

Before S&P Global Inc.

Comment re: Insurer Risk-Based Capital Adequacy – Methodology and Assumptions (pub. May 9, 2023)

Comments of the Antitrust Division of the United States Department of Justice

The Antitrust Division of the United States Department of Justice (“Antitrust Division”) submits this comment in response to S&P Global Ratings’ (“S&P”) request for public comment on its proposed credit ratings changes, *Insurer Risk-Based Capital Adequacy – Methodology and Assumptions* of May 9, 2023 (the “Proposal”).¹

When a credit rating agency (“CRA”) rates an insurance company, it needs to evaluate the credit quality of the assets that the insurance company holds on its balance sheet. When the CRA itself has issued a credit rating on an asset, it typically uses that credit rating as an input to its ratings model in determining the overall insurance company credit rating. When only a third-party CRA has issued a credit rating on an asset, however, the CRA typically has to evaluate the third party CRA’s rating based upon a “mapping” analysis to measure the credit risk that the asset presents. A mapping table allows a CRA to match or translate a third-party CRA’s credit rating onto its own credit rating system, thus allowing a CRA to use third-party credit ratings as an input for the CRA’s overall rating of an insurance company. In this circumstance, CRAs sometimes use “notching” to adjust up or down the credit rating that a third-party CRA has given to an asset.

Based on the information set forth in the Proposal, we understand that in step two of Chart 4, S&P proposes to use third-party regulatory mapping tables to determine the rating inputs that S&P applies for assets in insurance company investment portfolios that S&P itself has not rated, but that have been rated by other CRAs. *See Proposal* at ¶¶ 70-83. The Proposal, however, does not identify the specific third-party mapping tables S&P would use; nor does the proposal state whether S&P would use the face values set forth in those mapping tables or notch those ratings down.²

The Antitrust Division is concerned that the lack of clarity in the Proposal regarding which third-party mapping tables S&P will use and how S&P will utilize ratings by other CRAs could harm competition between S&P and the CRAs with which it competes to rate assets. First, the disclosure and use of specific mapping tables would provide assurance and transparency to the market that S&P does, and would continue to, use rating criteria that are independent, unbiased, consistent, and that reflect the underlying credit risk profile of the assets being evaluated, regardless of which CRA rated the asset. That transparency would allow insurance companies to have some basis to evaluate and build over the long-term their investment portfolios based upon the known framework and criteria that the disclosed mapping table uses. Second, because the Proposal creates uncertainty as to how mapping table ratings will be used—for example will third-party CRA ratings be notched—the

¹ Request for Comment: Request for Comment: Insurer Risk-Based Capital Adequacy--Methodology and Assumptions (May 9, 2023), at <https://www.spglobal.com/ratings/en/research/articles/230509-criteria-insurance-request-for-comment-request-for-comment-insurer-risk-based-capital-adequacy-methodolo-12693138>.

² *See* Department of Justice, *Comments of the Antitrust Division of the United States Department of Justice Re: Insurance Risk-Based Capital Adequacy*, April 29, 2022.

proposed changes could decrease the incentives of companies to use CRAs other than S&P, or invest in assets rated by CRAs other than S&P. To address these concerns and to maintain competition between S&P and its rival CRAs, the Antitrust Division urges S&P to specify in paragraph 73 of the Proposal the mapping tables S&P intends to use, for example the National Association of Insurance Commissioners' ("NAIC") mapping tables. S&P also should confirm it intends to apply rating inputs at the face values set forth in the, for example, NAIC mapping tables, without "notching" those ratings down.

Respectfully submitted,

Owen M. Kendler, Chief
Lisa Scanlon, Assistant Chief
Financial Services, Fintech & Banking
Section
Antitrust Division
U.S. Department of Justice

Karina Lubell, Chief
Competition Policy and Advocacy Section
Antitrust Division
U.S. Department of Justice