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October 19, 2020

VIA ELECTRONIC MAIL

Moody's Investors Service
Request for Comment Page

Re: Request for Comment: "General Principles for Assessing Environmental, Social and Governance Risks: Proposed Methodology Update," September 23, 2020.

Dear All:

The entirety of my response herein is intended to be publicly available on Moodys.com. I have also submitted this response to Moody's via its Request for Comment portal.
(https://www.moodys.com/researchandratings/research-type/methodologies-frameworks/request-for-comment/003006005/003006005/-/-1/0/-/0/-/-/-/-/-/-/-/-/global/pdf/-/rra)

My name is Bill Harrington. I resigned as a Moody Senior Vice President in July 2010, joined the Experts Board of Wikirating.org in 2015, and affiliated as a senior fellow with the non-profit Croatan Institute in 2017.
(https://www.linkedin.com/in/williamjharrington/)
(https://www.wikirating.org/)
(http://www.croataninstitute.org/william-j-harrington)

Following are two events that book-end my Moody's tenure.

On Saturday, September 15, 2001, Moody's used the apartment that my partner and I still occupy as a staging point for colleagues who, along with me, retrieved company laptops from Moody's downtown Manhattan office at 250 Vesey Street. Former Moody's executive Brian Clarkson, Joseph Grohotolski, and fifteen other colleagues were among those who gathered at our apartment before heading downtown. At the day's end, our corner sidewalk served as the transit point for organizing the haul of laptops for distribution to colleagues throughout New York City and the tri-state area. The delivering email copies Joseph Grohotolski.

My then Derivatives Group colleague and current Moody's Senior Vice President Stephen Lioce was among those whose laptop I retrieved. The delivering email copies Steve.

In late spring 2010, Moody's then Managing Director / Chief Credit Officer - Financial Institutions Group Mark Lamonte offered me a job in his group. One responsibility would have neem to oversee the development of credit rating methodologies. I declined the offer. The delivering email copies Mr. Lamonte.

The following relates to a period that began during my Moody's tenure and extended until 2019. My decade-long colleagues in Moody's Derivatives Group, Managing Director Bill May and Vice President Peter Hallenbeck, and my partner were members of a book club that at various times had five-to-nine other members. The group met at a different person's apartment each month, with the host serving dinner afterwards. My partner hosted Bill, Peter, and the rest of the book group in our apartment at least once a year. The delivering email copies both Bill and Peter.

My *Responsible Investor* opinion "Investors who want to fast-track sustainable fixed-income investments should inundate credit rating agencies with methodology critiques" (January 28, 2020) urges fixed-income practitioners to respond to NRSRO methodology proposals. (https://www.responsible-investor.com/articles/investors-who-want-to-fast-track-sustainable-fixed-income-investments-should-inundate-credit-rating-agencies-with-methodology-critiques)

My new *Responsible Investor* opinion "Moody's Global ESG Proposal is Transparent Bait-and-Switch" of today, October 19 describes this comment and links to it. The delivering email copies *Responsible Investor* Editor Ms. Sophie Robinson-Tillett.

The delivering email copies Director, SEC Office of Credit Ratings, Ms. Jessica Kane. (https://www.sec.gov/page/ocr-section-landing)

Until at least January 13, 2022, Moody's must fulfill the Compliance Commitments that it, affiliate Moody's Analytics, and parent Moody's Corporation agreed in the settlement with the US Department of Justice and the attorneys general of 21 states and Washington, DC on January 13, 2017. I will deliver copies of this letter to the US Department of Justice contacts to whom Mr. Ray McDaniel, President and CEO of Moody's Corporation, must provide annual certifications of adherence with the Compliance Commitments.
(https://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-nearly-864-million-settlement-moody-s-arising)

Moody's Corporation President and CEO Ray McDaniel can attest to the objectivity, rigor, and usefulness of my assessments of credit ratings and methodologies for all sectors, including structured finance, providers and end-users of derivative contracts, sovereigns, financial institutions, and ESG. The delivering email copies Mr. McDaniel.
(https://www.businessinsider.com/moodys-analyst-conflicts-corruption-and-greed-2011-8)

The *Wall Street Journal* requested Moody's "*annual certifications [of Compliance Commitments adherence] under a public records request but the Justice Department declined to provide them, claiming that they were covered by an exemption prohibiting the disclosure of 'trade secrets.' The Journal appealed the ruling.*" See Cezary Podkul, *Wall Street Journal*, "Kroll Agrees to Pay $2 Million to Settle Allegations It Broke Credit-Ratings Rules," September 30, 2020. The delivering email copies *Wall Street Journal* Senior Reporter Cezary Podkul.

(https://www.wsj.com/articles/kroll-agrees-to-pay-2-million-to-settle-allegations-it-broke-credit-ratings-rules-11601424377?mod=searchresults&page=1&pos=2)

Is the US Department of Justice covering for Moody's?
"Trade secrets" is nonsensical in light of the Compliance Commitments themselves, as well as the "open-book" policy that Moody's and all NRSRO credit rating companies claim to operate with respect to the consistency of every credit rating and the applicable credit rating methodologies.

Finding the Justice Department rationale both unconvincing and disturbing, I submitted Freedom of Information Act requests for Mr. McDaniel's annual certifications with the Attorney General's Office of Delaware on September 30, 2020. The delivering email copies the Delaware Attorney General.

US Senator Josh Hawley of Missouri, former Missouri attorney general, is a signatory to the Moody's settlement. The delivering email copies Senator Hawley's Chief of Staff.
(https://www.justice.gov/opa/press-release/file/926551/download, pages 57-58)

On May 4, 2020, Executive Director of the National Whistleblower Center John Kostyack and I discussed the possibility of using Moody's Compliance Commitments as a tool to support NWC oil and gas staff who use whistleblower law to report fraud to regulators. The delivering email copies Mr. Kostayck.

While at Moody's from 1999 to 2010, I voted in approximately 1500 structured finance, banking, insurance, and municipal committees. I co-developed global methodologies for derivative contracts, including both standard swap contracts and ones in which a structured finance deal referred to a flip clause in paying a swap dealer (flip-clause-swap-contract). See entirety of my "Motion to File Proposed Amicus Curiae Brief with the US 2nd Circuit Re: Case No. 18-1079."
(http://croataninstitute.org/images/publications/WJH-Motion-to-File-Amicus-Brief.pdf)

In 2009 and 2010, "I participated in 20+ sovereign committees as one of two required senior members from outside the Sovereign Group. My prior experience as an International Economist at The WEFA Group served me well in this capacity."
(https://www.sec.gov/comments/s7-18-11/s71811-33.pdf, page 3)

As a note, my WEFA Group colleagues included the following Moody's Analytics executives: Chief Economist Mark Zandi, Executive Director Paul Getman, and Managing Director Karl Zandi. The delivering email copies Paul, Mark, and Karl.
(https://www.sec.gov/comments/s7-18-11/s71811-33.pdf, pages 5, and 56-57)

On March 27, 2020, I submitted a response to Moody's "Request for Feedback: 'Proposed framework to assess carbon risks for the global refining and marketing sector,' February 27, 2020." Moody's neither posted my response nor discussed it in the resulting "Non-Credit Rating Assessment Framework for the Global Refining and Marketing Sector 'Carbon transition assessment framework for refining and marketing companies, July 10, 2020.'"
Appendix A to this letter, pages 20-23, contains my comment response of March 27, 2020.

(https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_1204197)
(https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_1226417)

Appendix B to this letter, pages 24-29 contains my response to the "Request for Public Comment: 'Topics and issues being addressed by the Climate-Related Market Risk Subcommittee (MRAC Climate Subcommittee) under the Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission'" of May 14, 2020. My response is also posted on the CFTC site. (https://comments.cftc.gov/PublicComments/ViewComment.aspx?ID=62485&GUID=40feb722-0be4-4a58-8f28-20b5a963f25b)

"*On October 1 [2020], the NYU Institute for Corporate Governance and Finance . . . [brought] . . . together a group of experts to have a wide-ranging discussion on emerging issues in economic policy.*"
(https://www.law.nyu.edu/icgfeconomypolicyconference)

The Institute Co-Directors Robert A. Jackson and Edward Rock organized the day. Professor Frank Partnoy of UC Berkeley moderated the Sustainable Finance discussion, replacing the initially announced moderator Chair of the Editorial Board and Editor-at-Large, US, and Moral Money Co-Founder of the *Financial Times* Gillian Tett. The panelists were CFTC Commissioner Russ Behnam, SEC Commissioner Allison Herren Lee, and Marilyn Waite of the William and Flora Hewlett Foundation.

Previously on September 29, I sent a group email to the aforementioned to suggest that the Sustainable Finance discussion address credit rating companies.

"Dear All,

"I am writing to ask that you assess the ways in which credit rating companies impede financing for projects that mitigate climate and sustainability exposures. To-date, you have treated credit rating companies with kid gloves. Why? Your doing so undercuts your argument that climate is an emergency that finance can fix.

"As a resource, you may use my *Responsible Investor* op-ed 'Investors who want to fast-track sustainable fixed-income investments should inundate credit rating agencies with methodology critiques' (Jan 28, 2020). I have shared the op-ed with most of you several times.

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

"Along those lines, I posted the text further below on my LinkedIn profile.

"https://www.linkedin.com/in/williamjharrington/

"Best regards,

"Bill Harrington"

On October 1, I listened to the Sustainable Finance discussion. When neither moderator nor panelists mentioned credit rating companies by the half-way point, I posed a credit rating question in the discussion chat box for the moderator, panelists, and viewers to see. Frank Partnoy bundled my question with another unrelated to credit rating companies and asked each panelist to respond. In turn, CFTC Commissioner Behnam ignored the credit rating question. SEC Commissioner Lee ignored the credit rating question. Ms. Waite said that she appreciated the credit rating question and endorsed a need for better understanding of the forward-looking assumptions that credit ratings embed.

The delivering email copies Professor Jackson, Professor Rock, Professor Partnoy, Ms. Tett, Commissioner Behnam, Commissioner Lee, and Ms. Waite.

The Sustainable Finance discussion reiterated what I have experienced day in and year out since beginning my self-funded, private-citizen advocacy to improve the content of credit ratings in 2011.

A pervasive cone of silence — omertà — stifles firmament discussion of the harm that inflated credit ratings inflict on us all.

The omertà extends to the US judicial system. On June 28, 2019, the US Court of Appeals for the Second Circuit denied my motion of June 25, 2019 to file an amicus curiae brief In *Re: Lehman Brothers Special Financing, Inc. against Branch Banking and Trust Company*, et al. On August 6, 2019, the Court denied my motion of July 15, 2019 to reconsider my motion to file the amicus curiae brief. See my "Proposed Amicus Curiae Brief to the US 2nd Circuit Re: Case No. 18-1079." (http://croataninstitute.org/images/publications/20190808-Amicus-Curiae-Brief.pdf)

The Court offered no reason in denying either of my motions. I find the Court's fear of considering my highly-informative and useful work deeply concerning.

Why is the US Court of Appeals for the Second Circuit, which is not afraid to rule against the President of the United States, afraid to hear from me?

The delivering email copies the US Court of Appeals for the Second Circuit and several parties in *Re: Lehman Brothers Special Financing, Inc. against Branch Banking and Trust Company*, et al — namely, counsel to the plaintiff, the Amicus Curiae Structured Finance Industry Group, and its counsel.

Alberto Thomas of Fideres Partners, LLP, and I recorded a "Ratings Manipulation Webinar" on June 30, 2020. My remarks begin at 18:00 and continue to the end. The delivering email copies Alberto Thomas.
(https://fideres.com/videos/ratings-manipulation-webinar)

On September 25, Executive Commissioning Editor at Palgrave Macmillan Tula Weis and I discussed my authoring one or a series of academic books on credit ratings, ESG, and related topics. The delivering email copies Tula.

I haven't decided whether to write one or a series of books, but I am committed to spending the rest of my life calling out the idiosyncratic and systemic credit losses that accrue in all sectors worldwide owing to DBRS Morningstar, Fitch Ratings, Moody's Investors Service, and S&P Global

Ratings inflating most credit ratings. No credit rating company has the standing to assess Governance of any other entities given the credit rating companies' own demonstrable failings since 2005, if not much earlier.

The delivering email copies governance analysts at DBRS Morningstar, Fitch Ratings, Investors Service, and S&P Global Ratings.

Respectfully,

/s/William J. Harrington

William J. Harrington
Senior Fellow, Croatan Institute
Wikirating.org Experts Board — Structured Finance Topics

CC: Mr. Joseph Grohotolski, Vice President, Moody's Investors Service

Mr. Stephen Lioce, Senior Vice President, Moody's Investors Service

Mr. Mark Lamonte, Managing Director, WilliamsMartson LLC

Mr. Bill May, Managing Director, Moody's Investor Service

Mr. Peter Hallenbeck, Vice President & Senior Credit Office, Moody's Investors Service

Ms. Sophie Robinson-Tillett, Editor at *Responsible Investor*

Ms. Jessica Kane, Director of Office of Credit Ratings, US Securities and Exchange Commission

United State Attorney for the District of New Jersey,
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Mr. Cezary Podkul, *Wall Street Journal* Senior Reporter

Ms. Kathy Jennings, Attorney General of Delaware

Mr. Kyle Plotkin, Chief of Staff for US Senator Joshua D. Hawley

Mr. John Kostack, Executive Director, National Whistleblower Center

Mr. Raymond McDaniel, President and Chief Executive Officer, Moody's Corporation

Mr. Mark Zandi, Chief Economist, Moody's Analytics

Mr. Paul Getman, Executive Director, Moody's Analytics

Mr. Karl Zandi, Managing Director, Moody's Analytics

Mr. Robert J. Jackson, Jr., Professor of Law, co-Director of the Institute for Corporate Governance and Finance, and Director of the Program on Corporate Law and Policy at New York University School of Law

Mr. Edward Rock, Martin Lipton Professor of Law, and Director of the Institute for Corporate Governance and Finance at New York University School of Law

Mr. Frank Partnoy, Professor of Law at the University of California Berkeley School of Law

Ms. Gillian Tett, Chair of the Editorial Board, Editor-at-Large US, and Moral Money Co-Founder, *Financial Times*

Mr. Rostin Behnam, Commissioner, United States Commodity Futures Trading Commission

Ms. Allison Herren Lee, Commissioner, United States Securities and Exchange Commission

Ms. Marilyn Waite, Climate and Clean Energy Finance Program Officer, William and Flora Hewlett Foundation

US Court of Appeals for the Second Circuit Re: *Lehman Brothers Special Financing, Inc. against Branch Banking and Trust Company*, et al.

Mr. Paul R. DeFilippo, Partner, Wollmuth Maher & Deutsch LLP

Ms. Jennifer Wolfe, Director, ABS and Investor Policy, Structured Finance Association

Ms. Madlyn Gleich Primoff, Partner, Freshfields Bruckhaus & Deringer US LLP

Mr. Timothy Harkness, Freshfields Bruckhaus & Deringer US LLP

Mr. David Livshiz, Counsel, Freshfields Bruckhaus & Deringer US LLP

Mr. Henry Hutten, Senior Associate, Freshfields Bruckhaus & Deringer US LLP

Mr. Alberto Thomas, Partner, Fideres Partners LLP

Ms. Tula Weis, Executive Commissioning Editor, Palgrave Macmillan

Mr. Andrew Steel, Global Head of Sustainable Finance, Fitch Ratings

Mr. Gregg Lemos-Stein, Global Head of Analytics & Research, S&P Global Ratings

Mr. Thomas Torgerson, Managing Director, Credit Ratings Global Financial Institutions & Sovereign Ratings, DBRS Morningstar

Moody's "Request for Comment: 'General Principles for Assessing Environmental, Social and Governance Risks: Proposed Methodology Update,' September 23, 2020" warrants big-picture critiques.

Note: Page numbers in parenthesis reference the Request for Comment.

1) **Moody's should extend the comment period by several months rather than close it on "October 22, 2020 no later than 11:59 P.M. US Eastern Time" (page 3). The proposal is extremely counter-intuitive, and many if not most interested parties get it 100% backwards.** Proof was continuously on offer during the 90-minute webinar that Moody's Senior Vice President--ESG Swami Venkataraman and Vice President Daniel Marty conducted on October 6. The overwhelmingly majority of questioners ***misunderstood*** the crux of the proposal — namely that an ESG credit impact score is an "ex-poste assessment" of the ESG impact on a credit rating and ***not*** an input to the credit rating. From the first question to the last, and despite repeated clarifications by Messrs. Venkataraman and Marty, participants asked: *How will the ESG credit impact score affect a credit rating?*

   Furthermore, at least one question necessitated the response: An "*E, S, or G issuer profile score is **not** a credit rating*."

   The proposal plainly fails the stated purpose of increasing transparency into the inter-relationship of ESG factors and a given credit rating. "*The CIS is an output of the rating process that would more transparently communicate our assessment of the impact of ESG considerations on assigned ratings in the context of other credit drivers*" (page 3).

2) **A second reason to extend the comment period: Fixed-income practitioners, financial regulators, ESG advocates and allies, and regular people require more education on the centrality of credit rating methodologies to the operations of a credit rating company. Few know that credit rating methodologies are central to the assignment and monitoring of credit ratings, or that credit rating companies *maintain* that they welcome comments on all credit rating methodologies all the time, or that credit rating companies periodically propose updates to selected credit rating methodologies with invitations for public comment.**

   My advocacy for third parties to push credit rating companies to improve the content of credit ratings by improving the content of credit rating methodologies has uncovered a lack of basic knowledge on credit rating companies, including what the U.S. Securities and Exchange Commission does and does not do in regulating them.

   For instance, I engaged directly both with the Climate-Related Market Risk Subcommittee under the Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission and with the sustainability non-profit Ceres on the most efficient means to improve the ESG content of credit ratings. See Appendix B, pages 24-29 to this letter, for my submission to the CFTC Climate-Related Market Risk Subcommittee of May 14, 2020.

However, the CFTC Climate-Related Market Risk Subcommittee and Ceres both released reports that entirely missed the credit rating company mark. Both the CFTC report and the Ceres report mis-identified ESG disclosure, rather than ESG content, as the main credit rating deficiency. Also, both reports deputized the SEC Office of Credit Ratings, rather than third-party commenters on credit rating methodologies, as the agent to push credit rating companies to improve the ESG content of credit ratings. See Ceres "Addressing Climate As a Systemic Risk: A call to action for U.S. financial regulators," June 2020, pages x, 28, & 34 and the CFTC "Managing Climate Risk in the U.S. Financial System," September 9, 2020," pages 46, 52, 98, & 127.
(https://www.ceres.org/sites/default/files/reports/2020-06/Financial%20Regulators%20FULL%20FINAL.pdf)
(https://www.cftc.gov/About/AdvisoryCommittees/MarketRiskAdvisory/MRAC_Reports.html)

3) **A third reason to extend the comment period: Moody's proposes to quickly implement the update in the sovereign sector, which, given its centrality to all other credit rating sectors, will enable Moody's to double down on its global under-counting of expected losses.**

4) **A fourth reason to extend the comment period: The proposal exposes the credit rating company Moody's Investors Service and parent Moody's Corporation to investor lawsuits, as well as to sanction by the U.S. Department of Justice and the attorneys general of the 21 states and District of Columbia that are party to the 2017 settlement with Moody's Corporation, Moody's Investors Service, and Moody's Analytics.**

Simply put, the structured finance provisions in the proposal are outright lies! As example, the following cannot possibly be true.

***"For structured transactions, we consider the impact of ESG risks that are expected to unfold within the legal final maturity of the transaction"* (footnote 10, page 28).**

The legal final maturities of some transactions, such as Navient student loan asset-backed securities, extend to 2083! See my letter to CFTC Secretary Christopher Kirkpatrick "31 Misrepresentations in CFTC Letter No. 17-52" of February 2, 2018, pp 30-33.
(https://www.wikirating.org/data/other/20180203_Harrington_J_William_31_Misrepresentations_in_CFTC%20_Letter_No_17-52.pdf)

Does Moody's represent that the respective rating committees for Navient the corporation and for individual Navient student loan ABS consider any, let alone all *"ESG risks that are expected to unfold"* in the student loan sector from now until 2083?

With respect to credit exposures to governance factors, does Moody's view good governance as meaning that Navient and other servicers follow the law and shepherd borrowers into income-based repayment plans (IBR) that are optimal with respect to borrower? Servicers fail at shepherding borrowers into IBR when they are thinly capitalized, lack the resources to take a high-touch approach to their loans, and are less likely to repay debt in full when due.

Do Navient and other servicers set aside reserves for economic difficulties, i.e., when servicing is more expensive because borrowers default and need IBR? Or do Navient and other servicers pay executive salaries and bonuses? If the latter, that is obviously a self-defeating governance failure by the servicer that increases the likelihood that it won't pay its own debt in full when due. It is bad for borrowers. And it is bad for ABS investors because it increases the likelihood that the ABS also won't be paid in full when due.

How does Moody's assess the credit implications to ABS with legal final maturities as far into the future as 2083 given Navient policy to buyback stock rather than apply cash to improve the likelihood that ABS deals will re-pay debt in full when due?

5) **<u>What is the value of introducing four new "scores," given that there will be "*no changes to outstanding ratings for all sectors globally . . . our proposed publication of CISs [ESG credit impact scores] will not change any ratings, currently or in the future*" (page 3)?</u>**

   Moody's has a track record of masking credit risk in core products such as the credit ratings of structured finance debt by generating "scores," "assessments," and "carved-out ratings." See Gaillard, Norbert J. and William J. Harrington "<u>Efficient, commonsense steps to foster accurate credit ratings,</u>" *Capital Markets Law Journal*, Volume 11, Issue 1, January 2016, Pages 38–59, especially footnotes 22-24 and 119. (https://doi.org/10.1093/cmlj/kmv064)

6) **<u>Does Moody's intend the proposal as ESG window dressing to avoid downgrading the majority of credit ratings globally?</u>**

   How does Moody's square its assertion that the proposal will produce "*no changes to outstanding ratings for all sectors globally"* with a contradictory assertion on page 6 — "*ESG Considerations Often Have More Potential Credit Risk Than Credit Benefit*"?

7) **<u>Moody's must consider the credit benefits, as well as the credit costs, that regulation imparts to the web of inter-connected entities, e.g., corporate and government issuers.</u> Currently, Moody's treats regulatory action in all sectors worldwide as a zero-sum cost to issuers rather than a trade-off that delivers corresponding benefits to some entities, such as government entities of all levels from municipal to sovereign.**

   Moody's also claims a laughable ability to gauge national sentiments, but not credit exposures, far into the future. The following two excerpts are both on page 9 of the proposal.

   > For "***Regulatory Risks with Visible and Immediate Impact*** *. . . we may consider the likely effects on product demand or production costs."*

For *"**Longer-Term Regulatory initiatives** . . . the future credit implications necessarily includes an assessment of the political landscape, including the will of the body politic to accept regulations that may result in higher costs or fewer jobs in the sector, and the ability of affected sectors to alter the course of regulation or implementation."*

8) **<u>Moody's must assess the likelihood that an issuer or bond will pay on time and in full over a longer, more meaningful horizon.</u> Moody's underestimates credit exposures by playing fast and loose with its assessment of considering "all material credit risks" viz-a-viz the actual period of assessment.**

   For instance, Moody's analysts on various webinars that I have described the assessment period for a long-term credit rating for a municipality, corporate, or sovereign as comparatively near-term, i.e., a range from two-to-five years.

   The proposal itself green-lights Moody's to continue basing long-term credit ratings on short-term analysis of credit exposures to ESG factors.

   "*While the future impact of diffuse, uncertain or very long-term risks cannot always be calibrated, fundamental credit strengths that provide resilience against short-term risks also provide resilience against most long-term risks.*" (proposal, page 7)

   Moody's also claims a laughable ability to gauge national sentiments, but not credit exposures, far into the future. The following excerpts are both on page 9 of the proposal.

   For "***Regulatory Risks with Visible and Immediate Impact** . . . we may consider the likely effects on product demand or production costs."*

   For *"**Longer-Term Regulatory initiatives** . . . the future credit implications necessarily includes an assessment of the political landscape, including the will of the body politic to accept regulations that may result in higher costs or fewer jobs in the sector, and the ability of affected sectors to alter the course of regulation or implementation."*

9) **<u>Questions on Moody's assessment of GOVERNANCE in assigning structured finance ratings</u>**

   How does Moody's assess the governance of Navient with respect to the lies continually made to the CFTC by the Structured Finance Association on behalf of Navient and other structured finance issuers — as evidenced by the SFA-supplied rationales that the regulator parrots in no-action letters — that increase the expected losses of Navient SLABS, as well as the ABS of other programs? See the entirety of <u>my above mentioned letter to CFTC Secretary Christopher Kirkpatrick "31 Misrepresentations in CFTC Letter No. 17-52" of February 2, 2018</u>.

How does Moody's evaluate in its own governance in having ignored the lies that the SFA has made to the CFTC on behalf of Navient and other structured finance issuers in assigning and monitoring the corporate bond rating of Navient, as well as the structured finance ratings of Navient student SLABS and other programs? See my *Croatan View* "US Financial Regulators Balk at Examining Complex Finance," February 8, 2018. (http://www.croataninstitute.org/latest/news/us-financial-regulators-balk-at-examining-complex-finance)

How does Moody's assess the governance of Navient in foregoing swaps with the daily exchange of variation margin and very low expected losses for the flip-clause-swap-contract and its much higher expected losses? See my "Motion to File Proposed Amicus Curiae Brief with the US 2nd Circuit Re: Case No. 18-1079, " page 18, #24. (http://croataninstitute.org/images/publications/WJH-Motion-to-File-Amicus-Brief.pdf)

On the flip side, how does Moody's assess the governance of financial institutions that provide flip-clause-swap-contracts, given that the institutions knowingly increase their own expected losses by eroding their respective capital positions with each flip-clause-swap-contract? See pages 2-4 of my above mentioned letter to CFTC Secretary Christopher Kirkpatrick "31 Misrepresentations in CFTC Letter No. 17-52" of February 2, 2018.

In the same vein, how does Moody's apply the lessons from the Lehman Brothers Bankruptcy to assess the expected losses that providers of flip-clause-swap-contracts ratchet up with each contract? See "Proposed Amicus Curiae Brief to the US 2nd Circuit Re: Case No. 18-1079," which I filed with the US Court of Appeals for the Second Circuit *Re: Lehman Brothers Special Financing, Inc. against Branch Banking and Trust Company*, et al on June 25, 2019, in total, especially pages 20-22, 47-48. (http://croataninstitute.org/images/publications/20190808-Amicus-Curiae-Brief.pdf) See also the accompanying "Motion to File Proposed Amicus Curiae Brief with the US 2nd Circuit Re: Case No. 18-1079,"page 22, #32 & page 36, #54. (http://croataninstitute.org/images/publications/WJH-Motion-to-File-Amicus-Brief.pdf)

A wrap-up question: How does Moody's assess the expected losses that accrue systemwide owing to the governance failure of the CFTC to protect the "safety and soundness of our financial system," especially given the regulator's capture by the Structured Finance Association, Navient, and other ABS issuers? See page 2, 5-6 and Appendix D pages 111-116 of my above mentioned letter to CFTC Secretary Christopher Kirkpatrick "31 Misrepresentations in CFTC Letter No. 17-52" of February 2, 2018.

Please also see page 8 and pages 78-79 of the same letter.

"*The CFTC will speak with Mr. William J. Harrington regarding his letter of 2 February 2018 in an open forum. This meeting and the information that Mr. Harrington conveys will:*

1. help the CFTC adopt policies that ensure the safety and soundness of both Swap Dealers and the financial system;

2. help the CFTC adopt policies that help the US economy by encouraging optimal investment and by decreasing bailout risk; and

3. redress the failure of the CFTC to speak with Mr. Harrington regarding SFIG misrepresentations of ABS flip clause swaps, despite Mr. Harrington having contacted CFTC staff on at least ELEVEN occasions since January 2017."

10) **Following is another fantastical representation that the proposal makes regarding ESG evaluation of structured finance transactions.**

> ***"For structured finance transactions, we typically assess how ESG considerations may affect underlying asset values, in addition to considering how the special purpose vehicle's governance affects creditors"* (page 8).**

How does Moody's assess the credit implications of the GOVERNANCE failures by issuers of US Collateralized Loan Obligations that place flip clauses in the priorities of payments but cannot comply with the US swap margin rules owing to a complete lack of the operational and financial resources needed to exchange variation margin on a daily basis? How does Moody's asset CLO "asset values" in light of these governance failures? My estimates show 75% of outstanding US CLOs (499 out of 661 US CLOs) have waterfall flip clauses but neither the operational resources nor the financial resources to exchange variation margin on a daily basis. See also my Croatan Institute *Working Paper* "Can Green Bonds Flourish in a Complex-Finance Brownfield?," pages 23-27.
(http://www.croataninstitute.org/publications/publication/can-green-bonds-flourish-in-a-complex-finance-brownfield)

Again, in the global CLO sector, how does Moody's assess the credit implications of governance failures by CLO issuers that also issue "combo notes" to help buyers such as US insurance firms evade regulatory-mandated capital levels? How does Moody's assess the likelihood that an insurance company that holds combo notes will pay debt and policies in full as due? How does Moody's asset CLO combo note "asset values" in light of these governance failures? See Cezary Podkul, *Wall Street Journal*, "Kroll Agrees to Pay $2 Million to Settle Allegations It Broke Credit-Ratings Rules," September 30, 2020.
(https://www.wsj.com/articles/kroll-agrees-to-pay-2-million-to-settle-allegations-it-broke-credit-ratings-rules-11601424377?mod=searchresults&page=1&pos=2)

See also two SEC notices on Kroll and Moody's fines owing to combo notes.
(https://www.sec.gov/news/press-release/2018-169 and
https://www.sec.gov/news/press-release/2020-235)

See also this Mayer Brown note on new NAIC treatment of combo notes.
(https://www.mondaq.com/unitedstates/securities/950188/major-change-in-capital-treatment-for-insurer-investments-in-principal-protected-securities)

11) **<u>How do Moody's committees assess the likelihood that ABS will pay in full when due in light of GOVERNANCE failures by structured finance issuers that unilaterally increase ABS expected losses by diluting investor protections mid-stream simply by paying a credit rating company to issue rating agency confirmation, notification, or other condition? The process is sometimes called "RAC</u>."**

> **"*For structured finance transactions, the strength of the control mechanisms laid out in the transaction documentation, as well as the adherence of the transaction parties to the documentation, are critical to the governance profile*" (page 17).**

Moody's committees can issue RAC even if a change increases ABS expected losses, so long as the increase is not so great as to warrant a downgrade to a lower credit rating.

Search "RAC" in Gaillard, Norbert J. and William J. Harrington "<u>Efficient, commonsense steps to foster accurate credit ratings,</u>" *Capital Markets Law Journal*, Volume 11, Issue 1, January 2016, Pages 38–59.
(https://doi.org/10.1093/cmlj/kmv064)

For 31 FFELP SLABS that Navient obtained RACs to extend legal final maturities to as far as 2083, see <u>my letter to CFTC Secretary Christopher Kirkpatrick "31 Misrepresentations in CFTC Letter No. 17-52" of February 2, 2018</u>, pages 30-33. For each of the 31 deals, the final maturity extension greatly increased expected losses.
(https://www.wikirating.org/data/other/20180203_Harrington_J_William_31_Misrepresentations_in_CFTC%20_Letter_No_17-52.pdf).
Also, Cezary Podkul, *Wall Street Journal*, "<u>A Borrower Wil be 114 When bonds Backed by Her Student Loans Mature</u>," January 7, 2020.
(https://www.wsj.com/articles/a-borrower-will-be-114-when-bonds-backed-by-her-student-loans-mature-11578393002?mod=searchresults&page=2&pos=16)

On Moody's RACS for providers of flip-clause-swap-contacts that increased ABS expected losses by unilaterally strip structured finance deals of investor protections, see "<u>Proposed Amicus Curiae Brief to the US 2nd Circuit Re: Case No. 18-1079</u>," which I filed with the US Court of Appeals for the Second Circuit *Re: Lehman Brothers Special Financing, Inc. against Branch Banking and Trust Company*, et al on June 25, 2019, pages 46-47.
(http://croataninstitute.org/images/publications/20190808-Amicus-Curiae-Brief.pdf)

12) **<u>Given the number of parties to even a simple structured finance transaction, how does Moody's assess the likelihood that a structured finance issuer will make all payments, including to debt and to swap providers, in full and in time in light of material SOCIAL risks to all transaction counterparties until the legal final maturity of a transaction?</u>**

> "*In structured finance, social risks that are material may include those the directly affect the underlying transaction assets as well as those that affect key transaction counterparties, such as the originator, servicer, swap counterparty and account bank*" (page 16).

13) **How does Moody's assess the credit exposures that proliferate throughout the global economic system owing to GOVERNANCE failures by global financial institutions that reward ongoing malfeasance such as money laundering and other serious deficiencies?**

> "*For example, governance failures at a subsidiary would typically negatively affect our view of the parent's governance strength, because it would suggest an important lack of oversight and control by the parent. As another example, even if a unit of a company demonstrates very strong governance practices on its own, the presence of entities in the same group with looser reporting standards or weaker compliance with important regulations may result in a lower governance IPS*" (page 25).

Following are two recent reports of multi-year malfeasance at global financial institutions.

Ian Talley and Dylan Toker, *Wall Street Journal*, "Leaked Treasury Documents Prompt Fresh Calls for Updated Anti-money Laundering Regulations," September 21, 2020. (https://www.wsj.com/articles/treasury-plugs-gap-in-anti-money-laundering-regulations-11600680611)

David Benoit, *Wall Street Journal* "Regulators Fine Citigroup $400 Million Over 'Serious Ongoing Deficiencies," October 7, 2020. (https://www.wsj.com/articles/federal-reserve-finds-serious-ongoing-deficiencies-at-citigroup-11602103099)

14) **Does Moody's or any credit rating company have standing to assess the credit implications attributable to the governance of any entity, given the failures of each credit rating company to assess the systemic credit catastrophes that its own failed governance has wreaked?**

A spectacularly damaging instance of governance failures by credit rating companies is the assignment of the wildly inflated credit ratings that ignited, fueled, and prolonged the 2008 financial crisis, as well as the ongoing application of the same crisis-causing processes to assign credit ratings today.

Following are notices of law enforcement and regulatory actions against Moody's Investors Service, S&P Global Ratings, DBRS Morningstar, and Kroll Bond Rating Agency.
(https://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-nearly-864-million-settlement-moody-s-arising)
(https://www.sec.gov/news/press-release/2018-169)
(https://www.sec.gov/news/press-release/2020-235)
(https://www.sec.gov/news/press-release/2020-112)
(https://www.sec.gov/news/pressrelease/2015-10.html)
(https://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-1375-billion-settlement-sp-defrauding-investors)

See also my "Motion to File Proposed Amicus Curiae Brief with the US 2nd Circuit Re: Case No. 18-1079, pages 18-20. (http://croataninstitute.org/images/publications/WJH-Motion-to-File-Amicus-Brief.pdf)

15) **How does Moody's evaluate the GOVERNANCE of the structured finance sector globally, given the sector's reliance on rating shopping, the policy of the SEC and other regulators to exempt credit rating companies from basic accountability, and Moody's role in promoting and practicing rating shopping?**

How does Moody's evaluate the likelihood of structured finance debt re-paying in full and on time given the pervasive inflation of credit ratings that rating shopping abets? How does Moody's evaluate the credit risk for individual deals, whole sectors, and the entire economy?

For the ongoing nullification of Dodd-Frank 939G by the SEC, see my 2018 Croatan Institute Working Paper "Can Green Bonds Flourish in a Complex-Finance Brownfield?," pages 10-12. (http://www.croataninstitute.org/publications/publication/can-green-bonds-flourish-in-a-complex-finance-brownfield)

16) **How do Moody's committees assess the systemic credit exposures that are attributable to the complete failure of U.S. regulatory GOVERNANCE with respect to credit rating companies?**

The self-referencing, circular, hall-of-mirrors co-dependency of credit ratings (which explicitly incorporate assessments of US regulatory policy) and US regulatory policy itself (which often cites credit ratings in violation of Dodd-Frank 939A) is just one sign of ineffective governance at both credit rating companies and US financial regulators.

See Joe Pimbley and Bill Harrington, *Croatan View*, "Federal Reserve Trashes Dodd-Frank Restrictions on Credit Ratings," May 2020. (https://croataninstitute.org/latest/news/federal-reserve-trashes-dodd-frank-restrictions-on-credit-ratings)

17) **How does Moody's assess the systemic credit exposures that are attributable to changing GOVERNANCE of the US financial system, such as the elimination, exemption, deferral, reversal, and dilution of provisions of the Dodd-Frank Act?**

See *Brookings Institute* "Tracking Deregulation in the Trump Era." (https://www.brookings.edu/interactives/tracking-deregulation-in-the-trump-era/)

18) **<u>Can Moody's read the minds of future people, including the entire "body politic"?</u>**

> "***Longer-Term Regulatory Initiatives Where Implementation Is Unclear***
> II
> "*In these cases, gauging the future credit implications necessarily includes an assessment of the political landscape, including the* ***will of the body politic*** *[emphasis added] to accept regulations that may result in higher costs or fewer jobs in the sector, and the ability of affected sectors to alter the course of regulation or implementation*" (page 11).

As a note, Moody's has often claimed the ability to discern the intent of large groupings of human beings.

> "*We assess the probability that a public body (usually a government but sometimes a central bank or supranational institution) will support an institution . . .* "
> Moody's Investors Service, "<u>Banks Methodology</u>," November 25, 2019, page 17. (https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_1147865)

> Also, "*Our assessment is designed to be qualitative and flexible in nature, enabling us to incorporate the often subtle real-world shifts that define attitudes to support for bank creditors*." Moody's, "<u>Bank Methodology</u>," 2015, page 80.

19) **<u>Is a core goal of the proposal to expand the business franchises of the Moody's acquisitions Four Twenty Seven and Vigeo Eiris?</u> The business of both affiliates is to provide assessments that are completely distinct from credit ratings. Under the proposal, the updated methodology will re-cycle Four Twenty Seven and Vigeo Eiris assessments as inputs to a new Environmental issuer profile score. However, an E IPS has no direct bearing on either the process for assigning a credit rating or a credit rating itself.**

> "*If this cross-sector methodology is updated as proposed, we expect no changes to outstanding ratings for all sectors globally. In establishing E, S and G IPSs, we propose to use the general principles described in the existing methodology*" (page 3).

> "*Although ESG risks and benefits are an important aspect of our rating analysis, E, S and G IPSs are not necessarily directly related to rating levels. IPSs do not reflect an issuer's overall credit strengths or weaknesses (e.g., brand strength or weakness, ability or inability to pass through cost increases, or financial flexibility). Two issuers can have the same ratings but very different IPSs, or the same IPSs but very different ratings*" (page 19).

20) **<u>Does Moody's see irony in its proposal to bury "transparency" as a "sub-sub-factor"?</u>**

> "*The transparency and disclosure category score is part of our assessment of Fiscal Policy Effectiveness sub-sub-factor of the Institutions and Governance Strength factor*" (page 33).

Appendix A

William J. Harrington Response of March 27, 2020 to
Moody's Investors Service Request for Feedback:
"*Proposed framework to assess carbon risks for the global refining and marketing sector,*" February 27, 2020

William J. Harrington
51 5Th Avenue
Apartment 16A
New York, NY 10003
917-680-1465
wjharrington@yahoo.com

March 27, 2020

VIA ELECTRONIC MAIL

Moody's Investors Service
CarbonTransitionFeedback@moodys.com

Re: Request for Feedback: "*Proposed framework to assess carbon risks for the global refining and marketing sector*," February 27, 2020.

Dear All:

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

My name is Bill Harrington. I resigned as a Moody Senior Vice President in July 2010, joined the Experts Board of Wikirating.org in 2015, and affiliated as a senior fellow with the non-profit Croatan Institute in 2017.
(https://www.linkedin.com/in/williamjharrington/)
(https://www.wikirating.org/)
(http://www.croataninstitute.org/william-j-harrington)

My Responsible Investor opinion "Investors who want to fast-track sustainable fixed-income investments should inundate credit rating agencies with methodology critiques" of January 28 urges fixed-income practitioners to respond to NRSRO methodology proposals.
(https://www.responsible-investor.com/articles/investors-who-want-to-fast-track-sustainable-fixed-income-investments-should-inundate-credit-rating-agencies-with-methodology-critiques)

The delivering email copies Director, SEC Office of Credit Ratings, Ms. Jessica Kane (https://www.sec.gov/page/ocr-section-landing). Ms. Kane publicly conceded that the SEC failed its ten-year oversight of NRSROs in remarks to a large industry conference this year. (*Wall Street Journal*, "SEC Rethinks Approach to Conflicts Among Bond Rating Firms," Cezary Podkul, February

24, 2020, https://www.wsj.com/articles/sec-rethinks-approach-to-conflicts-among-bond-rating-firms-11582589644?mod=searchresults&page=1&pos=4.)

Moody's is obligated to enforce the Compliance Commitments that it, affiliate Moody's Analytics, and parent Moody's Corporation agreed in the settlement with the US Department of Justice and the attorneys general of 21 state and Washington, DC on January 13, 2017. (https://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-nearly-864-million-settlement-moody-s-arising.) Accordingly, I will deliver copies of this letter to the US Department of Justice contacts to whom the Moody's entities report.

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

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

As an overarching improvement to the proposal:

Moody's must set a cap of "CT-7" for the Carbon Transition Assessment for the global refining and marketing sector.

As the proposal states on page 2, "no company in the sector will be positioned to benefit from the low-carbon transition." Page 3 of the proposal defines "CT-6," "CT-7," and "CT-8" as "Issuers exhibit 'moderate' positioning for the carbon transition."

Accordingly, the proposed cap of "CT-3" is irresponsibly generous. Page 3 of the proposal defines "CT-3," "CT-4," and "CT-5" as "Issuers exhibit 'strong' positioning for the carbon transition."

The following rationale on page 3 of the proposed cap of "CT-3" is unconvincing. How believable are any "mitigation plans and longer term resilience" in the global refining and marketing sector?

"*CTAs are designed to incorporate current positioning of the business as well as future risks and mitigation plans and longer-term resilience. Therefore, companies with substantial current exposure may nevertheless achieve a better CTA on account of robust longer-term plans and implementation strategies to position their company for the carbon transition.*"

Furthermore, the proposal to use "proxy" measures mandates the cap level of "CT-7." Any proxy measure introduces variability and lack of precision into a calculation. (See page 4 ". . . *for energy requirements, this subcomponent looks at the bottom of the barrel (BoB) index*" and page 5. ". . . *average of the analyst-adjusted, consolidated EBIT to total throughput barrels ratio for the last three years. We are not able to use the refining-only EBIT, which would exclude retail marketing,* *petrochemicals and other non-refining activities, because it is not publicly reported on a consistent basis*.")

Finally,

Moody's must publish a rigorous algorithm for mapping the Carbon Transition Assessment scores of "CT-7" to "CT-10" to the associated credit rating.

Moody's must end the practice of deploying all manner of nebulous "assessments" to inflate credit ratings (https://www.debtwire.com/info/moody%E2%80%99s-bets-germany-will-support-deutsche-bank-derivatives-above-all-else-%E2%80%94-analysis.)

Respectfully,

/s/William J. Harrington

William J. Harrington
Senior Fellow, Croatan Institute
Wikirating.org Experts Board — Structured Finance Topics

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

United State Attorney for the District of New Jersey, United States Attorney's Office for the District of New Jersey,
970 Broad Street, 7th Floor Newark, NJ 07102

Director, Consumer Protection Branch, U.S. Department of Justice
450 5th Street NW Washington, DC 20530

Kyle Plotkin, Chief of Staff for US Senator Joshua D. Hawley

Raymond McDaniel, Chief Executive Officer, Moody's Corporation

Appendix B

William J. Harrington Response of March 14, 2020 to
"Request for Public Comment: 'Topics and issues being addressed by the Climate-Related Market Risk Subcommittee under the Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission'"

William J. Harrington
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May 14, 2020

Mr. Robert B. Litterman
Chairman
Climate-Related Market Risk Subcommittee
Commodity Futures Trading Commission
1155 21st Street, N.W. Washington, D.C. 20581

Re: Request for Public Comment: "Topics and issues being addressed by the Climate-Related Market Risk Subcommittee (MRAC Climate Subcommittee) under the Market Risk Advisory Committee (MRAC)"

Dear Mr. Litterman:

My name is Bill Harrington. I am a senior fellow at Croatan Institute — an independent, nonprofit, tax exempt 501(c)(3) research institute whose mission is to harness the power of investment for social good and ecological resilience.
(http://www.croataninstitute.org/william-j-harrington)

I am a Key Expert on Structured Finance Topics for the Experts Board of Wikirating.org — a worldwide, independent, transparent, and collaborative organization for credit ratings. The Swiss nonprofit Wikirating Association operates the Wikirating platform.
(https://www.wikirating.org/)

My professional experience includes being a:
- byline journalist who covered the regulation and NRSRO credit ratings of complex finance, including securitizations and derivative contracts, at *Debtwire ABS*;
- senior vice president and derivatives analyst for swap dealers and securitizations at the NRSRO credit rating company Moody's Investors Service;
- structurer of non-dollar derivative contracts at Merrill Lynch; and
- international economist at The WEFA Group.

(https://www.linkedin.com/in/williamjharrington/)

> ***NRSRO credit rating companies <u>divert</u> capital flows from debt issuers, derivatives end-users, derivatives providers, exchanges, and other rated entities that mitigate exposures to physical risk, such as inundation by fire and water.***
>
> ***Likewise, NRSRO credit rating companies <u>divert</u> capital from debt issuers, derivatives end-users, derivatives providers, exchanges, and other rated entities that are adapting to the transition from carbon.***

Following is the SEC list of current NRSRO credit rating companies.
(https://www.sec.gov/ocr/ocr-current-nrsros.html)

<u>NRSRO credit rating companies play an out-sized role in influencing capital flows globally</u> by assigning credit ratings to US debt issuers, to the derivative obligations of US end-users, US swap dealers, and US major swap participants, to ring-fenced aspects of US exchanges and US swap clearing facilities, and to the non-US counterparts of the aforementioned entities.

<u>NRSRO credit rating companies lie</u> in representing that they incorporate climate and other ESG factors that impact the ability to pay of any debt issuer, derivatives end-user, derivatives provider, exchange, clearing house, and any other rated entity worldwide into the respective credit ratings, credit assessments, and other credit products.

<u>NRSRO credit rating companies DO NOT incorporate climate and other ESG factors</u> that impact the ability to pay of a debt issuer, derivatives end-user, derivatives provider, exchange, clearing house, and any other rated entity worldwide into the respective credit ratings and credit assessments, and other credit products.

<u>As a result, NRSRO credit rating companies assign inaccurate credit ratings</u> to every debt issuer, derivatives end-user, derivatives provider, exchange, clearing house, and other rated entity worldwide.

<u>Further, NRSRO credit rating companies divert capital flows from debt issuers and other rated entities that mitigate exposures to physical risk</u>, such as inundation by fire and water.

<u>Similarly</u>, NRSRO credit rating companies *divert* capital from debt issuers and other rated entities that are preparing for the carbon transition.

> ***In sum, inaccurate NRSRO credit ratings undermine the US and world economies and impede a sustained recovery from the Covid-19 pandemic.***

An NRSRO credit rating company has a perpetual license to print methodologies, ratings, and money without meaningful accountability.

All that an NRSRO credit rating company credit must do is facilitate public dialogue on methodologies as follows.

-- Post each methodology on publicly available website.
-- Invite comment, both confidential and public, on existing methodologies.
-- Solicit comment, both confidential and public, on proposals to update methodologies and to introduce new ones.
-- Post non-confidential comments on publicly available website.
-- Summarize comments, both confidential and public, on publicly available website.
-- Explain why comments were, or were not, incorporated into new methodology.

External comments are an under-utilized tool to pro-actively constrain NRSRO credit rating companies. An NRSRO credit rating company will finalize a methodology as proposed in the absence of comments but often incorporate at least some comments when many were submitted. Furthermore, an NRSRO credit rating company will often extend a comment period, or even post a new proposal, after receiving a critical mass of comments.

I have reviewed the comments and summaries for 92 methodology overhauls that the four major NRSRO credit rating companies — DBRS, Fitch, Moody's, and S&P — completed in 2019. The methodologies addressed the gamut of bond sectors, including securitizations of tax liens, public pension managers, power companies, bond insurers, and sovereigns.

-- Moody's lists 58 methodology proposals for 2019, with the number of comment responses ranging from zero to 15 (of the 15, 14 are confidential and one is available on Moody's site).
-- S&P lists 17 methodology proposals for 2019, with the number of comment responses ranging from one to 46 (of the 46, 36 are confidential and 10 are posted on the S&P site).
-- Fitch lists nine methodology proposals for 2019, with the number of comment responses ranging from 1 to 19 (of the 19, 13 are confidential and six are posted on the Fitch site.)
-- DBRS list six methodology proposals for 2019, with the number of comment responses ranging from 0 to 1.

No 2019 commenter addressed climate or other ESG factors on issuer ability to pay! The majority of 2019 commenters on NRSRO methodologies were issuers and industry groups arguing against provisions that would lower sector ratings.

Any person may pressure NRSRO credit rating companies to reverse course and honor their representations by incorporating climate and other ESG factors that impact the ability to pay of a debt issuer, derivatives end-user, derivatives provider, exchange, clearing house, and any other rated entity worldwide into the respective credit ratings, credit assessments, and other credit products.

See my Croatan View "Croatan Forum: Plain Speaking Produces Sustainable Action" of October 8, 2019 **(final two sections "A new activist front: municipal debt investors and issuers vs credit rating agencies!" and "Moody's Investors Service is an especially big target through 2022.")** **(**http://www.croataninstitute.org/latest/news/croatan-forum-plain-speaking-produces-sustainable-action)

See also my Responsible Investor opinion "Investors who want to fast-track sustainable fixed-income investments should inundate credit rating agencies with methodology critiques" of January 28, 2020.
(https://www.responsible-investor.com/articles/investors-who-want-to-fast-track-sustainable-fixed-income-investments-should-inundate-credit-rating-agencies-with-methodology-critiques)

A person has complete flexibility regarding format, tone, and public dissemination of a methodology comment. However, a commenter must be tenacious, and both submit multiple comments herself and convince allies to do the same. No NRSRO credit rating company is likely to capitulate suddenly given that continuing to dissemble boosts earnings.

The content of a methodology critique must tightly hone in on provisions that a commenter wishes to change. The language must be unambiguous, so that an NRSRO credit rating company either correctly incorporates the critique into a given methodology, or accurately summarizes the critique in publicly justifying its omission. Over time, the collective pile-up of well-articulated, commonsense critique will erode credit rating company intransigence by forcing each NRSRO to air and exhaust unconvincing rationales for ignoring physical risks and exposures to the transition from carbon.

Importantly, rigorous credit rating methodologies will obligate NRSRO credit rating committees to downgrade as well as upgrade. In a cohort of otherwise similar issuers, those with significant exposures to physical and carbon transition risks will have lower ratings than the remainder that either don't face the exposures or are mitigating them. Equally important, each announcement of a credit rating will state whether the credit impact of physical and carbon transition exposures raises the rating, lowers it, or is a wash. Even if the initial answer is most often "wash," the assessment process will refine existing measurement tools and create new ones.

For a real-world instance of a person pressuring an NRSRO credit rating company to reverse course and honor its climate representations in 2020, see this letter's Appendix. It contains my submission to Moody's Investors Service (Carbon Transition Feedback) Re Request for Feedback: "Proposed framework to assess carbon risks for the global refining and marketing sector," dated March 27, 2020.

Respectfully,

/s/William J. Harrington

William J. Harrington
Senior Fellow, Croatan Institute
Wikirating.org Experts Board — Structured Finance Topics