

William J. Harrington



April 8, 2020

VIA ELECTRONIC MAIL

Moody's Investors Service
[Moody's Requests for Comment](#)

United States Securities and Exchange Commission
[Fixed Income Market Structure Advisory Committee](#)

Re: Moody's Request for Comment "*Moody's Approach to Rating TruPS CDOs: Proposed Methodology Update*" March 9, 2020 and William J. Harrington, Harrington Independent Flip Clause Assessments, Submission to US Securities and Exchange Commission Fixed Income Market Structure Advisory Committee of April 8, 2020

Dear All:

The entirety of my response herein is intended to be publicly available on Moodys.com.

Likewise, the entirety of my response herein must be publicly available on the SEC FIMSAC page for Submitted Comments.

<https://www.sec.gov/comments/265-30/265-30.htm>

My name is Bill Harrington. I resigned as a Moody Senior Vice President in July 2010, joined the Experts Board of Wikirating.org in 2015, and affiliated as a senior fellow with the non-profit Croatan Institute in 2017.

<https://www.linkedin.com/in/williamjharrington/>

<https://www.wikirating.org/>

<http://www.croataninstitute.org/william-j-harrington>

The views expressed herein are entirely my own.

I registered “Harrington Independent Flip Clause Assessments” with New York County on November 3, 2014.

(<https://www.sec.gov/comments/265-30/26530-6383231-197808.pdf>)

I submitted a draft petition to the CFTC under §13.1 for a Rule that Bars a Regulated Entity from Agreeing to a Flip Clause or Walk-Away on March 9, 2020.

(<https://comments.cftc.gov/PublicComments/ViewComment.aspx?ID=62380&GUID=dc263b93-03e2-427c-af52-ca449e4f1547>)

I submitted a "Motion to File a Proposed Amicus Curiae Brief with the United States Court of Appeals for the Second Circuit Re: Case No. 18-1079, *Lehman Brothers Special Financing, Inc. against Branch Banking and Trust Company, et al.*" on June 25, 2019.

(<http://croataninstitute.org/images/publications/WJH-Motion-to-File-Amicus-Brief.pdf>)

Following is a link to my "Proposed Amicus Curiae Brief to the US 2nd Circuit Re: Case No. 18-1079 (Lehman vs 250 Financial Entities) - WJH V2.0 - 07-30-19."

(<http://croataninstitute.org/images/publications/20190808-Amicus-Curiae-Brief.pdf>)

My Responsible Investor opinion "Investors who want to fast-track sustainable fixed-income investments should inundate credit rating agencies with methodology critiques" of January 28 urges fixed-income practitioners to respond to NRSRO methodology proposals.

(<https://www.responsible-investor.com/articles/investors-who-want-to-fast-track-sustainable-fixed-income-investments-should-inundate-credit-rating-agencies-with-methodology-critiques>)

I do this work regarding the flip clause because no other former NRSRO analyst, no current NRSRO committees, nor any other person globally assesses the flip clause objectively and publicly.

The delivering email copies Director, SEC Office of Credit Ratings, Ms. Jessica Kane.

(<https://www.sec.gov/page/ocr-section-landing>)

Ms. Kane publicly conceded that the SEC failed its ten-year oversight of NRSROs in remarks to a large industry conference just two short months ago on February 24, 2020.

(<https://www.sec.gov/news/speech/speech-jessica-kane-2020-02-24>)

Moody's is obligated to enforce the Compliance Commitments that it, affiliate Moody's Analytics, and parent Moody's Corporation agreed in the settlement with the US Department of Justice and the attorneys general of 21 state and Washington, DC on January 13, 2017.

(<https://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-nearly-864-million-settlement-moody-s-arising>) Accordingly, I will deliver copies of this letter to the US Department of Justice contacts to whom the Moody's entities report.

US Senator Josh Hawley of Missouri, former Missouri attorney general, is a signatory to the Moody's settlement (<https://www.justice.gov/opa/press-release/file/926551/download>). The delivering email copies Senator Hawley's Chief of Staff.

I briefed my US Congressman Jerry Nadler and his staff on the flip clause in an hour-long, in-person meeting at his Manhattan office on July 7, 2014. The delivering email copies staff of Representative Nadler.

US Senator Elizabeth Warren of Massachusetts often queries the SEC on NRSRO failures. The delivering email copies many of Senator Warren's staff.

Moody's Corporation CEO Ray McDaniel often attests to the value of my critiques of NRSRO ratings and methodologies for all sectors that use derivative contracts and securitizations. (<https://www.businessinsider.com/moodys-analyst-conflicts-corruption-and-greed-2011-8>)

The delivering email also copies my former Moody's colleagues Al Remeza, Leon Mogunov, Steve Lioce, Rodrigo Araya, Peter Hallenback, Edward Manchester, Nicolas Weill, Rudy Bunja, Jerry Gluck, Yuri Yoshizawa, and Abe Putney.

My former Moody's colleagues know that all my critiques of NRSROs, Moody's, securitizations, and derivative contracts are entirely on point.

Also, my former Moody's colleagues know that my flip clause assessments, which are the only objective flip clause assessment worldwide, are entirely on point.

I resigned as a Moody's Senior Vice President in the Flip Clause Derivatives Group in July 2010. Doing objective work on the flip clause at Moody's became impossible, as my former colleagues all continue to demonstrate in their respective flip clause work.

Here we are, in yet another crisis made worse by Moody's having previously inflated most credit ratings, including all credit ratings for any party to a swap with a flip clause. I am doing my part to push Moody's to do better.

(<https://www.federalreserve.gov/monetarypolicy/talf.htm>)

The US CLO sector is a prominent example of issuers that continue to place flip clauses in priorities of payment, as Al Remeza knows all too well. Al co-heads Moody's the team that assigns ratings to new CLOs.

Al confided while I was at Moody's in 2010 that he had huge respect for how I continued to challenge Moody's management but was too scared to do so himself.

Rodrigo Araya observed while I was at Moody's in 2010 that I was the third colleague to ask if he believed that Yuri Yoshizawa had lied under oath to the Senate Permanent Subcommittee on Investigations. Rodrigo offered that he could not challenge Yuri or her testimony because family obligations obliged him to preserve his job.

(<https://www.hsgac.senate.gov/subcommittees/investigations/hearings/wall-street-and-the-financial-crisis-the-role-of-credit-rating-agencies>)

Rodrigo is the author of the Request for Comment "Moody's Approach to Ratings TruPS CDOs: Proposed Methodology Update." I hope that Rodrigo grows a spine. Likewise, Al and my other

Moody's colleagues. I hope that all grow spines and vote to adopt the points that I make herein. After all, how many times do Moody's analysts want to break the US financial system?

Regarding the dubious testimony that Yuri Yoshizawa provided to the Senate Permanent Subcommittee on Investigations in 2010, Al Remeza expressed anger that Yuri had exposed us all to possible investigation by law enforcement. I look forward to the day when law enforcement asks me about the flip clause.

Regarding Moody's global methodology for flip clauses, which Edward Manchester, Nicolas Weill, and I collaborated closely on, Nicolas conveyed while I was at Moody's in 2010 that he was extremely frustrated with Yuri for having dismissed the significance of the Judge Peck decision of January 25, 2010.

Regarding CDOs, AIG, and the flip clause, Peter Hallenback and I scrutinized AIG proposals to transfer 50-odd flip clause swaps to other swap dealers in 2009-2010.

Regarding my work on the AIG proposals, Rudy Bunja can attest that he was obligated to replicate my work in 2009 after senior Moody's management unsuccessfully tried to reverse committee decisions that I had led.

Regarding the complete failure of the flip clause, you may review rating actions for which Steve Lioce or Rodrigo Araya was lead analyst.

Regarding the origin of the flip clause, please ask Jerry Gluck. He joined Moody's Flip Clause Derivatives Group in 1996. The flip clause was standard in CDO priorities of payment when I began to assess it upon joining Moody's in June 1999.

As an overarching improvement to the proposal:

The Moody's methodology for TruPS CDOs must state that a TruPS CDO that makes provision to enter into a swap contract agrees to exchange full variation margin on a daily basis with a swap provider in accordance with the US swap margin rules.

Further:

No CDO, including but not limited to a TruPS CDO or a CLO, nor any other US ABS, structure note, or re-packaged security may have a flip clause in the priorities of payment.

The proposal mentions "swap" in four places but never mentions the US swap margin rules. Does Moody's not know about the US swap margin rules?

For help on the US swap margin rules, please see my *Debtwire ABS* article "Existing ABS swaps also caught in swap margin net."

<https://www.debtwire.com/info/existing-abs-swaps-also-caught-swap-margin-net-%E2%80%94-analysis>

Moody's must end the practice of deploying all manner of nebulous "assessments," such as the "counterparty risk assessment" that masks the flip clause, to inflate credit ratings.

<https://www.debtwire.com/info/moody%E2%80%99s-bets-germany-will-support-deutsche-bank-derivatives-above-all-else-%E2%80%94-analysis.>)

Respectfully,

/s/William J. Harrington

William J. Harrington

US Citizen

Harrington Independent Flip Clause Assessments

CC: Jessica Kane, Director of Office of Credit Ratings, US Securities and Exchange Commission

United State Attorney for the District of New Jersey, United States Attorney's Office for the District of New Jersey,
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Kyle Plotkin, Chief of Staff for US Senator Joshua D. Hawley

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