss performance," that
13 "[s]everely delinquent percentages are increasing [at] a rapid pace," and that "[l]osses
14 are occurring very early in some of the deals." RMBS Surveillance proposed that the
15 worst RMBS be identified by selecting those where the "[s]everely delinquent ratio to
16 loss coverage exceeds 50%," and "[m]odified stress shows potential default with in
17 [sic] 7 months." The agenda also indicated that "CDO surveillance and new ratings
18 will be advised prior to and following surveillance committee meetings of all intended
19 rating actions" and that the "impact of rating actions to the SF business will be
20 discussed and understood prior to public release of rating actions."

21 221. Based on S&P's then existing criteria, had the RMBS tranches been
22 placed on CreditWatch Negative, Global CDO would have been required to "notch"
23 the ratings of those RMBS tranches (*i.e.*, consider the ratings to be lower than they
24 were) when rating a CDO exposed to the credit risks of those RMBS tranches. All
25 other things being equal, this generally would have resulted in CDOs with exposure to
26 RMBS placed on CreditWatch Negative receiving lower credit ratings.

27 222. The RMBS Surveillance Committee that conducted the February 7, 2007
28 meeting was staffed with a majority of RMBS Surveillance personnel. Also present at

1 the meeting were, among others, Gillis, Jordan, and Senior Analyst A. The meeting
2 was contentious. In general, RMBS Surveillance personnel were in favor of taking
3 the recommended negative Rating Actions, while RMBS new issue personnel were
4 not.

5 223. On or about February 7, 2007, after the meeting, Executive F sent Senior
6 Executive E an email that stated: "The committee agreed that none of the deals will be
7 downgraded at this time. They agreed to the creditwatch and internal watch actions.
8 They would like the press releases to go out by next Tuesday after we complete a ton
9 of follow-ups."

10 224. On or about February 7, 2007, after the meeting, Senior Analyst A sent
11 Executive C an email that stated:

12 Given discussions we had this afternoon (LT) and given a directive I just
13 received from Tom Gillis, I want to make you aware of expectations
14 from both Tommy [Gillis] and Pat Jordan whom I just sat with in a
15 surveillance committee.

16 The purpose of this committee was to identify deals to be put on credit
17 watch. Note that given the current surveillance criteria, the vast majority
18 of these deals would not be put on credit watch because, for the most part
19 while delinquencies are very high, losses are nil to minimal. [Executive
20 F], however, was charged (I assume by Tommy [Gillis]) to come up with
21 criteria that would identify problematic deals to place on credit watch and
22 avoid the potential of large, rapid downgrades, should losses come in
23 very quickly.

24 The committee (TG [Gillis], PJ [Jordan], [Executive F] & her Group and
25 myself) did not come to a conclusion this afternoon. [Executive F] & I
26 were charged with [several tasks] to accomplish (very quickly)

27 225. Less than a week later, on or about February 12, 2007, Gillis convened a
28 meeting of a new committee, comprised of a majority of RMBS new issue, as opposed

1 to surveillance, personnel, to review the proposed CreditWatch Negative actions.
2 Present at this meeting, among others, were Gillis, Jordan, and Senior Analyst A.

3 226. The agenda for the February 12, 2007 meeting indicated that its purposes
4 were to: (a) "identify pools at risk for downgrade within the next six months"; (b)
5 "establish a methodology and process that will continuously identify pools at risk";
6 and (c) "understand the impact of RMBS ratings actions to CDO ratings prior to
7 taking rating action."

8 227. At the February 12, 2007 meeting, the new committee, staffed by a
9 majority of non-surveillance personnel: (a) agreed to place on CreditWatch negative
10 only 18 RMBS tranches, as opposed to the 50 recommended by RMBS Surveillance;
11 (b) agreed to revise RMBS surveillance criteria to permit downgrades to RMBS with
12 high delinquencies but minimal or no realized losses; and (c) initiated a project known
13 as the "Surveillance Efficiency Project." The Surveillance Efficiency Project was to
14 be supervised by Senior Analyst A and had as its primary mission, with a six-month
15 time frame, to automate the surveillance process to allow for faster and more accurate
16 review of RMBS tranches in batches. This mission ultimately expanded to include the
17 development of new surveillance criteria that combined RMBS new issue and
18 surveillance methodologies and included the use of loan-level data.

19 228. On or about February 14, 2007, S&P issued a press release announcing
20 that it had placed on CreditWatch with negative implications 18 tranches from 11 non-
21 prime 2006 RMBS deals. The affected tranches had been rated BBB-, BB+, and BB.
22 The press release stated that these tranches were placed on CreditWatch based on
23 delinquencies in the underlying loans in the collateral pools. The release also stated
24 that these CreditWatch placements would have "no impact on outstanding CDO
25 ratings."

26 229. On or about February 27, 2007, Executive F sent for review to, among
27 others, Rose, Jordan, and Executives E and G, a draft email that stated, among other
28 things:

1 Our rating performance outlook for Mezzanine SF CDO of ABS
2 transactions is contingent upon the performance of mezzanine tranches
3 issued by recent vintage Subprime RMBS transactions, but in the near
4 term to medium term we expect moderately negative rating performance
5 as a result of these transactions' exposure to mezzanine ('BBB' and 'BB'
6 rated) tranches of Subprime RMBS transactions. For the long term, it is
7 still too early to say with any degree of certainty.

8 The draft email continued:

9 With respect to CDO issuance, the market is currently in the midst of re-
10 pricing the risk associated with pools of Subprime mortgages. We're
11 seeing an uptick in Q1 CDO issuance as underwriters close warehouse
12 lines and move Subprime RMBS paper into new CDOs and other CDO
13 sectors remain robust. However, we expect to see a drop in the issuance
14 of Mezzanine SF CDOs of ABS after Q1.

15 230. In or about February 2007, RMBS Surveillance analysts ran an internal
16 exception report designed to capture non-prime RMBS rated by S&P in 2006 with
17 tranches where severe delinquencies exceeded 75% of available credit support. The
18 report identified 583 tranches from 151 subprime RMBS deals, including 92 tranches
19 rated BBB and 122 tranches rated BBB-.

20 231. From February 2007 through June 2007, the numbers of delinquencies
21 represented in internal exception reports were communicated in a monthly report to,
22 among others, Gillis and Executive C. In addition, Executive F sent weekly reports on
23 the performance of RMBS to, among others, Gillis, Rose, Bryan, and Jordan.

24 c. From March 2007 through June 27, 2007, S&P Issued CDO
25 Ratings that Failed to Account for the Substantially
26 Increased Credit Risks of Non-Prime RMBS

27 232. From in or about March 2007 through on or about June 27, 2007, S&P
28 reaped record profits by issuing and/or confirming CDO credit ratings that S&P knew

1 did not accurately reflect the true credit risks of those CDOs because they failed to
2 account for the substantially increased credit risks posed by certain non-prime RMBS
3 tranches that backed those CDOs.

4 (i) March 2007

5 233. By March 2007, S&P knew that the performance of non-prime RMBS
6 was bad and getting worse and that an ongoing review process was likely to result in
7 large-scale negative Rating Actions for non-prime RMBS. This knowledge was
8 reflected in a number of conversations, emails, and other communications from,
9 among, and between S&P executives and analysts, including those S&P executives
10 with responsibility for supervising the rating of CDOs. In particular:

11 a. During conversations in or about March 2007, Jordan, Teshler, and
12 other managers in Global CDO agreed that there were going to be significant negative
13 Rating Actions on non-prime RMBS and that these negative Rating Actions would
14 have a major impact on mezzanine cash CDOs.

15 b. On or about March 1, 2007, Teshler held a meeting of CDO rating
16 analysts that one CDO rating analyst characterized in a contemporaneous instant
17 message to another CDO rating analyst as “a meeting to discuss the blow up of the
18 resi[dential] market.” During the meeting, Teshler informed the analysts:

- 19 • A combination of factors relating to subprime RMBS had triggered a drop in
20 prices on the ABX index, a secondary market tied to RMBS, in a very
21 compressed time, with the result that 40 RMBS deals were no longer AAA
22 based on market perception.
- 23 • The market was discounting subprime RMBS, issuers still had huge
24 exposure to this RMBS, and issuers were very concerned.
- 25 • Issuers were shutting down and liquidating their warehouses (*i.e.*, stores of
26 RMBS temporarily held by issuers as they assembled assets for future
27 CDOs), in part to enable the issuers to avoid being required to mark their
28 positions to market (*i.e.*, to reduce, on their books, the listed value of

1 retained RMBS to reflect the current market value) and being stuck with
2 collateral that had suffered losses.

- 3 • CDO deals needed to be priced and closed to reduce issuers' exposure to the
4 underlying RMBS collateral.
- 5 • A lot of investors were expected to drop out of the CDO market, but this
6 would not stop the deals. Issuers could not let the deals fade away, and if
7 investors had already signed up for deals, issuers had the incentive to make
8 the deals happen rather than face losses on the underlying collateral.
- 9 • Issuers would still have to mark their positions in CDOs to market, but this
10 was more favorable to these issuers than if they had to mark to market their
11 positions in the underlying RMBS collateral.
- 12 • Tesher expected the analysts to be very busy as issuers pushed to price and
13 close CDO deals quickly.
- 14 • Tesher wanted everyone to realize that they had to tell the issuers that they
15 priced deals at their own risk and that the analysts would still need to
16 comply with criteria and could not push those criteria, but that they should
17 try to be cooperative and make sure to tell Tesher about any issues with
18 CDO issuers.
- 19 • The analysts had to continue to believe in the ratings from the RMBS group.
- 20 • The marketplace was chaotic.
- 21 • Retrancking (that is, repackaging structured debt securities, whose
22 underlying collateral previously had been downgraded, into new structured
23 debt securities) had occurred in the high-yield debacle, and Tesher saw this
24 happening again for CDOs.
- 25 • In order to close, deals would take cuts and CDO issuers would cut their
26 fees. It would be a challenging year for issuers to make up for losses, the
27 analysts would see a lot of issuers under a lot of pressure, and the analysts
28 should manage expectations.

1 c. Immediately following Teshher's meeting, two CDO analysts
2 engaged in the following instant message exchange regarding Teshher's comments:

3 Analyst 1: we got the gist of it

4 Analyst 2: that means market will crash . . deals will rush in before
5 they take further loss

6 Analyst 1: yes

7 Analyst 2: that means we will see grumpy analyst sand [sic] grumpy
8 bankers and a grumpy [Managing Director in Global CDO
9 ("Executive K")]

10 Analyst 1: I'm grympy [sic] anyway

11 Analyst 2: but then we should not push criteria
12 but we give in anyway
13 ahahhahaha

14 d. In a telephone conversation on or about March 13, 2007, Senior
15 Analyst B told Senior Executive A that non-investment grade classes (that is, those
16 rated below BBB-) totaled more than 12% of the 2006 subprime RMBS and that more
17 than half of the 2006 subprime RMBS rated BB+ and BB were expected to take some
18 loss.

19 e. On or about March 14, 2007, Executive G emailed a presentation
20 slide entitled "CDOs Have Increasingly Been Collateralized by RMBS Subprime," to,
21 among others, Jordan, Teshher, Gillis, Bryan, Senior Executives B and E, Executives C
22 and I, and Senior Analyst A. The slide illustrated that the exposure of mezzanine cash
23 and hybrid CDOs to subprime RMBS collateral had increased steadily from 2000 to
24 2006, so that 2006 mezzanine cash and hybrid CDOs were made up of over 70%
25 subprime RMBS collateral, primarily from the 2005 and 2006 vintages.

26 f. On or about March 19, 2007, Teshher wrote a memorandum titled
27 "The Fixed Income CDO Group, Monthly Activity Report, March 2007." He sent this
28 memorandum to Executive K and it subsequently was forwarded to Rose, Jordan, and

other executives at McGraw-Hill headquarters. In the memorandum, Teshler stated:

Regarding ABS CDOs – Many dealers accelerated the timing of CDO's that were in the pipeline in order to mitigate/manage their respective warehouse exposure. We have seen the timeline for many CDO's of ABS transactions accelerate due to preferential “mark to market” treatment a dealer can receive for CDO “priced” liabilities versus owning warehouse risk in its “raw form” (i.e. at the underlying subprime mortgage level). In turn, many dealers will be saddled with CDO of ABS Equity, Subordinate and Mezzanine tranches for transactions (predominantly supported by RMBS) which they aggressively priced over the last couple of weeks in order to mitigate their respective warehouse risk.

* * *

Market intelligence indicates that transactions that “priced” in order to shift/convert warehouse “mark to market risk” to SF CDO Liabilities were generally 70% along in the warehouse process. Any transactions that were generally halfway ramped up have either had their warehouses liquidated or frozen.

g. During the first two weeks of March 2007, S&P analysts, including Senior Analyst A and an analyst in Global RMBS (“Analyst D”), conducted a “risk ranking” analysis of 2006 vintage subprime RMBS. The initial results showed that large numbers of subprime RMBS ratings issued in 2006 likely would be at “high risk” for downgrade. On or about March 12, 2007, an RMBS Surveillance analyst (“Analyst E”) forwarded the “risk ranking” analysis to Executive F, noting the performance predictions for RMBS deals based on LEVELS 5.7 (S&P’s old model) and LEVELS 6.0 (the new model announced for use starting June 1, 2007). Executive F responded “Wow, these deals are in huge trouble.” Analyst E then responded: “The transactions look much worse in [LEVELS] 6.0. I wonder what [Senior Analyst A] is

1 going to do with this information.”

2 h. By on or about March 19, 2007, the analysts, including Senior
3 Analyst A and Analyst D, had completed their analysis of the risks to the 2006 vintage
4 subprime RMBS. The analysis concluded that “approximately 4.5% and 13% of the
5 BBB and BBB- bonds, respectively, will default.” The analysis also indicated that the
6 overwhelming majority of BB+ and BB RMBS tranches were at high or medium risk
7 of default.

8 i. On or about March 19, 2007, Senior Analyst A gave an internal
9 presentation titled “Structured Finance Ratings: Overview and Impact of the
10 Residential Subprime Market” to McGraw-Hill executives. In his presentation, Senior
11 Analyst A referenced the risk ranking of BBB and BBB- subprime RMBS and, with
12 respect to the “Impact of Subprime on CDOs,” stated as follows:

- 13 • RMBS has grown as a source of collateral for CDOs; 33% of U.S.
14 CDOs of ABS rated by S&P in 2006 had either Subprime RMBS or
15 CDOs of Subprime RMBS as their largest single category of collateral
16 held.
- 17 • Of CDOs collateralized primarily by Subprime RMBS (including
18 CDO² transactions [CDOs made up of pieces of other CDOs]
19 collateralized by CDOs of RMBS), 32% of the transactions rated in
20 2006 held primarily senior (‘AAA’ through ‘A’ rated) Subprime
21 RMBS tranche collateral and 68% held primarily mezzanine (‘A’
22 through ‘BB’ rated).
- 23 • Across different types of CDOs of ABS, Subprime RMBS far
24 outranks all other types of SF as a collateral type, comprising 43% of
25 total CDO of ABS assets by par value held (Q4 2006).
- 26 • RMBS CreditWatch placements and downgrades undertaken during
27 2007 year to date have not yet led to any downgrades or CreditWatch
28 placements on our CDO ratings.

- 1 • However, earlier (2002-2004 vintage) RMBS transactions are seeing
2 increased downgrade activity, and the notes from these RMBS
3 transactions appear in the collateral pools of CDOs of ABS issued in
4 2005 and before.
- 5 • Currently, 35 U.S. CDOs have seen 1% or more of their RMBS
6 collateral placed on CreditWatch negative or downgraded since
7 January 1st, 2007.

8 In his presentation, Senior Analyst A stated, "There will be some impact to CDOs as
9 RMBS has been a growing source of collateral."

10 j. On or about March 19, 2007, Analyst D, who had conducted a
11 "risk ranking" analysis of 2006 vintage RMBS, as described in paragraph 233(g)
12 above, sent an email to several RMBS and CDO analysts, with the subject line:
13 "Burning down the house – Talking Heads." The email stated:

14 With apologies to David Byrne . . . here's my version of "Burning Down
15 the House".

16
17 Watch out
18 Housing market went softer
19 Cooling down
20 Strong market is now much weaker
21 Subprime is boi-ling o-ver
22 Bringing down the house
23
24 Hold tight
25 CDO biz – has a bother
26 Hold tight
27 Leveraged CDOs they were after
28 Going – all the way down, with

1 Subprime mortgages

2 * * *

3 Own it

4 Hey you need a downgrade now

5 Free-mont

6 Huge delinquencies hit it now

7 Two-thousand-and-six-vintage

8 Bringing down the house.

9 k. Minutes later on or about March 19, 2007, Analyst D sent a follow
10 up email, stating: "For obvious, professional reasons please do not forward this song.
11 If you are interested, I can sing it in your cube ;-)."

12 l. On or about March 21, 2007, Analyst D circulated another email,
13 attaching a video of him "singing and dancing" the first verse of the song in S&P
14 offices, before an audience of laughing S&P coworkers.

15 m. On or about March 21, 2007, Teshar prepared a draft of a
16 presentation he was to give at the UBS Fifth Annual New York CDO Conference,
17 which was scheduled to occur on March 29, 2007. This draft presentation included,
18 among other things, the following statements:

- 19 • Under the heading "ABS CDOs and Underlying RMBS/Consumer Credit,"
20 "The U.S. subprime mortgage bubble has burst – now what?"
- 21 • "ABS CDOs Have Increasingly Been Collateralized by [U.S.] RMBS
22 Subprime."
- 23 • Under the heading "Impact of U.S. Subprime RMBS on ABS CDOs Wrap-
24 up," "RMBS has grown as a source of collateral for CDOs; 33% of U.S.
25 CDOs of ABS rated by S&P in 2006 had either Subprime RMBS or CDOs
26 of Subprime RMBS as their largest single category of collateral."
- 27 • Under the heading "Integrated Process for CDO and RMBS Surveillance,"
28 "Standard & Poor's has an integrated surveillance process to ensure the

1 ratings in our rated RMBS bonds and CDO transactions reflect our most
2 current credit view.”

3 n. On or about March 22, 2007, S&P published on its website a report
4 authored by Senior Analyst A titled “A Comparison of 2000 and 2006 Subprime
5 RMBS Vintages Sheds Light On Expected Performance.” With respect to non-prime
6 RMBS, the report stated:

7 While subprime mortgages issued in 2000 have the distinction of being
8 the worst-performing residential loans in recent memory, a good deal of
9 speculation in the marketplace suggests that the 2006 vintage will soon
10 take over this unenviable position. Based on our analysis, our current
11 loss expectation for the 2006 subprime vintage is 5.25 - 7.75%. In
12 subjecting the 2006 vintage deals rated by [S&P] to this loss scenario, we
13 believe that the majority of ‘BBB-’ and ‘BBB’ tranches are protected;
14 however, these tranches may experience significantly higher default rates
15 than other similarly rated tranches have seen in recent history. In light of
16 various market factors, such as slowing house price appreciation and
17 potential fallout from imprudent underwriting standards that existed in
18 late 2005 and 2006, the cause for concern is justified.

19 With respect to CDOs, the report recognized the steady increase in “exposure to
20 RMBS, especially subprime RMBS” and particularly for “CDOs of ABS
21 collateralized by mezzanine structured finance tranches, which have seen their
22 average subprime RMBS exposure increase from 42% of assets in CDO transactions
23 originated in 2003 all the way to 73.8% for transactions originated in 2006.” The
24 report then concluded, however:

25 Because [S&P’s] RMBS Surveillance and CDO Surveillance processes
26 function in an integrated fashion, we believe it’s important to consider
27 what the impact would be on our rated CDO transactions if subprime
28 loan losses were to reach 7.75%, the high end of the range presented

1 earlier in this article. As such, we have taken the projections and
2 reviewed the subprime exposures within our rated CDO transactions to
3 determine what the impact might be under this hypothetical scenario.
4 While it's clear that such a scenario could have a material impact on
5 CDO ratings, our review indicated that the outcome for any individual
6 CDO transaction will vary depending on certain deal-specific factors,
7 including structure, vintage, timing of the RMBS rating actions within a
8 given CDO pool, and, in particular, the asset selection made by the
9 collateral manager for the CDO.

10 By asserting that S&P had an integrated surveillance process and had conducted
11 a review to determine the impact of high, non-prime mortgage loan losses on
12 CDOs, S&P lulled the public into believing that its CDO ratings fully accounted
13 for the existing and anticipated deterioration of non-prime RMBS and reflected
14 S&P's most current credit opinions with respect to the underlying RMBS. In
15 fact, S&P continued to rate new CDOs without making adjustments to account
16 for continuing deterioration of underlying non-prime RMBS and in disregard of
17 internal analyses and reports demonstrating the extent of this continuing
18 deterioration.

19 o. On or about March 23, 2007, an S&P employee sent to, among
20 others, Gillis and Executives C, F, and I, an email that stated, "Finally the type of
21 article I expected but dreaded to see in the respectable press." Attached to the email
22 was an article from *Fortune* magazine titled "Dropping the Ball" that stated:

23 AMID THE CHAOS of the escalating subprime mortgage crisis,
24 the three major credit-rating agencies – Fitch, Moody's, and Standard &
25 Poor's – have been voices of calm. They've downgraded only a sliver of
26 the debt backed by such mortgages, and they say they expect the mess to
27 stay safely confined to the subprime sector.

28 But what if they're wrong? It's not just their reputations . . . that

1 are at stake, but possibly the housing market itself.

2 To appreciate the role that the rating agencies play in today's
3 housing market, you have to understand a piece of Wall Street alchemy:
4 the process by which mortgages are combined, carved up, recombined,
5 and carved up again in almost endless permutations to create new forms
6 of debt (which usually go by three-letter abbreviations). A bank or
7 brokerage bundles up hundreds of mortgages and sells investors debt that
8 is backed by mortgage payments and secured with homes. These asset-
9 backed securities – ABS's, in Street parlance – are sold in slices, each of
10 which carries its own theoretical level of risk, ranging from the
11 supposedly invulnerable (AAA) all the way down to the bottom rung of
12 investment grade and even past that, to a highly speculative unrated slice.
13 It's possible to create an AAA-rated asset out of somewhat shaky
14 collateral, because the first dollar of income goes to the securities with
15 the highest rating, while the first dollar of loss is assigned to those with
16 the lowest. The bottom layers provide a cushion that supposedly protects
17 the higher-rated securities.

18 Lately much of the bottom rung of investment-grade ABS's has
19 been snapped up by another Street creation called a collateralized debt
20 obligation (CDO), which, like an ABS is sold in slices. A large chunk of
21 a CDO that consists of barely investment-grade securities can still secure
22 a coveted AAA rating – again, because any losses have to eat through the
23 bottom layers.

24 * * *

25 Today all of the rating agencies say they have scrubbed the
26 numbers, and slices of debt that are rated investment grade will mostly
27 stay that way, even if the collateral consists of subprime mortgages.
28 Critics have their doubts.

1 p. Gillis forwarded the email and attached article to, among others,
2 Rose, Jordan, and Senior Executives B and E. Senior Executive B, in turn, forwarded
3 it to, among others, Rose, Jordan, Senior Executive A, and Executive C, via an email
4 that stated:

5 Seeing more articles like this in the last couple of days brought to mind
6 [Senior Executive A]'s suggestion yesterday about hiring a firm
7 specialized in helping us deal with this type of press and coordinating all
8 the moving parts of our external outreach (politicians, specialized media,
9 non-specialized media, normal customers of the ratings business, etc.).

10 q. On or about March 26, 2007, Executive F sent to Gillis, Jordan,
11 Bryan, Senior Executives B and E, Executives C and I, and Senior Analyst A an email
12 to which she attached the March 19, 2007 risk analysis prepared by Senior Analyst A
13 and his team of analysts, including Analyst D, as described above in paragraph 233(g).
14 On March 26, 2007, Jordan forwarded this to Teshar.

15 234. A primary source of ratings business for S&P during March 2007 was
16 mezzanine CDOs, which contained significant exposure to non-prime RMBS tranches
17 rated B to BBB+. Notwithstanding S&P's knowledge regarding the increasing
18 deterioration of non-prime RMBS, Cash CDO, under the supervision of Jordan and
19 Teshar, issued and/or confirmed (through Effective Date RACs) ratings for CDOs,
20 including such mezzanine CDOs, that S&P knew did not accurately reflect the credit
21 risks of those CDOs, because they failed to account for the substantially increased
22 credit risks of underlying non-prime RMBS tranches. In particular, in March 2007,
23 S&P issued and/or confirmed (through Effective Date RACs) ratings for 61 CDOs
24 priced at more than \$51 billion that were backed, at least in part, by non-prime RMBS.
25 Portions of at least 18 of these CDOs, priced at more than \$20.6 billion, were sold to
26 financial institutions and/or to purchasers whose losses would affect federally insured
27 financial institutions. For example:
28

1 a. On or about March 15, 2007, S&P rated Gemstone CDO VII Ltd.,
2 a \$1.1 billion CDO consisting of approximately 66% 2006 subprime RMBS, 18%
3 2005 subprime RMBS, and nearly 2% 2007 subprime RMBS collateral.
4 Approximately 56% of the collateral backing Gemstone VII was non-prime RMBS
5 rated BBB or below. Approximately \$803 million (72%) of Gemstone VII was rated
6 AAA by S&P. AAA and AA tranches of Gemstone VII were purchased by federally
7 insured financial institution M&T Bank, which based its decision to invest in
8 Gemstone VII in part on S&P's ratings of the CDO. In July 2007, S&P downgraded
9 over 22% of the subprime collateral underlying Gemstone VII. On April 15, 2008,
10 Gemstone VII defaulted. M&T Bank lost \$80 million on Gemstone.

11 b. On or about March 27, 2007, S&P rated Sorin CDO VI, Ltd., a
12 \$550 million CDO consisting of approximately 61% 2006 Alt-A RMBS, 24% 2007
13 Alt-A RMBS, and 8% 2005 Alt-A RMBS. Approximately 55% of the collateral
14 backing Sorin VI was non-prime RMBS rated BBB or below. Approximately \$396
15 million of Sorin VI was rated AAA by S&P. Sorin VI was purchased by several
16 financial institutions, including federally insured financial institution WesCorp, which
17 purchased \$100 million worth of an AAA tranche of this CDO. WesCorp's decision
18 to invest in Sorin VI was based, in part, on the credit ratings that S&P issued for the
19 CDO. S&P's primary CDO analyst on Sorin VI had received Analyst D's "Bringing
20 Down the House" email and the subsequent videotaped vocal performance on March
21 19 and 21, respectively, and had asked if he could forward the song to others. On
22 May 12, 2008, Sorin VI defaulted. WesCorp lost \$90 million on Sorin VI.

23 c. On or about March 29, 2007, S&P rated Cairn Mezzanine ABS
24 CDO III Ltd., a \$1.78 billion CDO consisting of approximately 28% 2006 subprime
25 RMBS, 40% 2005 subprime RMBS, and 10% 2006 Alt-A RMBS. Approximately
26 41% of the collateral backing Cairn Mezzanine III was non-prime RMBS rated BBB
27 or below. Approximately \$773 million of Cairn Mezzanine was rated AAA by S&P.
28 M&T Bank, relying in part on S&P's ratings, purchased an AAA tranche of Cairn

1 Mezzanine III. Ultimately, Cairn Mezzanine III defaulted. M&T Bank lost \$50
2 million on Cairn Mezzanine III.

3 d. On or about March 29, 2007, S&P rated Charles Fort CDO I, Ltd.,
4 a \$400 million CDO consisting of approximately 52% subprime RMBS and 34% Alt-
5 A RMBS. Approximately 51% of the collateral backing Charles Fort I was non-prime
6 RMBS rated BBB or below. Approximately \$280 million of Charles Fort I was rated
7 AAA by S&P. WesCorp, relying in part on S&P's ratings, purchased \$100 million of
8 an AAA tranche of Charles Fort I. Ultimately, Charles Fort I defaulted. WesCorp lost
9 \$90 million on Charles Fort I.

10 (ii) April 2007

11 235. In April 2007, S&P learned even more negative information regarding
12 the performance of non-prime RMBS, and remained aware that an ongoing review
13 process was likely to result in large-scale negative Rating Actions for non-prime
14 RMBS. This knowledge was reflected in a number of conversations, emails, and other
15 communications from, among, and between S&P executives and analysts, including
16 those executives with responsibility for rating CDOs. In particular:

17 a. On or about April 5, 2007, two S&P CDO analysts engaged in an
18 instant message exchange expressing their belief that S&P's CDO rating model was
19 severely underestimating credit risks:

20 [Analyst 1] btw that deal is ridiculous

21 [Analyst 2] I know right...model def[initely] does not capture half of the
22 ... risk

23 [Analyst 1] We should not be rating it

24 [Analyst 2] we rate every deal it could be structured by cows and
25 we would rate it

26 [Analyst 1] but there's a lot of risk associated with it – I personally don't
27 feel comfy signing off as a committee member
28

1 b. S&P's internal exception reports in April 2007 reflected the
2 continuing deterioration of 2005 and 2006 subprime and Alt-A RMBS rated by S&P.
3 As with the March 2007 reports, the April reports had a threshold of 75% severe
4 delinquency versus credit support (meaning they would capture any tranche with
5 equal or worse SD versus CS ratio), and they focused primarily on subprime and Alt-
6 A RMBS rated in 2005 and 2006. The April reports pulled up even more at-risk deals
7 than the March report (590 subprime deals and 481 Alt-A deals), though not as many
8 tranches overall (723 subprime tranches and 532 Alt-A tranches). The average SD
9 versus CS ratio for the subprime tranches was 121%, and 254% for the Alt-A
10 tranches. The reports reflected a continuing decline in the creditworthiness of the
11 BBB and BBB- rated tranches, showing the average SD versus CS ratio well over
12 100% (indicating that severe delinquencies already exceeded available credit support)
13 for hundreds of BBB and BBB- tranches of Alt-A and subprime RMBS tranches.
14 S&P analysts and executives knew that an SD versus CS ratio in excess of 100%
15 meant that the RMBS tranche at issue would in the near term almost certainly be
16 subject to a negative Rating Action.

17 c. On or about April 10, 2007, Analyst D sent an email to a Director
18 in RMBS Criteria that stated, among other things: "We should not be changing our
19 base case scenario just because the subprime market is tanking. Rest of the economy
20 is coasting fine." On or about April 18, 2007, Analyst D sent to, among others, Senior
21 Executive E and Executive F, an email that attached a PowerPoint presentation that
22 included the same statement.

23 d. On or about April 25, 2007, an analyst in the RMBS group
24 ("Analyst F") forwarded to Executives C and I, Senior Analyst A, and others an
25 analysis of the 2005 and 2006 vintage subprime RMBS. Using even the conservative
26 expected losses projected by S&P for these vintages, this analysis showed average
27 defaults of investment grade RMBS that vastly exceeded S&P's expectations. For
28 BBB tranches, the analysis showed average defaults of 47.44% for RMBS rated in

1 2005, 56.27% for RMBS rated during the first half of 2006, and 35% for RMBS rated
2 during the second half of 2006. For BBB- tranches, this analysis showed average
3 defaults of 64.44% for 2005 vintage RMBS, 71.74% for vintage RMBS from the first
4 half of 2006, and 51.01% for vintage RMBS from the second half of 2006. By
5 comparison, at that time CDOs were being rated with the assumption that the BBB
6 RMBS assets they contained had an average default rate of approximately 3%. On or
7 about April 30, 2007, Analyst F ran another analysis that produced similar, but
8 slightly different, results for defaults of BBB and BBB- tranches. Analyst F presented
9 similar information to Gillis on or about May 2, 2007.

10 e. On or about April 25, 2007, Executives F and G sent an email to,
11 among others, Rose, Gillis, Jordan, Teshler, Bryan, and Senior Analyst A, to which
12 was attached a memorandum regarding "RMBS & CDO Surveillance Weekly
13 Subprime Update." The memorandum began by explaining: "This is the first of the
14 weekly updates we propose sending to you so that you are apprised of the current state
15 of RMBS rating performance and the impact to the CDOs." The Executive Summary
16 section of the memorandum began by noting the continued deterioration of residential
17 mortgage performance:

18 Residential mortgage performance, particularly subprime mortgages,
19 continued the trend of increasing delinquency and losses, which we have
20 been closely monitoring since midyear, 2006. There is little evidence of
21 early payment defaults abating in the pools.

22 f. On or about April 30, 2007, Executives F and G sent to, among
23 others, Rose, Gillis, Jordan, Teshler, Bryan, and Senior Analyst A an "RMBS & CDO
24 Surveillance Weekly Subprime Update." The report began by noting the continuing
25 deterioration of residential mortgage performance: "Residential mortgage
26 performance, particularly subprime mortgages, continued the trend of increasing
27 delinquency and losses and rating performance remains predominately negative."
28 With respect to CDO Surveillance, the report noted the growing exposure to

1 deteriorating RMBS, stating:

2 [R]ating activity on the CDOs of ABS collateralized primarily by
3 Mezzanine SF tranches have seen balanced rating activity during the year
4 to date, with 10 upgrades and 10 downgrades. But, exposure to
5 CreditWatched and downgraded RMBS bonds continues to build in these
6 CDOs as RMBS tranche ratings continue to see negative rating activity,
7 and this week we saw the first cash flow CDO of ABS downgrades that
8 occurred primarily as a result of exposure to Subprime RMBS.

9 While the CDO transactions with the highest levels of exposure to
10 RMBS downgraded or CreditWatched since the start of 2007 are still
11 those originated from 2002 through 2004, exposures are increasing in the
12 2005 and 2006 vintage CDO transactions as later vintage RMBS held by
13 these CDOs sees more negative rating activity, and given the rate of
14 increase in CDO exposure to RMBS that has seen negative rating
15 activity, we expect to see a gradual increase in CDO negative rating
16 activity as a result.

17 236. Notwithstanding S&P's knowledge regarding the increasing deterioration
18 of non-prime RMBS, in April 2007, Cash CDO, under the supervision of Jordan and
19 Teshar, issued and/or confirmed (through Effective Date RACs) ratings for CDOs that
20 S&P knew did not accurately reflect the credit risks of those CDOs, because they did
21 not account for the substantially increased credit risks of underlying non-prime RMBS
22 tranches. In particular, in April 2007, S&P issued and/or confirmed (through
23 Effective Date RACs) ratings for 47 CDOs priced at more than \$24 billion that were
24 backed, at least in part, by non-prime RMBS, including at least three CDOs priced at
25 more than \$4 billion that were sold to financial institutions and/or to purchasers whose
26 losses would affect federally insured financial institutions. For example:

27 a. On or about April 10, 2007, S&P rated Vertical ABS 2007-1, a
28 \$1.5 billion CDO comprised of approximately 75% 2006 subprime RMBS, 8% 2007

1 subprime RMBS, and 6% 2005 subprime RMBS. Approximately 36.5% of the
2 collateral backing Vertical 2007-1 was non-prime RMBS rated BBB or below.
3 Federally insured financial institution Citibank purchased \$15 million of an AAA
4 rated tranche of Vertical 2007-1. On October 19, 2007, Vertical 2007-1 defaulted,
5 resulting in Citibank losing its full \$15 million investment.

6 b. On or about April 24, 2007, S&P rated Corona Borealis CDO Ltd.,
7 a \$1.5 billion CDO comprised of approximately 54% 2006 subprime RMBS and 32%
8 2005 subprime RMBS. Approximately 50% of the collateral backing Corona Borealis
9 was non-prime RMBS rated BBB or below. Relying in part on S&P's ratings,
10 federally insured financial institution Eastern Financial Florida Credit Union
11 purchased tranches of Corona Borealis. On February 1, 2008, Corona Borealis
12 defaulted, resulting in Eastern Financial Florida Credit Union losing its investment in
13 Corona Borealis.

14 (iii) May 2007

15 237. In May 2007, S&P learned additional information reflecting the
16 continued deterioration of non-prime RMBS and remained aware that an ongoing
17 review process was likely to result in large-scale negative Rating Actions for non-
18 prime RMBS. This knowledge was reflected in a number of conversations, emails,
19 and other communications from, among, and between S&P executives and analysts,
20 including those S&P executives with responsibility for supervising the rating of
21 CDOs. In particular:

22 a. In May 2007, RMBS Surveillance ran another set of internal
23 exception reports, and the results were worse than any prior report. As with the
24 previous months, the reports focused on 2005 and 2006 subprime and Alt-A RMBS
25 with tranches exceeding 75% severe delinquencies versus available credit support.
26 This time, the reports pulled 2,715 tranches from 631 subprime deals, and 2,000
27 tranches from 511 Alt-A deals. The average SD versus CS ratio for the 2,715
28 subprime tranches was 126%, while for the 2,000 Alt-A tranches it was 202%. The

1 Alt-A figures included 302 BBB tranches with an average of 139%, and 179 BBB-
2 tranches with an average of 170%. Similarly, there were 466 BBB subprime tranches
3 with an average of 120%, and 536 BBB- subprime tranches with an average of 139%.
4 For all of these RMBS categories, severe delinquencies had, on average, already
5 significantly exceeded available credit support.

6 b. On or about May 7, 2007, Executives F and G sent to, among
7 others, Rose, Gillis, Jordan, Teshler, Bryan, and Senior Analyst A an "RMBS & CDO
8 Surveillance Weekly Subprime Update." With respect to RMBS, the Executive
9 Summary stated that the "first quarter's reported performance for transactions issued
10 in 2007 reveal delinquency performance that exceeds all prior vintages."

11 c. On or about May 9, 2007, an associate in RMBS Surveillance
12 forwarded to Analyst E the internal exception reports for February through April
13 2007, which illustrated the dismal performance of 2005 and 2006 Alt-A and subprime
14 RMBS rated by S&P.

15 d. On or about May 13, 2007, Analyst E reported that he had updated
16 subprime and Alt-A RMBS performance statistics:

17 As expected, delinquencies and losses continue to increase in the Alt-A
18 and subprime sectors. After 6 and 12 months of seasoning, the 2006
19 vintage continues to be the worst performing vintage in terms of
20 delinquencies and loss percentages.

21 e. On or about May 14, 2007, Executives E and F sent to, among
22 others, Rose, Jordan, Teshler, Bryan, Executive G, and Senior Analyst A an "RMBS &
23 CDO Surveillance Weekly Subprime Update." With respect to RMBS, the Executive
24 Summary of this update emphasized the continuing deterioration of 2006 subprime
25 RMBS:

26 The performance of the 2006 subprime vintage continues to deteriorate.
27 After 12 months of seasoning, total delinquencies for the 2006 vintage
28 represent approximately 15.20% of the current pool balance. This is a

1 2.5% increase when compared to the prior distribution date. After a
2 similar amount of seasoning, total delinquencies for the 2006 vintage are
3 approximately 30% higher than the 2000 vintage, which has the
4 distinction of being the worst performing vintage. In addition to total
5 delinquencies, serious delinquencies (90+ [days], foreclosure, REO) are
6 also higher for transactions issued in 2006. After 12 months of
7 seasoning, serious delinquencies for the 2006 subprime vintage represent
8 approximately 8.38% of the current pool balance. When compared to the
9 prior distribution date, serious delinquencies have increased by
10 approximately 8%. Furthermore, serious delinquencies for the 2006
11 vintage are approximately 40% higher than the 2000 vintage. In terms of
12 cumulative losses, the 2006 vintage continues to be the worst performing
13 vintage.

14 f. On or about May 21, 2007, Jordan sent Rose a "Global CDO
15 Activity Report." In the report, Jordan explained that her group was analyzing
16 previously-issued CDOs assuming that second-lien subprime collateral would "default
17 with zero recovery," that is, that the collateral was worthless. Jordan did not describe
18 any similar effort to reflect the deterioration of non-prime RMBS in the issuance
19 and/or confirmation of new CDO ratings. Jordan did note, however, that the
20 implosion of subprime RMBS had brought a rush of CDO ratings business to S&P as
21 subprime RMBS issuers sought to offload the risk of this deteriorating collateral into
22 CDOs:

23 Because of the effect of the subprime RMBS situation, in March we
24 experienced the highest monthly deal volume ever, doubling the total
25 from the previous two months. The cash flow area closed an impressive
26 72 deals.

27 The report noted that the acceleration of cash CDOs during the first four months of
28 2007 was in part "due to preferential 'mark to market' treatment a dealer can receive

1 for CDO 'priced' liabilities versus owning warehouse risk in its 'raw form' (i.e. at the
2 underlying subprime mortgage level)." The report also noted:

3 Through April 2007, the US CDO new issuance revenue reached \$74.82
4 million dollars, with over half of the total revenue generated from cash
5 flow CDOs. This represents a significant increase over the revenue of
6 \$36.23 million reported for the same period in 2006. May is expected to
7 generate \$24.48 million in revenue, the highest total for the month of
8 May to date.

9 g. On or about May 21, 2007, Executives F and G sent to, among
10 others, Rose, Gillis, Jordan, Tesher, Bryan, and Senior Analyst A an "RMBS & CDO
11 Surveillance Weekly Subprime Update." With respect to RMBS, the Executive
12 Summary noted continuing negative rating performance:

13 Surveillance analyses continue to result in predominately negative rating
14 performance. Rating actions are pending following committees held
15 during the week of May 14th as analysts continue to process the
16 committee approved rating actions. One transaction, Long Beach 2006-
17 A, suffered the most severe rating cuts since the sub-prime performances
18 issue surfaced. The three bottom classes defaulted and all remaining
19 classes except the 'AAA' had ratings lowered and or placed on
20 CreditWatch. S&P and Moody's took similar rating actions just minutes
21 apart.

22 h. On or about May 29, 2007, Executives F and G sent to, among
23 others, Rose, Gillis, Jordan, Tesher, Bryan, and Senior Analyst A an "RMBS & CDO
24 Surveillance Weekly Subprime Update." With respect to RMBS, the Executive
25 Summary noted continuing negative rating performance as the result of building
26 delinquencies and losses:

27 Surveillance analyses continue to result in predominately negative rating
28 performance as delinquencies and losses continued to increase in the

1 pools. Deal performance resulted in the ratings of 246 classes being
2 impacted during the previous week. Fifteen classes were upgraded, 40
3 were downgraded, 108 were downgraded and creditwatched and 83 were
4 added to creditwatch with negative implications.

5 With respect to 2006 vintage RMBS in particular, the update reported that an
6 "increase in negative rating actions" was being observed even on investment grade
7 bonds.

8 238. Notwithstanding S&P's knowledge regarding the increasing deterioration
9 of non-prime RMBS, in May 2007, Cash CDO, under the supervision of Jordan and
10 Teshner, continued to issue and/or confirm (through Effective Date RACs) ratings for
11 CDOs exposed to the credit risks of non-prime RMBS that S&P knew did not
12 accurately reflect the true credit risks of those CDOs, because they failed to account
13 for the substantially increased credit risks of underlying non-prime RMBS tranches.
14 In particular, in May 2007, S&P issued primary or effective date confirmation ratings
15 for 29 CDOs priced at more than \$33 billion that were backed, at least in part, by non-
16 prime RMBS, including at least 7 CDOs priced at more than \$12 billion that were sold
17 to financial institutions and/or to purchasers whose losses would affect federally
18 insured financial institutions. For example:

19 a. On or about May 3, 2007, S&P rated Stack 2007-1 Ltd., a \$1.5
20 billion CDO comprised of approximately 40% 2006 subprime RMBS, 22% 2007
21 subprime RMBS, 5% 2005 subprime RMBS, and 24% 2007 Alt-A RMBS.
22 Approximately 64% of the collateral backing Stack 2007-1 was non-prime RMBS
23 rated BBB or below. S&P rated AAA more than \$1.1 billion of Stack 2007-1.
24 Citibank and Eastern Financial Florida Credit Union both purchased tranches of Stack
25 2007-1. On June 27, 2007, S&P confirmed its ratings for Stack 2007-1. Less than six
26 months later, on December 17, 2007, Stack 2007-1 defaulted, resulting in near total
27 losses of the investments by Citibank and Eastern Financial Florida Credit Union.
28

1 b. On or about May 9, 2007, S&P issued an Effective Date RAC
2 letter for Octonion I CDO, a \$1 billion CDO comprised of approximately 76% 2006
3 subprime RMBS, 5% 2005 subprime RMBS, and 1% 2007 subprime RMBS.
4 Approximately 62% of the collateral backing Octonion I was non-prime RMBS rated
5 BBB or below. Approximately \$772 million of Octonion I was rated AAA by S&P.
6 Citibank purchased approximately \$20 million of AAA and AA tranches of Octonion
7 I. Octonion I had closed on March 6, 2007. To confirm Octonion I's ratings, S&P
8 analysts took the S&P ratings on the underlying non-prime RMBS at face value. Two
9 months later, S&P downgraded nearly 11% of the underlying non-prime RMBS
10 collateral, and on February 8, 2008, Octonion I defaulted. Citibank suffered a loss of
11 almost its entire investment in Octonion I.

12 c. On or about May 9, 2007, S&P issued an Effective Date RAC
13 letter for Plettenberg Bay CDO, a \$502 million CDO comprised of approximately
14 42% 2006 subprime RMBS, 39% 2005 subprime RMBS, and 1% 2007 subprime
15 RMBS. Approximately 52% of the collateral backing Plettenberg Bay was non-prime
16 RMBS rated BBB or below. S&P rated AAA approximately \$436 million of
17 Plettenberg Bay. Citibank purchased approximately \$8 million of A- and BBB
18 tranches of Plettenberg Bay. Plettenberg Bay had closed on March 8, 2007. To
19 confirm Plettenberg Bay's ratings, S&P analysts again took the S&P ratings on the
20 underlying non-prime RMBS at face value. Merely two months later, S&P
21 downgraded nearly 3% of the underlying non-prime RMBS collateral, and, on March
22 6, 2008, Plettenberg Bay defaulted. Citibank suffered an almost total loss of its
23 investment in Plettenberg Bay.

24 d. On or about May 17, 2007, S&P rated Acacia Option ARM 1 CDO
25 Ltd., a \$500 million CDO comprised of approximately 98% non-prime RMBS.
26 Approximately 21% of the collateral backing Acacia Option ARM 1 was non-prime
27 RMBS rated BBB or below. S&P rated approximately \$420 million of Acacia Option
28 ARM 1 AAA, and approximately \$470 million A or above. Federally insured

1 financial institution First Midwest Bank purchased approximately \$8.8 million of an
2 A tranche of Acacia Option Arm 1. On October 3, 2007, S&P confirmed its ratings of
3 Acacia Option ARM 1. Less than two weeks later, S&P downgraded nearly 14% of
4 the underlying non-prime RMBS collateral. In May 2008, Acacia Option ARM 1
5 defaulted, resulting in First Midwest Bank losing almost its entire investment.

6 (iv) June 1, 2007 to June 27, 2007

7 239. Between June 1, 2007, and June 27, 2007, S&P learned additional
8 information reflecting the continued deterioration of non-prime RMBS -- including
9 reports indicating that non-prime tranches rated BBB and below were failing -- and
10 remained aware that an ongoing review process was likely to result in large-scale
11 negative Rating Actions for non-prime RMBS. This knowledge was reflected in a
12 number of conversations, emails, and other communications from, among, and
13 between S&P executives and analysts, including those S&P executives with
14 responsibility for supervising the rating of CDOs. In particular:

15 a. On or about June 1, 2007, Executive G circulated an update to
16 CDO ratings leadership, including Jordan, Teshler, and Bryan, explaining that he was
17 tracking subprime RMBS delinquencies aggregated at the CDO pool level in order to
18 "get a forward look at which Mezz SF and High Grade SF CDOs might experience the
19 greatest levels of stress, rather than waiting for RMBS rating actions to find out."

20 b. On or about June 4, 2007, Executives F and G sent to, among
21 others, Rose, Gillis, Jordan, Teshler, Bryan, and Senior Analyst A an "RMBS & CDO
22 Surveillance Weekly Subprime Update." With respect to RMBS, the Executive
23 Summary stated that "Surveillance analyses continue to result in predominately
24 negative rating performance as delinquencies and losses continued to increase in the
25 pools."

26 c. On or about June 11, 2007, Executives F and G sent to, among
27 others, Rose, Gillis, Jordan, Teshler, Bryan, and Senior Analyst A an "RMBS & CDO
28 Surveillance Weekly Subprime Update." With respect to RMBS Surveillance, the

1 Executive Summary stated:

2 Surveillance analyses continue to result in predominately negative rating
3 performance as delinquencies and losses continued to increase in the
4 pools. The number of severely delinquent loans exceeds 6% in the 2006
5 vintage deals and the dollar balance of loans in foreclosure and REO
6 continues to increase. Research to determine the current time required to
7 liquidate the loans has been initiated. We expect to obtain data necessary
8 to adjust our severity assumptions and the anticipated timing of losses,
9 both of which may negatively impact rating performance.

10 The update also detailed the determination that certain tranches of subprime RMBS
11 were particularly vulnerable to Ratings Actions. The update stated that analysts had
12 run all of S&P's 18,000 subprime RMBS ratings and found that, on average, the BBB
13 and lower tranches of subprime RMBS had greater than 100% severe delinquencies
14 versus available credit support. This was double the 50% SD versus CS ratio that, in
15 February 2007, RMBS Surveillance had suggested be used for reviewing RMBS
16 tranches for placement on CreditWatch Negative. Moreover, S&P analysts and
17 executives knew that an SD versus CS ratio in excess of 100% meant that the RMBS
18 tranche at issue would in the near term almost certainly be subject to a negative Rating
19 Action. The update also attached a report that listed CDOs with high exposure to
20 already downgraded 2006 subprime RMBS.

21 d. On or about June 17, 2007, Gillis sent to Rose a memorandum
22 titled "Rating Quality & Knowledge Management Activity Report." The
23 memorandum began by discussing RMBS, stating:

24 Losses continue to pile up in the subprime market. Total losses for the
25 2006 book are currently at 0.25%. This compares to the previous worse
26 performing year of 2000 with 0.05% of losses.

27 The memorandum also discussed the process underway to modify criteria, noting:

28 This process has been marred by the lack of direction from management

1 on how to approach it. The group has responded marvelously to the
2 effort, yet the rules under which we have to operate are continually
3 changing. In addition, we have been restricted in what we have
4 believe[d] should be done.

5 e. On or about June 18, 2007, Executives F and G sent to, among
6 others, Rose, Gillis, Jordan, Teshler, Bryan, and Senior Analyst A an "RMBS & CDO
7 Surveillance Weekly Subprime Update." With respect to RMBS, the Executive
8 Summary stated, "The performance of the 2006 subprime vintage continued to
9 deteriorate during the month of May." The Executive Summary further noted that
10 "[t]otal and serious delinquencies rose slightly in the month of May" and that when
11 "compared to the April distribution date, total and serious delinquencies have
12 increased by 12% and 13% respectively." With respect to CDOs, the update stated:
13 "Few CDO of ABS rating actions have occurred solely because of exposure to
14 Subprime RMBS so far (and none for the 2006 vintage CDOs of ABS), but CDO
15 rating cushions continue to erode as a result of RMBS rating actions."

16 f. On or about June 20, 2007, in response to an inquiry regarding the
17 use of the term "highly volatile" when referring to certain RMBS ratings in the
18 Weekly RMBS/CDO Surveillance Performance Updates, Executive F sent to S&P's
19 Chief Credit Officer an email that stated, "By highly volatile ratings, I am referring to
20 the subordinate bonds of 1,148 transactions that we have either placed on creditwatch
21 with negative implications or have stepped up the internal monitoring due to poor
22 performance. I believe that these ratings will be downgraded if credit performance
23 continues to deteriorate."

24 g. On or about June 25, 2007, Executives F and G sent to, among
25 others, Rose, Gillis, Jordan, Teshler, Bryan, and Senior Analyst A an "RMBS & CDO
26 Surveillance Weekly Subprime Update" that reflected even worse performance. With
27 respect to RMBS, the Executive Summary stated:
28

1 Data from the May 2007 distribution revealed continued decline in
2 collateral performance and our analysis resulted in addition [sic] negative
3 rating actions. During the previous week we took ratings actions on
4 various classes from 62 different transactions from 23 different issuers.
5 We downgraded 45 classes backed by closed-end second-lien collateral
6 and placed 27 of those classes on Credit Watch with negative
7 implications. Twelve of these classes remain on Credit Watch negative,
8 and six were removed. In addition, we placed the ratings on 46 other
9 classes backed by closed-end second-lien collateral on Credit Watch
10 negative. Our rating actions affected a total of 34 closed-end second-lien
11 deals from 12 different issuers. Our rating actions also affected 42
12 classes backed by subprime collateral from 30 different transactions from
13 15 different issuers. We placed 31 classes on Credit Watch negative and
14 downgraded 11 classes: five were placed on Credit Watch negative, four
15 remain on Credit Watch negative, and two were removed from Credit
16 Watch negative.

17 With respect to CDOs, the update stated:

18 Cushions continue to tighten on Mezz SF CDO of ABS [Mezzanine cash
19 CDO] tranches as a result of RMBS negative rating activity. While most
20 of the negative cushions are still being seen on earlier vintage CDOs of
21 ABS (2000 through 2002) that have already seen ratings lowered as a
22 result of exposure to [other types of underlying collateral], some later
23 vintage transactions have eroded their available rating cushion solely due
24 to RMBS rating activity. As a result, CDO Surveillance is setting up
25 calls with CDO managers for transactions likely to see CreditWatch
26 placements in the near term future.

27 The update also attached a list of "all U.S. Cash Flow and Hybrid CDO transactions
28 with exposure to RMBS tranches downgraded in 2007 through last week, or currently

1 on watch for downgrade.” The list included 197 mezzanine cash flow and hybrid
2 CDOs.

3 h. On or about June 27, 2007, at a meeting of the SFLT attended by,
4 among others, Rose, Jordan, and Senior Executive B, Gillis began the meeting by
5 asking the group to reflect on its “subprime approach.” Based on discussions at the
6 meeting, Gillis and Senior Executive B were asked to report back to the SFLT with
7 recommendations on “closing the gap in between RMBS New Deal & Surveillance re-
8 rating.”

9 i. On or about June 27, 2007, Senior Analyst B reported to Gillis that
10 the 2006 vintage subprime RMBS “could see losses over 25%.” Senior Analyst B’s
11 analysis was forwarded to Jordan, Senior Executives B and E, Executives C and F,
12 and Senior Analyst A the same day. Executive F commented in an email later that
13 day that if Senior Analyst B was correct, S&P could see defaults at “AA” and “AAA”
14 rated tranches of subprime RMBS. Later that same day, Analyst E responded to
15 Executive F’s email that he and others in his group had come up with results similar to
16 Senior Analyst B’s and that S&P “could expect losses to be approximately 20.50%.”

17 240. Notwithstanding their knowledge regarding the increasing deterioration
18 of non-prime RMBS, including the failure of BBB rated non-prime RMBS tranches,
19 Jordan and Tesher did not provide this information to line-level Cash CDO analysts.
20 In particular, Jordan and Tesher received the information contained in the June 11,
21 2007 report and recognized its significance for ratings of new CDOs that were backed
22 by non-prime BBB and below rated RMBS tranches. Nevertheless, they did not
23 provide this information to line-level CDO analysts rating CDOs with exposure to
24 non-prime RMBS.

25 241. Notwithstanding S&P’s knowledge regarding the increasing deterioration
26 of non-prime RMBS, including the failure of BBB rated non-prime RMBS tranches,
27 from June 1, 2007 through June 27, 2007, Cash CDO, under the supervision of Jordan
28 and Tesher, continued to issue and/or confirm (through Effective Date RACs) ratings

1 for CDOs exposed to the credit risks of non-prime RMBS tranches that S&P knew did
2 not accurately reflect the true credit risks of those CDOs, because they failed to
3 account for the substantially increased credit risks of underlying non-prime RMBS
4 tranches. In particular, between June 1, 2007 and June 27, 2007, S&P rated 30 CDOs
5 priced at more than \$27 billion that were backed, at least in part, by non-prime RMBS
6 collateral, including at least 12 CDOs priced at more than \$12 billion that were sold to
7 financial institutions and/or purchasers whose losses would affect federally insured
8 financial institutions. For example:

9 a. On or about June 13, 2007, S&P issued an Effective Date RAC for
10 NovaStar ABS CDO I, Ltd., a \$374 million CDO comprised of approximately 72%
11 2006 subprime RMBS, 18% 2005 subprime RMBS, 5% 2007 subprime RMBS, and
12 4% 2006 Alt-A RMBS. Approximately 74% of the collateral backing NovaStar I was
13 non-prime RMBS rated BBB or below. S&P rated approximately \$277 million of
14 NovaStar I AAA. WesCorp purchased an AAA rated tranche of NovaStar I. To
15 confirm NovaStar I's ratings, S&P rating analysts took the ratings on the underlying
16 non-prime RMBS at face value. One month later, S&P downgraded over 7% of the
17 underlying non-prime RMBS collateral. NovaStar I defaulted on February 4, 2008,
18 resulting in near total losses to investors. WesCorp lost \$90 million on NovaStar I.

19 b. On or about June 14, 2007, S&P rated Acacia CDO 12 Ltd., a \$500
20 million CDO comprised of approximately 78% non-prime RMBS. Approximately
21 32% of the collateral backing Acacia CDO 12 was non-prime RMBS rated BBB or
22 below. S&P rated approximately \$391 million of Acacia CDO 12 AAA. WesCorp
23 purchased an AAA rated tranche of Acacia CDO 12. In October 2007, S&P
24 downgraded approximately 13% of the underlying non-prime RMBS collateral for
25 Acacia CDO 12. Ultimately, Acacia CDO 12 defaulted, resulting in near total losses
26 to investors. WesCorp lost \$90 million on Acacia CDO 12.

27 c. On or about June 15, 2007, S&P issued an Effective Date RAC for
28 Pyxis ABS CDO 2007-1, a \$1.5 billion CDO, of which over \$1 billion was rated AAA

1 by S&P. Pyxis 2007-1 was comprised of approximately 55% 2006 subprime RMBS,
2 31% 2005 subprime RMBS, and 2% 2007 subprime RMBS. Approximately 46% of
3 the collateral backing Pyxis 2007-1 was non-prime RMBS rated BBB or below. To
4 issue the Effective Date RAC, S&P analysts again took at face value the existing S&P
5 ratings on the underlying non-prime RMBS collateral. Less than one month later,
6 S&P downgraded over 13% of the non-prime RMBS collateral, and Pyxis 2007-1
7 defaulted on February 1, 2008, resulting in near total losses to investors.

8 d. On or about June 20, 2007, S&P issued an Effective Date RAC for
9 Ixis ABS CDO 3 Ltd., a \$544 million CDO comprised of approximately 46% 2006
10 subprime RMBS, 26% 2005 subprime RMBS, and 2% 2006 Alt-A RMBS.
11 Approximately 49% of the collateral backing Ixis 3 was non-prime RMBS rated BBB
12 or below. S&P rated approximately \$397 million of Ixis 3 AAA. Eastern Financial
13 Florida Credit Union invested in Ixis 3. To confirm its ratings of Ixis 3, S&P analysts
14 took at face value the existing S&P ratings on the underlying non-prime RMBS
15 collateral. Less than one month later, S&P downgraded 4% of the underlying non-
16 prime RMBS collateral. Ultimately, Ixis 3 defaulted, resulting in near total losses to
17 investors, including Eastern Financial Florida Credit Union.

18 e. On or about June 27, 2007, S&P issued an Effective Date RAC for
19 Stack 2007-1 Ltd., a \$1.5 billion CDO that it had rated on May 3, 2007. To issue the
20 Effective Date RAC, S&P analysts again took at face value the existing S&P ratings
21 on the underlying non-prime RMBS collateral. Less than one month later, S&P
22 downgraded 5% of the underlying non-prime RMBS collateral. In October, S&P
23 downgraded 34% of the underlying non-prime collateral. On December 17, 2007,
24 Stack 2007-1 defaulted, resulting in a near total loss to investors, including Citibank
25 and Eastern Financial Florida Credit Union.

d. On June 28, 2007, S&P Issued CDO Ratings that Failed to Account for Authorized Negative Rating Actions on Non-Prime RMBS

242. On or about June 28, 2007, S&P decided to accelerate the process to revise surveillance criteria and to authorize immediate large-scale negative Rating Actions on non-prime RMBS ratings. Rose made the ultimate decision to proceed with these negative Rating Actions.

243. Jordan and Teshner were aware of the authorization of immediate large-scale negative Rating Actions on non-prime RMBS ratings, but did not inform line-level CDO analysts of this decision.

244. Unaware of the decision, line-level Cash CDO analysts, under the supervision of Jordan and Teshner, continued to issue and/or confirm (through Effective Date RACs) ratings for CDOs exposed to the credit risks of non-prime RMBS tranches that S&P knew did not accurately reflect the true credit risks of those CDOs, because they failed to account for the substantially increased credit risks of underlying non-prime RMBS tranches. For example:

a. On June 28, 2007, S&P issued an Effective Date RAC for Laguna Seca Funding I, Ltd., a \$500 million CDO, of which approximately \$379 million was rated AAA by S&P. Laguna Seca Funding I was comprised of approximately 31% 2006 subprime RMBS, 39% 2005 subprime RMBS, and 7% 2007 subprime RMBS. To issue the Effective Date RAC, S&P analysts took at face value existing S&P ratings on the non-prime RMBS collateral. Two weeks later, S&P downgraded 2% of the subprime RMBS collateral, and identified Laguna Seca Funding I as a CDO impacted by the downgrades. Laguna Seca Funding I defaulted on April 8, 2008, resulting in near total losses to investors.

b. On June 28, 2007, S&P rated Ridgeway Court Funding II Ltd., a \$3 billion CDO, of which over \$2.8 billion was rated AAA by S&P. Ridgeway Court Funding II was comprised of approximately 33% 2006 subprime RMBS, 10% 2005

1 subprime RMBS, and 7% 2007 subprime RMBS collateral. To issue its ratings for
2 Ridgeway Court Funding II, S&P analysts took at face value the existing S&P ratings
3 on the underlying non-prime RMBS collateral. Ridgeway Court Funding II defaulted
4 on January 15, 2008, resulting in near total losses to investors, including Eastern
5 Financial Florida Credit Union.

- 6 e. From June 29, 2007 through July 17, 2007, S&P
7 Issued CDO Ratings that Failed to Account for
8 Additional Negative Rating Actions S&P Was
9 Working to Effect on Non-prime RMBS

10 245. Throughout the day on June 29, 2007, senior members of Structured
11 Finance, including Rose, Gillis, Jordan, and Senior Executive B, discussed the plan to
12 accelerate negative Rating Actions for non-prime RMBS. By the end of the day, a
13 final decision had been made regarding the logistics for implementing the massive
14 RMBS negative Rating Actions – a CreditWatch and criteria revision announcement,
15 to be followed immediately by downgrades.

16 246. At 7:39 p.m., on June 29, 2007, Executive I sent an email regarding “the
17 work needed to accelerate the surveillance actions” in which he stated, regarding the
18 downgrades: “We have only a week or two for drastic action.”

19 247. At 8:40 pm, on June 29, 2007, Senior Executive B sent an email to
20 Executive C, stating: “We have shortened the dates to act [A]bsent any adverse
21 event that may require us acting sooner than that, such timings tentatively include a
22 CW [CreditWatch] press release on Monday July 9th.”

23 248. On or about July 1, 2007, Gillis forwarded to Jordan, Senior Executives
24 B and E, Executives C and I, and Senior Analysts A and B a spreadsheet identifying
25 428 subprime RMBS deals to be reviewed. Gillis’s accompanying email stated, “We
26 have estimated the potential losses we expect from the 2006 vintage as a basis for
27 taking near term rating action that will truly reflect the appropriate rating levels.”
28 Gillis also noted that in the future the review would also need to be extended to

1 “closed end seconds” and “Alt-A” transactions.

2 249. On July 3, 2007, a recently hired analyst in the Structured Finance group
3 initiated an email string with an investment banker client. On July 3, 2007, in
4 response to an inquiry about how his new job was going, the analyst stated:

5 Job’s going great. Aside from the fact that the MBS world is crashing,
6 investors and the media hate us, and we’re all running around to save
7 face no complaints.

8 On July 5, as part of the same continuing email string, the analyst stated:

9 The fact is, there was a lot of internal pressure in S&P to downgrade lots
10 of deals earlier on before this thing started blowing up. But the
11 leadership was concerned of p*ssing off too many clients and jumping
12 the gun ahead of Fitch and Moody's.

13 On July 6, as part of the same continuing email string, the investment banker
14 responded:

15 This might shake out a completely different way of doing biz in the
16 industry. I mean come on, we pay you to rate our deals, and the better
17 the rating the more money we make?!?! Whats [sic] up with that? How
18 are you possibly supposed to be impartial????

19 On July 11, as part of the same continuing email string, the analyst responded:

20 Nah. I'll admit it. We dropped the ball on this one. But you think it's
21 bad now, wait 'till next week (hint, hint).

22 Later on July 11, as part of the same continuing email string, the analyst added:

23 You should see how it is here right now. It's like a friggin [sic] trading
24 floor. “Downgrade, Mortimer, downgrade!!!”

25 250. On July 5, 2007, at 8:00 a.m., executives and analysts at S&P held a
26 meeting to discuss an “acceleration” of the process to revise surveillance criteria.
27 Among those notified of the meeting were Jordan and Gillis. Later that day, analysts
28 held a committee meeting to approve the specific ratings to be downgraded.

1 251. On or about July 6, 2007, Jordan sent an email that was subsequently
2 forwarded to Rose in which she stated:

3 I'm listening to the RMBS discussion about the dramatic changes we will
4 very soon be making. B/c the planned RMBS changes will result in
5 unprecedented CDO downgrades, and currently all of this is firewalled
6 and highly confidential, I struggle with how to answer these questions.

7 252. On July 10, 2007, S&P publicly announced the placement of "credit
8 ratings on 612 classes of [RMBS] backed by U.S. subprime collateral on CreditWatch
9 with negative implications." The affected RMBS classes totaled approximately \$12
10 billion in securities. The ratings placed on CreditWatch Negative included first-lien
11 subprime RMBS from 2005 and 2006. S&P indicated that large-scale downgrades to
12 the ratings placed on CreditWatch Negative would immediately follow. In addition,
13 S&P announced significant changes to its new issue and surveillance criteria with
14 respect to subprime RMBS. In particular, S&P toughened its loss severity and loss
15 timing assumptions for purposes of surveillance, and increased its credit enhancement
16 requirements for new subprime transactions. These were changes to RMBS
17 Surveillance criteria that S&P had initiated on or about June 11, 2007. Nevertheless,
18 between June 11 and July 10, 2007, S&P continued to issue and/or confirm ratings for
19 new CDOs without taking into account the expected effect of these planned changes
20 on underlying RMBS.

21 253. In the same July 10, 2007 announcement, S&P stated that it would be
22 reviewing hundreds of CDOs backed by the identified RMBS collateral in anticipation
23 of immediate downgrades. S&P also announced that it would be reviewing other
24 classes of RMBS collateral, including closed-end second-lien and Alt-A transactions.

25 254. On July 11, 2007, in an email titled "'PRIVILIGED [sic] &
26 CONFIDENTIAL -- Quick Market Pulse' from CVMs", an S&P executive compiled
27 a summary of reports from various CVMs regarding market reaction to the
28 CreditWatch announcement from the day before. The email was sent to Rose with

1 the opening statement, "Your eyes only for now. Share only with GPLs [Group
2 Practice Leaders] and Tommy [Gillis]? GPLs/Tommy [Gillis] and cc CVMs? All
3 SFLT?" The email included a report on the reaction in the CDO market to S&P's
4 massive CreditWatch actions from two CVMs, including Executive J, who stated that
5 CDO issuers and collateral managers were angry, because the downgrades were
6 affecting their ability to continue to issue CDOs. The CVMs then stated:

7 [W]e have more rating action yet to come. . . . [CDO] Deals that close
8 now will be downgraded if we don't stop them. This is different from
9 what happened in March. Deals could close then as people closed their
10 warehouses -- but we were not going to immediately downgrade the
11 underlying [RMBS collateral]. In contrast, we will be doing exactly this
12 on Thursday and next week.

13 255. On July 12, 2007, S&P publicly announced a mass downgrade of 2005
14 and 2006 vintage subprime RMBS.

15 256. At or about the time S&P announced the mass downgrades, analytical
16 managers in Cash CDO proposed that ratings of CDOs be discontinued until rating
17 actions on underlying RMBS collateral had settled down.

18 257. Business leaders in Cash CDO, however, including Jordan and Teshar,
19 rejected this proposal, with Teshar noting, in the context of issuers still needing to
20 clear out warehouse lines, that S&P could not "close the window."

21 258. On July 13, 2007, Jordan recognized that certain pipeline CDOs had
22 particular exposure to the credit risks of non-prime RMBS tranches. After reviewing
23 a list of the most exposed CDO deals being proposed at that time, including Libertas
24 Preferred Funding V, Ltd., Delphinus CDO 2007 Ltd., and Biltmore CDO 2007-1,
25 Ltd., she concluded that the CDO group either needed to assume that the subprime
26 RMBS assets were rated at CCC or not rate those CDO deals at all.

27 259. On July 13, an S&P CDO analyst emailed employees of two banks that
28 issued CDOs a cartoon that depicted asset-backed CDOs as a game of "Jenga," where

1 the object is to remove pieces from a structure, creating a more and more unstable
2 structure, until the entire thing collapses.

3 260. Between July 13 and July 17, 2007, as S&P continued to prepare for
4 additional downgrades to non-prime RMBS deals, Teshar and S&P analysts prepared
5 to announce a new policy of “notching” S&P’s own RMBS ratings. Under the
6 planned new notching policy, ratings on certain classes of at-risk non-prime RMBS
7 tranches would be considered to be rated lower than S&P’s existing ratings for
8 purposes of rating CDOs with exposure to them, in order to reflect the reality that
9 entire classes of non-prime RMBS were under review and likely to be downgraded.

10 261. Between June 29, 2007 and July 17, 2007, notwithstanding S&P’s work
11 to complete massive negative Rating Actions and the announcement of revised rating
12 criteria for non-prime RMBS, notwithstanding the public announcement of
13 downgrades of non-prime RMBS and the effects those downgrades would have on
14 CDO ratings, and notwithstanding the preparation of a plan to notch non-prime RMBS
15 ratings when using them in rating CDOs, Cash CDO, at Teshar’s direction, continued
16 to issue and/or confirm (through Effective Date RACs) ratings for CDOs exposed to
17 the credit risks of non-prime RMBS tranches, taking the then-existing non-prime
18 RMBS ratings at face value. S&P knew that these CDO ratings did not accurately
19 reflect the true credit risks of the rated CDOs, because the ratings continued to fail to
20 account for the substantially increased credit risks of the underlying non-prime RMBS
21 tranches, as reflected by the imminent impact of the planned negative Rating Actions.
22 In particular:

23 a. On July 3, 2007, S&P rated Pinnacle Peak CDO I, a \$1.5 billion
24 CDO, of which over \$1.4 billion was rated AAA by S&P. Pinnacle Peak I was
25 comprised of approximately 28% subprime RMBS and 33% Alt-A RMBS. Citigroup
26 was a purchaser of Pinnacle Peak I. S&P issued an Effective Date RAC for Pinnacle
27 Peak I on October 15, 2007, taking the ratings of underlying RMBS collateral at face
28 value. Within four days, S&P downgraded 5% of the RMBS collateral in the

1 just-RAC'd CDO. Six months after it closed, on January 17, 2008, Pinnacle Peak I
2 defaulted, resulting in a near total loss to investors, including Citigroup. Citibank was
3 affected by Citigroup's losses on Pinnacle Peak I.

4 b. On July 6, 2007, S&P issued an Effective Date RAC for Charles
5 Fort CDO I, a \$400 million CDO, of which \$280 million was rated AAA by S&P.
6 Charles Fort I was comprised of approximately 52% subprime and 34% Alt-A RMBS.
7 In issuing the RAC, S&P took the ratings of underlying RMBS collateral at face
8 value. Charles Fort I was purchased in part by WesCorp. Ultimately, Charles Fort I
9 defaulted, resulting in near total losses to its investors, including WesCorp.

10 c. On July 11, 2007, S&P rated Pine Mountain CDO III, Ltd., a \$500
11 million CDO, of which \$380 million was rated AAA by S&P. Pine Mountain III was
12 comprised of approximately 22% 2006 subprime RMBS, 44% 2005 subprime RMBS,
13 16% 2007 subprime RMBS, and 11% alt-A RMBS. Approximately 53.9% of the
14 collateral backing Pine Mountain III was non-prime RMBS rated BBB or below. In
15 issuing this rating, S&P took the ratings of the underlying RMBS collateral at face
16 value. Ultimately, Pine Mountain III defaulted, resulting in near total losses to its
17 investors.

18 d. On July 12, 2007, S&P rated Ballyrock CDO, a \$500 million CDO
19 of which 70% was rated AAA by S&P. Ballyrock was comprised of approximately
20 46% 2006 subprime RMBS and 52% 2005 subprime RMBS. Approximately 56% of
21 the collateral backing Ballyrock was non-prime RMBS rated BBB or below. In
22 issuing its rating of Ballyrock, S&P took the ratings of the underlying RMBS
23 collateral at face value. Ultimately, Ballyrock defaulted, resulting in near total losses
24 to investors.

25 e. Between July 13 and 18, 2007, S&P rated four CDOs priced at
26 more than \$1.6 billion that were backed by non-prime RMBS collateral. Within less
27 than 7 months, S&P had downgraded one or more tranches of all four CDOs.
28

f. On and After July 18, 2007, S&P Issued CDO Ratings that Disregarded S&P's Announced "Notching" Policy

262. On July 18, 2007, S&P publicly announced that it would "notch" its own ratings (that is, consider them to have lower ratings for purposes of rating CDOs with exposure to them) on certain tranches of non-prime RMBS when rating CDOs with exposure to them, due to the potential for further downgrades. The purpose of the policy was to reassure the investing public that S&P had taken into account the possibility of downgrades in underlying RMBS when rating CDOs. Investors could then be assured that the ratings were more accurate, because the notching policy built greater credit support into the structure of the CDOs.

263. In reality, S&P did not apply this notching policy consistently to all deals. Rather, it worked with issuers to use a deal-by-deal analysis that it never revealed to the public. When this analysis showed that application of the publicly-announced notching policy would interfere with S&P's ability to rate a CDO, S&P used various methods to get around the publicly-announced policy and issue a rating for the CDO.

264. For example, on the same day that S&P announced its new policy, it was preparing a closing date rating for Delphinus CDO, which contained a large number of subprime RMBS tranches. When S&P analysts ran the Delphinus portfolio through CDO Evaluator with full notching at around 5:00 p.m. that night, they discovered that four CDO tranches failed the Q-Ramp test. The analysts then progressively scaled back the notching on subprime RMBS assets until, just after midnight, only one CDO tranche was failing. S&P rated Delphinus on July 19, 2007, notwithstanding the continuing Q-Ramp failure of one CDO tranche.

265. On or about August 2, 2007, S&P analysts were advised that they did not need to apply the publicly-announced notching criteria to CDOs that became effective after July 18, 2007, and had not yet received Effective Date RACs. Rather, S&P

1 analysts were directed to continue to rely on the existing RMBS ratings that were
2 under review for likely downgrade when determining whether to issue an Effective
3 Date RAC.

4 266. When use of notching resulted in a failure of S&P's critical Q-Ramp test,
5 S&P frequently ignored the results and issued an Effective Date RAC anyway,
6 without informing investors that the deal had failed a key S&P test when notching was
7 applied.

8 267. Throughout September and the first half of October 2007, S&P analysts
9 reviewed and re-rated hundreds of non-prime RMBS tranches. Despite the inevitable
10 downgrade of hundreds more RMBS ratings, S&P continued to disregard the
11 prophylactic "notching" policy it had announced in July in issuing and/or confirming
12 (through Effective Date RACs), in September and early October 2007, at least 8
13 ratings for CDOs priced at more than \$8.8 billion that were backed by non-prime
14 RMBS.

15 268. On or about October 15, 17 and 19, 2007, S&P announced downgrades to
16 hundreds of additional non-prime RMBS ratings – including the almost complete re-
17 rating of all subprime RMBS issued in 2007. Those downgrades substantially
18 eliminated the credit support for dozens of RMBS-backed CDOs that S&P had rated –
19 including CDOs that S&P had rated just days earlier.

20 269. Among the CDOs for which S&P issued Effective Date RACs without
21 applying its publicly-announced notching policy were:

- 22 a. Corona Borealis CDO Ltd. (Effective Date RAC issued on July 30, 2007;
23 purchased by Eastern Financial Florida Credit Union);
- 24 b. Pampellone CDO II (Effective Date RAC issued on July 27, 2007;
25 purchased by Eastern Financial Florida Credit Union); and
- 26 c. Pinnacle Peak CDO I (Effective Date RAC issued on October 15, 2007;
27 losses affected Citibank, which had loaned funds to Pinnacle Peak I via a
28 revolving credit facility).

C. S&P's False Representations Were Material to Financial Institutions' Investment Decisions

270. As set forth in detail in paragraphs 45-52 above, S&P knew that both its ratings of RMBS and CDOs and the perceived reliability of those ratings were significant factors considered by financial institutions, including federally insured financial institutions, in making their decisions to invest in RMBS and CDOs.

271. As set forth in detail in paragraphs 123-269 above, S&P's competition for ratings business, that is, its desire to maintain and increase market share and profits, and its resulting desire to maintain its relationships with issuers who drove its ratings business, improperly influenced S&P to favor issuers in its ratings of RMBS and CDOs. In particular, as alleged in detail in paragraphs 125-198 above, beginning at the latest in or about September 2004 and continuing through at least in or about October 2007, to maintain and increase its market share and profits, S&P limited, adjusted, and delayed updates to the ratings criteria and analytical models S&P used to assess the credit risks posed by RMBS and CDO tranches, thereby weakening those criteria and models from what S&P analysts believed was necessary to make them more accurate.

272. Nevertheless, as set forth in detail in paragraphs 110-122 above, beginning at the latest in or about September 2004 and continuing through at least in or about October 2007, S&P falsely represented that its credit ratings of RMBS and CDO tranches were objective, independent, uninfluenced by any conflicts of interest that might compromise S&P's analytic judgment, and reflected S&P's true current opinion regarding the credit risks the rated RMBS and CDO tranches posed to investors. These false representations were material to financial institutions' decisions to rely on S&P's ratings in making decisions to invest in RMBS and CDOs.

273. As set forth in detail in paragraphs 91-95 above, the ratings on the assets that served as underlying collateral for a CDO were the most important factor in the CDO rating and were a primary input into CDO Evaluator. As a result, pending

1 negative Rating Actions on the underlying collateral were an important source of
2 credit risk, and to ignore this risk could lead to inflated CDO ratings that would
3 mislead investors who purchased the CDO tranches.

4 274. As set forth in detail in paragraphs 200-269 above, beginning at the latest
5 in or about March 2007 and continuing through at least in or about October 2007,
6 S&P knew that the credit risks of certain non-prime RMBS tranches were increasing,
7 were expected to increase, and were anticipated to result in negative Rating Actions,
8 yet knowingly disregarded the true extent of the credit risks associated with those non-
9 prime RMBS tranches in issuing and/or confirming for CDOs backed by those non-
10 prime RMBS tranches ratings that S&P knew did not accurately reflect those CDOs'
11 true current credit risks because they failed to account for the increased credit risks
12 posed by those non-prime RMBS tranches.

13 275. In issuing these CDO ratings, S&P deceived financial institutions that
14 invested in these CDOs into believing that S&P's ratings reflected its true current
15 opinion regarding the credit risks of these CDOs, when in fact they did not. This
16 deception was material to financial institutions' investment decisions, and the
17 financial institutions suffered extensive losses, in excess of \$5 billion, based on
18 currently identified transactions, when the ratings ultimately were downgraded and the
19 CDOs defaulted.

20 **D. Mailings and Wirings In Furtherance, and Executions, of the**
21 **Scheme to Defraud**

22 276. Beginning at the latest in or about September 2004, and continuing at
23 least through in or about October 2007, within the Central District of California and
24 elsewhere, as described more fully in paragraphs 110-275 above, defendant McGraw-
25 Hill, acting through S&P Ratings, the successor to which is defendant S&P LLC,
26 knowingly and with intent to defraud, devised, participated in, and executed a scheme
27 to defraud investors in RMBS and CDOs, including federally insured financial
28 institutions, as to material matters, and to obtain money from these investors by means

1 of material false and fraudulent pretenses, representations, and promises and the
2 concealment of material facts.

3 277. For the purpose of executing this scheme to defraud, S&P deposited and
4 caused to be deposited correspondence for delivery by the United States Postal
5 Service or a private or commercial interstate carrier, and transmitted and caused to be
6 transmitted writings by means of wire communications in interstate and foreign
7 commerce. In particular, as reflected in S&P's Code of Conduct, each time S&P
8 issued a rating of an RMBS or CDO, it posted the rating on S&P's public website,
9 which caused it to be transmitted by interstate wire, including in particular from
10 S&P's corporate headquarters in New York, New York, to investors and potential
11 investors located in the Central District of California and elsewhere outside of New
12 York state, and issued the rating through a wire feed to the media, which also caused it
13 to be transmitted by interstate wire, including in particular from S&P's corporate
14 headquarters in New York, New York, to media outlets located in the Central District
15 of California and elsewhere outside New York state. In addition, when S&P issued
16 Effective Date RAC letters, it sent those letters by United States mail, private or
17 commercial interstate carrier, email, or facsimile, from S&P's corporate headquarters
18 in New York, New York, to issuers and others located elsewhere outside of New York
19 state. In addition, S&P typically received its fees for issuing ratings by wire transfer,
20 often causing those fees to be transmitted by interstate wire, including in particular,
21 from places outside California to S&P's account at Bank of America in San Francisco,
22 California. Each deposit of an Effective Date RAC letter for delivery by the United
23 States Postal Service and/or a private or commercial interstate carrier, and each
24 transmission by interstate wire of a rating, Effective Date RAC letter, or rating fee
25 occurring in connection with the scheme to defraud described in paragraphs 110-275,
26 and relating to an RMBS or CDO a portion of which was sold to a federally insured
27 financial institution and/or a purchaser whose losses would affect a federally insured
28 financial institution, constituted a mailing or transmission by means of wire

communication in interstate and foreign commerce for the purpose of executing the scheme to defraud that affected a federally insured financial institution. Examples include, but are not limited to, the following:

Date	CDO	Federally Insured Financial Institution(s) Affected	Mailing or Use of Interstate Wires
3/6/2007	Octonion I CDO Ltd.	Citibank	Internet posting of rating
3/6/2007	Pampelonne CDO II, Ltd.	Eastern Financial Florida Credit Union	Internet posting of rating
3/8/2007	Plettenberg Bay CDO	Citibank	Internet posting of rating
3/8/2007	Plettenberg Bay CDO	Citibank	Rating fee wire of \$338,275 from La Salle National Bank, Chicago, IL
3/8/2007	Adams Square Funding II, Ltd.	Citibank	Internet posting of rating
3/15/2007	Gemstone CDO VII	M&T Bank	Internet posting of rating
3/15/2007	888 Tactical Fund, Ltd.	Citibank	Internet posting of rating
3/26/2007	Novastar ABS CDO I Ltd.	Western Federal Corporate Credit Union	Rating fee wire of \$243,040 from Deutsche Bank Trust, New York, NY
3/27/2007	Sorin CDO VI Ltd.	Western Federal Corporate Credit Union	Internet posting of rating
3/29/2007	Charles Fort CDO I Ltd.	Western Federal Corporate Credit Union	Internet posting of rating
3/29/2007	Armitage ABS CDO Ltd.	Citibank; Eastern Financial Florida Credit Union	Internet posting of rating

Date	CDO	Federally Insured Financial Institution(s) Affected	Mailing or Use of Interstate Wires
3/29/2007	Armitage ABS CDO Ltd.	Citibank; Eastern Financial Florida Credit Union	Rating fee wire of \$502,500 from La Salle National Bank, Chicago, IL
3/29/2007	Cairn Mezz ABS CDO III Ltd.	Citibank; M&T Bank	Internet posting of rating
3/29/2007	Cairn Mezz ABS CDO III Ltd.	Citibank; M&T Bank	Rating fee wire of \$500,000 from La Salle National Bank, Chicago, IL
4/5/2007	Tourmaline CDO III Ltd.	Citibank	Internet posting of rating
4/10/2007	Vertical ABS CDO 2007-1 Ltd.	Citibank	Internet posting of rating
4/24/2007	Corona Borealis CDO Ltd.	Eastern Financial Florida Credit Union	Internet posting of rating
5/1/2007	Markov CDO I Ltd.	Eastern Financial Florida Credit Union	Internet posting of rating
5/3/2007	Stack 2007-1, Ltd.	Citibank; Eastern Financial Florida Credit Union	Internet posting of rating
5/3/2007	Stack 2007-1, Ltd.	Citibank; Eastern Financial Florida Credit Union	Rating fee wire of \$500,000 from Investors Bank and Trust Co., Boston, MA
5/9/2007	Octonion I CDO Ltd.	Citibank	Effective Date RAC letter sent by mail, email and/or facsimile to Delaware, Texas, and Cayman Islands

1	Date	CDO	Federally Insured Financial Institution(s) Affected	Mailing or Use of Interstate Wires
2				
3	5/9/2007	Plettenberg Bay CDO Ltd.	Citibank	Effective Date
4				RAC letter sent
5				by mail, email
6				and/or facsimile
7				to Delaware and
8				Ireland
9	5/17/2007	Acacia Option ARM 1 CDO Ltd.	First Midwest	Internet posting
10				of rating
11	5/24/2007	High Grade Structured Credit CDO 2007-1	Bank of America	Internet posting
12				of rating
13	5/24/2007	High Grade Structured Credit CDO 2007-1	Bank of America	Rating fee wire of
14				\$600,000 from La
15				Salle National
16				Bank, Chicago,
17				IL
18	6/7/2007	Pinnacle Point Funding II Ltd.	Bank of America	Internet posting
19				of rating
20	6/7/2007	Pinnacle Point Funding II Ltd.	Bank of America	Rating fee wire of
21				\$500,000 from La
22				Salle National
23				Bank, Chicago,
24				IL
25	6/8/2007	Gemstone CDO VII Ltd.	M&T Bank	Rating fee wire of
26				\$500,000 from
27				Deutsche Bank
28				Trust, New York,
				NY
	6/8/2007	Corona Borealis CDO Ltd.	Eastern Financial Florida Credit Union	Rating fee wire of
				\$500,000 from JP
				Morgan Chase
				Bank, New York,
				NY

Date	CDO	Federally Insured Financial Institution(s) Affected	Mailing or Use of Interstate Wires
6/13/2007	Novastar ABS CDO I, Ltd.	Western Federal Corporate Credit Union	Effective Date RAC letter sent by mail, email and/or facsimile to California, Delaware, and Cayman Islands
6/14/2007	Acacia CDO 12 Ltd.	Western Federal Corporate Credit Union	Internet posting of rating
6/14/2007	HSPI Diversified CDO Fund II, Ltd.	Citibank	Internet posting of rating
6/20/2007	Ixis ABS CDO 3 Ltd.	Eastern Financial Florida Credit Union	Effective Date RAC letter sent by mail, email and/or facsimile to Delaware, Illinois, and Cayman Islands
6/21/2007	888 Tactical Fund, Ltd.	Citibank	Effective Date RAC letter sent by mail, email and/or facsimile to Delaware, Texas, and Cayman Islands
6/27/2007	Markov CDO I Ltd.	Eastern Financial Florida Credit Union	Rating fee wire of \$500,000 from Bank of New York, New York, NY
6/27/2007	Stack 2007-1, Ltd.	Citibank; Eastern Financial Florida Credit Union	Effective Date RAC letter sent by mail, email and/or facsimile to Delaware and Cayman Islands
6/28/2007	Ridgeway Court Funding II Ltd.	Eastern Financial Florida Credit Union	Internet posting of rating

Date	CDO	Federally Insured Financial Institution(s) Affected	Mailing or Use of Interstate Wires
6/28/2007	ACA ABS 2007-2 Ltd.	Bank of America	Internet posting of rating
7/3/2007	Pinnacle Peak CDO I Ltd.	Citibank	Internet posting of rating
7/6/2007	Charles Fort CDO I Ltd.	Western Federal Corporate Credit Union	Effective Date RAC letter sent by mail, email and/or facsimile to Delaware, Pennsylvania, and Cayman Islands
7/25/2007	Armitage ABS CDO Ltd.	Citibank; Eastern Financial Florida Credit Union	Effective Date RAC letter sent by mail, email and/or facsimile to Delaware and Cayman Islands
7/27/2007	Pampelonne CDO II, Ltd.	Eastern Financial Florida Credit Union	Effective Date RAC letter sent by mail, email and/or facsimile to Cayman Islands
7/27/2007	Bonifacius	Citibank	Internet posting of rating
7/27/2007	Tourmaline CDO III Ltd.	Citibank	Effective Date RAC letter sent by mail, email and/or facsimile to Delaware and Cayman Islands
7/30/2007	Corona Borealis CDO Ltd.	Eastern Financial Florida Credit Union	Effective Date RAC letter sent by mail, email and/or facsimile to Delaware, Illinois, and Cayman Islands

278. Each time S&P issued a rating or Effective Date RAC letter for an RMBS or CDO, a portion of which was purchased by a financial institution, it constituted a separate and distinct execution and/or attempted execution of the scheme to defraud, and to obtain money by means of false and fraudulent representations from, financial institutions. Examples of such executions and/or attempted executions of the scheme include, but are not limited to, the following executions and/or attempted executions of the scheme to defraud, and to obtain money by means of false and fraudulent representations from, the following federally insured financial institutions on or about the following dates:

Date	CDO	Federally Insured Financial Institution(s)	Execution
3/6/2007	Pampelonne CDO II, Ltd.	Eastern Financial Florida Credit Union	Issuance of rating
3/8/2007	Adams Square Funding II, Ltd.	Citibank	Issuance of rating
3/15/2007	Gemstone CDO VII	M&T Bank	Issuance of rating
3/27/2007	Sorin CDO VI Ltd.	Western Federal Corporate Credit Union	Issuance of rating
3/29/2007	Charles Fort CDO I Ltd.	Western Federal Corporate Credit Union	Issuance of rating
3/29/2007	Armitage ABS CDO Ltd.	Eastern Financial Florida Credit Union	Issuance of rating
3/29/2007	Cairn Mezz ABS CDO III Ltd.	M&T Bank	Issuance of rating
4/24/2007	Corona Borealis CDO Ltd.	Eastern Financial Florida Credit Union	Issuance of rating
5/1/2007	Markov CDO I Ltd.	Eastern Financial Florida Credit Union	Issuance of rating
5/3/2007	Stack 2007-1, Ltd.	Eastern Financial Florida Credit Union	Issuance of rating
5/17/2007	Acacia Option ARM 1 CDO Ltd.	First Midwest	Issuance of rating
5/24/2007	High Grade Structured Credit CDO 2007-1	Bank of America	Issuance of rating

Date	CDO	Federally Insured Financial Institution(s)	Execution
6/4/2007	Cairn Mezz ABS CDO III Ltd.	M&T Bank	Issuance of Effective Date RAC letter
6/7/2007	Pinnacle Point Funding II Ltd.	Bank of America	Issuance of rating
6/13/2007	Novastar ABS CDO I, Ltd.	Western Federal Corporate Credit Union	Issuance of Effective Date RAC letter
6/14/2007	Acacia CDO 12 Ltd.	Western Federal Corporate Credit Union	Issuance of rating
6/20/2007	Ixis ABS CDO 3 Ltd.	Eastern Financial Florida Credit Union	Issuance of Effective Date RAC letter
6/27/2007	Stack 2007-1, Ltd.	Eastern Financial Florida Credit Union	Issuance of Effective Date RAC letter
6/28/2007	Ridgeway Court Funding II Ltd.	Eastern Financial Florida Credit Union	Issuance of rating
6/28/2007	ACA ABS 2007-2 Ltd.	Bank of America	Issuance of rating
7/6/2007	Charles Fort CDO I Ltd.	Western Federal Corporate Credit Union	Issuance of Effective Date RAC letter
7/25/2007	Armitage ABS CDO Ltd.	Eastern Financial Florida Credit Union	Issuance of Effective Date RAC letter
7/27/2007	Pampelonne CDO II, Ltd.	Eastern Financial Florida Credit Union	Issuance of Effective Date RAC letter
7/30/2007	Corona Borealis CDO Ltd.	Eastern Financial Florida Credit Union	Issuance of Effective Date RAC letter

1 **VII. CLAIMS FOR RELIEF**

2 **A. FIRREA: Mail Fraud; 12 U.S.C. § 1833a, 18 U.S.C. § 1341**

3 279. Plaintiff incorporates the allegations contained in paragraphs 1-278
4 above.

5 280. Each deposit of an item for delivery by the United States Postal Service
6 or a private or commercial interstate carrier by or caused by S&P for the purpose of
7 executing the scheme to defraud and to obtain money by means of false and fraudulent
8 representations described in paragraphs 110-275 above constitutes a separate violation
9 of 18 U.S.C. § 1341. Each such violation that affected a federally insured financial
10 institution constitutes a separate violation of 12 U.S.C. § 1833a(c)(2). For each such
11 violation, pursuant to 12 U.S.C. § 1833a(b), the United States is entitled, and seeks, to
12 recover a civil money penalty against defendants in an amount to be assessed by the
13 Court.

14 **B. FIRREA: Wire Fraud; 12 U.S.C. § 1833a, 18 U.S.C. § 1343**

15 281. Plaintiff incorporates the allegations contained in paragraphs 1-278
16 above.

17 282. Each transmission by or caused by S&P by means of wire
18 communication in interstate and foreign commerce for the purpose of executing the
19 scheme to defraud and to obtain money by means of false and fraudulent
20 representations described in paragraphs 110-275 above constitutes a separate violation
21 of 18 U.S.C. § 1343. Each such violation that affected a federally insured financial
22 institution constitutes a separate violation of 12 U.S.C. § 1833a(c)(2). For each such
23 violation, pursuant to 12 U.S.C. § 1833a(b), the United States is entitled, and seeks, to
24 recover a civil money penalty against defendants in an amount to be assessed by the
25 Court.

1 **C. FIRREA: Financial Institution Fraud; 12 U.S.C. § 1833a,**
2 **18 U.S.C. § 1344(1)**

3 283. Plaintiff incorporates the allegations contained in paragraphs 1-278
4 above.

5 284. Each execution and/or attempted execution by or caused by S&P of the
6 scheme to defraud financial institutions set forth in paragraphs 110-275 above
7 constitutes a separate violation of 18 U.S.C. § 1344(1), and, therefore, of 12 U.S.C.
8 § 1833a(c)(1). For each such violation, pursuant to 12 U.S.C. § 1833a(b), the United
9 States is entitled, and seeks, to recover a civil money penalty against defendants in an
10 amount to be assessed by the Court.

11 **D. FIRREA: Financial Institution Fraud; 12 U.S.C. § 1833a,**
12 **18 U.S.C. § 1344(2)**

13 285. Plaintiff incorporates the allegations contained in paragraphs 1-278
14 above.

15 286. Each execution and/or attempted execution by or caused by S&P of the
16 scheme to obtain money owned by and under the custody and control of financial
17 institutions by means of false and fraudulent representations set forth in paragraphs
18 110-275 above constitutes a separate violation of 18 U.S.C. § 1344(2) and, therefore,
19 of 12 U.S.C. § 1833(c)(1). For each such violation, pursuant to 12 U.S.C. § 1833a(b),
20 the United States is entitled, and seeks, to recover a civil money penalty against
21 defendants in an amount to be assessed by the Court.

1 **VIII. PRAYER FOR JUDGMENT**

2 WHEREFORE, the United States of America prays for judgment against
3 defendants as follows:

4 A. Civil money penalties under FIRREA up to the maximum amount
5 allowed by law.

6 B. All other relief this Court deems just and proper, including post-judgment
7 interest, attorneys' fees and litigation fees as appropriate, and costs of this action.

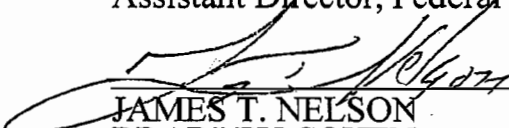
8
9 DATED: February 4, 2013

Respectfully submitted,

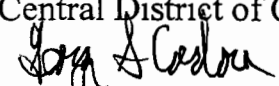
10 STUART F. DELERY
11 Principal Deputy Assistant Attorney General
12 United States Department of Justice,
13 Civil Division

14 MAAME EWUSI-MENSAH FRIMPONG
15 Deputy Assistant Attorney General

16 MICHAEL S. BLUME
17 Director, Consumer Protection Branch
18 ARTHUR R. GOLDBERG
19 Assistant Director, Federal Programs Branch

20 
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SONDRA L. MILLS
THOMAS D. ZIMPLEMAN
Trial Attorneys, Civil Division

21 ANDRÉ BIROTTE JR.
22 United States Attorney
23 Central District of California

24 
GEORGE S. CARDONA
25 Chief Assistant United States Attorney
26 LEON W. WEIDMAN
27 ANOIEL KHORSHID
28 RICHARD E. ROBINSON
Assistant United States Attorneys

Attorneys for Plaintiff United States of America

1 **DEMAND FOR JURY TRIAL**

2
3 Plaintiff United States of America hereby demands a trial by jury.

4
5 DATED: February 4, 2013

Respectfully submitted,

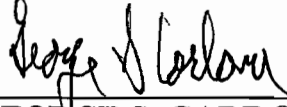
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23 ANOIEL KHORSHID
RICHARD E. ROBINSON
24 Assistant United States Attorneys

25 Attorneys for Plaintiff United States of America
26
27
28

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐) UNITED STATES OF AMERICA (b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): (c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) See Attachment 1	DEFENDANTS MCGRAW-HILL COMPANIES, INC., and STANDARD & POOR'S FINANCIAL SERVICES LLC County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only): Los Angeles Attorneys (If Known) See Attachment 2
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II. BASIS OF JURISDICTION (Place an X in one box only.) ☒ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party) ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width: 100%;"><thead><tr><th></th><th>PTF</th><th>DEF</th><th></th><th>PTF</th><th>DEF</th></tr></thead><tbody><tr><td>Citizen of This State</td><td>☐ 1</td><td>☐ 1</td><td>Incorporated or Principal Place of Business in this State</td><td>☐ 4</td><td>☐ 4</td></tr><tr><td>Citizen of Another State</td><td>☐ 2</td><td>☐ 2</td><td>Incorporated and Principal Place of Business in Another State</td><td>☐ 5</td><td>☐ 5</td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td>☐ 3</td><td>☐ 3</td><td>Foreign Nation</td><td>☐ 6</td><td>☐ 6</td></tr></tbody></table>		PTF	DEF		PTF	DEF	Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4	Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5	Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4																				
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5																				
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6																				

IV. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding	☐ 2 Removed from State Court	☐ 3 Remanded from Appellate Court	☐ 4 Reinstated or Reopened	☐ 5 Transferred from another district (specify):	☐ 6 Multi-District Litigation	☐ 7 Appeal to District Judge from Magistrate Judge
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V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT: \$** In excess of \$5 billion.

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

The United States brings this action pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1833a, to recover civil money penalties from defendants for: mail and wire fraud affecting federally insured financial institutions; and financial institution fraud.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce/ICC Rates/etc. ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities /Exchange ☐ 875 Customer Challenge 12 USC 3410 ☒ 890 Other Statutory Actions ☐ 891 Agricultural Act ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Info. Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes	CONTRACT ☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	TORTS PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Fed. Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury-Med Malpractice ☐ 365 Personal Injury-Product Liability ☐ 368 Asbestos Personal Injury Product Liability	TORTS PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability BANKRUPTCY ☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 American with Disabilities - Employment ☐ 446 American with Disabilities - Other ☐ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence Habeas Corpus ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus/Other ☐ 550 Civil Rights ☐ 555 Prison Condition FORFEITURE / PENALTY ☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs ☐ 660 Occupational Safety /Health ☐ 690 Other	LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) (405(g)) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS-Third Party 26 USC 7609
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VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☐ No ☐ Yes

If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number: CV 13-00779

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

☒ Check here if the U.S. government, its agencies or employees is a named plaintiff.

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

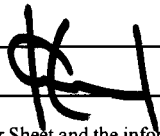
☐ Check here if the U.S. government, its agencies or employees is a named defendant.

Los Angeles County and New York State

List the California County, or State if other than California, in which **EACH claim arose.** (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

Los Angeles County and New York State

X. SIGNATURE OF ATTORNEY (OR PRO PER):  **AUSA Anoiel Khorshid** **Date** February 4, 2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

ATTACHMENT 1

Attorneys for Plaintiff UNITED STATES OF AMERICA

ANDRÉ BIROTTE JR. United States Attorney GEORGE S. CARDONA California Bar No.: 135439 LEON W. WEIDMAN California Bar No.: 104078 ANOIEL KHORSHID California Bar No.: 223912 RICHARD E. ROBINSON California Bar No.: 090840 Assistant United States Attorneys United States Attorney's Office, Central District of California Room 7516 Federal Building 300 North Los Angeles Street Los Angeles, California 90012 Telephone: (213) 894-8323/2404/6086/0713 Facsimile: (213) 894-7819 [Main] Emails: George.S.Cardona@usdoj.gov Lee.Weidman@usdoj.gov Anoiel.Khorshid@usdoj.gov Richard.Robinson@usdoj.gov	STUART DELERY Principal Deputy Assistant Attorney General MAAME EWUSI-MENSAH FRIMPONG California Bar No.: 222986 MICHAEL S. BLUME ARTHUR R. GOLDBERG JAMES T. NELSON SONDRA L. MILLS California Bar No.: 090723 BRADLEY COHEN JENNIE KNEEDLER THOMAS D. ZIMPLEMAN Trial Attorneys, Civil Division United States Department of Justice, Civil Division P.O. Box 261, Ben Franklin Station Washington, D.C. 20044 Telephone: (202) 616-0219/8474 [Main] Facsimile: (202) 514-8742 & (202) 616-8470 Emails: James.Nelson2@usdoj.gov Bradley.Cohen@usdoj.gov Jennie.L.Kneedler@usdoj.gov Sondra.Mills@usdoj.gov Thomas.D.Zimpleman@usdoj.gov
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ATTACHMENT 2

Attorneys for Defendants MCGRAW-HILL COMPANIES, INC., and
STANDARD & POOR'S FINANCIAL SERVICES LLC

Floyd Abrams S. Penny Windle Adam Zurofsky CAHILL GORDON & REINDEL LLP 80 Pine Street New York, NY 10005 Emails: fabrams@cahill.com pwindle@cahill.com azurofsky@cahill.com	Carl H. Loewenson Ronald G. White MORRISON & FOERSTER LLP 1290 Avenue of the Americas New York, NY 10104-0050 Emails: cloewenson@mofo.com rwhite@mofo.com
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