

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9706 / January 21, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 74105 / January 21, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31425 / January 21, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16349

In the Matter of

BARBARA DUKA,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
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 that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 15E(d) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 9(b) of the Investment Company Act (“Investment Company Act”) against Barbara Duka (“Respondent” or “Duka”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Barbara Duka, age 49, 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.

B. OTHER RELEVANT ENTITY

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.

C. SUMMARY

3. These proceedings involve a scheme and fraudulent practice or course of business that led to false and misleading statements by S&P concerning its post-financial crisis methodology for rating conduit/fusion CMBS. The disclosures at issue concern S&P’s calculation of 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 critical 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. Duka led and was responsible for the actions of the analytical group within S&P that analyzed and assigned ratings to new issue CMBS transactions, and (after approximately early January 2011) that assigned surveillance ratings to outstanding CMBS bonds (the “CMBS Group”). In late 2010, S&P’s CMBS Group, acting through and led by Duka, loosened its methodology for calculating DSCRs, resulting in CE requirements that were approximately 25% to 60% lower for bonds at each different level of the capital structure. This change to S&P’s methodology was designed to make S&P’s ratings more attractive to fee-paying CMBS issuers. Duka ordered the change because she perceived that S&P’s criteria were too conservative and were causing S&P to lose rating assignments, thereby threatening both the profitability of the CMBS Group she led and her position within the firm.

6. S&P’s CMBS Group, acting through and led by Duka, published eight CMBS Presale reports between February and July 2011 in which S&P failed to disclose its relaxed methodology for calculating DSCRs. The reports instead represented that S&P used a more conservative methodology for calculating DSCRs when rating the transactions. Market participants were therefore misled into believing that the ratings at issue were more conservative than they actually were.

7. S&P and Duka acted with scienter in connection with the false and misleading CMBS Presales, in that Duka and the CMBS Group knew that the Presales contained inaccurate data and intentionally or recklessly caused such inaccurate data to be published, and for other reasons discussed below.

8. S&P failed to follow its own established internal policies and procedures when the CMBS Group changed its method for calculating DSCRs and in connection with ratings that the CMBS Group assigned by using the undisclosed new methodology. Duka caused and aided and abetted such failures, among other things, by causing the CMBS Group to prepare internal documents that failed to describe the new methodology, contrary to the policies that governed such documents, and by changing the numerical model for CMBS ratings without adequately communicating those changes to the responsible persons within S&P's internal control structure.

D. S&P's CMBS RATINGS

9. Rating agencies' consistency and transparency are important to investors, including in the CMBS market. Without consistent application of rating methodology, ratings are not comparable from deal to deal. 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 S&P employees to consistently apply established criteria, avoid being influenced by non-criteria factors, such as business relationships with the issuers, and publish sufficient information about S&P's procedures and assumptions so that users of credit ratings could understand how S&P arrived at its ratings.

10. 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 obligors 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. The bonds at the bottom of the structure thus provide a cushion against loss to the bonds at the top of the structure. This cushion is a key aspect of the CE applicable to each bond in a CMBS transaction.

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

12. The CMBS Group led by Duka competed for and sometimes obtained CMBS rating assignments in 2010 and 2011. After being hired to rate a transaction, the CMBS Group spent approximately two months analyzing the loans and properties. The CMBS Group then gave final feedback to the issuer concerning recommended ratings for levels of the capital structure proposed by the issuer. The feedback included summary data concerning DSCRs and other key metrics.

13. After receiving final feedback, the issuer announced the transaction to the public. Shortly after the announcements, the CMBS Group publicly disseminated a Presale report setting

forth S&P's preliminary recommended ratings and the detailed rationale for the ratings. Although these ratings were designated as preliminary, they were issued in the offer and sale and in connection with the purchase and sale of the CMBS bonds because issuers and investors used the Presales as part of the total mix of information available to analyze the transactions. Final ratings were not issued until after the closing of the transactions. Investors typically had approximately one week after the announcement of the proposed transaction to make their investment decisions.

14. Duka, as managing director of the CMBS Group, oversaw the entire process whereby the CMBS Group analyzed CMBS transactions, submitted feedback to issuers, made ratings determinations, prepared models and internal documents pertaining to such ratings, published reports and commentaries announcing ratings or other actions taken by the CMBS Group, and, in conjunction with S&P's criteria organization, decided and published matters regarding the criteria that S&P used to rate CMBS. As an experienced employee of S&P, Duka was thoroughly familiar with S&P's internal policies and procedures governing CMBS ratings, and in particular the requirement that the CMBS Group comply with published criteria when assigning ratings to transactions.

E. S&P'S ESTABLISHED METHODOLOGY FOR RATING CMBS USING PUBLISHED CRITERIA CONSTANTS TO CALCULATE DEBT SERVICE COVERAGE RATIOS

15. On or about June 26, 2009, S&P published "U.S. CMBS Rating Methodology And Assumptions For Conduit/Fusion Pools" ("the Criteria Article"). The Criteria Article was intended to inform market participants, including investors, how S&P determined its ratings. Specifically, the Criteria Article explained how S&P calculated net cash flow, used DSCRs to estimate losses on loans in CMBS pools, and used those loss estimates to calculate the CE necessary for the various rating levels.

16. The DSCR is the annual net cash flow produced by an income-generating property, divided by the annual debt service payment required under the mortgage loans. DSCRs are usually expressed as a multiple, for example, 1.2x. DSCRs give a measure of a property's ability to cover debt service payments. Put another way, DSCRs show the cushion that is available to absorb a decline in net cash flow generated by a property during the term of the mortgage loan.

17. The CMBS Group calculated the denominator in the DSCR (the debt service) by multiplying the original principal amount of the loan by a "loan constant" reflecting an interest rate and an amortization schedule.

18. The Criteria Article's methodology is based on an "archetypical pool" of commercial real estate loans. The "archetypical pool" is described in a table identified as Table 1. Table 1 included loan constants by property type – Retail 8.25%, Office 8.25%, Multifamily 7.75%, Lodging 10.00% and Industrial 8.50%. The Criteria Article did not clearly state how S&P used the loan constants in Table 1 (the "criteria constants") in its analysis for CMBS ratings.

19. After publication of the Criteria Article, extensive internal discussions ensued concerning the loan constants that S&P would use to calculate debt service. Some personnel took

the position that S&P should use the published criteria constants while others argued that S&P should use “actual constants” derived from the terms of the loans. On or about July 31, 2009, senior S&P management affirmed that the firm would use the criteria constants to calculate DSCRs. On or about March 10, 2010, the CMBS criteria committee further decided that S&P would use the actual constants if higher than the criteria constants to determine debt service payments. Duka was the lead CMBS Group member on the CMBS criteria committee and signed the written decision of the CMBS criteria committee. The March decision was a minor change to the prior practice because actual loan constants were rarely higher than the criteria constants. The CMBS Group, with Duka’s knowledge and acquiescence, incorporated the methodology that resulted from these decisions into the model that it used to analyze CMBS transactions.

20. On or about June 22, 2010, S&P published a commentary on a CMBS transaction called JPMCC 2010-C1. S&P did not rate the transaction. The Commentary was prepared under Duka’s guidance, identified Duka as the Analytical Manager for U.S. CMBS New Issuance, and listed persons supervised by Duka as Primary Credit Analysts. In the commentary, S&P included DSCRs based on actual loan constants, but then stated that the firm “typically evaluates a transaction’s loan default probability using a stressed DSC based on . . . a stressed loan constant. For JPMCC 2010-C1, the pool’s weighted average stressed debt constant would equal approximately 8.33%, based primarily on the retail and office exposure, for which our constant is 8.25%.” S&P closed the commentary with a direct comparison of the JPMCC 2010-C1 pool to the archetypical pool. In that comparison S&P stated that the pool’s DSCR was based upon “stressed constants.” Through these statements, S&P informed the public that it used the criteria constants to calculate DSCRs in its analysis of CMBS transactions.

21. On or about September 24, 2010, S&P published a Presale for a CMBS transaction called JPMCC 2010-C2. Duka supervised the preparation and publication of the Presale. The Presale set forth preliminary ratings for the transaction and detailed S&P’s analysis that led to its ratings. It began with a summary overview that highlighted the pool-wide DSCR, and the subsequent analysis contained approximately 45 DSCR representations. In addition to the pool-wide DSCR, the Presale presented DSCRs for stratified portions of the pool and for individual loans. In each case, the DSCR was calculated based upon the criteria constants.

22. As a result of its internal actions described above, including decisions and model implementation, the published commentary on JPMCC 2010-C1, and the published Presale for JPMCC 2010-C2, S&P established that it based its calculation of DSCRs on the criteria constants. Duka, by virtue of her active participation in the relevant decisions and ratings activity, was fully aware of this fact.

F. DUKA’S DECISION TO RELAX S&P’S METHODOLOGY IN ORDER TO ATTRACT MORE BUSINESS

23. Prior to the financial crisis, S&P held a dominant share of the market for rating CMBS. The financial crisis essentially halted the new issuance CMBS market. When issuers started marketing CMBS transactions again in 2010, S&P’s market share did not rebound to its pre-crisis level. Instead, S&P was losing market share to other NRSROs, a fact that members of the CMBS Group believed was caused by the conservatism of the firm’s criteria.

24. Duka was aware of and concerned about S&P's low market share and blamed it in part on her perception that S&P's CMBS criteria were producing CE levels that were too high for S&P to get rating assignments from CMBS issuers. In an email dated October 11, 2010, Duka wrote that "we looked at and lost [a CMBS new issue] because our feedback was much more conservative than the other rating agencies." In an email dated November 11, 2010, Duka wrote that S&P's "more conservative criteria . . . could impact the business" and were among the "key challenges" facing the CMBS Group. In a December 2010 activity report to S&P management, Duka noted that S&P had lost a different CMBS new issue assignment due to criteria and again noted that "our criteria has historically been somewhat more conservative than the other agencies."

25. Duka's concerns about S&P's conservative criteria culminated in mid-December 2010. At the time, S&P's Model Quality Review group ("MQR") had just produced a draft report concerning the CMBS model. The purpose of the MQR review was to determine whether the model was an appropriate computer implementation of the S&P criteria. The model MQR reviewed used the methodology based on the criteria constants, as determined by the CMBS criteria committee.

26. Duka and several other persons within the CMBS Group circulated emails within the Group concerning how to respond to the draft report. They asserted that they were basing their DSCRs on the criteria constants, which had been "vetted in a criteria committee." Nevertheless, Duka wrote that a member of the CMBS Group was "starting to convince me that we should rethink this, as it doe[s] not have the intended result."

27. At that time, S&P had an internal procedure, called the Criteria Process Guidelines, that was specifically designed to respond to situations where analytical practice groups perceived weaknesses in S&P's criteria. The Guidelines created a five-step process of initiation, research, approval, dissemination, and review so that such issues could be resolved in a rigorous and well-documented fashion. The Guidelines were a key part of S&P's internal controls because they were intended to ensure that criteria were developed with the active input and approval of independent criteria experts, and not solely by practice groups such as the CMBS Group, which were viewed as susceptible to commercial influence.

28. Rather than seeking a rigorous and comprehensive review through the criteria process as to why S&P's CMBS criteria were too conservative, Duka and her CMBS Group devised a scheme to rapidly and materially decrease CE levels with a simple change to their numerical model. In or around mid-December 2010, the CMBS Group materially changed their methodology. While the model previously calculated the DSCR for each loan by using the higher of the actual loan constant or the criteria constant, the new model calculated the DSCR for each loan by using the higher of the actual loan constant or the *average* of the actual loan constant and the criteria constant.

29. Personnel within S&P described the average constants as "blended constants." Blended constants were in all cases *lower* than the criteria constants. The use of blended constants resulted in lower annual debt service calculations and, therefore, higher DSCRs, which led the model to estimate fewer anticipated defaults as well as lower losses from defaults. This resulted in CE requirements that were approximately 25% to 60% lower than they would have been had the

CMBS Group used the criteria constants to compute DSCRs. As a result, the CMBS Group had a ratings methodology that would produce more attractive CE levels to fee-paying issuers.

30. Duka failed to adequately follow the Criteria Process Guidelines. Instead, Duka's effort to apply the criteria process was at best minimal and informal, and violated the standard of care applicable to a person in Duka's position. At S&P's holiday party, she and one or two other members of the CMBS Group approached the new CMBS criteria officer, who had just joined S&P earlier on the same day, and pushed him to agree to use blended constants. When he demurred, Duka approached the chief of S&P's structured finance criteria organization with the same request early the next morning. After a brief meeting, Duka unilaterally concluded that she had obtained his approval for use of the blended constants, but she made no record of the meeting or this decision. Moreover, approval from the structured finance criteria chief, even if given, would not have satisfied the requirements of the Criteria Process Guidelines. A reasonable person in Duka's position would have documented her actions concerning the change in methodology and would have made a reasonable effort to follow S&P's policies and procedures concerning criteria changes.

31. The structured finance criteria chief denies that he gave any approval to Duka for the CMBS Group to broadly use blended constants. He and Duka, however, both agree that he instructed Duka to document the methodology that the CMBS Group used for calculating DSCRs, and any changes to that methodology, in public and internal documents, including Presales and RAMPs discussed below. Duka has admitted receiving that instruction from the structure finance criteria chief.

G. DUKA'S FALSE AND MISLEADING STATEMENTS TO INVESTORS, AND INTERNALLY, CONCERNING RATINGS USING THE RELAXED DSCR METHODOLOGY

32. During the first half of 2011, the CMBS Group experienced a surge in ratings engagements. S&P used its blended constant methodology to rate the following six conduit/fusion CMBS transactions: MSC 2011-C1, FREMF 2011-K701, JPMCC 2011-C3, FREMF 2011-K11, FREMF 2011-K13 and JPMCC 2011-C4. Issuers paid S&P approximately \$7 million to rate these six transactions.

33. For each transaction, the CMBS Group published a Presale. Each Presale set forth the recommended S&P ratings for the various bonds in the CMBS capital structure, which were based on the CE that the structure provided to each level. The text of the Presale then began with a paragraph entitled "Rationale," which was in essence an executive summary of the document. The Rationales for each of the six rated transactions explicitly stated S&P's DSCR for the pool based on the criteria constants, implying that those DSCRs formed the analytical basis for the assigned ratings. The Rationale did not disclose that S&P in fact had based its recommended CE on a far less conservative analysis that was based on blended constants.

34. The placement of the DSCRs and constants in this executive summary reflects the importance of DSCRs in the analysis of CMBS bonds. But the deceptive nature of the Presales did not stop there. The Presales continued with over 40 more representations of DSCRs calculated

using the criteria constants. These representations included DSCRs for the entire pool, stratified portions of the pool, and individual loans. Some Presales also included DSCRs calculated from actual loan constants, but none of the Presales included any DSCRs calculated from the blended constants that S&P actually used to rate the transactions.

35. Had S&P actually used the DSCRs derived from the criteria constants, as set forth in the Presales, it would have required materially higher amounts of CE in the six rated transactions. For the AAA bonds, which were by far the largest part of the transactions, CE was lowered between approximately 500 and 750 basis points by using DSCRs derived from blended constants. For the BBB bonds, CE was lowered by approximately 250 to 300 basis points by using DSCRs derived from the blended constants.

36. The inclusion of data in the Presales based on criteria constants did not result from error, mistake, or negligence. Since the CMBS Group did not use the data that it published in the Presales, the CMBS Group had no analytical reason to calculate it. In order to calculate such data, the CMBS Group needed to enter the models, know where the blended loan constants appeared in the formulas, change those formulas to reflect the criteria constants, re-run the models with the criteria constants, and copy the resulting data into the Presales. These acts were all done intentionally.

37. Before publishing the Presales, Duka engaged in a conversation with her chief subordinate concerning whether to disclose anything about the relaxed criteria in the Presales. They decided to add the following sentence to a section in the middle of each Presale that described the conduit/fusion methodology: “[i]n determining a loan’s DSCR, Standard & Poor’s will consider both the loan’s actual debt constant and a stressed constant based on property type as further detailed in our conduit/fusion criteria.” This sentence did not inform investors that S&P had changed its methodology to use blended constants. It was instead consistent with S&P’s established methodology that considered both the actual constant and the criteria constant, and then chose the higher of the two. Duka’s subordinate, in sworn testimony, stated that the sentence was “written to be vague . . . based upon her instruction.”

38. Duka also used vague language internally in responding to the MQR review of the CMBS model, which was not concluded until June 2011. MQR focused part of its review on the loan constants, and explicitly requested that Duka certify that she was “comfortable with the assumption that loan constants used to derive debt service are appropriate to estimate the debt service amount.” In response, Duka stated that “we consider both the constants in [Criteria Table 1] and the actual constants,” and that “New Issuance would use the actual (if higher) but look at both if the actual constant is lower than the [Criteria Table 1 constant].” This language suggested that Duka’s group engaged in some sort of analysis when deciding upon which constant to use, when in fact Duka had decided to simply use a 50/50 blended constant for all loans in all pools.

39. Significantly, even though Duka’s CMBS Group changed the model in the midst of the MQR review, Duka never showed the new model to MQR. Instead, Duka knowingly allowed MQR to perform its important internal control function with a model that was outdated and applied criteria that the CMBS Group had rejected. Duka’s frustration of the MQR process violated the

standard of care for a person in Duka's position and aided and abetted and caused failures of S&P's internal controls.

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

41. Duka also caused the CMBS Group to misrepresent the calculation of DSCRs in internal documents known as Rating Analysis and Methodology Profiles ("RAMPs"). According to S&P's RAMP Guidelines, "The RAMP's objective is to explain the rating recommendation to voting committee members [who approved the proposed rating] through application of criteria. The RAMP captures the key drivers of the issue being rated, the relevant facets of analysis, the pertinent information being considered, and the underlying criteria and applicable assumptions" S&P's Model Use Guidelines described various matters pertaining to models that must be documented in RAMPs, including key assumptions used in models and modifications to models.

42. As noted above, Duka met briefly with S&P's chief structured finance criteria officer in December before starting to use blended constants. As further noted above, Duka agreed that she and her CMBS Group would disclose the methodology used to calculate DSCRs, and any changes to that methodology, in the RAMPs. Instead, the RAMPs for each of the six transactions listed above disclosed DSCRs calculated using the criteria constants, when in fact S&P rated the transactions using blended constants. The RAMPs did not describe the use of blended constants, the data derived from blended constants, or the fact that the models were modified to apply blended constants. Thus, Duka violated the standard of care set forth in S&P's policies and procedures and documentation requirements, and aided and abetted and caused failures of S&P's internal controls and failures by S&P to comply with requirements to make and retain books and records.

43. In July 2011, S&P published Presales with preliminary ratings for two additional CMBS transactions called GSMS 2011-GC4 and FREMF 2011-K14. As for the previous six transactions, the Presales contained multiple DSCRs calculated based on the criteria constants. They also included DSCRs calculated from actual loan constants, but did not provide any DSCRs derived from the blended constants S&P actually used for the preliminary ratings. As a result, these Presales also made numerous false and misleading statements about the amount of stress that S&P placed on the loans in the pools when assigning its ratings. The RAMPs for these transactions similarly provided data based on the criteria constants, and to some extent actual constants, but not blended constants. Duka's continuing failure to meet the standard of care set forth in S&P's policies and procedures concerning RAMPs aided and abetted and caused failures of S&P's internal controls and failures by S&P to comply with requirements to make and retain books and records.

44. The day before S&P published the Presale for GSMS 2011-GC4, one of the rating analysts on the transaction asked Duka's chief subordinate whether "BD [Duka] wants us to report DSC based on the blend as well as the stressed [criteria] constant?" The chief subordinate replied,

“I spoke with her and she wants to show both the dsc using stressed constant and the dsc using actual constant.” Thus, Duka explicitly decided not to disclose DSCRs using blended constants – the data that the analyst actually used to calculate the ratings.

45. Several potential investors questioned the low level of CE for the AAA bonds in the GSMS 2011 GC-4 transaction. S&P gave a preliminary AAA rating to bonds with 14.5% CE. Using the DSCRs described in the Presale, which calculated DSCRs based on the criteria constants, S&P’s model would have required approximately 20% CE for the AAA bond.

46. In light of the investor questions, S&P’s senior management reviewed S&P’s ratings and discovered the use of blended constants. S&P then withdrew its preliminary ratings for the two transactions. As a result, these transactions did not close on schedule, even though, at least with regards to the GSMS 2011-GC4 transaction the issuer and investors had entered into contracts for purchase and sale. S&P’s decision to withdraw the ratings occurred over a series of internal meetings. Several persons who attended those meetings reported that Duka admitted that the decision not to disclose blended constants in the Presales was intentional.

47. On May 24, 2012, S&P’s Compliance Department issued a memorandum regarding a Targeted Post Event Review of the GSMS 2011-GC4 transaction. The Compliance Department found that Duka violated the S&P Ratings Services Codes of Conduct in eight separate instances and the Model Quality Review Guidelines in one instance. Because Duka had resigned and left S&P on March 5, 2012, the Compliance Department did not recommend any remedial action against her.

48. S&P and Duka thus intentionally, knowingly or recklessly made and caused to be made false and misleading statements to investors concerning the DSCRs used and the amount of stress S&P applied in ratings or preliminary ratings, or both, for the eight transactions, and Duka violated the standard of care for a person in her position. S&P and Duka further intentionally, knowingly or recklessly engaged in a scheme and practice or course of business that operated as a fraud or deceit on investors.

H. VIOLATIONS

49. As a result of the conduct described above, Duka willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibits fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

50. In the alternative, as a result of the conduct described above, Duka willfully aided and abetted and caused S&P’s violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

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

52. As a result of the conduct described above, Duka willfully aided and abetted and caused S&P's violations of Rule 17g-6(a)(2) under the Exchange Act, which prohibits NRSROs from issuing, or offering or threatening to issue, a credit rating that is not determined in accordance with the NRSRO's established procedures and methodologies for determining credit ratings, based on whether the rated person purchases or will purchase the credit rating.

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

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent Duka an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent Duka pursuant to Section 15E(d) of the Exchange Act and Section 9(b) of the Investment Company Act of 1940;

C. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Duka should be ordered to cease and desist from committing or causing or aiding and abetting violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 15E(c)(3) of the Exchange Act, and Exchange Act Rules 17g-6(a)(2), 17g-2(a)(2)(iii), and 17g-2(a)(6), whether Respondent Duka should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act, and whether Respondent Duka should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act and Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against her upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary