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## U.S. Economic Sanctions Laws: Practical Implications for European Companies

In general, U.S. economic sanctions are government-imposed restrictions on international commerce with foreign countries, individuals, entities or other instrumentalities, such as vessels, for foreign policy purposes.<sup>1</sup> Both the threat and deployment of economic sanctions are important tools in modifying behavior on the international stage.<sup>2</sup> Given the increased enforcement of U.S. economic sanctions laws and regulations, companies (and their employees) must be aware of the potential impact on their business.

The United States utilizes economic sanctions in response to a variety of national security threats and other foreign policy concerns.<sup>3</sup> There are several pieces of legislation granting the President authority to impose economic sanctions. First, under the International Emergency Economic Powers Act (“IEEPA”), the President may block certain business transactions or freeze assets in response to any threats to the national security, foreign policy, or economy of the United States.<sup>4</sup> This law grants the authority to use economic sanctions during times of peace. Second, under the Trading with the Enemy Act (“TWEA”), the President may oversee or restrict any and all trade between the United States and its enemies during times of war.<sup>5</sup>

The U.S. economic sanctions programs promulgated under IEEPA apply to “U.S. Persons.” The IEEPA definition of U.S. Persons includes: (1) United States citizens and permanent resident aliens of the United States, wherever located; (2) persons within the United States, regardless of nationality; and (3) entities organized under the laws of the United States or of any states, territory, possession of the United States, including foreign branches.

Meanwhile, sanctions programs promulgated under TWEA, which apply exclusively to North Korea and Cuba, affect any

“person subject to the jurisdiction of the U.S.”<sup>6</sup> This definition is similar to that of U.S. Persons under IEEPA, but with one important exception – it also includes any entity, wherever organized or doing business, that is owned or controlled by U.S. citizens, permanent residents of the United States, or entities organized under the laws of the United States. Thus, under TWEA-based sanctions programs, even a foreign subsidiary of a U.S. corporation is subject to U.S. law.

The United States Department of the Treasury’s Office of Foreign Asset Controls (“OFAC”) administers and enforces economic sanctions programs pursuant to the Presidential national emergency powers, as well as pursuant to specific legislation permitting the imposition of controls on transactions and the freezing of assets under US jurisdiction. Many of these sanctions are multilateral, based on United Nations or other international mandates, and rely upon cooperation with allied governments. The OFAC website provides a wealth of information on U.S. economic sanctions programs and is an excellent resource for additional information on specific sanctions programs.<sup>7</sup>

Notably, U.S. sanctions programs can impact European companies. European companies are, therefore, well-advised to make themselves aware of U.S. sanctions laws and regulations. For example, although a wholly-owned and incorporated European company ordinarily may, under U.S. law, legally conduct business with U.S.-sanctioned countries, they may not do so if they are subject to jurisdiction in the United States. These companies may be subject to the jurisdiction in the United States if any of the following applies: (1) the company’s senior management is comprised of U.S. Persons; (2) the company’s senior management is based in the United States and essentially manages the company from the U.S.; (3) there are U.S. Persons working within the business that have dealings with sanctioned countries and have not properly recused themselves; or (4) foreign persons use the mail or wires to communicate with a U.S. Person regarding a dealing or transaction with a sanctioned country.

Accordingly, no U.S. Person or person subject to the jurisdiction of the United States may approve, finance, facilitate or guarantee any transaction by a foreign person where a transaction by a foreign person would be prohibited if performed by a U.S. Person. Facilitation provisions vary by sanctions program, but generally include altering operating policies or procedures to permit a foreign subsidiary to do the business, or referring to a foreign person purchase orders, requests for bids, or similar business opportunities to which a U.S. person could not directly respond. Another example of facilitation is changing or creating operating policies or procedures of a particular affiliate with the specific purpose of facilitating trans-

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1 Economic sanctions include the limitation of imports and exports to the target country, the restriction of investment in the target country, and the prohibition of private financial relations between a sender country’s citizens and the target country’s people or government. Robert O’Quinn, *A User’s Guide To Economic Sanctions*, 1997, available at <http://www.heritage.org/Research/Reports/1997/06/A-Users-Guide-To-Economic-Sanctions>.

2 David R. Moran, *No Panacea: Analyzing Sanctions Before Imposition*, 27 *STETSON LAW REVIEW* 1405 (1998).

3 For example, the United States government has indicated a need to protect the integrity of the financial system from terrorist financing and money laundering—risks posed by Iran to the international financial system. United States Department of the Treasury, Office of Foreign Assets Control, *Treasury Under Secretary for Terrorism and Financial Intelligence Stuart Levey Remarks at a Press Conference on Joint \$536 Million Settlement with Credit Suisse AG*, available at <http://www.ustreas.gov/offices/enforcement/ofac/actions/20091216.shtml>.

4 International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*

5 Trading with the Enemy Act, 12 U.S.C. § 95a, b.

6 The United States sanctions against Cuba are well-known, although President Obama has recently taken steps to ease some of these restrictions. Michael D. Shear and Cecilia Kang, *Obama Lifts Broad Set Of Sanctions Against Cuba*, *WASHINGTON POST*, Apr. 14, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/13/AR2009041302965.html>.

7 The OFAC website is available at <http://www.ustreas.gov/offices/enforcement/ofac/>.

actions that would otherwise be prohibited.<sup>8</sup> Finally, facilitation may also involve using or authorizing the use of foreign forwarders, shipping agents or vessels that are banned under a particular sanctions program, such as the Islamic Republic of Iran Shipping Lines under the Weapons of Mass Destruction program.

There are two broad categories of economic sanctions: (1) program-based sanctions and user-based sanctions. Program-based sanctions often target countries, such as Burma (Myanmar), Cuba, Iran, North Korea, Sudan, and Syria.<sup>9</sup> User-based sanctions include sanctions aimed in response to particular individuals, entities and activities, such as narcotics, nuclear proliferation, trafficking, and terrorism.<sup>10</sup>

The United States has utilized economic sanctions against a broad range of target countries, individuals, entities and other instrumentalities. To that end, the U.S. has compiled a list of "Specially Designated Nationals" ("SDN") and Blocked Persons who are restricted from doing business with the United States, U.S. entities, or U.S. Persons. The SDN list includes terrorist organizations, individual terrorists, and state sponsors of terrorism (such as Iran, and North Korea). It also includes individuals, companies, financial institutions, and vessels that are owned or controlled by targeted countries, or that are designated under other programs.<sup>11</sup> As the SDN list is updated frequently, companies and their employees are well-advised to check the list often prior to conducting business abroad. Other countries, including Germany, also maintain these types of lists.

There have been several actions taken recently to enforce the sanctions laws, resulting in several significant penalties.<sup>12</sup> Recent criminal prosecutions handled by the U.S. Department of Justice have resulted from investigations initially conducted by the U.S. Department of Homeland Security's Immigration and Customs Enforcement, the Federal Bureau of Investigation, the Department of Commerce's Bureau of Industry and Security, the Pentagon's Defense Criminal Investigative Service, and other law enforcement agencies.<sup>13</sup> Violations of the U.S. economic sanctions laws and regulations can result in the imprisonment of individual employees, substantial fines to both individual employees and the company, loss of business, loss of export licenses and privileges, and reputational harm to both individual employees and the company.

The largest OFAC penalty was recently levied against Credit Suisse AG, a Swiss corporation headquartered in Zurich. In violation of the U.S. economic sanctions laws, Credit Suisse processed thousands of transactions with the intent to conceal the involvement of Iran, Sudan, Libya, Burma, Cuba, and the former Liberian regime of Charles Taylor. OFAC described Credit Suisse's actions as "egregious" because of a number of aggravating factors, including the substantial economic benefit to sanctioned parties, the scope and severity of the conduct,

and awareness of the conduct within the bank.<sup>14</sup> Furthermore, there was a systematic practice of creating internal directives and procedures on how to conceal such information at all levels of the financial institution. The London affiliate of the bank even used code names to disguise the identities of the sanctioned entities. In 2009, Credit Suisse reached a global settlement with OFAC, the Department of Justice, and the New York District Attorney's Office for a combined total of \$536 million. The penalty would likely have been higher had the bank not ceased all business with Iran or not cooperated with the various government investigations.<sup>15</sup>

In 2009, Schneider GmbH, a German company, and its two directors, both German nationals, were indicted in a federal district court in Massachusetts for conspiracy to violate IEEPA and the Iranian Transactions Regulations. Although none of the parties involved was a U.S. Person, 31 C.F.R. § 560.205(a) (1) prohibits "the reexportation from a third country, directly or indirectly, by a person other than a United States person, of any goods, technology or services that have been exported from the United States...if: (1) Undertaken with knowledge or reason to know that the reexportation is intended specifically for Iran or the Government of Iran."<sup>16</sup> In contravention of this law, the two German nationals used e-mail, mail, telephone calls, and faxes to contact U.S. companies to purchase pumps and pump parts, worth \$200,000, that would then be sent to Iran. Although one of the involved parties maintained that the products were destined for use in Germany, he later indicated that the pumps would in fact be re-exported to Jordan. The true destination of the pumps was continually concealed, but, in fact, they were being imported from the United States to Germany for the purpose of being re-exported to Iran, in violation of the Iranian Transactions Regulations. If extradited to the United States and ultimately convicted, each of the two German nationals will face up to five years in prison and three years of supervised release, as well as a \$ 250,000 fine. The company faces a maximum \$ 500,000 fine.<sup>17</sup>

Corporate compliance policies and procedures are critical to ensuring compliance with U.S. economic sanctions laws. For example, companies should implement procedures for U.S. Persons to formally recuse themselves from the following: (1) receiving, initiating, or forwarding any correspondence, documents or other materials related to business with a sanctioned country; (2) attending meetings where there are discussions related to business in sanctioned countries; and (3) participating in any conversations or telephone calls where business with sanctioned countries is discussed.

Furthermore, all employees should receive training on how to properly respond to inquiries from a sanctioned party or that refer to a sanctioned party. In particular, non-U.S. persons should not: (1) provide or forward to any U.S. Person any correspondence, documents or other materials related to a sanctioned party; (2) refer to or discuss with a U.S. Person any matters or business opportunities related to a sanctioned party, including in meetings, on telephone calls, or during pri-

<sup>8</sup> See, e.g., 31 C.F.R. § 560.417.

<sup>9</sup> For a recent review of the economic sanctions against Cuba, see Sven Kühn von Burgsdorff, *The Effectiveness of Economic Sanctions: The Case of Cuba*, 4 INTERCULTURAL HUMAN RIGHTS LAW REVIEW 31 (2009).

<sup>10</sup> For a history of economic sanctions in response to states involved in international terrorism, see Kenneth W. Abbott, *Economic Sanctions and International Terrorism*, 20 VANDERBILT JOURNAL OF TRANSNATIONAL LAW 289, 289 (1987).

<sup>11</sup> United States Department of the Treasury, Office of Foreign Assets Control, *Specially Designated Nationals List (SDN)*, available at <http://www.ustreas.gov/offices/enforcement/ofac/sdn/>.

<sup>12</sup> For additional examples of enforcement prosecutions, see *Fact Sheet: Major U.S. Export Enforcement Prosecutions (2007 to the Present)*, Department of Justice, available at <http://www.justice.gov/nsd/docs/summary-eaca.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> United States Department of the Treasury, Office of Foreign Assets Control, *Treasury Under Secretary for Terrorism and Financial Intelligence Stuart Levey Remarks at a Press Conference on Joint \$536 Million Settlement with Credit Suisse AG*, available at <http://www.ustreas.gov/offices/enforcement/ofac/actions/20091216.shtml>.

<sup>15</sup> *Id.*

<sup>16</sup> 31 C.F.R. § 560.205(a)(1).

<sup>17</sup> *Two German Nationals and a German Company Indicted for Conspiring to Export U.S. Origin Goods to Iran*, The United States Attorney's Office, District of Massachusetts, available at <http://www.justice.gov/usao/ma/Press%20Office%20-%20Press%20Release%20Files/Feb2009/schneiderIndictmentPR.html>.

vate conversations; or (3) request any assistance from a U.S. Person.

Due diligence is also essential to ensuring a company's compliance with U.S. economic sanctions laws and regulations. Companies with a global customer base or extensive network of agents or traders should consider implementing structured due diligence procedures to achieve these aims. As a starting point, companies should determine which employees are U.S. Persons. Customers and other third parties should also be properly screened and vetted before entering into a business relationship. Finally, companies may choose to consider one of the many software programs that can be installed on company computers to automatically screen documents, such as purchase orders and shipments. These types of due diligence efforts, amongst others, can assist companies to comply with the law and avoid both inadvertent and intentional violations.

Importantly, there may be some upcoming changes made to the U.S. economic sanctions laws and regulations. Specifically, the Obama Administration and the U.S. Congress are pushing for more stringent sanctions against Iran.<sup>18</sup> Both the U.S. House of Representatives and U.S. Senate have recently passed legislation that would expand the economic sanctions program against Iran. The Iran Refined Petroleum Sanctions Act of 2009<sup>19</sup> and the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2009<sup>20</sup> would specifically target certain sectors in Iran, including the petroleum and energy sectors. This legislation would prohibit selling or otherwise providing goods, services, or technology that directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum product, as well as prohibit providing Iran with refined petroleum products. Meanwhile, the Iran Threat Reduction Act of 2009, which is still in the House, would expand upon the definition of U.S. Person to make the IEEPA-based sanctions programs akin to the TWEA-based sanctions, as well as apply the prohibitions retroactively.<sup>21</sup>

President Obama also recently signed an Executive Order declaring that the increased violence in Somalia and frequent piracy and armed robbery off the coast of Somalia constitutes an unusual and extraordinary threat to U.S. national security.<sup>22</sup> The President declared a national emergency in response to the threat and froze the assets of certain individuals and entities involved in the violence and piracy.

The international community is likewise increasing its support of economic sanctions, especially against Iran. In particular, the European Union and the rest of the international community have become increasingly concerned about Iran and North Korea's nuclear weapons programs. The United Nations and several European Union member states have been calling for additional sanctions against Iran in response to its continued uranium enrichment activities.<sup>23</sup> On June 9, 2010, the United

Nations Security Council approved its fourth round of sanctions against Iran's nuclear program, with support from the United States. In part, these recent sanctions restrict military purchases, trade, and financial transactions by the Islamic Revolutionary Guards Corps, which controls Iran's nuclear program.<sup>24</sup> On June 17, 2010, the European Union also approved increased sanctions against Iran, which prohibit investments, technical assistance, and technology transfers to the oil and gas industry in Iran.<sup>25</sup>

Several multi-national corporations, including Royal Dutch Shell and Siemens AG, have decided to terminate their business in Iran to avoid any resulting reputational harm. Other companies have ceased doing business with Iran because of the fear of being deceived into violating sanctions laws. For example, Iran's major shipping line, the Islamic Republic of Iran Shipping Lines, repeatedly renames its ships and alters bills of lading to shield prohibited cargo from scrutiny, which may result in some companies unknowingly working with Iran and thereby violating the sanctions laws.<sup>26</sup> Nonetheless, many European companies with U.S. ties are continuing to conduct business in Iran, a list of which has been recently published by the U.S. Government Accountability Office.<sup>27</sup> The authors of the report identified forty-one firms that had commercial activity in the Iranian energy sector between 2005 and 2009.<sup>28</sup>

There are certain risks, however, inherent to doing business in sanctioned countries, in particular with Iran.<sup>29</sup> For example, under the IEEPA and the 2007 IEEPA Enhancement Act,<sup>30</sup> it is unlawful for "a person," irrespective of nationality or location, to violate, or to attempt or conspire to violate, the applicable sanctions laws, or to "cause" a violation thereof.<sup>31</sup> OFAC has interpreted "person" to include non-U.S. Persons who could "cause" a violation of the applicable sanctions regulations by withholding information from a U.S. entity, thereby causing the U.S. entity to unknowingly engage in a prohibited transaction. As a result, foreign companies and individual employees can be subject to themselves to U.S. jurisdiction by causing or facilitating a U.S. Person to violate the sanctions laws.

For example, on May 4, 2010, the Royal Bank of Scotland ("RBS") entered into a Deferred Prosecution Agreement with the Department of Justice stemming from the conduct of ABN Amro Bank, N.V. ("ABN"), part of whose assets were previously acquired by RBS. Specifically, between 1998 and

18 See *Obama to Pursue UN Sanctions Despite Iran Nuclear Deal*, BBC News, May 20, 2010, available at [http://news.bbc.co.uk/2/hi/world/middle\\_east/10129674.stm](http://news.bbc.co.uk/2/hi/world/middle_east/10129674.stm).

19 Iran Refined Petroleum Sanctions Act, S.908, available at <http://www.opencongress.org/bill/111-s908/show>.

20 Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009, S.2799, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:S.2799>.

21 Iran Threat Reduction Act of 2009, H.R.1208, available at <http://www.opencongress.org/bill/111-h1208/show>.

22 Executive Order concerning Somalia, available at <http://www.whitehouse.gov/the-press-office/2011/05/05/20110505-executive-order-concerning-somalia>.

23 For a review of the United Nation's use of sanctions, see Jason C. Nelson, *The United Nations and the Employment of Sanctions as a Tool of International Statecraft: Social Power Theory as a Predictor of Threat Theory Utility*, 29 LAW AND PSYCHOLOGY REVIEW 105 (2005).

24 Neil MacFarquhar, *U.N. Approves New Sanctions to Deter Iran*, NEW YORK TIMES, June 9, 2010, available at <http://www.nytimes.com/2010/06/10/world/middleeast/10sanctions.html?hp>.

25 *EU Leaders Approve Fresh Sanctions Against Iran*, BBC NEWS, June 17, 2010, available at [http://news.bbc.co.uk/2/hi/world/us\\_and\\_canada/10341907.stm](http://news.bbc.co.uk/2/hi/world/us_and_canada/10341907.stm).

26 United States Department of the Treasury, Office of Foreign Assets Control, *Treasury Under Secretary for Terrorism and Financial Intelligence Stuart Levey Remarks at a Press Conference on Joint \$536 Million Settlement with Credit Suisse AG*, available at <http://www.ustreas.gov/offices/enforcement/ofac/actions/20091216.shtml>.

27 U.S. Government Accountability Office, *Iran Sanctions: Firms Reported to Have Commercial Activity in the Iranian Energy Sector and U.S. Government Contracts*, available at <http://www.gao.gov/products/GAO-10-721T>.

28 *Id.*

29 However, many companies view Iranian-related activity as a business opportunity instead of a potential risk. United States Department of the Treasury, Office of Foreign Assets Control, *Treasury Under Secretary for Terrorism and Financial Intelligence Stuart Levey Remarks at a Press Conference on Joint \$536 Million Settlement with Credit Suisse AG*, available at <http://www.ustreas.gov/offices/enforcement/ofac/actions/20091216.shtml>.

30 IEEPA, along with the Trading With The Enemy Act, is the statutory basis for the promulgation of sanctions regulations by OFAC, including those targeted against Iran.

31 See 50 U.S.C. § 1705(a).

2005 ABN engaged in the systematic practice of “stripping” certain sanctioned country identifying information from payment messages to correspondent banks in the United States. As a result, the payments, which cleared through a U.S. entity, avoided the OFAC filtering mechanisms put in place by U.S. banks.<sup>32</sup> Other recent cases involving similar “stripping” practices have resulted in large fines (in some cases in excess of \$500 million) levied against Lloyds TSB Bank, plc., Australia and New Zealand Bank Group, Ltd., and Credit Suisse AG. The Lloyds case is particularly notable because the bank “caused” non-affiliated entities to violate U.S. sanctions.

32 See DOJ Press Release, *Former ABN Amro Bank N.V. Agrees to Forfeit \$500 Million in Connection with Conspiracy to Defraud the United States and with Violation of the Bank Secrecy Act* (May 10, 2010), available at <http://www.justice.gov/PrintOut2.jsp>.

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## Suing the Rating Agencies for Subprime Investment Losses: Recent Developments in the United States and a German Perspective

### I. Introduction: A New Target in Subprime Litigation

The subprime crisis and subsequent market crash have given rise to substantial litigation by investors, with over 500 related lawsuits filed in the United States to date. But one group of key players, the credit rating agencies – although facing a chorus of criticism in public discussion<sup>1</sup> and increased scrutiny from government regulators in the United States as well as in Europe<sup>2</sup> – have largely watched this litigation unfold from the sidelines.

Until now. While plaintiffs have generally focused on wrongdoing by the entities that originated mortgages and sold financial products backed by those mortgages – alleging, for example, that mortgage originators fraudulently concealed their aban-

donment of underwriting guidelines from RMBS purchasers – investors are now turning their sights on the ratings agencies. The agencies have attracted attention given their integral role in structuring residential mortgage-backed securities (“RMBS”) and collateralized debt obligations (“CDOs”), the high fees they earned for their ratings, and the drastic downgrades, often to junk levels, of subprime RMBS and CDO assets.<sup>3</sup> Recent disclosures of damaging internal emails also support the conclusion that the agencies fraudulently or negligently manipulated their ratings in order to generate repeat business and reap large fees.<sup>4</sup> Litigants have asserted claims against the agencies ranging from fraud and negligent misrepresentation to breach of contract and Securities Act violations.<sup>5</sup> While the ratings agencies have traditionally depended on the First Amendment’s protection of freedom

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1 E.g. DER SPIEGEL, *Trio Infernale*, 47/2009 (Nov. 16, 2009), 72 ff.

2 T. M. J. Möllers, *JZ* 2009, 861 ff; United States Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Exhibits to Hearing on Wall Street and the Financial Crisis: The Role of Credit Rating Agencies, April 23, 2010, available at [http://hs-gac.senate.gov/public/\\_files/Financial\\_Crisis/042310Exhibits.pdf](http://hs-gac.senate.gov/public/_files/Financial_Crisis/042310Exhibits.pdf); United States Securities & Exchange Commission (“SEC”), Summary Report of Issues Identified in the Commission Staff’s Examinations of Select Credit Rating Agencies, July 2008, available at <http://www.sec.gov/news/studies/2008/craexamination070808.pdf>. The SEC has also implemented new regulations to control conflicts of interest in the ratings process, following the U.S. Congress’s enactment of the Credit Agency Reform Act, which requires the rating agencies to implement procedures to manage conflicts of interest and gives the SEC broader oversight authority. 15 U.S.C. § 780-7 (2006). See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations, Credit Rating Agency Reform Act Release No. 34-55857, 17 C.F.R. §§ 240, 249b (June 5, 2007), available at <http://www.sec.gov/rules/final/2007/34-55857.pdf>, at 3.

3 “Ninety-one percent of the triple-A securities backed by subprime mortgages issued in 2007 have been downgraded to junk status, along with 93 percent of those issued in 2006 and 53 percent of those issued in 2005. On Jan. 30 of 2008 alone, Standard & Poor’s downgraded over 6,300 subprime residential mortgage-backed securities and 1,900 C.D.O.’s.” Editorial, *What About the Raters*, N.Y. TIMES, May 2, 2010.

4 U.S. Senate Subcommittee Exhibits, *supra* note 2; SEC’s Summary Report, *supra* note 2.

5 Cases filed against ratings agencies arising from structured financial products – and resulting decisions – include, for example, *California Public Employees’ Retirement System v. Moody’s Corp.*, No. CGC-09-490241, 2010 WL 2286924/Cal. Super. Ct. May 24, 2010; *New Jersey Carpenters Vacation Fund v. Royal Bank of Scotland Group*, No. 08 Civ. 50932010 WL 1172964 (S.D.N.Y. March 26, 2010); *New Jersey Carpenters Health Fund v. DLJ Mortgage Capital, Inc.*, No. 08 Civ. 5653 2010 WL 1473288 (S.D.N.Y. Mar. 29, 2010); *Connecticut v. Moody’s Corp.* (Conn. Super. Ct. April 9, 2010) (complaint); *Connecticut v. The McGraw Hill Cos., Inc.*, No. 3: 10CV00546 (Conn. Super. Ct. Mar. 10, 2010) (complaint); *Flynn ex rel. Moody’s Corp. v. McDaniel*, No. 08-cv-11059, 2010 WL 624292 (S.D.N.Y. Feb. 23, 2010) (granting motion to remand); *Iowa Student Loan Liquidity Corp. v. IKB Deutsche Industriebank AG*, No. 09-cv-08822, 2009 WL 3476344 (S.D.N.Y., (complaint) Oct. 16, 2009); *Abu Dhabi Comm. Bank v. Morgan Stanley*, No. 08-cv-7508, 2009 WL 2828018 (S.D.N.Y. Sept. 2, 2009) (denying motion to dismiss fraud claims), 2009 WL 3346674 (S.D.N.Y. Oct. 15, 2009) (granting motion to dismiss contract claims but reaffirming fraud claims); *Ohio Police & Fire Pension Fund v. Standard & Poor’s Financial Svcs. LLC*, No. 09-cv-1054 (S.D. Ohio Nov. 20, 2009) (complaint).