

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

_____)	
RETIREMENT PLAN FOR GENERAL)	
EMPLOYEES OF THE CITY OF NORTH)	
MIAMI BEACH and ROBIN STEIN,)	PETITION PURSUANT TO
)	CPLR ARTICLE 4
Petitioners,)	
)	Index No. _____
v.)	
)	
THE MCGRAW-HILL COMPANIES, INC.)	
)	
Respondent.)	
_____)	

Petitioners, Retirement Plan for General Employees of the City of North Miami Beach and Robin Stein, by and through their undersigned counsel, allege upon personal knowledge as to themselves and upon information and belief otherwise, as follows:

NATURE OF THE ACTION

1. Petitioners bring this action pursuant to CPLR Article 4, Section 624 of the New York Business Corporation Law, and New York common law to enforce Petitioners' rights to inspect certain of The McGraw-Hill Companies, Inc.'s ("McGraw-Hill" or "the Company") books and records for the purpose of discovering the extent of the wrongdoing McGraw-Hill has committed, to identify the officers and directors who may be held responsible for such wrongdoing, and to determine whether a demand upon the Company would be futile pursuant to N.Y. Business Corporations Law § 626(c).

PARTIES TO THE ACTION

A. Petitioners

2. Petitioner Retirement Plan for General Employees of the City of North Miami Beach (“North Miami Beach”) is a resident of the State of Florida. Since at least May 2009, North Miami Beach was, and remains, a beneficial owner of McGraw-Hill common stock.

3. Petitioner Robin Stein is a resident of the State of New Jersey. Since at least June 1997, Ms. Stein was, and remains, a beneficial owner of McGraw-Hill common stock.

B. Respondent

4. Respondent McGraw-Hill is incorporated under the laws of the State of New York and has its principal place of business at 1221 Avenue of the Americas, New York, New York 10020. The Company has four operating segments: Standard & Poor’s Ratings (“S&P”), S&P Capital IQ/S&P Indices, Commodities & Commercial, and McGraw-Hill Education. During most of the Relevant Period (January 1, 2002, through the present), McGraw-Hill had only three reporting segments and, until the Company filed its Form 10-Q for the first quarter of 2011 on April 27, 2011, S&P’s financial results were reported as part of McGraw-Hill’s Financial Services segment. McGraw-Hill, under the S&P brand, provides credit ratings, research, and analysis covering fixed-income securities, other debt instruments, and issuers of such debt instruments in the global capital markets.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to CPLR 401-411 to enforce the Respondent's obligations under New York statutory and common law.

6. Venue in New York County is proper pursuant to CPLR 503(c) and 506(a), and N.Y. Bus. Corp. Law § 624(d), as claims are asserted against McGraw-Hill, which has its principal office in New York County and is therefore a resident of New York County.

BACKGROUND FACTS

7. McGraw-Hill bills S&P as "the world's foremost provider of credit ratings." S&P's credit ratings are opinions "about the ability and willingness of an issuer ... to meet its financial obligations in full and on time" and are one tool that investors can look to when making decisions about bonds and other fixed income investments. Its credit ratings can also address the credit quality of an individual debt issue and the likelihood that it may default.

8. McGraw-Hill's credit rating business boomed in the years leading up to the financial crisis, taking in soaring revenue from Wall Street. For instance, in the first quarter of 2002, McGraw-Hill reported revenue of approximately \$380 million for its Financial Services segment. By the third quarter of 2005, the Financial Services segment boasted revenues of over \$605 million, growth which was, in part, attributed to a rise in residential mortgage backed securities ("RMBSs"), collateralized debt obligations ("CDOs"), and commercial-backed mortgage securities. In fact, reported revenues continued to increase in the Financial Services segment and peaked at approximately \$821 million in the second quarter of 2007 through proliferating structured finance

transactions and, in particular, CDOs and commercial mortgage-backed securities in the U.S.

9. As the credit rating business mushroomed, especially in relation to complex structured financial products, so did S&P's opportunity to provide falsely optimistic credit ratings. It was widely alleged in the financial press – and confirmed in the Senate Report (defined below) – that the credit ratings provided by S&P and the other major credit rating agencies helped trigger the global financial crisis. In particular, the toxic mortgage-related securities at the core of the meltdown would not have been marketed and sold without S&P's seal of approval. In other words, S&P's ratings of, among other things, RMBSs and CDOs did not accurately reflect their risk profile or current information. This spawned a panoply of federal and state investigations into the role the credit rating agencies played in the financial crisis, revealing rampant conflicts of interest with issuers that tainted initial credit ratings issued by S&P and its maintenance of these ratings, as well as lax or non-existent surveillance of the credit ratings it had already issued. These investigations should come as no surprise to McGraw-Hill, which admitted that, beginning in the third quarter of 2007, the credit rating agencies, including S&P, “became subject to scrutiny for their rating on structured finance transactions that involve the packaging of subprime residential mortgages, including [RMBSs] and [CDOs].”

10. On August 29, 2007, S&P received a subpoena from the New York Attorney General's Office requesting information and documents relating to S&P's ratings of securities backed by residential real estate mortgages.

11. On August 31, 2007, the Staff in the U.S. Securities and Exchange Commission's ("SEC") Office of Economic Analysis, Office of Compliance, Inspections, and Examinations, and Division of Trading and Markets initiated examinations into the three major credit rating agencies, including S&P, with respect to their activities in rating subprime RMBSs and CDOs. Among the key inquiries of the SEC investigation was whether the credit rating agencies complied with their policies and procedures for initial ratings and ongoing surveillance, the effectiveness of their conflict of interest procedures, and whether ratings were influenced by conflicts of interest related to the credit rating agencies' role in bringing issues to the market and the compensation they received from issuers and underwriters.

12. Without attributing conduct to any particular credit rating agency, the SEC issued its conclusions in a July 2008 report, finding that: (i) relevant ratings criteria were not always disclosed; (ii) none of the credit rating agencies had specific written procedures for rating RMBSs and CDOs; (iii) the credit rating agencies did not appear to have specific policies and procedures in place to identify or address errors in their models or methodologies; and (iv) although the credit rating agencies were required to maintain and enforce policies and procedures designed to manage conflicts of interest, significant conflicts still persisted, particularly in the "issuer pays" model for RMBS and CDO offerings.

13. On October 16, 2007, S&P received a subpoena from the Connecticut Attorney General's Office requesting information and documents relating to the conduct of S&P's credit ratings business. The subpoena was issued in connection with an investigation by the Connecticut Attorney General into whether S&P's conduct in its

credit ratings business violated the Connecticut Antitrust Act. S&P received a second subpoena from the Connecticut Attorney General's Office, dated December 6, 2007, seeking information and documents relating to the rating of securities backed by residential real estate mortgages, and a third subpoena, dated January 14, 2008, seeking information and documents relating to the rating of municipal and corporate debt.

14. On March 10, 2010, the Connecticut Attorney General announced that it sued S&P, among others, for violations of the Connecticut Unfair Trade Practices Act because their structured finance securities were tainted by the prospect of earning lucrative fees for credit ratings.

15. On November 8, 2007, S&P received a civil investigative demand from the Massachusetts Attorney General's Office requesting information and documents relating to S&P's ratings of securities backed by residential real estate mortgages.

16. A 2008 article from *The Wall Street Journal* discussed the extent of the involvement of Harold McGraw, the Chairman and Chief Executive of McGraw-Hill, in S&P's business. According to the article, McGraw was responsible for stressing S&P's profit growth above all else and setting S&P's budget. Although McGraw's "strategy led to booming profits from 2004 to 2007, S&P ... now is grappling with a downside that includes lost business and regulatory inquiries about the independence of its ratings." *The Wall Street Journal* recognized that "[b]uilding market share in existing and new products also got lots of attention [and] McGraw was a big supporter of the innovative products that S&P was rating during the boom." In fact, like the other ratings firms, S&P was "hungry for revenue from the tidal wave of CDOs and other complex securities flooding the market."

17. On April 13, 2011, the Senate Subcommittee on Investigations issued a report entitled “Wall Street and the Financial Crisis: Anatomy of a Financial Collapse” (the “Senate Report”). The Senate Report contains a 75-page case study on, among others, S&P’s complicity in the financial crisis, which was spurred in part by widespread investments in the subprime mortgage securities market. For example, internal S&P emails cited in the Senate Report reveal that analysts with S&P and senior management were well aware of increasing risks in the mortgage market, including higher risk mortgage products, lax lending standards, poor quality loans, and mortgage fraud. As a result, the Senate Report concluded that “[e]vidence gathered by the Subcommittee shows that credit rating agencies were aware of the problems in the mortgage market Instead of using this information to temper their ratings, the firms continued to issue a high volume of investment grade ratings for mortgage backed securities.”

18. The focus of the Senate Report appeared to be the ratings S&P gave to a subprime-mortgage backed CDO called Delphinus, which was given a AAA rating after S&P already began mass downgrades of subprime-backed mortgage securities. Little more than a year later, Delphinus was given a junk rating. In light of the fact that S&P apparently continued to grant AAA ratings even after the Company revealed to world markets that its methodologies for rating subprime-backed securities were fatally flawed, serious questions exist regarding the Board’s exercise of its fiduciary responsibilities.

19. A number of exhibits contained in the Senate Report indicate the Board’s knowledge of S&P’s business. For example, one exhibit includes a March 3, 2007 email indicating that S&P’s RMBS rating division was scheduled to present to McGraw-Hill

executives on the subprime situation, including ratings and how to deal with fallout from the mortgage industry.

20. On August 17, 2011, *The New York Times* published an article reporting that the United States Department of Justice (“DOJ”) was investigating whether S&P improperly rated mortgage products, such as RMBSs and CDOs.

21. On September 26, 2011, the Company announced that it received a Wells Notice from the SEC indicating that the staff was considering recommending a civil injunctive action against Standard & Poor’s Rating Services, then a division of S&P, for violations of the federal securities laws with respect to S&P’s ratings issued for a 2007 offering of a CDO identified as Delphinus CDO 2007-1.

22. Because S&P is a critical business segment of the Company – it contributed more than 25% of the Company’s revenues from 2008 to 2010 – it is presumably a segment that is closely monitored by the Board.¹ Thus, the Board knew or should have known of the growing problems in the mortgage industry, problems about which S&P publicly reported and which would directly impact the RMBS and CDO ratings. Internal emails from the Senate Report indicated that S&P analysts and senior management were well aware before July 2007 of increasing risks in the mortgage market, including higher risk mortgage products, lax lending standards, poor quality loans, and mortgage fraud. Nevertheless, the Board allowed S&P to continue to issue

¹ Prior to that time, McGraw-Hill reported S&P as part of its Financial Services segment, which recorded revenue from other services, as well, without specifying each service’s contributing revenue. Despite this, the Financial Services segment earned robust returns, accounting for 44% of McGraw-Hill’s revenue in 2007 and nearly 44% in 2006. From 2008 to 2010, McGraw-Hill continued to report S&P as part of the Financial Services segment, but specified S&P’s revenues in the Company’s SEC filings.

inflated ratings for the RMBSs and CDOs, which produced billions in revenue until July 2007, when S&P abruptly reversed its course and issued downgrades.

23. The inherent conflicts of interest in the credit ratings business were well known and the Board was aware or should have been aware of this. In 2003, for example, the SEC issued a report on these conflicts, concluding that “[c]oncerns had been expressed that a rating agency might be tempted to give a more favorable rating to a large issue because of the large fee, and to encourage the issuer to submit future large issues to the rating agency.” *Report on the Role and Function of Credit Rating Agencies in the Operation of the Securities Markets*, U.S. Securities and Exchange Commission (Jan. 2003). Because of the amount of revenue and profit generated by S&P, the Board knew or should have known that S&P (i) was being paid by the issuers seeking ratings for products that they intended to sell to investors and (ii) knew that the issuers needed investment grade ratings to sell the RMBS and CDO securities.

24. In fact, according to a former S&P Managing Director in charge of the RMBS Ratings Group, “[b]y 2004 the structured finance department at S&P was a major source of revenue and profit for the parent company, McGraw-Hill. Focus was directed at collecting market share and revenue data on a monthly basis from the various structured finance rating group[s] and forwarded to the finance staff at S&P.” Not surprisingly, from 2004-2007, S&P provided AAA ratings to a majority of the RMBS and CDO securities issued in the U.S.

PETITIONERS’ § 624 DEMAND AND THE NEGOTIATIONS
BETWEEN THE PARTIES

25. By letter dated November 18, 2011, petitioner North Miami Beach made a written demand upon the Company pursuant to N.Y. Bus. Corp. Law § 624 and New

York common law for the inspection of certain books and records (the “Demand Letter”) expressly identified in the Demand Letter for the period of January 1, 2002, through the present.² The Demand Letter is attached hereto as Exhibit A.

26. The Demand sought the following categories of documents:

- All books and records concerning the composition of the Board, its committees, and subcommittees, as well as any special committees formed in connection with S&P’s credit ratings for RMBSs and CDOs during the Relevant Period;
- All books and records concerning the independence of the Company’s Board;
- All books and records concerning the Company’s policies and procedures regarding the Board’s oversight of S&P including, but not limited to, S&P’s Structured Finance Ratings Group;
- All books and records that identify and discuss S&P’s business and operations, and the identification of its senior level employees who report directly to the Board;
- All books and records concerning any and all investigations, reviews and/or analyses by the Board, the Audit Committee, and any Special Committee of the Board that were conducted in 2007, 2008, 2009, 2010, and 2011 with respect to S&P’s compliance framework for its business operations;
- All books and records concerning S&P’s policies and procedures for issuing credit ratings for RMBSs and CDOs, and any subsequent monitoring of these credit ratings which were discussed at meetings of the Board, any committee or subcommittee of the Board, or any Special Committee;
- All books and records concerning increasing S&P’s market share for rating RMBS and CDO securities, which was discussed at meetings of the Board, any Special Committee, or any other committee or subcommittee of the Board;
- All books and records concerning S&P’s policies and procedures that address and manage conflicts of interest, particularly arising out of its “issuer pays” model for issuing credit ratings, that were discussed at meetings of the Board, any committee or subcommittee of the Board, or any Special Committee;
- All books and records concerning S&P’s determination to take action on thousands of RMBS and CDO securities that held AAA ratings beginning in 2007, including S&P’s downgrade of over 1000 RMBSs and 100 CDOs by the

² On June 22, 2012, petitioner Robin Stein joined in the Demand of North Miami Beach.

end of July 2007 and the decision to downgrade or place on credit watch approximately 6300 RMBS and 1900 CDO securities on January 30, 2008, which was discussed at meetings of the Board, any committee or subcommittee of the Board, or any Special Committee;

- All books and records concerning any modifications or potential modifications to S&P's policies and procedures for issuing credit ratings for RMBS and CDO securities, and any monitoring of these credit ratings following enactment of the U.S. Credit Rating Agency Reform Act on September 29, 2006, or the SEC Proposed Rules for Nationally Recognized Statistical Rating Organizations, revised and adopted in February 2009, which were discussed at meetings of the Board, any committee or subcommittee of the Board, or any Special Committee;
- All books and records which show that the Company has adequately disclosed all material information pertaining to S&P's issuance of credit ratings for RMBS and CDO securities;
- All books and records sufficient to identify Company personnel in charge of enforcing the Company's Code of Business Ethics and any other conflict of interest policies of the Company;
- All books and records, including those sufficient to identify the costs incurred by the Company regarding any congressional inquiry including, but not limited to, the U.S. Senate Subcommittee on Investigations, any civil and/or criminal investigations, administrative or regulatory reviews, enforcement actions and lawsuits by any governmental or regulatory body including the SEC, the DOJ, federal prosecutor's office and/or any state attorney general, and private civil lawsuits pertaining to S&P's ratings of RMBS and CDO securities;
- All books and records sufficient to identify the Company's stockholders as of the date of the Demand; and
- All books and records sufficient to identify other stockholders of the Company making books and records demands pertaining to S&P's ratings of RMBS and CDO securities.

27. In the Demand Letter, petitioner North Miami Beach stated numerous proper purposes justifying why it should be allowed to review Company internal documents. These include, in light of the Senate Report and the investigations and legal actions conducted by the SEC, the DOJ, and the New York and Connecticut Attorneys General, the following:

- To investigate potential wrongdoing, mismanagement, and breaches of fiduciary duty by the members of the Company's Board and senior management in connection with the events, circumstances, and transactions described above;
- To assess any policies, rules, guidelines, or other measures the Board has considered and/or implemented in the past 10 years that were designed to address S&P's policies and procedures for issuing credit ratings for RMBS and CDO securities;
- To assess any policies, rules, guidelines, or other measures the Board has considered and/or implemented in the past 10 years that were designed to address potential conflicts of interest in S&P's RMBS and CDO business;
- To ascertain oversight by the Board of S&P's determination to take action on thousands of RMBS and CDO securities that held AAA ratings, including S&P's downgrade of over 1000 RMBSs and 100 CDOs by the end of July 2007 and S&P's decision to downgrade or place on credit watch approximately 6300 RMBS and 1900 CDO securities on January 30, 2008;
- To ascertain the process employed by the Board and senior management in reaching decisions concerning S&P's policies toward fees charged by S&P to issuers of RMBS and CDO products to obtain credit ratings for these products and other corporate perquisites and reporting and monitoring of same;
- To assess the ability of the Company's Board to consider impartially a demand for action (including a request for permission to file a derivative lawsuit on the Company's behalf) related to the issues described in the Demand; and
- To explore remedial measures including, without limitation, seeking a meeting with the Company's Board to discuss proposed reforms, communicating with other Company stockholders, preparing a stockholder resolution for the Company's next annual meeting, and/or taking appropriate legal action in the event the members of the Company's Board did not properly discharge their fiduciary duties.

28. Petitioner North Miami Beach made its Demand in good faith, under oath, for the inspection and copying of the Company's books and records. As set forth above, the Demand stated proper purposes and otherwise complies with the requirements of § 624 and New York common law.

29. On November 22, 2011, by counsel, McGraw-Hill responded to the Demand with a letter confirming petitioner North Miami Beach's consent to extend the

deadline to comply with the Demand to December 9, 2011, and requesting additional evidence of North Miami Beach's status as an owner of McGraw-Hill stock. McGraw-Hill's November 22 letter is attached hereto as Exhibit B.

30. On December 9, 2011, McGraw-Hill further responded to the Demand with a Response Letter objecting to the Demand on the grounds that it was "vastly overbroad, seeking an array of documents beyond the scope of what is contemplated under Section 624 . . . and New York common law." McGraw-Hill further objected on the basis that, in its view, North Miami Beach's purposes in making the Demand were "entirely speculative" and "insufficient as a matter of law to justify the sweeping demands set forth in [the] letter," and questioned the propriety of North Miami Beach's request for documents that predated its ownership of McGraw-Hill stock. McGraw-Hill's Response Letter is attached hereto as Exhibit C.

31. In support of its position, McGraw-Hill equated North Miami Beach's Demand with the allegations raised in *Teamsters v. Harold McGraw III*, No. 90-cv-00140 (S.D.N.Y. Mar. 11, 2010), which the District Court dismissed on the basis that the existence of certain government investigations and reports identified by the plaintiffs did not support a cognizable claim that any Board member breached his or her duties, or acted with scienter. In the *Teamsters* derivative action, the plaintiff submitted a demand letter to McGraw-Hill's Board, which refused to pursue any legal action on behalf of the Company. In response to the Board's rejection, the plaintiff filed suit, alleging several causes of action, including violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and sundry state law claims for breach of fiduciary duty, gross mismanagement, corporate waste, and unjust enrichment. The court dismissed the

plaintiff's claims under the federal securities laws. In doing so, the court determined that the plaintiff's complaint failed to plead a purchase or sale of a security, reliance by the Company on the defendants' misstatements or omissions, or resulting injury to the Company. Moreover, the court declined to find the existence of various regulatory investigations sufficient to establish scienter. Once the court disposed of the plaintiff's federal securities claims, it declined to exercise supplemental jurisdiction over the plaintiff's pending state law claims, such as the breach of fiduciary duty claim – which does not require a plaintiff to establish scienter.

32. Contemporaneous with its Response, McGraw-Hill produced the exceedingly narrow set of documents it identified therein. These documents consisted only of the minutes of the Company's annual shareholder meetings from 2002 through 2011, totaling a mere 53 pages.

33. On January 6, 2012, counsel for petitioner North Miami Beach replied to McGraw-Hill's response, asserting that: (1) the Demand was for proper purposes and premised on credible evidence of wrongdoing; (2) the materials sought were within the scope of § 624 and New York common law; (3) North Miami Beach appropriately sought materials predating its ownership of McGraw-Hill stock because those materials related to current problems in the Company; and (4) the documents provided by McGraw-Hill with its Response Letter constituted an inadequate response to the Demand Letter.

34. Further, petitioner North Miami Beach explained that McGraw-Hill's reliance on *Teamsters* was misplaced, as that case was dismissed (on March 11, 2010) before a number of the critical facts identified in the Demand emerged. For instance, Petitioner pointed to the Senate Report, issued on April 13, 2011, which revealed

important information concerning S&P's complicity in the financial crisis. The Senate Report also demonstrated that S&P analysts and senior management were well aware of increasing risks in the mortgage market, including higher risk mortgage products, lax lending standards, poor quality loans, and mortgage fraud. In addition, the Senate Report contained a number of exhibits pointing to the Board's knowledge of S&P's business practices as they related to the financial crisis. Petitioner also noted the August 17, 2011, *The New York Times* article, which reported that the DOJ was investigating whether S&P improperly rated mortgage products, such as RMBSs and CDOs. Finally, the SEC issued a Wells Notice on September 26, 2011, indicating that the Commission is considering recommending a civil injunctive action against Standard & Poor's Rating Services, then a division of S&P, for violations of the federal securities laws.

35. Petitioner's reply letter concluded with a request that McGraw-Hill immediately cure the deficiencies in its response. At the same time, Petitioner offered to discuss the scope of North Miami Beach's Demand in an attempt to narrow the disagreement concerning the range of the requested documents. Petitioner North Miami Beach's January 6, 2012 letter is attached hereto as Exhibit D.³

36. On January 19, 2012, a conference call was held in an effort to address McGraw-Hill's concerns and determine if a compromise on the scope of the documents could be reached without court intervention. McGraw-Hill complained, among other reasons, that the request was overly broad. Counsel for North Miami Beach explained

³ The January 6, 2012 letter also disputed McGraw-Hill's contention that North Miami Beach had not submitted sufficient evidence of its current ownership of McGraw-Hill stock. Nevertheless, to further assuage McGraw-Hill's concerns and clarify North Miami Beach's standing and proper intentions, North Miami Beach included with the January 6 letter supplementary documentation further demonstrating its current ownership of McGraw-Hill stock. The supplementary documentation is attached hereto as Exhibit E.

that counsel for McGraw-Hill was misreading the Demand with respect to the types of documents Petitioner was seeking. To clarify McGraw-Hill's misconception, counsel for North Miami Beach specifically stated that, for each category of documents, it was seeking *only* those documents that the Board reviewed, prepared, or disseminated, not documents which would have to be searched for throughout the entire Company. Accordingly, the universe of documents was limited and the production of responsive documents would not be burdensome.

37. In response to the "meet and confer" conference call, on February 3, 2012, McGraw-Hill's counsel sent North Miami Beach a letter again stating its position that North Miami Beach's request failed to establish a credible basis to find probable wrongdoing and that it did not identify a proper purpose. The letter concluded that because North Miami Beach sought full compliance with its Demand Letter, *i.e.*, required the production of the documents to which it was entitled, McGraw-Hill was "not prepared to supplement its production of responsive documents." McGraw-Hill's February 3, 2012 letter is attached hereto as Exhibit F.

38. In a June 22, 2012 letter, counsel for petitioner North Miami Beach advised McGraw-Hill that Ms. Stein had joined in the Demand and provided documentation of Ms. Stein's ownership of McGraw-Hill stock since at least June 1997 and a Special Power of Attorney executed by Ms. Stein authorizing undersigned counsel to act on her behalf. The June 22, 2012 letter and the documentation submitted with it are attached hereto as Exhibit G.

39. The June 22 letter also responded to McGraw-Hill's previous letter, again asserting that the Demand stated a proper purpose under New York law and, based on the

representations of counsel during the “meet and confer,” was appropriately narrow in scope. Counsel for Petitioners reiterated that, as reaffirmed during the January 19 conference call, the documents sought in each category of materials included only “documents that McGraw-Hill’s Board reviewed, prepared or disseminated” (emphasis in original). The letter also explained that, in light of Ms. Stein’s participation in the Demand, Petitioners could properly seek to assess the Board’s independence. Counsel for Petitioners again requested that McGraw-Hill cure the deficiencies in its response to the Demand Letter, but agreed, in the spirit of cooperation, to “further discuss the scope of the Demand to avoid the need for court intervention.”

40. On July 12, 2012, counsel for McGraw-Hill responded, again arguing that Petitioners had not demonstrated a credible basis to find probable wrongdoing and, incredibly, again relying on the inapposite result in the *Teamsters* case. The letter also repeated McGraw-Hill’s assertion that Petitioners’ Demand was overbroad, notwithstanding Petitioners’ representation that the scope of the request was narrowly tailored to Board materials, and contended – erroneously – that counsel for Petitioners had not made any such representation during the conference call six months earlier. The letter concluded with an offer to discuss the production of shareholder records and annual balance sheet and profit and loss information – information that was not directly responsive to the Demand – and to further discuss the scope and purposes of Petitioners’ Demand. McGraw-Hill’s July 12, 2012 letter is attached hereto as Exhibit H.

41. On August 3, 2012, counsel for Petitioners once again wrote counsel for McGraw-Hill. That letter again challenged McGraw-Hill’s mischaracterization and misapprehension of the *Teamsters* case and further contended both that the Demand

sought “essential and sufficient” documents and that McGraw-Hill’s repeated offer to supplement its prior response with only shareholder records and annual balance sheet and profit and loss information constituted an inadequate response to the Demand. Finally, Petitioners once again stated that the Demand had an appropriately limited scope: “to the extent that [counsel for McGraw-Hill does] not read the Demand as limited to Board-level materials, this letter specifically reaffirms that it is. Thus, North Miami Beach and Ms. Stein are requesting only documents that McGraw-Hill’s Board received, reviewed and/or generated within each category of materials sought.” Petitioners’ August 3, 2012 letter is attached hereto as Exhibit I.

42. On September 6, 2012, counsel for Petitioners and McGraw-Hill once again participated in a conference call in an attempt to reach a compromise without court intervention. During that call, Petitioners’ counsel explained that, with regard to the first four categories of documents identified in the Demand, consistent with prior correspondences, Petitioners sought only those documents regarding (i) the “flow of information” to McGraw-Hill’s Board of Directors relating to S&P’s business and operations and (ii) the responsibility of McGraw-Hill’s directors for oversight of S&P’s business. Petitioners recommended that McGraw-Hill produce Board presentations related to S&P, as well as charters and by-laws of Board committees responsible for S&P oversight. Upon beginning the discussion of the fourth category of requested documents, counsel for McGraw-Hill abruptly ended the conversation, advising that counsel would have to confer with the Company before agreeing to produce any additional documents. Incredibly, counsel for McGraw-Hill then offered an ultimatum: if McGraw-Hill produced documents *purportedly* responsive to the Demand, Petitioners would have to

agree – prior to the production and any opportunity to review the documents that would be produced – that any such production would constitute full satisfaction of Petitioners’ Demand. Petitioners declined McGraw-Hill’s absurd proposal, explaining that it would be unreasonable to agree that any documents produced would satisfy the Demand without first examining those documents.

43. In a letter dated September 20, 2012, counsel for McGraw-Hill summarized the September 6 phone call and, ultimately, refused to comply with Petitioners’ Demand for documents to which they were entitled, concluding that “[u]nder the circumstances, we cannot agree to make a supplemental production of documents beyond the materials covered by Section 624, *i.e.*, shareholder records and annual balance sheet and profit and loss information” McGraw-Hill’s letter of September 20, 2012, is attached hereto as Exhibit J.

44. On October 2, 2012, counsel for Petitioners sent a letter asserting that counsel for McGraw-Hill mischaracterized the September 6, 2012 phone call, particularly with regard to McGraw-Hill’s ultimatum. Counsel for Petitioners explained that, logically, Petitioners could not agree to such a request “without reviewing the production to determine whether, in fact, the Company produced the responsive books and records, a position we believe is more than reasonable.” Petitioners concluded that because “the Company is refusing to permit inspection and copying of the demanded documents, we are forced to pursue alternative appropriate legal and equitable remedies including, but not limited to, filing a complaint in the New York State Supreme Court.”

The October 2, 2012 letter is attached hereto as Exhibit K.

45. McGraw-Hill's response equates with a refusal to permit inspection of any documents whatsoever.

**ADDITIONAL FINDINGS OF WRONGDOING BY S&P THAT
EMERGED AFTER THE DEMAND**

46. On November 5, 2012, the Federal Court of Australia issued a nearly 1500-page judgment that painstakingly described how S&P misled twelve local councils and their financial advisor by assigning its highest rating to a pair of constant proportion debt obligations ("CPDOs"), a financial product created by ABN Amro Bank NV in 2006. In October 2008, the CPDOs cashed out because their net asset value dropped below 10% of the par price for which they had been acquired, causing the plaintiffs in the Australian action to suffer losses.

47. Through internal documents, the Australian Court exhaustively described discussions between S&P and ABN Amro regarding the factors that would affect the rating of the CPDOs. According to the documents, these factors indicated that the rating for the CPDOs should be less than AAA.

48. Nevertheless, in connection with the sale of the Australian CPDOs, ABN Amro provided reports prepared by S&P to the plaintiffs asserting that S&P "has deemed [the risk] consistent with a 'AAA' rating [its highest rating]."

49. The Australian Court characterized S&P's ratings of the CPDOs as "hopelessly deficient," noting that "[t]he CPDO could achieve a rating of AAA only on the basis of an unreasonable combination of unreasonably optimistic inputs but not otherwise."

50. Ultimately, the court found that S&P was liable to the councils and their financial advisor for negligence, negligent misstatement, and violation of various

Australian statutes prohibiting the dissemination of false and/or misleading statements concerning financial products. The court stated: “[B]y assigning and authori[z]ing the AAA rating[,] S&P represented to all potential investors its expert opinion that the capacity of the Rembrandt notes to pay scheduled interest to the noteholders and principal at maturity was extremely strong and that this opinion was based on reasonable grounds and had been reached by S&P having exercised reasonable care and skill.” S&P’s representations, however, were held to be deceptive: the court was “also satisfied that these representations were misleading and deceptive, likely to mislead and deceive and false in a material particular because the opinion was not based on reasonable grounds and S&P had not exercised reasonable care or skill in reaching the opinion.”

51. Indeed, S&P’s AAA ratings for the Australian CPDOs were found to be flawed in numerous respects. For instance, S&P did not properly assess the Australian CPDOs’ risk of default, and found that the CPDOs failed to warrant a AAA rating.

52. S&P sought to excuse, or at least limit, its liability under a statutory provision that provides for such relief “if it appears to the court that the [defendant] . . . has acted honestly [] having regard to all the circumstances of the case . . .” The court declined: “It does not appear to [the court] to be fair having regard to all the circumstances of the case to excuse S&P from the alleged contraventions (assuming them to be proved). S&P held itself to be experts in the rating of structured financial products. As discussed it made at least one fundamental error and a number of unreasonable, unjustified and irrational decisions in the process of determining the rating but also failed to correct the rating of the . . . Rembrandt 2006-3 CPDO, even though S&P knew or must

have known by then that its rating was based on an important, but unreasonable and unjustified, modelling input, being volatility (amongst other problems).”

53. Similarly, on November 7, 2012, shortly after the Australian Court issued its judgment, an Illinois state court ruled that the Illinois Attorney General could proceed with her claim that S&P and McGraw-Hill, as its parent company, engaged in deceptive business practices when they assured investors “that the process by which S&P rated various securities was independent, objective, and unbiased.” The securities at issue were “complex financial products that have as their base, either directly or indirectly, a stream of income generated by a pool of residential mortgages.” The Cook County Court noted that because these structured finance products were opaque, meaning that details of the underlying asset pool and the structure of the transaction are not publicly available, S&P’s ratings “are of enhanced importance to investors.”

54. Moreover, the Cook County Court found that since S&P is compensated for its ratings services by issuers of the securities it rates, there is an inherent conflict between “S&P’s status as an ‘independent’ and ‘objective’ rating agency and its desire to maximize profits by catering to those issuers whose repeat business drives those profits.” The Illinois Attorney General alleged that, contrary to S&P’s public statements that it adhered to business practices and codes of conduct, S&P “allowed its profit motive to override its objectivity and independence.”

55. The Cook County Court concluded that the misrepresentations concerning S&P’s independence and objectivity were material to investors, particularly since certain investors are restricted to investing in products that receive a certain rating from S&P (*e.g.*, its highest AAA rating).

56. In the end, the Cook County Court rejected the defendants' motion to dismiss and allowed the Illinois Attorney General's claims under the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/1-1, *et seq.*, and the Uniform Deceptive Trade Practices Act, 815 ILCS 510/1-1, *et seq.*, against McGraw-Hill and S&P to go forward.

CAUSE OF ACTION

(For Judgment Pursuant to CPLR 401-411)

57. Petitioners repeat and reallege each and every allegation contained in paragraphs 1 through 56 as if set forth fully herein.

58. Section 624 of New York's Business Corporation Law and New York common law require McGraw-Hill to provide shareholders with access to books and records for any purpose reasonably related to the person's interest as a shareholder.

59. As detailed herein, petitioners North Miami Beach and Robin Stein made a Demand upon McGraw-Hill pursuant to Section 624 and New York common law, and McGraw-Hill has provided an inadequate response to that Demand and otherwise refused to comply with its duties under Section 624 and New York common law.

60. Article 4 of the CPLR provides a device for challenging the actions of the Company and enforcing Petitioners' rights under New York law. Petitioners have a clear right to the enforcement of, and compliance with, Section 624 and New York common law.

61. Petitioners have no adequate remedy at law.

62. Accordingly, Petitioners are entitled to judgment under CPLR Article 4 ordering McGraw-Hill to fully comply with Petitioners' Demand under N.Y. Bus. Corp. Law § 624 and New York common law.

WHEREFORE, Petitioners demand an order for relief as follows:

- a) directing Respondent to permit Petitioners and/or their attorneys to inspect and copy the materials requested in the Demand Letter forthwith;
- b) awarding the costs and fees associated with the prosecution of this action to the Petitioners; and
- c) awarding such other and further relief as the Court deems appropriate.

Dated: January 31, 2013

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