

The DOJ Complaint Re Standard & Poor's: The Facts

The DOJ's complaint makes numerous allegations that are either entirely without merit, internally contradictory -- with emails cited that had no effect on the CDOs at issue -- or logically flawed.

DoJ Claims	Facts
11 of the CDOs that DOJ says "affected" Citibank or Bank of America were arranged by the same institution.	<ul style="list-style-type: none"> ▶ DOJ is making the absurd contention that Citibank and Bank of America were harmed by S&P's ratings on CDOs that they themselves arranged and purchased. ▶ The DOJ is seeking penalties from S&P for losses allegedly incurred by Citibank and Bank of America on CDOs where the banks played both sides of the transaction.
Para. 144 – DOJ claims that the loss of a deal due to criteria caused a change in the LEVELS model.	<ul style="list-style-type: none"> ▶ The email cited has nothing to do with the LEVELS model. ▶ The DOJ has strategically placed this paragraph in order to lead the reader to conclude that the email cited has something to do with the LEVELS model. ▶ In fact, the non-US RMBS deal mentioned in the email did not involve the LEVELS model. ▶ Further, S&P's criteria were significantly more conservative than other rating agencies which played a major role in S&P's loss of the business.
Paras. 158-169 – DOJ claims that an S&P executive proposed changes to the CDO model that were motivated by market share.	<ul style="list-style-type: none"> ▶ The DOJ argues in Paras. 158 - 168 proposed changes to the CDO model and the alleged profit motive of the alleged "Overall Approver" of the model. ▶ Then, in Para. 169, it concedes that the proposal was ultimately never implemented because the analysts concluded that it was not analytically appropriate. ▶ The DOJ's own language demonstrates that it is fully aware of the fact that the proposed model was not deemed analytically appropriate.
Paras. 200- 269 – S&P "knew" that RMBS going into CDOs issued in March - June 2007 were about to be downgraded and did nothing about it.	<ul style="list-style-type: none"> ▶ From March - July 2007, S&P had taken rating actions on more than 500 U.S. Subprime RMBS classes. As a result, S&P required added protection for any CDO containing those classes. ▶ In July 2007, S&P took rating actions on approximately 1000 additional U.S. Subprime RMBS classes. ▶ Only one of the CDOs the government identifies from the March - July time period was negatively affected by the RMBS rating actions taken in July, because the deals were rated with enough protection to absorb those rating actions. ▶ Therefore, any internal debate or discussion considering potential ratings actions in July had no effect on the CDOs the DOJ identifies and are irrelevant to the argument.
Para. 211 – DOJ claims that a surveillance executive was "prevented" from taking downgrades by Tom Gillis.	<ul style="list-style-type: none"> ▶ It's simply not true and the DOJ's own complaint shows this: ▶ Para. 211 does not cite any email or other evidence in support of the claim that Gillis "prevented" Executive F from taking downgrades. ▶ A few paragraphs later, DOJ cites an email from February 2007 written by Executive F which states the opposite: Gillis urged Executive F to begin discussing taking action on poor performing RMBS. ▶ This contemporaneous document, also cited by DOJ, shows that Gillis in fact was urging that negative actions be taken and spurring the work necessary for the analysts to accomplish that.
Para. 235 – DOJ refers to message: "we rate every deal. It could be structured by cows and we would rate it".	<ul style="list-style-type: none"> ▶ The deal referenced in the message was a non-U.S. collateralized loan obligation (CLO), not a collateralized debt obligation (CDO) backed by residential mortgage-backed securities (RMBS). ▶ No CLOs are part of the DOJ suit. The CLO referenced in the message has performed well and today is rated AA+.

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<p>Para. 235 – DOJ refers to message: “model def does not capture half of the ris[k]”.</p>	<ul style="list-style-type: none">▶ The model referenced by the S&P analyst was submitted by a banker – it was not an S&P model.▶ After sending the message, the analyst required the banker to change and improve the model so that it would adequately capture credit risk in accordance with S&P's criteria. Ultimately, the banker's revised model was approved by the S&P Rating Committee.
<p>Para. 275 – DOJ states the affected institutions suffered losses “in excess of \$5 billion”.</p>	<ul style="list-style-type: none">▶ The DOJ does not provide any clarity on its method of calculating the damages being sought.▶ The \$5 billion-plus figure demanded in the complaint is clearly disproportionate to the less than \$15 million in revenue received by S&P for rating the CDOs cited.