

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	
	:	
LEHMAN BROTHERS SECURITIES	:	
AND ERISA LITIGATION	:	09 MD 2017 (LAK)
	:	
This document applies to:	:	
	:	
<i>In re Lehman Brothers Mortgage-Backed Securities</i>	:	
<i>Litigation, No. 08-CV-6762 (LAK)</i>	:	
	:	
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**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF  
MOODY'S INVESTORS SERVICE, INC.'S MOTION TO DISMISS**

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Moody's Investors Service, Inc. ("Moody's"), submits this reply brief in further support of its motion to dismiss the Consolidated Class Action Complaint ("Complaint" or "CAC").

### **PRELIMINARY STATEMENT**

Plaintiffs' Opposition offers no authority – not a single relevant case – to support their baseless attempt to radically expand the scope of §§ 11, 12(a)(2), and 15 of the Securities Act of 1933 to impose strict liability on entities, like rating agencies, that do not distribute or sell securities, but are, at most, alleged only to be involved in the process by which a security is created. Unable to support their claims with either applicable authorities or factual allegations, Plaintiffs instead fill out their opposition with irrelevant assertions concerning the purported lack of "independence," and involvement in "structuring," of the Rating Agencies (the "RAs"). Plaintiffs also fail to refute the showing, in Moody's moving brief ("MDYS Br.") and those of other defendants, that dismissal is compelled as well on numerous other, separate grounds: (i) failure to plead actionable misstatements or omissions; (ii) failure to plead a recoverable loss; (iii) the time bar imposed by the statute of limitations; and (iv) lack of standing.

#### **I. PLAINTIFFS IDENTIFY NO BASIS FOR LIABILITY UNDER SECTION 11**

Plaintiffs disclaim, as they must, any assertion that Moody's has potential liability as an "expert" under § 11(a)(4). Plaintiffs' RA Opposition ("Opp. Br.") at 9. SEC Rule 436(g) explicitly exempts Moody's, as an NRSRO, from any liability arising from alleged inaccuracies in its ratings. Moreover, an "expert" can be exposed to § 11(a)(4) liability only if its written consent to being named as certifying a portion of the registration statement is filed with the statement. There is, and could be, no claim that Moody's provided any such consent in this case.

Plaintiffs' sole argument, then, is that Moody's can be held potentially liable not as a provider of ratings but somehow, under § 11(a)(5), as an "underwriter." This notion is implausible on its face, and Plaintiffs' opposition offers nothing to lend it even a modicum of

credibility. Plaintiffs cite no case in which any court has stretched the statutory definition of “underwriter” to include any rating agency or comparable entity. Nor do Plaintiffs refute Moody’s showing that courts have consistently limited § 11(a)(5) liability to those with substantial participation in the *distribution* of the security.<sup>1</sup> Plaintiffs do not, and cannot, identify *any* factual allegations that Moody’s participated in distributing any securities.

Unable to seriously dispute Moody’s summary of the law, Plaintiffs misrepresent it, claiming that Moody’s argues that § 11(a)(5) liability is limited to “those who purchase securities from an issuer with a view to their resale.” (Opp. Br. at 12.) Moody’s has not argued this. Nor is this Judge Lynch’s holding in *In re Refco, Inc. Secs. Litig.*, 2008 WL 3843343, at \*5 (S.D.N.Y. Aug. 14, 2008) (“*Refco II*”). What Judge Lynch *did* say – and what Moody’s has argued – is that the plain language of the definition of “underwriter” found in § 2(a)(11) of the Act encompasses not simply any participation in the *issuance*, but rather in the “undertaking,” *i.e.*, the purchasing of securities with a view to resale. 2008 WL 3843343, at \*4. It is this language, said Judge Lynch, that has led courts to limit “underwriter” liability under § 11(a)(5) to “all – but only – those who play a role in the *distribution* of the securities.” *Id.* (emphasis added). Plaintiffs offer no effective rejoinder to this clear statutory analysis.<sup>2</sup>

Instead, relying almost entirely upon the wholly inapposite decision in *Harden v. Raffensperger, Hughes & Co.*, 65 F.3d 1392 (7th Cir. 1995), Plaintiffs argue that any person whose actions were “necessary” to the security’s distribution falls within the scope of

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<sup>1</sup> Contrary to Plaintiffs’ straw man argument, Moody’s does not claim that Rule 436 immunizes it from all § 11 liability; indeed, it is clear from Moody’s moving brief that the compelling grounds for dismissal of the § 11(a)(5) claim are independent and distinct from the Rule 436 exemption. At the same time, however, Plaintiffs’ baseless assertion of § 11(a)(5) “underwriter” liability here can be fairly seen as a backdoor attempt to undermine the SEC’s determination that NRSROs should not operate under the threat of § 11 liability for their ratings activities.

<sup>2</sup> Indeed, even the authorities cited by Plaintiffs for the proposition that “underwriter” must be construed broadly still cabin that definition to those participating in the *distribution* of the securities. *See, e.g., SEC v. Universal Express, Inc.*, 475 F. Supp. 2d 412, 431 (S.D.N.Y. 2007).

“underwriter” for purposes of § 11(a)(5). Neither *Harden* nor any other authority supports such a broad reading, which would radically alter the scope of §11 liability.

*Harden* involved the liability of a “qualified independent underwriter,” an entity required by then-existing NASD rules to “perform due diligence on the registration statement” before an NASD member would be allowed to use an affiliate to underwrite a securities offering. *See* 65 F.3d at 1394-95, 1397. Thus, it is immediately obvious that not only did the *Harden* defendant perform the *exact* role that the Securities Act expects of traditional underwriters – utterly unlike what is alleged here with respect to the RAs – but that its participation was “necessary” to the security’s distribution in the sense that such distribution was *forbidden by regulation* without the underwriter’s participation. By contrast, nothing in the securities laws requires an issuer to publish or even obtain ratings before distributing to the investing public.<sup>3</sup> (The issuer here chose to state that it would only issue Certificates with a certain rating, but there was nothing “necessary” about that decision.) Moreover, NASD (and SEC) rules specifically stated not only that § 11(a)(5) liability would attach but required the independent underwriter “to undertake the legal responsibilities and liabilities of an underwriter under [§ 11],” *id.* at 1398. This regulatory framework was critical to the court’s imposition of liability.<sup>4</sup> There is, of course, no such framework here – nor, in fact, precedent or authority of *any* kind to suggest that underwriter liability has ever attached to the kind of activities that Moody’s is alleged to have engaged in.<sup>5</sup>

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<sup>3</sup> In promulgating Rule 436(g), the SEC specifically considered and rejected any requirement that issuers include ratings in their offering documents. *See* 47 FR 11380, 11391.

<sup>4</sup> Judge Lynch took exactly this view in refusing a similar entreaty to apply *Harden* so as to find participants in the drafting of the registration statement – surely a “necessary” step in a much more fundamental way than Moody’s ratings here – to be underwriters. *See Refco II*, 2008 WL 3843343, at \*4 n.6. Plaintiffs’ “but-for” interpretation of *Harden* would clearly impose liability on every person involved in the drafting of the required registration documents, a position that (as noted in *Refco II*) was rejected by the Supreme Court. *See id.* at \*3.

<sup>5</sup> Plaintiffs’ other cases are equally inapposite. In *Special Situations Fund III, L.P. v. Cocchiola*, 2007 WL 2261557 (D.N.J. Aug. 3, 2007), the only defendants the court actually found to be underwriters were those whom the plaintiff had alleged bought from the issuer and resold to the public (and those defendants did not dispute this

Indeed, Plaintiffs' theory of § 11(a)(5) liability is based solely on implausible, conclusory assertions that the RAs "structured" the Certificates – *i.e.*, allegations concerning the process by which the securities were created.<sup>6</sup> Even if this scenario about the RAs' purported role in structuring were plausibly supported by factual allegations in the complaint (which it is not), it is simply irrelevant to § 11(a)(5) liability, and Plaintiffs have cited no authority that suggests otherwise. The creation of the security is not a part of the *distribution* process and certainly not an activity traditionally encompassed by the underwriter's role. The Securities Act imposes no obligations upon the issuer to structure a security in a particular manner. The Act's focus is entirely on how that security is presented to the investing public, and § 11(a)(5) liability does not lie unless a party assumes responsibility for the *entire registration statement* by "hold[ing] [itself] out as evaluating the [Certificates] or endorsing" the statement. *Refco II*, 2008 WL 3843343 at \*5. Moody's only alleged role as an evaluator or endorser is its provision of the ratings themselves – for which, as Plaintiffs concede, Moody's is exempt from liability.

## II. PLAINTIFFS IDENTIFY NO BASIS FOR LIABILITY UNDER SECTION 12

Plaintiffs effectively concede that they have no basis for asserting a § 12(a)(2) claim against Moody's – by their failure to distinguish cases cited by the RAs and by their reliance on authorities that merely confirm the frivolousness of this claim. For example, *Capri v. Murphy*,

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with evidence). *See id.* at \* 8-9. Similarly, *SEC v. Kern*, 425 F.2d 143 (2d Cir. 2005), involved the purchase of securities for the purposes of redistribution to the public – a classic underwriting function. *See id.* at 152.

<sup>6</sup> The actual allegations with respect to *this issuance* – as opposed to vague general allegations about structured transactions – amount only to claims that Moody's provided feedback as to the ratings that a given structure would likely achieve. There are no factual allegations that render plausible the claim (as Plaintiffs suggest) that the RAs actually had control of the creation of the Certificates, which was at all times the responsibility of the issuer. Plaintiffs' claim that Moody's was involved in "producing the Prospectus Supplements" (Opp. Br. at 14) is limited to a single allegation in the Complaint, *i.e.*, that "Moody's participated in the drafting and dissemination of the Prospectus Supplements." (CAC ¶ 34.) This is precisely the sort of conclusory allegation, "devoid of further factual enhancement," that cannot sustain a complaint under *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009), and that Judge Lynch rejected in *Refco I*, *see In re Refco Secs. Litig.*, 503 F. Supp. 2d 611, 630-31 (S.D.N.Y. 2007). In any case, as held by Judge Lynch in *Refco II*, merely participating in the drafting of an offering document – even if Moody's had done so – does not satisfy the definition of "underwriter."

856 F.2d 473 (2d Cir. 1988), highlights the bedrock rule – now reinforced, of course, by the Supreme Court decisions in *Twombly* and *Iqbal* – that a § 12(a)(2) claim predicated on solicitation requires specific factual allegations demonstrating actual involvement in the solicitation process itself. The *Capri* court found that defendants actively directed and supervised the conduct of the delegated salesperson – that, indeed, the salesperson “provided no information to the investors other than what was supplied by defendants,” “took no action in relation to the investors other than that which was contemplated by defendants,” and acted entirely at defendants’ “behest.” 856 F.2d at 478. Similarly, *In re American Bank Note Holographics, Inc. Securities Litigation*, 93 F. Supp. 2d 424, 439 (S.D.N.Y. 2000), involved a defendant who participated in “road shows” – conduct that has been consistently held to constitute § 12(a)(2) “solicitation” activity. Moreover, in *Holographics*, the defendant was the subject company of the IPO at issue. *Id.* at 439 (“solicitations by the to-be-spun-off subsidiary have been held to meet the definition of ‘seller’”).

Here, the Complaint is bereft of even a single factual allegation pointing to any involvement by Moody’s in marketing and promoting the securities at issue. *See, e.g., Shain v. Duff & Phelps Credit Rating Company*, 915 F. Supp. 575 (S.D.N.Y. 1996) (solicitation for § 12 purposes “requires direct and personal contact or control over and direction of the person who makes the direct solicitation”).<sup>7</sup> Neither is there a single allegation that Moody’s had any contact with actual investors or participated in sales promotional activities such as road shows. Indeed, the only specific allegations cited by Plaintiffs (Opp. Br. at 20-21) – *e.g.*, that Moody’s had a role in determining how loan packages were structured or participated in the drafting of offering

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<sup>7</sup> In a willful misreading of *Shain*, Plaintiffs suggest that the operative factor in the decision was the absence of allegations regarding the rating agency’s involvement in the drafting of deal documents. (Opp. Br. at 23-24.) In fact, the court’s overarching focus and the express basis for its holding was the remoteness of Duff & Phelps from the actual sales solicitation process – a finding that applies *a fortiori* to the case at bar. 915 F. Supp. at 589.

materials – simply highlight how remote the allegations against Moody’s are from any actual solicitation of investors. Unsurprisingly, Plaintiffs cite no case in which mere participation in drafting deal documents or “structuring” a deal by a third-party service provider constituted “solicitation” activity under § 12(a)(2). On the contrary, courts have consistently rejected attempts to ground § 12(a)(2) liability upon alleged involvement in drafting or preparing deal documents. *See, e.g., More v. Kayport Package Express*, 885 F.2d 531 (9<sup>th</sup> Cir. 1989) (accountant’s preparation of financial statements used to sell securities no basis for § 12 liability); *Mercer v. Jaffe, Snider, Raitt & Heur, P.C.*, 713 F. Supp. 1285 (W.D. Mich. 1989) (lawyer’s preparation of offering statements and promotional material no basis for § 12 liability).

In short, Plaintiffs’ opposition provides compelling confirmation that their §12 claim against Moody’s was brought with disregard for the applicable law, which compels dismissal.<sup>8</sup>

### **III. PLAINTIFFS IDENTIFY NO BASIS FOR LIABILITY UNDER SECTION 15**

Even assuming, *arguendo*, that Plaintiffs have adequately pleaded a primary violation, they offer no support for their profoundly implausible attempt to stretch the definition of a § 15 “control person” to include Moody’s. Plaintiffs’ own cited cases confirm that “control person” allegations can survive a motion to dismiss *only* when directed at the officers, directors, employers or affiliates that allegedly controlled a primary violator. *See e.g., In re Adelphia Commc’ns Corp. Sec. & Derivative Lit.*, Civ. No. 03-MD-1529, 2007 WL 2615928, at \*10 (S.D.N.Y. Sept. 10, 2007) (directors); *In re Global Crossing Ltd. Sec. Lit.*, 322 F. Supp. 2d 319, 349 (S.D.N.Y. 2004) (partner members of primary violator’s firm); *Ellison v. Am. Image Motor Co., Inc.*, 36 F. Supp. 2d 628, 642-44 (S.D.N.Y. 1999) (“officers” and “employers” of primary

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<sup>8</sup> Plaintiffs contend that they have sufficiently pleaded the so-called “second prong” of pleading solicitation by alleging Moody’s acceptance of fees from Lehman in connection with rating services. (Opp. Br. at 22-23.) Given Plaintiffs’ utter failure to plead the “first prong,” this argument is moot. In any event, the notion that payment received for rating services constitute a financial interest that motivates *solicitation* is insupportable on its face and, tellingly, Plaintiffs do not cite a single authority in support of this assertion.

violators). Moody's, in contrast, is not alleged to have had any ownership interest, board positions, signing power, or contractual power – or any other power to control – with respect to Lehman.<sup>9</sup> Plaintiffs do not refute Moody's showing in this regard (MDYS Br. at 22-25) nor can they reconcile the allegations in the Complaint – about the RAs' seeking to curry favor with, and win business from, Lehman – that are inherently inconsistent with the notion of “control.” At best, the Complaint alleges the RAs had some ability to “influence” the transactions at issue – which, as Plaintiffs cannot dispute, is insufficient as a matter of law. *See, e.g., In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 352 F. Supp. 2d 429, 459 (S.D.N.Y. 2005).

#### IV. PLAINTIFFS FAIL TO REFUTE THAT THEIR CLAIMS ARE TIME-BARRED

Plaintiffs do not dispute that the relevant notice date for determining whether their claims are time-barred is **February 23, 2008** (Opp. Br. at 26), and they wholly fail to refute Moody's showing (MDYS Br. at 25-32) that they were on “inquiry notice” on or before that date. Instead, Plaintiffs seek to distort the standard governing “storm warnings” analysis on a motion to dismiss, asserting that Rule 12(b)(6) dismissal based on the statute of limitations defense is “typically inappropriate.” (Opp. Br. at 55.) This contention ignores, *inter alia*, the Second Circuit's recent articulation of the law in *Staeher v. Hartford Fin. Servs. Group, Inc.*, 547 F.3d 406, 412 (2d Cir. 2008) (inquiry notice “readily” and frequently resolved on motion to dismiss).<sup>10</sup>

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<sup>9</sup> In evident desperation, Plaintiffs cite *In re Falstaff Brewing Corp. Antitrust Litigation*, 441 F. Supp. 62, 68 (D. Mo. 1977), which involved lenders – not a rating agency or any other service provider – and where the court based its decision on specific allegations that defendants were in fact *directing* the management and policies of the primary violator and required it, *inter alia*, to replace acting officers and directors. *Id.* at 65. There are no such allegations here, and the relationship between Moody's and Lehman is in no way analogous to that in *Falstaff*.

<sup>10</sup> Moreover, Plaintiffs fail to recognize that, in this *non-fraud* case, all that must be shown is notice of probable misstatements, not notice of probable fraud. *See In re Novagold Resources Inc. Sec. Litig.*, No. 08 Civ 7041 (DLC) --- F. Supp. 2d ---, 2009 WL 1575220 at \*13 (S.D.N.Y. June 5, 2009) (if plaintiff chooses to assert non-fraud securities claim, it is on notice when it learns of “probability of an earlier 'untrue statement' or 'omission,' not when it learns a misstatement involved fraud.”); *see also Alaska Elec. Pension Fund v. Pharmacia Corp.*, 554 F.3d 342, 348 & n.4 (3d Cir. 2009); *In re Openwave Systems Sec. Litig.*, 528 F. Supp. 2d 236, 245 (S.D.N.Y. 2007).

Plaintiffs contend that they were not on inquiry notice of purported misrepresentations and omissions concerning the RAs because they did not have “detailed facts” until at least July 2008 when the SEC completed a “year-long” investigation of the RAs. (Opp. Br. at 29.) On the contrary, inquiry notice is triggered when credible public accusations have been made relating to the misstatements at issue, *not* when all the details have emerged or when accusations have led to official findings. *See In re Global Crossing, Ltd. Sec. Litig.*, 313 F. Supp. 2d 189, 201 (S.D.N.Y. 2003); *cf. Shah v. Meeker*, 435 F.3d 244, 245 (2d Cir. 2006).<sup>11</sup> Indeed, the SEC inquiry is, if anything, indicative of clear storm warnings by the **fall of 2007** when the investigation was well underway and the subject of numerous media articles.<sup>12</sup> Similarly, with regard to alleged conflicts of interest and “ratings shopping practices,” the numerous articles previously cited by Moody’s<sup>13</sup> include a front-page Wall Street Journal article from **August 2007** asserting that underwriters took their business to “another rating company if they couldn’t get the rating they needed” and quoting a former Moody’s managing director as saying, “‘It was always about shopping around’ for higher ratings.” With regard to the RAs’ alleged use of outdated models, Plaintiffs ignore, *inter alia*, their own allegations, CAC ¶¶ 72, 162, as to purported RA disclosures of outdated models and methodologies in 2007.<sup>14</sup>

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<sup>11</sup> Plaintiffs’ contention is also implausible on its face, given the fact that *prior* to July 2008 *other* plaintiffs filed Securities Act claims against the RAs making many of the same allegations concerning the RAs made here. *See, e.g.*, May 14, 2008 complaint in *New Jersey Carpenters Vacation Fund v. Harborview Mortgage Loan Trust* 2006-4 (S.D.N.Y.), 08-CV-5093, at ¶¶ 34, 62 (RAs were allegedly “conflicted and incentivized” to issue “inflated” ratings; ratings were allegedly issued “based on outdated credit rating methodology”).

<sup>12</sup> *See* Rubins Decl., Exs. I – K (media articles from **fall of 2007**, all discussing SEC investigation of RAs’ alleged conflicts of interests and all specifically mentioning Moody’s).

<sup>13</sup> *See* Rubins Decl., Exs. E, G – J.

<sup>14</sup> Contradicting their own Complaint, Plaintiffs now assert that the “the announcement of new models is not an indication that old models were deficient.” (Opp. Br. at 30 n. 15.) Moreover, articles from **2007** clearly raise questions as to the deficiencies of the old models. *See* Rubins Decl., Exs. E- F. Further evidence of Plaintiffs’ blinders to the available information directly relating to their claims is their citation to *In re Moody’s Corp. Sec. Lit.*, 599 F. Supp. 2d 493, 506-507 (S.D.N.Y. 2009), where Judge Kram determined that inquiry notice of alleged *fraud* relating to Moody’s potential conflicts of interest was not triggered as of July 2003. 599 F. Supp. 2d at 505. Plainly, this finding is of no help to Plaintiffs in avoiding the overwhelming evidence of a February 2008 trigger

Plaintiffs also vainly attempt to avoid the record of notice inquiry of alleged loan irregularities by focusing on a supposed lack of details. Unable to deny the raging storm warnings regarding the practices of the important loan originators, Plaintiffs implausibly argue that they lacked equally detailed information about each smaller lender as well. (Opp. Br. at 32 n.16.)<sup>15</sup> Under the required “totality-of-the-circumstances test,” *see In re Novagold*, 2009 WL 1575220 at \*10, the volume and breadth of information regarding alleged substandard origination practices among Countrywide, IndyMac, Greenpoint, Wells Fargo, Lehman, et al. were clearly more than sufficient to put the Plaintiffs on notice as to what they allege in the Complaint. *See Staehr*, 547 F.3d at 431.<sup>16</sup> Equally illogical is Plaintiffs’ assertion that they were justified in ignoring all storm warnings because the RAs’ ratings themselves provided reassurance. (Opp. Br. at 31.) Since, as previously demonstrated, Plaintiffs were on inquiry notice as to alleged deficiencies in the RAs’ ratings prior to late February 2008, they can hardly point to the ratings as material words of “comfort.” Nor can they contend that storm warning reports could be disregarded because they, too, purportedly contained “words of comfort.” (RA Opp. Br. at 27.) Here, where the storm warnings included widely-reported allegations that the entire MBS market was a “mess” (*see, e.g.*, Rubins Decl., Ex. E), no substantial reliance on management attempts to offer reassurance could be reasonable. Moreover, any purported words

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date – years later -- as to their *non*-fraud claims. In fact, the filing of the first underlying complaint in *In re Moody’s Sec. Lit.* – on **July 19, 2007** – constitutes still another “storm warning” prior to February 2008.

<sup>15</sup> Plaintiffs also attempt to minimize the role of the “principal originators” identified in the Complaint by asserting they were allegedly responsible for originating “only a small fraction of the composite loans” for “dozens of the certificates.” (Opp. Br. at 32 n. 16.) In fact, those issuances in which Countrywide, IndyMac, Greenpoint, Wells Fargo or Lehman did not do all or substantially all of the originating and servicing of the loans are few and far between, even among those issuances cherry-picked by Plaintiffs’ to try to support its point. Defendants’ moving papers have already detailed the publicly available information specifically mentioning each of these entities’ allegedly inadequate and improper origination practices. *See, e.g.*, MDYS Br. at 28-30.

<sup>16</sup> Plaintiffs also imply they relied on the vetting of the loans by the “Master Servicer” (Opp. Br. at 31), ignoring the fact that the Complaint itself confirms that they had pre-2008 notice of alleged problems with the work of Lehman’s subsidiary, Aurora -- the Master Servicer on the vast majority of the 94 offerings identified in the Complaint (and on all 9 offerings in which the named plaintiffs’ allegedly invested). *See* CAC ¶¶ 74-89 (citing **June 27, 2007** Wall Street Journal article discussing lending practices of Lehman’s in-house lending outlets).

of reassurance came too late to provide any comfort to Plaintiffs, whose investments were all made by June 2007. See CAC ¶¶ 31-32. See, e.g., *Farr v. Shearson Lehman Hutton, Inc.*, 755 F. Supp. 1219, 1228 (S.D.N.Y. 1991) (reassuring statements did not abate duty of inquiry when received after risky aspects of investment were already publicly revealed).<sup>17</sup>

#### V. PLAINTIFFS CANNOT PLEAD A RECOVERABLE LOSS

Plaintiffs, willfully missing the point, contend that calculation of a security's value is inappropriate on a motion to dismiss. (Opp. Br. at 41-42.) They fail to refute Moody's showing that, based on the nature of the securities at issue, as set forth in the Complaint and the Prospectuses, there could be no possible loss in value here absent an interruption in cash flow – which Plaintiffs cannot and do not allege. See *McMahan & Co. v. Warehouse Entm't, Inc.*, 65 F.3d 1044, 1049 (2d Cir. 1995) (value of security “may not be equivalent to its market price”).

#### CONCLUSION

For the foregoing reasons, as well as those set forth in the Reply Memoranda of Law of The McGraw-Hill Companies, Inc. and the Individual Defendants (which are incorporated by reference herein), the Complaint against Moody's should be dismissed in its entirety.

Dated: New York, New York  
July 31, 2009

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<sup>17</sup> In any event, the alleged reassurances by management cited by Plaintiffs – blanket pronouncements of no wrongdoing (Opp. Br. at 32-34) – would provide no comfort to the reasonable investor and are simply insufficient to dissipate storm warnings. See *GVA Market Neutral Master Ltd. v. Veras Capital Partners Offshore Fund, Ltd.*, 580 F. Supp. 2d 321, 332 (S.D.N.Y. 2008) (“outright denials of the specific practices being investigated” did not fulfill plaintiff's duty of inquiry); *In re Merrill Lynch & Co., Inc. Research Reports Securities Lit.*, 289 F. Supp. 2d 429, 433 (S.D.N.Y. 2003) (“A plaintiff's duty to inquire is not dissipated merely because of a defendant's denial of wrongdoing.”)