

**From: Bill Harrington** [mailto:wjharrington@yahoo.com]

**Sent: Saturday, May 31, 2014 04:30 PM**

**To: Haldane, Andy**

Cc: Bill Harrington <[wjharrington@yahoo.com](mailto:wjharrington@yahoo.com)>

Subject: Improving Securitisation Quality - WJH Comment Letter to U.S. SEC on ABS Ratings

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This email has reached the Bank via the Internet or an external network

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**Mr. Haldane:**

We are LinkedIn connections. Attached is my May 29 comment letter to the U.S. Securities and Exchange Commission that proposes derivative disclosures with respect to securitisations.

[\[https://www.sec.gov/comments/s7-18-11/s71811-84.pdf\]](https://www.sec.gov/comments/s7-18-11/s71811-84.pdf).

I was an SVP for Derivatives at Moody's Investors Services from 1999 to 2010 and co-developed Moody's protocol for assessing derivative contracts across all securitisation sectors worldwide. Other rating agencies such as S&P and Fitch Ratings use identical protocols; all are severely deficient.

Moreover, the deficiencies exist within the derivative contracts themselves, not simply within rating agency models. As noted on p. 11 of my comment letter: "ABS issuers that have entered into derivative contracts cannot repay ABS with likelihoods that come close to matching their ratings."

The fatal flaw in the swap contracts most commonly used by ABS issuers is a "flip clause." Flip clause risk should be a major concern of the Bank of England, for instance with respect to the bad bank portfolios of swap providers such as RBS and Barclays.

Please see "Flip side of a flip clause: A derivative provider's rating should be debited twice," p.3 of my comment letter.

I'd be happy to brief your colleagues and you on derivative risk with respect to securitisations and counterparties. I have already briefed most U.S. regulators, as well as U.K. House of Commons Treasury Select Committee and the ESMA.

I may be in London the week of June 9.

Best regards,

Bill Harrington  
917-680-1465

**From:** Haldane, Andy [REDACTED]

**To:** "wjharrington@yahoo.com" <wjharrington@yahoo.com>

**Cc:** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Sent:** Sunday, June 1, 2014 at 05:28:35 AM EDT

**Subject:** Re: Improving Securitisation Quality - WJH Comment Letter to U.S. SEC on ABS Ratings

Thanks Bill. I am copying in colleagues here at the Bank leading on this work, Sarah and Niki, who I am sure will be interested in your thoughts.

Best  
Andy

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**From: Bill Harrington** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Sent: Monday, June 23, 2014 at 10:46:41 PM EDT**

**Subject:** Re: Improving Securitisation Quality - WJH Comment Letter to U.S. SEC on ABS Ratings

All:

An update on my work in drawing attention to undercapitalized and overrated ABS.

Next week, I speak with staff of at least one SEC commissioner to outline main points of my May 29, 2014, comment letter; i.e. ABS with embedded derivative risk is misrated and the misrating is abetted by SEC policy. Previously, I have spoken with SEC staff, but not staff of individual commissioners.

Should the SEC reverse course and examine ABS deficiencies in resources and ratings, scrutiny will turn to the same risks in European ABS.

Please keep in mind the Eurosail transactions, other European ABS with Lehman as a counterparty that suffered losses, and my critiques of ABS when defining "safe, plain-vanilla, transparent" ABS.

For a start, ABS with a cross-currency swaps, e.g. Euro-dominated SME ABS denominated in sterling tranches, are neither "safe," nor "plain vanilla," nor "transparent."

Building on that start, ABS ratings are not reliable.

Best,

Bill Harrington

From: Bill Harrington [REDACTED]

Sent: Sunday, March 8, 2015 at 12:49:59 PM EDT

Subject: Meet with Bill Harrington Week of 16/March?

**Dear Mr. Haldane, Ms. Breedon, and Ms. Anderson:**

I have corresponded with you previously regarding nonclearable swap contracts with flip clauses and no margin posting. These swap contracts underpin, and dangerously distort, decision making in most ABS sectors worldwide. The implications for investors, clearing houses, and policy makers are both serious and not well understood or publicized.

I would like to discuss my insights in person during my upcoming visit to London (Monday, 16/March through Thursday, 19/March). If you are not available, please suggest others whom I may contact directly. Alternatively, please advise that I should use the "Contact Us" feature of the BoE website.

My CV lists my 15 years of work with respect to nonclearable swap contracts with flip clauses and no margin posting, as well as most other derivative contracts commonly used within and outside of the ABS sector.

In particular, please note the first article under 'Publications,' p.7. [[Efficient, commonsense actions to foster accurate credit ratings | Capital Markets Law Journal | Oxford Academic \(oup.com\) / https://academic.oup.com/cmlj/article-abstract/11/1/38/2366006?redirectedFrom=fulltext](https://academic.oup.com/cmlj/article-abstract/11/1/38/2366006?redirectedFrom=fulltext)] This article builds on, and encapsulates, much of my work; I believe that this article will become a standard reference on the deficient legal and risk analyses of flip clauses.

I'll send the article to you as soon as it has been accepted for publication; it has already been accepted for presentation in the module on International Political Economy at the annual conference of the American Political Science Association this September in San Francisco.

Best regards,

Bill Harrington

**From:** Parent, Allison [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Sent:** Friday, March 13, 2015 at 12:03:05 PM EDT  
**Subject:** RE: Non-Clearable Swap Contracts with Flip Clauses and No Margin Posting

Afternoon Bill,

Thank you for your offer to meet next week. Does next Wednesday, 18th at 4pm still work for you?

Prior to joining the Bank, I worked in the US Congress as General Counsel of Senate Budget Committee focusing on both fiscal and financial services issues. I am familiar with the OTCDs reform having negotiated the text of Title VII of DFA and working with CFTC in the development of their rules. Glad to hear you will be participating at their upcoming roundtable and will be able to share your points with them directly at the event.

The Bank looks forward to learning more about the issues you reference below. Please send along your paper in advance for us to review to help facilitate the dialogue and to share with others who regrettably will be out of the office next week.

I am cc'ing our PA, Alex Ellis, who will be able to help manage security details going forward.

I look forward to seeing you next week.

Kind regards,

Allison

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From: Bill Harrington <wjharrington@yahoo.com>

To: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sent: Friday, March 13, 2015 at 12:17:13 PM EDT

Subject: Re: Non-Clearable Swap Contracts with Flip Clauses and No Margin Posting

Hi Allison:

Yes, next Wednesday, 18/March at 4:00PM works well.

Attached please find "Efficient, commonsense steps to foster rating accuracy" by Norbert J. Gaillard and me. Please advise that you are able to access the document.

[[Efficient, commonsense actions to foster accurate credit ratings | Capital Markets Law Journal | Oxford Academic \(oup.com\) / https://academic.oup.com/cmlj/article-abstract/11/1/38/2366006?redirectedFrom=fulltext](https://academic.oup.com/cmlj/article-abstract/11/1/38/2366006?redirectedFrom=fulltext)]

Best regards,

Bill Harrington

**From: Bill Harrington <wjharrington@yahoo.com>**

**To:** [REDACTED]

[REDACTED]

**Sent: Tuesday, March 24, 2015 at 02:27:42 PM EDT**

**Subject: Re: Non-Clearable Swap Contracts with Flip Clauses and No Margin Posting**

Dear Allison and Michalis:

Thank you for having met with me on Wednesday, 18/March. Our meeting was very useful in helping me understand the views of the Bank of England with respect to securitizations and in preparing my upcoming discussions with the US CFTC, SEC, and Federal Reserve, as well as with the Bank of International Settlements.

As I mentioned, the deficiencies with respect to the structuring of most securitizations are numerous, with the flip clause being among the most problematic and emblematic. Removing flip clauses from the priority of payments of "high-quality" securitizations will obligate the securitization industry to build more robust structures, but is only a first step. I will prod the BIS to organize a discussion on flip clauses so that their role as fig leaf that masks double-counting under derivative contracts (and very dubious legal analysis) will be better understood.

The article "Efficient, commonsense steps to foster rating accuracy," which I shared with you, will be published this year in the Capital Markets Law Journal. As the article lays out and as we discussed, the deficiencies in securitizations and rating practices go hand-in-hand, Fixing one entails fixing both.

Best regards,

Bill Harrington

From: Parent, Allison [REDACTED]  
To: "wjharrington@yahoo.com" <wjharrington@yahoo.com>  
Cc: [REDACTED]

[REDACTED]

Sent: Tuesday, March 24, 2015 at 03:23:18 PM EDT  
Subject: RE: Non-Clearable Swap Contracts with Flip Clauses and No Margin Posting

Hi Bill,

Thank you very much for taking the time to meet with us last week. We appreciate you raising this issue and others for further consideration. We have shared with others your concerns as referenced below and your paper.

Please keep in touch.

Kind regards,

Allison

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**From: Bill Harrington [mailto:wjharrington@yahoo.com]**

**Sent: Tuesday, May 12, 2015 11:37 PM**

**To: Parent, Allison**

**Cc: Haldane, Andy; Breeden, Sarah; Anderson, Nicola; Marzano, Michele; Hume, Michael**

**Subject: Re: Non-Clearable Swap Contracts with Flip Clauses and No Margin Posting**

Hi Allison:

Attached please find the presentation that I gave today to the teams from the CFTC, FCA, FDIC, FHFA, FRB, and OCC with respect to margin posting by ABS issuers, flip clauses, and clearinghouses. This presentation will be posted on CFTC.gov tomorrow.

[\[External Meetings: Conference Call with Mr. William Harrington and Mr. Rick Michalek | CFTC and dftsubmission\\_051215\\_2376\\_0.pdf \(cftc.gov\)\]](#)

**A point that came up in the call is the UK referendum on remaining in the EU. This uncertainty argues that there is no reason to be harmonizing EU and US financial regulations until after the UK status is settled.**

Best,

Bill Harrington





Also, regarding deficient credit ratings, please convey to your CFTC counterparts who are completing the UK Comparability Determination that the Dodd-Frank Act prevents them from relying on, or citing, credit ratings. The CFTC mistakenly cited the credit ratings of securitizations posted as margin in the comparability determinations for Japan and Australia. The CFTC Office of Inspector General is copied here.)

As an update, I affiliated as a senior fellow with Croatan Institute in November 2017. The Institute, which actively assesses climate sustainability and finance, posted my Working Paper "Can Green Bonds Flourish in a Complex-Finance Brownfield?" in July 2018.

<https://croataninstitute.org/2018/07/01/can-green-bonds-flourish-in-a-complex-finance-brownfield/>] The Working Paper proposes a financial sustainability score to measure the impact of a financial instrument on the sustainability of the financial system. Unsurprisingly, flip clause swap contracts, including ones in prominent EU "green" RMBS deals, score among the worst with respect to both a given deal and the swap dealer that assumes walk-away risk to its own credit profile.

Following is a link to the comment "*Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (In the Event of No-Deal Brexit)*" that I submitted to the CFTC on May 31, 2019. <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2960>. Many CFTC staff and commissioners are copied here.

The comment take-away: "***The CFTC must amend the CFTC No-Deal Brexit Rule to exclude a swap contract with a flip clause, other walkaway provision, or rating agency condition/confirmation (RAC) that is transferred to an affiliate, branch, or other entity domiciled in the US.***"

My comment provides an overview of Croatan Institute, a description of my advocacy to eliminate the flip clause swap contract from the US financial system, and links to 37 of my submissions and articles. Following are three entries that pertain to our dialogue.

**Entry #2, page 4.** "*Preserve Rigorous Policy with Respect to the ABS Sector in Making Comparability Determinations for the UK at the CFTC Open Commission Meeting of March 25, 2019,*" March 22, 2019. The entry cites my 2015 meeting and subsequent dialogue with your former Bank of England colleague, and now Executive Direct of the Global Financial Markets Association, Ms. Allison Parent. Ms. Parent is copied here.

**Entry #6, page 7.** "*Can Green Bonds Flourish in a Complex Finance Brownfield?*" July 2018.

**Entry #8, pages 8-9.** "*William J. Harrington CFTC MRAC and Topic Submission,*" March 28, 2018.

Best regards,

Bill Harrington  
917-680-1465

