UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10599 / December 21, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 84923 / December 21, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33339 / December 21, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-16349

In the Matter of **BARBARA DUKA** **Respondent.**	**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND- DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15E(d) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest to enter this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15E(d) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") as to Barbara Duka ("Duka" or "Respondent"). After an initial decision had issued in this matter, the Commission remanded the case to Chief Judge Murray for reassignment to a new ALJ pursuant to the United States Supreme Court's decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018).

II.

On January 21, 2015, the Commission instituted public administrative proceedings pursuant to Section 8A of the Securities Act, Sections 15E(d) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act against Barbara Duka (Securities Act Rel. No. 9706, Exchange Act Rel. No. 74105, and Investment Company Act Rel. No. 31425).

Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings Pursuant to Section 8A of the Securities Act, Sections 15E(d) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act ("Order"), as set forth below.

Respondent and the Division recognize that, according to *Lucia*, 138 S. Ct. 2044, Respondent is entitled to a "new hearing" before "another ALJ (or the Commission itself)." 138 S. Ct. at 2055. Respondent knowingly and voluntarily waives any claim or entitlement to such a new hearing before another ALJ or the Commission itself. Respondent also knowingly and voluntarily waives any and all challenges to the administrative proceedings or any and all orders that were issued during or at the conclusion of those proceedings, whether before the ALJ, the Commission, or any court, based upon any alleged or actual defect in the appointment of ALJ James E. Grimes.

III.

On the basis of this Order and the Respondent's Offer, the Commission finds[1] that:

A. Summary

1. Barbara Duka, age 51, is a resident of New York City, New York. During 2009 through 2011, Duka was managing director at Standard & Poor's Ratings Services with responsibility for new issue ratings of Commercial Mortgage Backed Securities ("CMBS") and, after approximately early January 2011, surveillance ratings of CMBS.

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

Duka's Violation of Securities Act Section 17(a)(3)

3. These proceedings involve a practice or course of business that led to false and misleading statements by S&P concerning its post-financial crisis methodology for rating

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

conduit/fusion CMBS[2] and, specifically, the methodology by which S&P calculated the Debt Service Coverage Ratio ("DSCR"), a key quantitative metric used to rate CMBS transactions.

4. S&P used DSCRs to predict defaults of loans in CMBS pools and thereby determine appropriate levels of Credit Enhancement ("CE") for particular ratings. CE is a component of a credit rating; in general terms, ratings with higher levels of CE are more conservative and provide greater protection against loss to investors.

5. Rating agencies' consistency and transparency are important to investors, including in the CMBS market. Without consistent application of rating methodology, ratings are not comparable for various CMBS transactions. Similarly, without transparency, investors can neither assess the methodology employed by the rating agency nor the application of that methodology, and thus cannot determine what weight to accord the rating. S&P's Code of Conduct reflected these priorities by requiring that S&P employees publish sufficient information about S&P's procedures and assumptions so that investors could understand how S&P arrived at its ratings.

6. Duka led and was responsible for the actions of the analytical group within S&P that analyzed and assigned ratings to newly issued CMBS transactions, and beginning in 2011, that assigned surveillance ratings to existing CMBS bonds (the "CMBS Group").

7. In or about late 2010, S&P's CMBS Group changed the methodology for calculating the Debt Service Coverage Ratio ("DSCR") for conduit/fusion CMBS.

8. S&P's CMBS Group, acting through and led by Duka, thereafter published eight CMBS presale reports[3] between February and July 2011 in which S&P did not disclose the changed methodology for calculating DSCRs when rating the transactions. For seven of the eight transactions, the change in methodology resulted in CE levels that were between 437 and 750 basis points lower than the CE levels that would have resulted under the disclosed methodology – a reduction of between 25% and 55%. In other words, these transactions would have received lower ratings under the methodology that S&P used prior to the change in methodology implemented by the CMBS Group in late 2010.

9. Given the correlation between the methodology used to calculate DSCRs and ultimate ratings, a reasonable investor would view it as important that the undisclosed change in methodology would potentially have yielded different ratings.

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[2] A conduit/fusion CMBS is a group of bonds, payment of which is backed by a pool of loans secured by commercial real estate. The bonds at the top of the capital structure receive priority in payment of principal and interest, while the bonds at the bottom experience losses first when obligators default on the underlying loans. Because of these differences, the bonds at the bottom of the capital structure receive the highest rate of return, while the bonds at the top receive the lowest rate of return.

[3] The presale report is a public document listing the preliminary ratings for the securities being offered in the transaction and describing the rationale for the ratings.

10. Duka failed to exercise reasonable care to ensure that the changed methodology for calculating DSCRs was adequately disclosed to the investing public. Specifically, after the CMBS Group changed the methodology it used to calculate DSCRs in late 2010, Duka never told any of her subordinates to include that information in the presales and never confirmed that any adequate disclosure was included.

11. Thus, in failing to ensure that the changed methodology was disclosed to CMBS investors in the eight S&P presale reports, after she had accepted the responsibility to ensure that disclosure, Duka failed to act with reasonable care and was thus negligent in failing to disclose the changed methodology.

12. Duka's negligence caused investors to receive misleading information and prevented them from learning material information.

13. Because Duka's negligence extended to eight S&P presale reports that omitted material information, her actions amounted to a practice or course of business which operated as a fraud or deceit upon a purchaser.

14. As a result of the conduct described above, Duka negligently violated Section 17(a)(3) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities.

Duka Caused S&P's Violation of Exchange Act Section 15E(c)(3)(A)

15. In 2010, Congress added a new subsection (c)(3) to Exchange Act Section 15E. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 932(a)(2)(B), 124 Stat. 1376, 1873. Subsection (c)(3)(A) provides that:

> Each nationally recognized statistical rating organization shall establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe, by rule.

15 U.S.C. § 78*o*-7(c)(3)(A). This requirement was "self-executing" and effective the day after the Dodd-Frank Act was enacted. Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 72936, 2014 WL 4538057, at *30 (Aug. 27, 2014); *see* Dodd-Frank Act, Pub. L. 111-203, § 4, 124 Stat. 1390.

16. S&P maintained a system of internal controls, which included S&P's Code of Conduct. Among other things, the Code of Conduct provided that "[w]here Ratings Services assigns an initial rating to a structured finance product, it shall provide investors and/or

subscribers (depending on Ratings Services business model) with a brief statement of its analytic rationale."

17. S&P failed to accurately provide "its analytic rationale," briefly or otherwise—because its presales did not disclose the changed methodology for calculating DSCRs discussed above.

18. All eight of the CMBS presales S&P published from February to July 2011 failed to disclose the changed methodology for calculating DSCRs and thus failed to comply with the analytic rationale requirement in the code of conduct. These repeated failures demonstrate that S&P failed to maintain and enforce an effective internal control structure and constitute a violation of Exchange Act Section 15E(c)(3)(A).

19. Duka's negligent failure to ensure that the presales disclosed the change in methodology for calculating DSCRs was a cause of S&P's violation

20. As a result of the conduct described above, Duka therefore caused S&P's violation of Section 15E(c)(3) of the Securities Exchange Act of 1934.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Duka's Offer.

Accordingly, it is hereby ORDERED that**:**

A. Pursuant to Section 8A of the Securities Act, Sections 15E(d) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act, Respondent Duka cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 15E(c)(3) of the Exchange Act.

B. Respondent Duka shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $7,500 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

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

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

Payments by check or money order must be accompanied by a cover letter identifying Barbara Duka as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gregory Kasper, Regional Trial Counsel, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294.

Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, she shall not argue that she is entitled to, nor shall she benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that she shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary