

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan	: :	Case No. 12-426-EL-SSO
	:	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	: :	Case No. 12-427-EL-ATA
	:	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority	: :	Case No. 12-428-EL-AAM
	:	
In the Matter of the Application of The Dayton Power and Light Company for the Waiver of Certain Commission Rules	: :	Case No. 12-429-EL-WVR
	:	
In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders	: :	Case No. 12-672-EL-RDR
	:	

**THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM
IN OPPOSITION TO OCC'S SECOND MOTION TO COMPEL**

I. INTRODUCTION AND SUMMARY

OCC claims that work product that DP&L provided to credit rating agencies ("CRAs") is not protected by the work product doctrine because the disclosure to the CRAs purportedly waived the protection. Not so. The Supreme Court of Ohio has held that the waiver rules applicable to attorney-client communications are not applicable to work product. In re Election of November 6, 1990 for the Office of Attorney Gen. of Ohio, 57 Ohio St. 3d 614, 567 N.E.2d 243 (1991). Work product retains its protected status when it is shared with third parties who are agents of the client. Id.

Here, DP&L hired the CRAs to perform an evaluation of DP&L's credit worthiness. Those CRAs have obligations to maintain the confidentiality of non-public information that DP&L has provided to them. Thus, under In re Election, the information remains subject to work product protection. The Commission should thus deny OCC's motion to compel.

II. CRA's ARE HIRED BY DP&L AND WILL NOT DISCLOSE CONFIDENTIAL INFORMATION THAT DP&L PROVIDES TO THEM

Dr. William Chambers worked at the CRA Standard & Poor's for twenty-two years. Declaration of William J. Chambers, ¶ 3 (attached as Exhibit 1). During that time, he became familiar with industry practice relating to, among other things, the use of credit rating reports and the ability of the subject of a credit rating report to communicate on a confidential basis with the CRA. Id.

Credit ratings are used in the industry to determine the credit worthiness of many different debt issuers. Id. ¶ 4. Entities such as banks, retirement plans and others rely upon the accuracy of credit rating reports to make investment decisions. Id. The ability of debt issuers

(like DP&L) to obtain credit is significantly dependent upon the fact that banks, retirement plans, and other investors have confidence in the accuracy of the credit ratings reports issued by CRAs. Id.

CRAs are retained by and paid by the subject entity (here, DP&L) whose credit is being reviewed. Id. ¶ 5. The CRA is thus an agent of that subject entity. Id.

In the review process, it is common that the subject entity whose credit is being reviewed (here, DP&L) would provide information in confidence to the CRA. Id. ¶ 6. When the CRA publishes its review of the subject, the CRA will not disclose information that was provided in confidence by the subject. Id. In fact, it is industry practice that CRAs will refuse to produce information provided in confidence to them by the subject, even if the information is subpoenaed. Id.

The CRAs value and utilize the confidential information they receive from debt issuers. Id. ¶ 7. They believe that a frank, open discussion of the company's position and prospects provides the best possible basis on which they can make correct rating decisions. Id. They recognize that if fear or concern regarding the potential public disclosure of such confidential information were to interfere with the openness or completeness of the discussion, the quality of the subsequent rating decisions could be reduced. Id. As a consequence, the CRA's preserve and protect any confidential information they receive from debt issuers. Id. For example, Moody's Investors Service's Code of Professional Conduct and Standard & Poor's policy statement very specifically state that they will treat information that they receive in confidence as confidential. Id. 7-8

The ability of the CRA and the subject to have confidential communications is critical to the credit rating process. Id. ¶ 9. If communications between the subject and the CRAs are not treated as confidential, then the subject will not provide confidential information to the CRA. Id. And if the CRA did not have access to that confidential information, then the CRA's ability to prepare accurate and reliable credit reports would be significantly impaired, which would in turn impair the ability of borrowers to get credit and result in investors having less comprehensive and less accurate information on which to make investment decisions. Id.

III. DP&L PROVIDES CONFIDENTIAL INFORMATION TO CREDIT RATING AGENCIES

DP&L's credit is rated by the three major CRAs -- Moody's, S&P and Fitch. Declaration of Craig L. Jackson, ¶ 3 (attached as Exhibit 2). Those entities have access to the same publicly-filed information to which any investor would have access (e.g., SEC filings, filings at the Commission). Id.

To assist those CRAs to perform a more detailed review of DP&L's credit rating than the CRA could achieve by reviewing publicly-available information, DP&L provided information to those CRAs regarding DP&L's expected results of this case. Id. ¶ 4. Those numbers differed from DP&L's as-filed numbers, because they show the results that DP&L expects to achieve, not the results for which it asks. Id.

DP&L's ability to litigate and settle this case would be significantly harmed if intervenors had access to DP&L's expected results of this case. Id. ¶ 5.

IV. INFORMATION THAT DP&L PROVIDED TO CRAS IS PROTECTED BY THE WORK PRODUCE DOCTRINE

The Supreme Court of Ohio has held that the waiver rules that apply to privileged communications do not apply to work product. In re Election of November 6, 1990 for the Office of Attorney Gen. of Ohio, 57 Ohio St. 3d 614, 567 N.E.2d 243 (1991). The dispute in that case was an election dispute between Lee Fisher and Paul Pfeifer relating to the 1990 election for the office of attorney general. Id. at 614.

Gordon Strauss was an attorney representing Mr. Fisher, and at Mr. Strauss' direction, two witnesses observed the counting of ballots. Id. Those witnesses then delivered their notes to Mr. Fisher's campaign manager. Id. at 614-15. In the election dispute, Mr. Pfeifer sought copies of the notes, and argued that any protection those notes would have had was waived when they were provided to the campaign manager. Id. The Supreme Court of Ohio rejected that argument:

"[Mr. Pfeifer] argues that any privilege conferred by the rule was waived because the witnesses prepared the notes for and delivered them to [Mr. Fisher]'s campaign manager . . . and because the witnesses were deposed by [Mr. Fisher] and testified extensively on the same subject covered by the notes. [Mr. Pfeifer's] argument would have merit if it were addressed to the attorney-client privilege of R.C. 2317.02(A). [Mr. Fisher] does not claim exemption under this statute, however, but under Civ. R. 26(B)(3). The court finds that a waiver of the attorney-client privilege does not necessarily constitute a waiver of exemption under Civ. R. 26(B)(3).

The court finds from the aforementioned facts that [the witnesses] acted as attorney Strauss's agents. Thus, [Mr. Fisher] has successfully carried his burden of proof to invoke the protection of the rule,"

Id. (emphasis added; internal citations omitted).

Other courts have likewise held that providing work product to third parties does not waive the work product protection. Westinghouse Elec. Corp. v. Republic of Philippines, 951 F.2d 1414, 1428 (3d Cir 1991) ("A disclosure to a third party waives the attorney-client privilege unless the disclosure is necessary to further the goal of enabling the client to seek informed legal assistance. Because the work-product doctrine serves instead to protect an attorney's work product from falling into the hands of an adversary, a disclosure to a third party does not necessarily waive the protection of the work-product doctrine. Most courts hold that to waive the protection of the work-product doctrine, the disclosure must enable an adversary to gain access to the information."); Tronitech, Inc. v. NCR Corp., 108 F.R.D. 655, 656-57 (S. D. Ind. 1985) (plaintiff filed motion to compel production of letter from defendant's attorneys to defendant's outside auditors; the court rejected plaintiff's argument that disclosure to the auditors waived the work product protection: "The attorney-client privilege may be waived by disclosure to third parties because it rests on the confidentiality of the communication. The work product doctrine, on the other hand, is intended only to prevent disclosure to the opposing counsel and his client, so it is not ordinarily waived by disclosure to third parties" (citing 8 Wright & Miller, Federal Practice & Procedure § 2025, 209-10)); Laguna Beach Cnty. Water Dist. v. Superior Court of Orange Cnty., 124 Cal. App. 4th 1453, 1458-61 (2004) (holding that letter from defendant's attorneys to defendant's auditors was protected by the work product doctrine; stating "the purpose of the work product doctrine is to protect information against opposing parties, rather than against all others outside a particular confidential relationship, in order to encourage effective trial preparation. Thus, work product protection is not waived except by a disclosure wholly inconsistent with the purpose of the privilege, which is to safeguard the attorney's work product and trial preparation." (citations and quotations omitted)).

The information that DP&L provided to the CRAs is analogous to the information provided to auditors in Tronitech and Laguna Beach. CRAs and auditors both are engaged by the attorney's client; CRAs and auditors both receive confidential information that would be protected as work product; and CRAs and auditors both prepare reports about the client that are intended to be shared publicly with third-party investors. Just as the letters to auditors were protected by the work product doctrine in Tronitech and Laguna Beach, the information that DP&L provided to CRAs should be protected here.

Finally, OCC's claim (pp. 7-11) that DP&L has waived the work product protection by failing to provide a privilege log and produce the documents for inspection is incorrect. In a decision cited by OCC, the Commission has held that a privilege is waived only if the party fails to support the privilege claim on a document-by-document basis by providing copies of the documents and/or a log for the Attorney Examiner to inspect. In the Matter of the Application of Ohio Edison Company, Case No. 10-176-EL-ATA, Entry ¶ 18 (Jan. 27 2011). DP&L will bring copies of the requested documents and a log of the documents to the January 30, 2013 discovery conference.

V. CONCLUSION

The Commission should deny OCC's motion to compel the production of work product information that was disclosed to CRAs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Memorandum in Opposition to OCC's Second Motion to Compel has been served via electronic mail upon the following counsel of record, this 29th day of January, 2013:

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EXHIBIT 1

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of	:	Case No. 12-672-EL-RDR
The Dayton Power and Light Company	:	
to Establish Tariff Riders	:	

DECLARATION OF WILLIAM J. CHAMBERS

STATE OF MASSACHUSETTS)	
) SS:	
COUNTY OF SUFFOLK)	

William J. Chambers declares:

1. My name is William J. Chambers. I have personal knowledge of all matters stated in this Declaration, and I am competent to testify to the facts stated below.

2. I earned a Ph.D. in economics from Columbia University in 1975. I joined the faculty at Boston University in 2005, where I teach finance, investment analysis and related courses. A complete copy of my curriculum vitae is attached as Appendix A to my Second Revised Direct Testimony in this matter.

3. From 1983 to 2005, I was employed at Standard & Poor's; I was in the debt rating division for the large majority of my time there. During that time, I became familiar with industry practice relating to, among other things, the use of credit rating reports and the ability of the subject of a credit rating report to communicate on a confidential basis with the CRA.

4. Credit ratings are used in the industry to determine the credit worthiness of many different debt issuers. Entities such as banks, pension plans and others rely upon the accuracy of credit rating reports to make investment decisions. The ability of debt issuers (like DP&L) to obtain credit is significantly dependent upon the fact that banks, pension plans, and other investors have confidence in the accuracy of the credit ratings reports issued by CRAs.

5. CRAs are retained by and paid by the subject entity (here, DP&L) whose credit is being reviewed. The CRA is thus an agent of that subject entity. The subsequent rating decisions are independent of these financial arrangements. The CRA's are not advocates for the rated entity but provide independent opinions of the entity's creditworthiness based on the entirety of the information they obtain.

6. In the review process, it is common that the subject entity whose credit is being reviewed (here, DP&L) to provide information in confidence to the CRA. When the CRA publishes its review of the subject, the CRA will not disclose information that was provided in

confidence by the subject. In fact, it is industry practice that CRAs will refuse to produce information provided in confidence to them by the subject, even if the information is subpoenaed.

7. The CRAs value and utilize the confidential information they receive from debt issuers. They believe that a frank, open discussion of the company's position and prospects provides the best possible basis on which they can make correct rating decisions. They recognize that if fear or concern regarding the potential public disclosure of such confidential information were to interfere with the openness or completeness of the discussion, the quality of the subsequent rating decisions could be reduced. As a consequence, the CRA's preserve and protect any confidential information they receive from debt issuers. Moody's Investors Service's Code of Professional Conduct addresses its approach to this information. Moody's policy states in part:

3.15 MIS and its Employees will:

3.15.1 Preserve the confidentiality of Confidential Information communicated to them by an Issuer or its agent; and

3.15.2 Unless they have received permission from the Issuer, refrain from publicly disclosing Confidential Information in Credit Rating Announcements, or through research, conferences, or conversations with investors, other Issuers, or any other persons.

3.15.3 Notwithstanding the foregoing, MIS shall not be restricted from:

a. publishing any Credit Rating or other opinion regarding a particular security or transaction which incorporates Confidential Information as long as: (i) the

Confidential Information is not specifically disclosed and (ii) the disclosure is made publicly so that the opinion is available to investors generally;

b. using third party contractors or agents bound by appropriate confidentiality obligations to assist in any aspect of the ratings process or related business activities;

c. disclosing information as required by any applicable law, rule, or regulation, or at the request of any governmental agency or authority; or

d. disclosing information to third parties with an independent legal right to receive it.

3.16 MIS will use Confidential Information only for purposes related to its Rating Services.

3.17 Employees will take all reasonable measures to protect all property and records belonging to or in possession of MIS from fraud, theft, and misuse.

3.20 Employees will not disclose any non-public information about Credit Ratings or possible future Credit Rating Actions of MIS, except to the relevant Issuer or its designated agents.

3.21 Employees will not share Confidential Information entrusted to MIS with employees of any affiliated entities except to the extent such employees are acting as agents or contractors of MIS with respect to the relevant Rating Service and are bound by appropriate confidentiality obligations. Employees will not share Confidential Information within MIS except on a “need-to-know” basis. ¹

¹ Moody's Investors Service, Code of Professional Conduct, May 2011, pp 14, 15

8. Standard & Poor's has taken a similar approach to the confidential information it receives. It has stated:

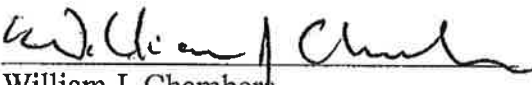
A substantial portion of the information set forth in company presentations is highly sensitive and is provided by the issuer to us solely for the purpose of arriving at ratings. Such information is kept strictly confidential by the ratings group, on a need-to-know basis.... It is not to be used for any other purpose, nor by any third party, including other Standard & Poor's units. Standard & Poor's maintains a "Chinese Wall" between its rating activities and its equity information services. Even if a public rating is subsequently assigned, any rationales or other information we publish about the company will refer only to publicly available corporate information. In the same vein, if we change a rating or outlook based on confidential information received, we will take pains to avoid disclosing that information in our published materials.²

9. The ability of the CRA and the subject to have confidential communications is critical to the credit rating process. If communications between the subject and the CRAs are not treated as confidential, then the subject will not provide confidential information to the CRA. And if the CRA did not have access to that confidential information, then the CRA's ability to prepare accurate and reliable credit reports would be significantly impaired, which would in turn impair the ability of borrowers to get credit and result in investors having less comprehensive and less accurate information on which to make investment decisions.

² Standard & Poor's, Our Rating Process, May 2008

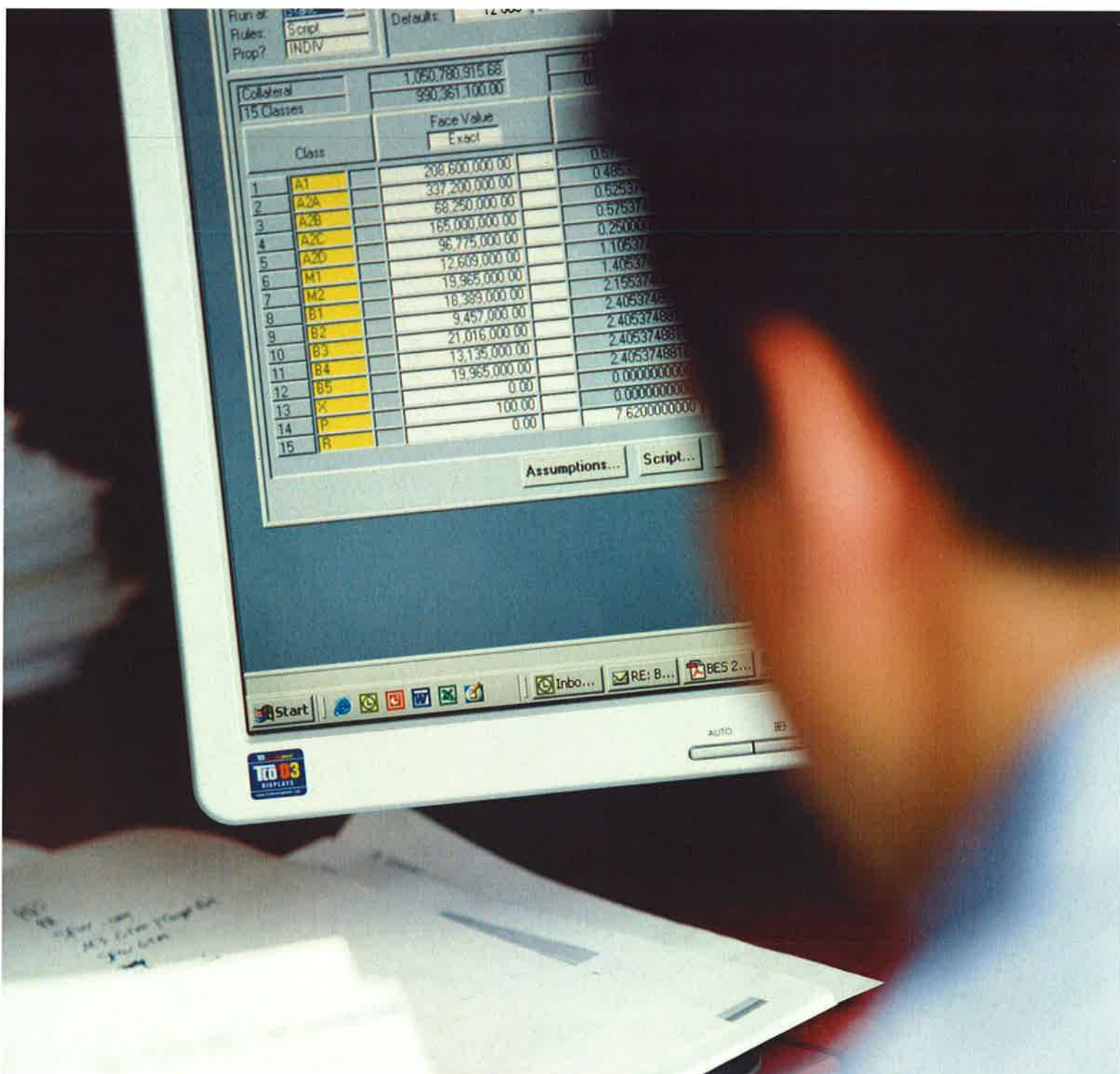
10. I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

11. Executed on January 29, 2013 at Boston, Massachusetts.


William J. Chambers

688816.1

EXHIBIT A



Code of Professional Conduct

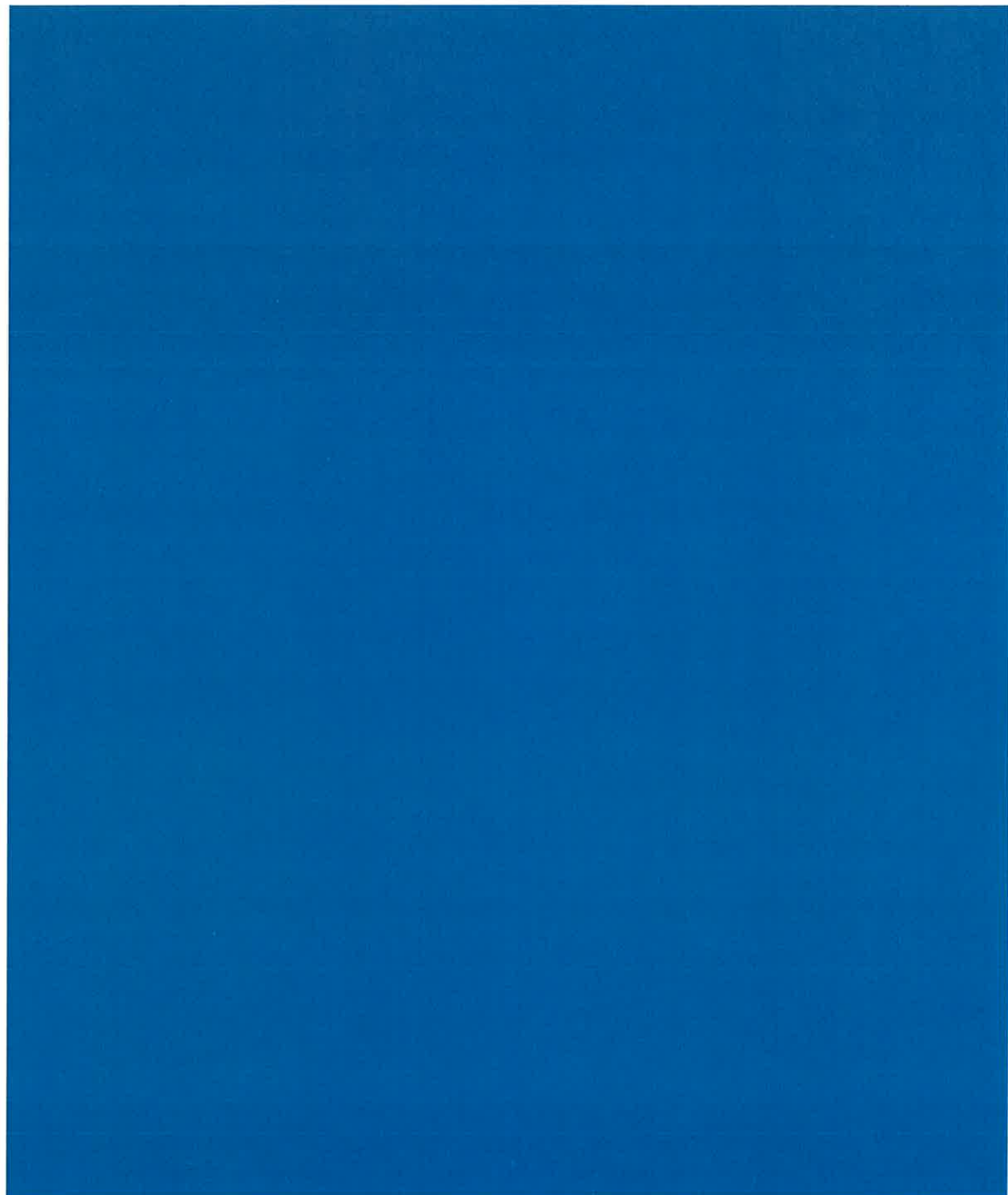


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Preamble

Financial markets should be efficient and fair to all market participants. Credit rating agencies play an important information role in these markets. Moody's Investors Service ("MIS") provides opinions in the form of credit ratings and related research about the creditworthiness of issuers of securities and their financial obligations. Our credit ratings are forward-looking opinions that seek to measure relative credit loss. That is to say, they forecast the likelihood of default on a bond and the estimated severity of loss in the event of that bond's default.

Given the vast amount of information available to investors today — some of it valuable, some of it not — MIS helps investors and others sift through this information and analyze the credit risks they face when lending to a particular borrower, or when purchasing an issuer's debt or debt-like securities.¹ MIS makes our public credit ratings available to investors globally on a contemporaneous basis, free of charge.

In order to enhance market understanding and confidence in MIS's credit ratings, MIS has adopted this Code of Professional Conduct (the "MIS Code" or "Code"). Through this Code, MIS seeks to protect the integrity of the rating process, to ensure that investors and issuers are treated fairly, and to safeguard confidential information provided to us by issuers. To use MIS ratings effectively, the market should be informed of both their attributes and limitations. It is our responsibility to be as transparent as practicable with respect to our:

- » rating methodologies;
- » rating policies and practices; and
- » overall track record.

This Code, as well as associated policies, is accessible on MIS's public website, moody.com.² The MIS Code is organized into three sections:³

- » The Quality and Integrity of the Rating Process;
- » Independence and Avoidance and/or Management of Conflicts of Interest; and
- » Responsibilities to the Investing Public and Issuers.

¹ MIS provides credit ratings for different types of debts or financial obligations – including, for example, private loans, publicly and privately traded debt securities, preferred shares and other securities that offer a fixed or variable rate of return. For simplicity's sake, the term "debt and debt-like securities" is used herein to refer to debt securities, preferred shares, and other financial obligations of these sorts.

² Although, in the interest of transparency, we have posted this Code and other related policies on moody.com, MIS does not assume, as a result of such public disclosure, any responsibility or liability to any third party arising out of or relating to this Code or those policies. The MIS Code is not part of any contract with any third party, and no third party shall have any right to enforce any of its provisions. MIS also retains complete discretion to revise this Code at any time to reflect changes in MIS ratings policies and procedures or to address changes in market, legal, or regulatory circumstances.

³ The MIS Code has been structured in this manner in order to track the IOSCO Code as closely as possible.

I. Defined Terms

For the purposes of this document, the terms below, organized by category, are defined as follows:

Documents

1. **Core Principles for the Conduct of Rating Committees** is the MIS policy referred to in Provisions 3.1 and 3.8 below.
2. **Designating Issuers That Do Not Participate in the Rating Process** is the MIS policy referred to in Provision 3.11 below.
3. The **International Organization of Securities Commissions' Code of Conduct Fundamentals for Credit Rating Agencies ("IOSCO Code")** is a framework Code of Conduct published on December 23, 2004 and subsequently revised in May 2008, by the International Organization of Securities Commissions. It was developed through cooperative efforts of international securities regulatory authorities, rating agencies, issuers, investors and other market participants. MIS has publicly endorsed the IOSCO Code.
4. The **International Organization of Securities Commissions' Principles Regarding the Activities of Credit Rating Agencies ("IOSCO Principles")** is a set of broad principles developed by the international regulatory community and published on September 25, 2003. The IOSCO Principles is the document upon which the IOSCO Code is based. MIS has publicly endorsed the IOSCO Principles.
5. The **Moody's Corporation Code of Business Conduct ("MCO Code")** is the code of conduct adopted by Moody's Corporation ("MCO").
6. The **Moody's Investors Service Code of Professional Conduct ("MIS Code" or the "Code")** is this code of conduct for MIS. Except as noted immediately below, the MIS Code governs the conduct of:
 - a. MIS; and
 - b. all Employees whether employed by MIS in a full-time or part-time capacity.This Code is not applicable in Japan and Australia.
7. **Rating Symbols and Definitions** is a reference guide that sets out the definitions the rating symbols and rating scales used by MIS.
8. **Securities Trading Policy** is MCO's Securities Trading Policy.

Employee Types

1. An **Analyst** is an Employee whose primary function is participation in the Credit Rating analysis process.
2. **DCO** refers to the individual designated by MIS as its global Designated Compliance Officer.
3. An **Employee** is any individual who works for MIS in any capacity.
4. **Management** or **Managers** are those Employees who have personnel management responsibilities.

Organizational Structure

1. The **MIS Compliance Department** is the department that is responsible for assessing MIS's and its Employees' compliance with the policies and procedures described in this Code.
2. The **Credit Policy Group** is an internal group and is separate from the business lines that are principally responsible for rating various classes of Issuers and obligations. The Credit Policy Group is overseen by MIS's Chief Credit Officer, who is directly accountable to the Chief Executive Officer

and Chief Operating Officer of MIS and reports quarterly to the MCO Board of Directors. The Credit Policy Group is responsible for conducting research on the performance of Credit Ratings, reviewing and approving methodologies and models, and overseeing various internal credit committees that formulate high level rating policies and practices for each of the rating groups.

3. **MCO** refers to Moody's Corporation and is the listed parent company of MIS and all of MCO's subsidiaries, including the companies that comprise MIS.
4. **MIS** refers to Moody's Investors Service, Inc. and the wholly owned subsidiaries of MCO that engage in Credit Rating Services and that also might engage in Ancillary Services or Other Permissible Services.

Services and Products

1. **Ancillary Services** are those products and services that may be offered by MIS, that are not Credit Rating Services, and that comprise market forecasts, estimates of economic trends, pricing analysis or other general data analysis as well as related distribution services.
2. A **Credit Rating** is an opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial instrument, issued using an established and defined ranking system of rating categories. See also Section II below.
3. A **Credit Rating Action** is any one of items i. – iii. below. MIS publishes Credit Rating Actions via one or more Credit Rating Announcements or on moodys.com with a clear and prominent reference on the relevant webpage to the place on moodys.com where disclosure specified in the applicable laws for Credit Ratings or Credit Rating Announcements is required.
 - i. *An assignment of an MIS Credit Rating*: where a Credit Rating is determined for a specific Issuer or obligation for the first time. Credit Ratings include, among other things, Credit Ratings that are:
 - assigned to securities that are issued over time pursuant to programs, series or categories of debt that are subject to an existing Credit Rating, or
 - based on the pass-through of a primary Issuer's Credit Rating, derive their Credit Rating exclusively from the existing Credit Rating of the program, series, category of debt or primary Issuer, as the case may be, and the rating committee for the existing Credit Rating incorporates future issuances into its analysis. Consequently, Credit Rating Actions with respect to these Credit Ratings are not subject to further analysis by a rating committee beyond the analysis conducted by the original rating committee for the existing Credit Rating.
 - ii. *A change in an MIS Credit Rating (upgrade or downgrade)*: MIS's Credit Ratings are subject to either upgrades or downgrades as set out below.
 - Upgrade: the Credit Rating is moved upwards on the rating scale.
 - Downgrade: the Credit Rating is moved downwards on the rating scale.
 - iii. *A withdrawal of an MIS Credit Rating*.
4. **Credit Rating Announcements** are those written communications that publicly announce Credit Rating Actions.
5. **Credit Rating Services** are those products and services that are offered by MIS, that are derived from the credit rating process and that provide an opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such debt or financial obligation, debt security, preferred share or other financial

instrument, issued using an established and defined ranking system of rating categories.

6. **Non-Participating Credit Ratings** are published Credit Ratings in which the Issuer has declined (expressly or through failure to respond to) MIS's offer to participate in the rating process on a going-forward basis.
7. **Other Permissible Services** are those products and services that MIS may offer that are neither Credit Rating Services nor Ancillary Services and that are listed in MIS's [Rating Symbols and Definitions](#).⁴
8. **Rating Services** means any or all of the following: Credit Rating Services, Ancillary Services and/or Other Permissible Services.
9. **Unsolicited Credit Ratings**
 - a. **Outside the EU**, Unsolicited Credit Ratings are those Credit Ratings published under the following two conditions:
 - i. the Credit Rating is a first-time assignment related to a given Issuer; and
 - ii. the Credit Rating was not requested by the Issuer and was initiated by MIS.
 - b. **In the EU**, Unsolicited Credit Ratings are those Credit Ratings not initiated at the request of the Issuer or rated entity. This designation applies at the "Credit Rating" level, i.e. it applies to both Issuer and debt ratings.

Other

1. **Confidential Information** is any information received by MIS from an Issuer or its authorized agent in connection with the rating process or in connection with providing Ancillary Services or Other Permissible Services in respect of which MIS has received written notice specifically indicating the proprietary and confidential nature of the information. However, the term "Confidential Information" shall not include:
 - a. information that is or later becomes publicly known;
 - b. information available to MIS on a non-confidential basis prior to disclosure by the Issuer or its agents;
 - c. information that becomes available to MIS on a non-confidential basis from a third party not reasonably known by MIS to be bound by a confidentiality agreement with the Issuer or otherwise prohibited from making available such information;
 - d. information developed independently by MIS without reference to the Confidential Information; or
 - e. information that has been aggregated or transformed in such a way that it is no longer identified as relating to any individual Issuer.
2. **EU** means European Union.
3. **Family Members** has the meaning given to it in the [Securities Trading Policy](#).
4. An **Issuer** is any entity that issues debt, a credit commitment, or debt-like securities.
5. **Securities** has the meaning given to it in the [Securities Trading Policy](#). The term "derivative" is incorporated in this definition of "Securities".

⁴ MIS has revised its definitions of Credit Rating Services and Ancillary Services to align them with provisions in the European Regulation on Credit Rating Agencies and, accordingly, certain products or services that MIS used to consider Credit Rating Services or Ancillary Services are now classified as Other Permissible Services. MIS nevertheless considers Other Permissible Services, as well as Ancillary Services, to constitute Rating Services.

II. What Are Credit Ratings?

A Credit Rating is an opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial instrument, issued using an established and defined ranking system of rating categories.

Credit Ratings are based on information obtained by MIS from sources believed by MIS to be accurate and reliable, including but not limited to Issuers and their agents, as well as sources independent of the Issuer. MIS relies on Issuers and their agents to provide information that is true, accurate, timely, complete and not misleading.

MIS adopts all necessary measures so that the information it uses in assigning a Credit Rating is of sufficient quality and from sources MIS considers to be reliable including, when appropriate, independent third-party sources. However, MIS is not an auditor and cannot in every instance independently verify or validate information received in the rating process. Thus, in assigning a Credit Rating, MIS is in no way providing a guarantee with regard to the accuracy, timeliness, or completeness of factual information reflected, or contained, in the Credit Rating or any related MIS publication.

In the rating process, MIS maintains independence in its relationships with Issuers, investors, and other interested entities. MIS does not have a fiduciary relationship with the Issuer whose security is being rated (or any other party). Nor does MIS act as an advisor to the Issuers it rates. MIS may comment on the potential credit implications of proposed structural elements of a security, but MIS does not participate in the actual structuring of any security under consideration for a Credit Rating.

As a matter of policy, and in keeping with its role as an independent and objective publisher of opinions, MIS retains complete editorial control over the content of its Credit Ratings, credit opinions, commentary, and all related publications. MIS reserves the right at any time to suspend, modify, lower, raise or withdraw a Credit Rating, or place a rating on the watchlist in accordance with MIS policies and procedures. MIS editorial control includes its right to decide whether, and when, to issue a Credit Rating or publish any information or commentary, except in those rare instances where the public disclosure of a Credit Rating has been contractually limited (See Provision 3.4 below) or limited by applicable laws.

III. The Provisions

1. Quality and Integrity of the Rating Process

As described in the IOSCO Principles, MIS will endeavor to provide forward-looking opinions on the relative creditworthiness of Issuers of debt and debt instruments in order to help reduce the information asymmetry that exists between those Issuers and potential purchasers of their debt.

A. QUALITY OF THE RATING PROCESS

- 1.1 Since Credit Ratings are probabilistic opinions about future creditworthiness, the performance of an individual Credit Rating opinion will not be judged on the basis of the individual outcome, but on whether the individual Credit Rating was formed pursuant to MIS's established processes. Where possible, the performance of Credit Ratings collectively will be evaluated on the basis of how they perform on a statistical basis ex post (e.g., default studies, accuracy ratios, and stability measures).
- 1.2 MIS will develop and maintain rigorous and systematic rating methodologies. Where possible, resulting Credit Ratings will be periodically subjected to objective validation based on historical experience. The Credit Policy Group will be responsible for monitoring the appropriateness and completeness of rating methodologies and procedures, and for approving any significant changes to MIS's rating methodologies and procedures.
- 1.3 In assessing an Issuer's or obligation's creditworthiness, Analysts will use MIS's methodologies. Analysts will apply a given methodology in a consistent manner, as determined by MIS.
- 1.4 Credit Ratings will be determined by rating committees and not by any individual Analyst.⁵ In producing a Credit Rating, MIS will consider all information known and believed to be relevant by the applicable Analyst and rating committee about an Issuer, including information received from a source other than the Issuer or underwriter that the applicable Analyst and rating committee find credible and potentially significant to a rating decision in a manner generally consistent with MIS's published methodologies. In formulating Credit Ratings, MIS will employ Analysts who, individually or collectively (for rating committees), have appropriate knowledge and experience in developing a rating opinion for the type of credit being analyzed.
- 1.5 MIS will comply with its record retention policies and applicable laws when maintaining records used to support its Credit Ratings and research processes. Employees will familiarize themselves with MIS's record retention policies, and periodically certify their compliance with such policies.
- 1.6 MIS and its Analysts will take steps to avoid issuing any credit analyses, Credit Ratings or reports that contain misrepresentations or are otherwise misleading as to the general creditworthiness of an Issuer or obligation.

Once a rating committee has determined the appropriate Credit Ratings to be assigned to an Issuer's debt classes (e.g., senior unsecured), or to debt issued under specific program documents, MIS will assign such Credit Ratings to such classes unless and until a subsequent rating committee determines otherwise. Debt issuance by an Issuer or under specific program documents may be routine (e.g., refinance), or may be material to the Issuer's creditworthiness or the program structure (e.g., a material change in the Issuer's leverage). It is the responsibility of the Analyst to monitor the Issuer's debt issuance and leverage and changes to program documents, and to bring material changes to the rating committee's attention.

Credit Ratings that are:

- » assigned to securities that are issued over time pursuant to programs, series or categories of debt that are subject to an existing Credit Rating, or
- » based on the pass-through of a primary Issuer's Credit Rating,

derive their Credit Rating exclusively from the existing Credit Rating of the program, series, category of debt or primary Issuer, as the case may be, and the rating committee for the existing Credit Rating incorporates future issuances into its analysis. Consequently, Credit Rating Actions with respect to these Credit Ratings are not subject to further analysis by a rating committee beyond the analysis conducted by the original rating committee for the existing Credit Rating.

- 1.7 MIS will invest resources sufficient to carry out high-quality credit assessments of Issuers or obligations. When deciding whether to rate or continue rating an obligation or Issuer, MIS will assess whether it is able to devote sufficient personnel with appropriate skills to make a proper rating assessment, and whether its personnel likely will have access to sufficient information needed in order to make such an assessment. In its Credit Rating Announcements for Credit Ratings that present limited historical data, MIS will make such limitation clear in a prominent place. MIS adopts all necessary measures so that the information it uses in assigning a Credit Rating is of sufficient quality and from sources MIS considers to be reliable including, when appropriate, independent third-party sources.

In cases involving new types of financial products, MIS will refrain from providing a Credit Rating unless it believes that it has sufficient information and the appropriate analytical skills to do so.

MIS will require the Credit Policy Group to:

- 1.7.1 review the feasibility of providing a Credit Rating for a type of structure that is materially different from the structures MIS has rated;
 - 1.7.2 at least once every twelve months, review the methodologies and models and significant changes to the methodologies and models MIS uses; and
 - 1.7.3 assess whether existing methodologies and models for determining Credit Ratings of structured products are appropriate when MIS determines that the risk characteristics of the assets underlying a structured product have materially changed.
- 1.8 MIS will adopt and maintain an appropriate continuing education program for Analysts. MIS will designate one or more appropriate Employees to implement and oversee the program.
- 1.9 MIS will organize its rating committees to promote continuity and avoid bias in the rating process.

B. MONITORING AND UPDATING

- 1.10 MIS will allocate adequate personnel and financial resources to monitoring and updating its Credit Ratings. Once a Credit Rating is published, and unless it is withdrawn, MIS will monitor the Credit Rating and update it by:
- a. at least once in any twelve month period, reviewing the creditworthiness of the Issuer or other relevant entity or debt or debt-like securities;
 - b. initiating a review of the status of the Credit Rating upon becoming aware of any information that might reasonably be expected to result in a Credit Rating Action (including withdrawing a Credit Rating) consistent with the applicable rating methodology; and
 - c. updating on a timely basis the Credit Rating, as appropriate, based on the results of any such review referred to in (a) or (b) above.

Where practicable, subsequent monitoring will incorporate all cumulative experience obtained. MIS will apply changes in relevant key rating assumptions both to current and subsequent Credit Ratings.

- 1.11 Where practicable, MIS will use separate analytical teams for assigning initial Credit Ratings and for subsequent monitoring of structured finance Credit Ratings. Each team will have the requisite level of experience and resources to perform its respective functions in a timely manner. MIS will also evaluate internal processes and market trends in order to maintain operational flexibility to allocate resources needed to monitor existing Credit Ratings and conduct reviews on a timely basis.
- 1.12 MIS will publish a Credit Rating Announcement if it discontinues a public Credit Rating on an

Issuer or obligation, (except for routine debt maturities, calls, or redemptions) in accordance with MIS's policies and procedures regarding the withdrawal of Credit Ratings.

C. INTEGRITY OF THE RATING PROCESS

- 1.13 MIS and its Employees will comply with all applicable laws and regulations governing their activities in the jurisdictions in which MIS operates. For greater certainty, to the extent that a provision in the MIS Code is inconsistent with applicable laws and regulations in a jurisdiction in which MIS operates, then that provision in the MIS Code will not apply in that jurisdiction to the extent of the inconsistency.
- 1.14 MIS and its Employees will deal fairly and honestly with Issuers, investors, other market participants, and the public.
- 1.15 MIS will hold its Employees to high standards of integrity. MIS will not knowingly employ any individuals with demonstrably compromised integrity, subject to applicable law.
- 1.16 MIS and its Analysts will not, either implicitly or explicitly, give any assurance or guarantee of a particular Credit Rating prior to a rating committee. This does not preclude MIS from developing provisional assessments used in structured financings or similar transactions.
- 1.17 MIS Employees are prohibited from making proposals or recommendations to an obligor or Issuer, underwriter or sponsor of a security about the corporate or legal structure, assets, liabilities or activities of an obligor or Issuer. Consistent with this prohibition, in assessing credit risk MIS Employees may properly hold a series of discussions with an Issuer or its agents in order to: (1) understand and incorporate into their analysis the particular facts and features and any modification thereof, as proposed by the Issuer or its agents; and (2) explain to the Issuer or its agents the Credit Rating implications of MIS's methodologies as applied to the Issuers proposed facts and features.
- 1.18 While Employees are not expected to be experts in the law, they are expected (and in some cases required by applicable laws) to report activities of which they are aware that a reasonable person would question as a potential violation of the law or this Code. All MIS Employees outside of the EU are obligated to report these issues promptly to the Legal Department, which will take appropriate action, as determined by the laws and regulations of the jurisdiction and the rules and guidelines set forth by MIS. MIS Employees within the EU also are required to report all suspected legal violations to the Legal Department. In accordance with the procedures outlined in the MCO Code, Employees also may report such matters on a confidential basis by calling the MCO Integrity Hotline.
- 1.19 Management will prohibit retaliation by any Employee or by MIS itself against any Employee who, in good faith, reports a possible violation of the law or this Code.
- 1.20 Neither MIS nor any credit rating agency under its control will:
 - a. provide rating advisory services;
 - b. act as a broker or dealer engaged in the business of underwriting securities or money market instruments; or
 - c. have a financial or controlling interest in an entity rated by MIS or any of its "Credit Rating Affiliates" identified in Item 3 of MIS's Form NRSRO.

2. Independence and Avoidance and/or Management of Conflicts of Interest

A. GENERAL

- 2.1 MIS will not forbear or refrain from taking a Credit Rating Action, or from initiating or concluding a review of a Credit Rating, based on the potential effect (economic, political, or otherwise) of the action on MIS, an Issuer, an investor or other market participant.
- 2.2 MIS and its Analysts will use care and professional judgment to maintain both the substance and appearance of independence and objectivity.
- 2.3 The determination of a Credit Rating will be influenced only by factors relevant to the credit assessment.
- 2.4 The Credit Rating MIS assigns to an Issuer or obligation will not be affected by the existence of, or potential for, a business relationship between MIS (or its affiliates) and the Issuer (or its affiliates), or any other party, or the non-existence of any such relationship.
- 2.5 MIS will separate, operationally and legally, its Rating Services and Analysts from any other business that may present a conflict of interest. MIS will disclose on moodys.com any Ancillary Services and Other Permissible Services it offers. If MIS intends to offer new Other Permissible Services or Ancillary Services, MIS will first consult with the Compliance or Legal Departments. For Ancillary Services and Other Permissible Services that do not necessarily present conflicts of interest with MIS's Credit Rating Services, MIS will have in place procedures and mechanisms designed to minimize the likelihood that conflicts of interest will arise, or to appropriately manage those conflicts that may arise.

B. PROCEDURES AND POLICIES

- 2.6 MIS will adopt written internal procedures and mechanisms to:
 - a. identify; and
 - b. eliminate, or manage and disclose, as appropriate, actual or potential conflicts of interest that may influence the opinions and analyses MIS makes or the judgment and analyses of Employees who have an influence on Credit Ratings decisions.
- 2.7 MIS's disclosures of known actual and potential conflicts of interest will be complete, timely, clear, concise, specific, and prominent. Such disclosures will be made through moodys.com.
- 2.8 MIS will disclose the general nature of its compensation arrangements with rated entities.
 - a. MIS does not provide consulting services. MIS does not receive from rated Issuers compensation unrelated to its Rating Services. If MIS were to receive from a rated Issuer compensation unrelated to its Rating Services, MIS would disclose the proportion such fees constitute against the fees MIS receives from the Issuer for Rating Services.
 - b. MIS will disclose if it receives 10 percent or more of its annual net billings from a single Issuer, originator, arranger or subscriber (including any affiliates of the Issuer, originator, arranger, or subscriber).
- 2.9 In accordance with MIS's *Securities Trading Policy*, MIS and its Employees will not engage in any Securities (including derivatives) trading that presents conflicts of interest with MIS's or its Employees' rating activities.
- 2.10 In instances where rated entities (e.g., governments) have, or are simultaneously pursuing, affiliated oversight functions related to MIS, MIS will use different Employees to conduct its Credit Rating evaluations for such rated entities than those Employees involved in its oversight issues.

C. ANALYST AND EMPLOYEE INDEPENDENCE

- 2.11 Reporting lines for Employees and their compensation arrangements will be organized to eliminate or effectively manage actual and potential conflicts of interest.
- a. Analysts will not be compensated or evaluated on the basis of the amount of revenue that MIS derives from Issuers that the Analyst rates or with which the Analyst regularly interacts.
 - b. MIS will conduct formal and periodic reviews of compensation policies and practices for Employees who participate in, or who might otherwise have an effect on, the Credit Rating process to ensure that these policies and practices do not compromise the objectivity of the Credit Rating process.
- 2.12 MIS has implemented a separation of its rating and commercial activities. MIS Employees who approve or participate in determining or monitoring Credit Ratings, or who are involved in the development or approval of models or methodologies used in providing Rating Services, will not participate in discussions regarding fees or payments with any rated entity. Employees in the MIS Commercial Group will not participate in the determination or monitoring of Credit Ratings or in the development or approval of models or methodologies used in providing Rating Services.
- 2.13 As described in more detail in various policies and procedures, Employees will not approve, participate in or otherwise influence the determination of the Credit Rating of any particular entity or obligation if the Employee or any Family Member of the Employee:
- a. owns Securities (including derivatives of Securities) of the rated entity;
 - b. owns Securities (including derivatives of Securities) of any entity related to a rated entity, the ownership of which either constitutes a conflict of interest or creates the impression of a conflict of interest that MIS deems to be unacceptable;
 - c. has had a recent employment or other significant business relationship with the rated entity that either constitutes a conflict of interest or creates the impression of a conflict of interest that MIS deems to be unacceptable;
 - d. has an immediate relation (*i.e.*, a spouse, partner, parent, child, or sibling) who works for the rated entity in circumstances where this employment relationship either constitutes a conflict of interest or creates the impression of a conflict of interest that MIS deems to be unacceptable; or
 - e. has, or had, any other relationship with the rated entity or any related entity thereof that either constitutes a conflict of interest or creates the impression of a conflict of interest that MIS deems to be unacceptable.
- 2.14 In accordance with the *Securities Trading Policy*, Employees who are involved in the rating process and their Family Members are prohibited from buying, selling or engaging in any transaction in any Security (including a derivative of any Security) issued, guaranteed, or otherwise supported by any entity within such Employee's primary area of analytical responsibility.
- 2.15 MIS maintains prohibitions on soliciting or accepting money, gifts, favors, services or entertainment from any customer (*i.e.* any third party with whom MIS has a business relationship that relates to Credit Rating activities). All MIS personnel are required to obey these prohibitions and those in the MCO Code.
- 2.16 Any Analyst or Manager who becomes involved in any personal relationship that creates the potential for any real or apparent conflict of interest (including, for example, any personal relationship with an employee of a rated entity or agent of such entity within his or her area of analytic responsibility), will be required, subject to applicable law, to disclose such relationship to his or her

immediate supervisor, his or her department head, and/or a member of the Compliance, Human Resources or Legal Departments, as required by applicable policies and procedures. Based on the assessment of this information, MIS will take appropriate steps to mitigate the real or apparent conflict.

- 2.17 Where an Analyst or any other Employee who participates in determining or monitoring Credit Ratings leaves the employ of MIS and becomes an employee of an Issuer, underwriter, or sponsor of obligations the Analyst or other Employee was involved in rating or of a financial firm with which he or she had dealings as part of his or her duties at MIS, MIS will conduct a look back review of such Analyst's or Employee's work in accordance with applicable law. Where required by law, MIS will report to the regulatory authorities those instances where MIS becomes aware within the time period specified by the relevant regulatory authority, that a former MIS employee obtains employment with such an entity referred to in the preceding sentence in the circumstances described therein after his or her employment with MIS.

3. Responsibilities to the Investing Public and Issuers

A. TRANSPARENCY AND TIMELINESS OF RATINGS DISCLOSURE

- 3.1 In accordance with MIS's *Core Principles for the Conduct of Rating Committees*, MIS will distribute as soon as practicable its Credit Rating Actions regarding the Issuers, debt and debt-like obligations it rates.
- 3.2 MIS will make Credit Rating Actions on public debt securities or public debt Issuers available to the public without cost. Such Credit Rating Actions will be posted on MIS's public website. The public will be able to obtain a current public Credit Rating and any relevant Credit Rating Announcement for any Issuer, debt or debt-like obligation without cost, subject to the following exception. Where the relevant Credit Rating Announcement relating to a debt or debt-like obligation of a United States public finance issuer is combined with a "new issue report" in a single publication, then:
- a. the public will be able to obtain the relevant, current public Credit Rating for the debt or debt-like obligation without cost; and
 - b. MIS may elect to make the Credit Rating Announcement available to the public without cost for a limited period of time but for not less than seven consecutive calendar days.
- 3.3 MIS will encourage structured finance Issuers and originators of structured finance products to publicly disclose all relevant information regarding these products.
- 3.4 Upon the request of an Issuer, and at MIS's sole discretion, MIS may agree to keep a Credit Rating confidential. However, if an Issuer or security — including a tranche of a structured finance security — already carries a public Credit Rating from MIS, all subsequent decisions to change or discontinue such Credit Rating will be made available to the public without cost.
- 3.5 MIS will publicly disclose its policies, or summaries of policies, for distributing Credit Ratings, Credit Rating Actions, reports, and updates and will keep current such policies and summaries.
- 3.6 In each of its Credit Rating Announcements, MIS will include certain information consistent with the law in the jurisdiction in which an MIS credit rating affiliate issuing a rating operates, including but not limited to:
- a. a reference to the date of the last associated Credit Rating Announcement, if any (by referencing moody's.com);

- b. a summary of the key elements of the rationale underlying the Credit Rating to be included in the Ratings Rationale section;
 - c. a summary of the key rating assumptions/factors and sensitivity analysis of the relevant key rating assumptions/factors;
 - d. language to indicate which substantially material sources of information were used to prepare the Credit Rating;
 - e. a description of the attributes and limitations of the Credit Rating so as to indicate whether MIS considers satisfactory the quality of information available on the rated entity; and
 - f. a reference to the principal methodology(ies) and model(s) used to determine the Credit Rating. MIS will explain if a Credit Rating is based on more than one principal methodology and if a review of only one methodology might cause financial market professionals to overlook other important aspects of the Credit Rating. MIS will indicate where different methodologies and other important aspects factored into Credit Ratings can be found on moodys.com.
- 3.7 MIS will publish sufficient information about its rating committee process, procedures, methodologies, and any assumptions about the published financial statements that deviate materially from information contained in the Issuer's published financial statements so that financial market professionals can understand how a Credit Rating assessment was made.
- a. MIS will publish sufficient information about its loss expectations and cash flow analysis relating to a structured finance Credit Rating so that a financial market professional can understand the basis for the Credit Rating. To the extent practical, MIS will disclose the degree to which it analyzes how sensitive a structured finance Credit Rating is to changes in MIS's underlying Credit Rating assumptions.
 - b. MIS will insert "(sf)" into all of its new and existing Credit Ratings of structured finance instruments. The insertion of "(sf)" will appear following the Credit Rating in all of MIS's Credit Rating Announcements and research reports – e.g., "Aa3(sf)" when referring to a specific Credit Rating.
 - c. MIS will clearly indicate the attributes and limitations of Credit Ratings and generally the extent to which MIS obtains verification of information provided to it by the Issuer or originator of a rated security. This information should assist investors in developing a greater understanding of what a Credit Rating is.
- 3.8 In accordance with MIS's *Core Principles for the Conduct of Rating Committees*, where feasible and appropriate, prior to issuing or revising a Credit Rating, MIS will inform the Issuer of the critical information and principal considerations upon which the Credit Rating is based and afford the Issuer an opportunity to submit additional factual information not previously available to the Issuer, or to clarify any likely factual misperceptions in order to produce a well-informed Credit Rating. MIS will duly evaluate the Issuer's response. Where in particular circumstances MIS has not informed the Issuer prior to issuing or revising a Credit Rating, MIS will inform the Issuer as soon as practicable thereafter and, generally, will explain the reason for the delay.
- 3.9 Where not precluded by specific circumstances, MIS will allow the Issuer a brief period of time, which may vary depending on the circumstances, to notify MIS of the Issuer's desire to appeal the Credit Rating decision. Appeals must be based on information not previously available to the Issuer or MIS.
- 3.10 In order to promote transparency and to enable the market to best judge the aggregate performance of Credit Ratings on debt instruments, where possible, MIS will publish sufficient

information about its historical default rates by rating category, the transitions between rating categories, and periodic performance metrics so that financial market professionals can understand the historical performance of securities assigned to different rating categories. Where feasible, this information will include verifiable, quantifiable historical information about the performance of its rating opinions, organized and structured and, where possible, standardized in such a way to assist financial professionals in drawing performance comparisons between credit rating agencies.

Upon request, MIS will provide Credit Ratings data to regulatory authorities to allow those authorities to conduct their own evaluation of Credit Ratings performance.

- 3.11 In order to promote transparency regarding the nature of MIS's interactions with Issuers, and in accordance with MIS's Policy on *Designating Issuers That Do Not Participate in the Rating Process*, MIS will publicly designate and disclose the names of Issuers that decline to participate in the rating process.
- 3.12 As a publisher of opinions about credit, MIS reserves the right at any time to issue Unsolicited Credit Ratings if MIS believes: (i) there is a meaningful credit market or investor interest served by the publication of such a rating; and (ii) it has sufficient information to support adequate analysis and, if applicable, ongoing monitoring. In accordance with MIS's policies on designating unsolicited credit ratings,⁶ when a Credit Rating is an Unsolicited Credit Rating, MIS will not seek or accept remuneration for its analytical services from the Issuer for at least one year after the publication of such Credit Rating.
- 3.13 MIS will publicly disclose via press release and posting on moodys.com any material modifications to its rating methodologies and related significant practices, procedures, and processes. Where feasible and appropriate, disclosure of such material modifications will be made subject to a "request for comment" from market participants prior to their implementation. MIS will carefully consider the various uses of Credit Ratings before modifying its rating methodologies, practices, procedures, and processes.
- 3.14 As a publisher of credit research related to its Credit Ratings, MIS will seek to provide clear, accurate, transparent, and high quality research about rated Issuers and issues. Research sales shall be separated from the research and rating process in ways that help protect the latter activities from improper conflicts of interest. As provided elsewhere in this section, Confidential Information and non-public information about MIS's future Credit Rating Actions may not be selectively disclosed to research subscribers or others.

B. TREATMENT OF CONFIDENTIAL INFORMATION

- 3.15 MIS and its Employees will:
 - 3.15.1 Preserve the confidentiality of Confidential Information communicated to them by an Issuer or its agent; and
 - 3.15.2 Unless they have received permission from the Issuer, refrain from publicly disclosing Confidential Information in Credit Rating Announcements, or through research, conferences, or conversations with investors, other Issuers, or any other persons.
 - 3.15.3 Notwithstanding the foregoing, MIS shall not be restricted from:
 - a. publishing any Credit Rating or other opinion regarding a particular security or transaction which incorporates Confidential Information as long as: (i) the Confidential

⁶ These policies, or summaries of them, are publicly available on moodys.com.

Information is not specifically disclosed and (ii) the disclosure is made publicly so that the opinion is available to investors generally;

- b. using third party contractors or agents bound by appropriate confidentiality obligations to assist in any aspect of the ratings process or related business activities;
 - c. disclosing information as required by any applicable law, rule, or regulation, or at the request of any governmental agency or authority; or
 - d. disclosing information to third parties with an independent legal right to receive it.
- 3.16 MIS will use Confidential Information only for purposes related to its Rating Services.
- 3.17 Employees will take all reasonable measures to protect all property and records belonging to or in possession of MIS from fraud, theft, and misuse.
- 3.18 In accordance with the *Securities Trading Policy*, Employees will be prohibited from engaging in transactions in Securities (including derivatives) when they possess material, non-public information or Confidential Information concerning the Issuer of such Securities.
- 3.19 Employees will familiarize themselves with the *Securities Trading Policy*, and periodically certify their compliance as required by such policy.
- 3.20 Employees will not disclose any non-public information about Credit Ratings or possible future Credit Rating Actions of MIS, except to the relevant Issuer or its designated agents.
- 3.21 Employees will not share Confidential Information entrusted to MIS with employees of any affiliated entities except to the extent such employees are acting as agents or contractors of MIS with respect to the relevant Rating Service and are bound by appropriate confidentiality obligations. Employees will not share Confidential Information within MIS except on a “need-to-know” basis.
- 3.22 Employees will not use or share Confidential Information for the purpose of trading Securities (including derivatives) or for any other purpose except as described in Provision 3.15 of this Code.
- 3.23 Except as required under any applicable law, rule, regulation, or at the proper request of any governmental agency or authority, MIS’s internal deliberations and the identities of persons who participated in a rating committee will be kept strictly confidential and will not be disclosed to persons outside of MIS except on a “need- to-know” basis and where such persons are bound by appropriate confidentiality provisions.

C. REFERRING TIPS TO LAW ENFORCEMENT OR REGULATORY AUTHORITIES

- 3.24 MIS may be required to refer to appropriate law enforcement or regulatory authorities any information that MIS has received from a third party and finds credible that alleges that an Issuer of securities rated by MIS has committed or is committing a violation of law that has not been adjudicated by the relevant court. MIS is not required to verify the accuracy of the information alleging the material violation of law.

4. Enforcement and Disclosure of the MIS Code and Communication with Market Participants

- 4.1 Management will be responsible for the implementation and the enforcement of the MIS Code. The Compliance Department will annually review and assess the efficacy of such implementation and enforcement.

-
- 4.2 The provisions of this Code are derived primarily from the IOSCO Principles and the IOSCO Code. However, MIS has made certain modifications to more closely align this Code with MIS's business mode and practices, as well as the laws adopted by various regulators globally. Such modifications will be specifically identified and explained in a report that MIS will publish annually outlining compliance with the MIS Code and explaining any deviations that may exist between the MIS Code and the IOSCO Code.
- 4.3 With respect to the subjective standards that are incorporated in this Code, MIS will use its good faith efforts in implementing such standards.
- 4.4 MIS will publish in a prominent position on moodys.com links to (1) the MIS Code; (2) a general description of the methodologies MIS uses in assigning Credit Ratings; and (3) information about MIS's historic Credit Rating(s) performance.
- 4.5 The MIS Compliance Department will be responsible for assessing adherence to the various procedural provisions of this Code. The reporting line of the Compliance Department will be independent of MIS's Credit Rating activities. Neither MIS's DCO, nor any other employee within the MIS Compliance Department, may: (1) perform Credit Ratings; (2) participate in the development of ratings methodologies or models; (3) perform marketing or sales functions; or (4) participate in establishing compensation levels, other than for MIS Compliance Department employees. In addition, all employees in the MIS Compliance Department will be required to receive training on compliance with these requirements upon the beginning of their employment in that department and annually thereafter. The DCO is responsible for implementation and enforcement of these requirements within the MIS Compliance Department. An employee who becomes aware of a breach of this policy will be required to report such breach to MIS's Legal Department.
- 4.5.1 The DCO's compensation will not be linked to MIS's financial performance and will be arranged so as to promote and not impair the independence of the DCO and the MIS Compliance Department.
- 4.5.2 MIS will require the DCO to review annually MIS's compliance during the prior calendar year with MIS's policies and procedures that relate to ratings-related activities, including any material changes to the MIS Code, the MCO Code and MIS's conflict of interest policies, and prepare a confidential, annual compliance report. Where required by law or as the DCO deems appropriate, such annual compliance report also will address MIS's compliance with relevant securities laws.
- 4.6 MIS will require, on an annual basis, an appropriate combination of officers, including the DCO, Chief Risk Officer and Chief Human Resources Officer, to review MIS's policies and procedures that relate to ratings-related activities and conflicts of interest, its internal control systems for such policies and procedures, and its compensation and promotion policies and practices, report to the Chairman of MIS's Board of Directors (or head of the relevant subcommittee of the Board) on MIS's compliance with the policies, procedures, systems and practices referred to in this provision, and recommend any changes that are necessary.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Moody's Investors Service
7 World Trade Center at
250 Greenwich Street
New York, New York 10007

Questions and comments on the Code can be sent to the following email address:
MISCodeofConduct-Comments@moody.com

Moody's
INVESTORS SERVICE

SP11557

EXHIBIT B

Our Rating Process

Publication date: 15-Apr-2008 00:00:00 EST

[View Analyst Contact Information](#)

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Our Rating Process

Most corporations approach us to request a rating prior to the sale or registration of a debt issue. That way, first-time issuers can receive an indication of what rating to expect. Issuers with rated debt outstanding also want to know in advance what effect issuing additional debt will have on the ratings we already have assigned. (As a matter of policy, in the U.S., we assign and publish ratings for all public corporate debt issues of more than \$100 million--with or without a request from the issuer. In these cases, we contact the issuer to elicit its cooperation.)

The analysts with the greatest relevant industry/country expertise are assigned to evaluate the credit and commence surveillance of the company. Our analysts generally concentrate on one or two industries, covering the entire spectrum of credits within those industries. Such specialization allows the analysts to accumulate expertise and competitive information better than if junk-bond issuers were followed separately from high-grade issuers. While one analyst takes the lead in following a given issuer and typically handles day-to-day contact, a team of experienced analysts--including a back-up analyst--is always assigned to the rating relationship with each issuer.

Meeting with management

A meeting with corporate management is an integral part of our rating process. The purpose is to review in detail the company's key operating and financial plans, management policies, and other credit factors that have an impact on the rating. Management meetings are critical in helping to reach a balanced assessment of a company's circumstances and prospects.

Participation

The company typically is represented by its chief financial officer. The chief executive officer usually participates when strategic issues are reviewed (usually the case at the initial rating assignment). Operating executives often present detailed information regarding business segments. Outside advisors may be helpful in preparing an effective presentation. We neither encourage nor discourage their use: It is entirely up to management whether advisors assist in the preparation for meetings, and whether they attend the meetings.

Scheduling

Management meetings usually are scheduled at least several weeks in advance, to assure mutual availability of the appropriate participants and to allow adequate preparation time for our analysts. In addition, if a rating is being sought for a pending issuance, it is to the issuer's advantage to allow about three weeks following a meeting for us to complete the review process. More time may be needed in certain cases, if, for example, extensive review of documentation is necessary. However, where special circumstances exist and a quick turnaround is needed, we endeavor to meet the requirements of the marketplace.

Facility tours

Touring major facilities can be very helpful for us to understand a company's business. However, it generally is not critical in assigning a rating to a given company. Considering the time constraints that typically arise in the initial rating exercise, arranging facility tours may not be feasible. As discussed below, such tours may well be a useful part of the subsequent surveillance process.

Preparing for meetings

Corporate management should feel free to contact its designated Standard & Poor's credit analyst for guidance in advance of the meeting regarding the particular areas that will be emphasized in the analytic process. Published ratings criteria, as well as industry commentary and articles on peer companies, may also help management appreciate the analytic perspective.

Providing detailed, written lists of questions tends to constrain spontaneity and artificially limit the scope of the meeting. Therefore, some of our practices prefer not to do so, while other practices endeavor in other ways to avoid such outcomes.

We request that the company submit background materials well in advance of the meeting, (ideally, several sets), including:

- Five years of audited annual financial statements;
- The last several interim financial statements;
- Narrative descriptions of operations and products; and
- If available, a draft registration statement or offering memorandum, or equivalent.

Apart from company-specific material, relevant industry information also is useful. Although not mandatory, written presentations by management often help provide a framework for the discussion. Such presentations typically mirror the format of the meeting discussion, as outlined below. Where a written presentation is prepared, it is particularly useful for our team to review it in advance of the meeting.

There is no need to try to anticipate all questions that might arise. If additional information is necessary to clarify specific points, it can be provided subsequent to the

meeting. In any case, our credit analysts generally will have follow-up questions that arise as the information covered at the management meeting is further analyzed.

Confidentiality

A substantial portion of the information set forth in company presentations is highly sensitive and is provided by the issuer to us solely for the purpose of arriving at ratings. Such information is kept strictly confidential by the ratings group, on a need-to-know basis. (Obviously, if information is known to us or comes to be known from other sources, the company cannot expect us to treat this information confidentially.) It is not to be used for any other purpose, nor by any third party, including other Standard & Poor's units. Standard & Poor's maintains a "Chinese Wall" between its rating activities and its equity information services. Even if a public rating is subsequently assigned, any rationales or other information we publish about the company will refer only to publicly available corporate information. In the same vein, if we change a rating or outlook based on confidential information received, we will take pains to avoid disclosing that information in our published materials.

Conduct of meeting

In a typical meeting with issuer management, we typically address:

- Industry environment and prospects;
- An overview of major business segments, including operating statistics and comparisons with competitors and industry norms;
- Financial policies and financial performance goals;
- Distinctive accounting practices;
- Projections, including income and cash flow statements and balance sheets, together with the underlying market and operating assumptions;
- Capital spending plans; and
- Financing alternatives and contingency plans.

It should be understood that our ratings are not based on the issuer's financial projections or management's view of what the future may hold. Rather, ratings are based on our assessment of the company's prospects. However, management's financial projections are a valuable tool in the rating process, because they indicate management's plans, how management assesses the company's challenges, and how it intends to deal with problems. Projections also depict the company's financial strategy in terms of anticipated reliance on internal cash flow or outside funds, and they help articulate management's financial objectives and policies.

Management meetings with companies new to the rating process typically last two to four hours, or longer if the company's operations are particularly complex. If the issuer is domiciled in a country new to ratings or participates in a new industry, more time is usually required. When, in addition, there are major accounting issues to be covered, meetings can last a full day or two.

Short, formal presentations by management are useful to introduce areas for discussion. We prefer meetings to be interactive and largely informal, with ample time allowed for questions and responses. (At management meetings, as at all other times, we welcome the company's questions regarding our procedures, methodology, and analytical criteria.)

Rating committee

A committee is always convened to assign a new issuer rating. Rating committees normally consist of five to seven voting members, and a chairperson reviews the suitability of the committee participants.

A presentation is made by the lead analyst to the rating committee, which has been provided in advance with appropriate financial statistics and comparative analysis. The presentation follows the methodology as outlined in the methodology section below. It includes analysis of the company's business and its operating environment, evaluation of its strategic and financial management, accounting aspects, and financial analysis. When rating a specific issue, there is additional discussion of the proposed issue and terms of the indenture.

Once the ratings are determined, the company is notified and told of the major supporting considerations. We allow the issuer to respond to the rating decision prior to its publication by presenting new or additional data. We entertain appeals in the interest of having available the most information possible and, thereby, the most accurate ratings. In the case of a decision to change an extant rating, any appeal must be conducted as expeditiously as possible, i.e., within a day or two. The committee reconvenes to consider the new information.

After notifying the company, the rating is disseminated via the media, or released to the company for dissemination in the case of private placements or corporate credit ratings.

To maintain the integrity and objectivity of our rating process, our internal deliberations and the identities of those who sat on a rating committee are kept confidential, and not disclosed to the issuer.

Surveillance

Corporate ratings on publicly distributed issues are monitored for at least one year. The company can then elect to pay us to continue surveillance. Ratings assigned at the company's request have the option of surveillance, or being on a "point-in-time" basis.

Surveillance is performed by the same industry analysts who work on the assignment of the ratings. In fact, we strive to provide continuity of the lead analyst and a portion of the relevant rating committee (some members do rotate, though, to allow for fresh perspectives, and the lead analyst role must rotate after five years). To facilitate surveillance, companies put the lead analyst on mailing lists to receive interim and annual financial statements, press releases, and bank documents, including compliance

certificates. The lead analyst is in periodic contact with the company to discuss ongoing performance and developments. Where these vary significantly from expectations, or where a major, new financing transaction is planned, an update management meeting is appropriate. We also encourage companies to discuss hypothetically--again, in strict confidence--transactions that perhaps are only being contemplated (e.g., acquisitions, new financings), and, where practicable, we endeavor to provide frank feedback about the potential ratings implications of such transactions.

In any event, management meetings routinely are scheduled at least annually. These meetings enable analysts to keep abreast of management's view of current developments, discuss business units that have performed differently from original expectations, and be apprised of changes in plans. As with initial management meetings, we willingly provide guidance in advance regarding areas we believe warrant emphasis: There generally is no need to dwell on basic information covered at the initial meeting. Apart from discussing revised projections, it is helpful to revisit the prior projections and to discuss how actual performance varied, and why.

A significant proportion of meetings with company officials take place on the company's premises. There are several reasons: to facilitate increased exposure to management personnel--particularly at the operating level; obtain a first-hand view of critical facilities; and achieve a better understanding of the company by spending more time reviewing the business units in depth. We actively encourage meetings on company premises, but time and scheduling constraints on both sides dictate that arrangements for these meetings be made some time in advance.

Because the staff is organized by specialty, credit analysts typically meet each year with most major companies in their assigned area to discuss the industry outlook, business strategy, and financial forecasts and policies. This way, competitors' forecasts of market demand can be compared with one another, and we can assess implications of competitors' strategies for the entire industry. Our analysts can judge management's relative optimism regarding market growth and relative aggressiveness in approaching the marketplace.

Importantly, the analyst compares business strategies and financial plans over time and seeks to understand how and why they changed. This exercise provides insights regarding management's abilities with respect to forecasting and implementing plans. By meeting with different managements over the course of a year, and the same management year after year, analysts can distinguish between managements with thoughtful, realistic agendas and those with wishful approaches.

Management credibility is achieved to the extent the record demonstrates that a company's actions are consistent with its plans and objectives. Once earned, credibility helps support continuity of a particular rating level, because we can rely on management to do what it says to maintain and/or restore creditworthiness when faced with financial stress or strategic challenge. Once lost, credibility is difficult to restore.

The rating process benefits from the unique perspective on credibility gained by extensive evaluation of management plans and financial forecasts over many years.

Rating changes

As a result of the surveillance process, it sometimes becomes apparent that changing conditions require reconsideration of the outstanding rating. When this occurs, the analyst undertakes a preliminary review, which, after internal deliberation, may lead to a CreditWatch listing. This is followed by a comprehensive analysis, communication with management, and a presentation to the rating committee. The rating committee evaluates the matter, arrives at a rating decision, and notifies the company--after which we publish the rating changes, if any, and the new outlook. The process is exactly the same as the rating of a new issue. Reflecting this surveillance, the timing of rating changes depends neither on the sale of new debt issues nor on our internal schedule for reviews.

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1-877-772-5436

EXHIBIT 2

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	:	Case No. 12-426-EL-SSO
The Dayton Power and Light Company for	:	
Approval of Its Electric Security Plan	:	

In the Matter of the Application of	:	Case No. 12-427-EL-ATA
The Dayton Power and Light Company for	:	
Approval of Revised Tariffs	:	

In the Matter of the Application of	:	Case No. 12-428-EL-AAM
The Dayton Power and Light Company for	:	
Approval of Certain Accounting Authority	:	

In the Matter of the Application of	:	Case No. 12-429-EL-WVR
The Dayton Power and Light Company for	:	
the Waiver of Certain Commission Rules	:	

In the Matter of the Application of	:	Case No. 12-672-EL-RDR
The Dayton Power and Light Company	:	
to Establish Tariff Riders	:	

DECLARATION OF CRAIG L. JACKSON

I, Craig L. Jackson, declare as follows:

1. My name is Craig L. Jackson, and I am the Chief Financial Officer of The Dayton Power and Light Company ("DP&L").

2. I have been involved in working on these cases since before they were filed, and during the course of that work, I have been advised by DP&L's counsel, Judi Sobecki,

and DP&L's outside counsel, Faruki Ireland & Cox P.L.L. ("FI&C"), regarding both the likely outcome and the range of possible outcomes of these cases.

3. DP&L's credit is rated by the three major CRAs -- Moody's, Standard & Poor's and Fitch. Those entities have access to the same publicly-filed information to which any investor would have access (e.g., SEC filings, filings at the Commission).

4. To assist those CRAs to perform a more detailed review of DP&L's credit rating than the CRA could achieve by reviewing publicly-available information, DP&L provided information to those CRAs regarding DP&L's expected results of this case. Those numbers differed from DP&L's as-filed numbers, because they show the results that DP&L expects to achieve, not the results for which it asks.

5. DP&L's ability to litigate and settle this case would be significantly harmed if intervenors had access to DP&L's expected results of this case.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated January 29, 2013.



Craig L. Jackson

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/29/2013 3:23:02 PM

in

Case No(s). 12-0426-EL-SSO, 12-0427-EL-ATA, 12-0428-EL-AAM, 12-0429-EL-WVR, 12-0672-EL-RDR

Summary: Memorandum The Dayton Power and Light Company's Memorandum in Opposition to OCC's Second Motion to Compel electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company