



Via electronic submission to: [cpc@moodys.com](mailto:cpc@moodys.com)

Date: February 28, 2006

Re: *Multiemployer Pension Plans: Moody's Analytical Approach*

Ladies and Gentlemen:

Milliman, Inc. respectfully submits these comments on Moody's *Request for Comment, Multiemployer Pension Plans: Moody's Analytical Approach*, January 2006, as published online at [www.Moodys.com](http://www.Moodys.com).

### **Milliman's Statement of Interest**

With more than 50 years' experience in the employee benefits field, Milliman is one of the nation's leading advisors to multiemployer pension and welfare plans. As consultants and actuaries, we currently apprise more than 150 jointly managed pension and welfare plans covering two million participants. We also confer with the Pension Benefit Guaranty Corporation (PBGC) regarding rules relating to the funding and termination of multiemployer pension plans.

### **Summary of Milliman's Comments**

Milliman recommends that Moody's not adopt its proposed methodology, but rather work further with interested parties to develop a more credible basis for consideration of a company's participation in a multiemployer plan in determining the company's credit rating. We question the proposal on three key grounds:

- *Conceptual Basis* — Moody's approach fails to consider the factors of the underlying legal basis and accounting principles that distinguish employer obligations under a multiemployer pension plan from obligations to a single employer pension plan.
- *Timing* — Moody's analytical approach ignores actively pending legislative and emerging accounting developments that will have direct bearing on the principles and factors underlying Moody's proposed methodology.
- *Methodology* — Moody's should work with multiemployer plans, plan sponsors, and practitioners to develop a factual basis and methodology that would more accurately reflect the underlying financial relationships intended to be represented by the proposed adjustments.

### **Milliman's Specific Concerns**

**Conceptual Basis.** As the proposal briefly acknowledges, there are profound distinctions between single employer pension plans and multiemployer pension plans regarding an employer sponsor's legal liability, control over the plan, and financial accounting standards. In particular, the sponsor of a single employer plan is ultimately liable for vested benefits; it must either fund the benefits in accordance with the Internal Revenue Service's (IRS) funding rules or, if it terminates the plan, either buy annuities or

incur a liability to PBGC. Given these and other important differences, Moody's long-standing practice of making adjustments to a company's financial position to reflect the estimated funded status of its single employer pension plans should not be mirrored to reflect a multiemployer pension plan's funded status.

By contrast, the liability of an employer contributing to a multiemployer plan varies according to the number of its employees covered by the plan. The contribution rate is fixed for the duration of the collective bargaining agreement, and as the employer's size of its covered workforce increases, its contributions increase (and decreases when fewer workers are covered). This change in an employer's covered workforce also affects the employer's potential withdrawal liability. The extent of the effect will depend on which method the plan has chosen to allocate liability. Most methods rely on a five-year contribution history, but some assign liability without relying at all on contributions. Thus, Moody's proposal to estimate a company's funding burden or a company's withdrawal liability by considering an employer's contributions is conceptually flawed.

***Timing.*** The Administration and Congress are currently engaged in resolving differences in legislation (H.R.2830 and S.1783) that will materially modify the legal basis for employers' obligations and the funding standards for multiemployer pension plans. Separately but concurrently, the Financial Accounting Standards Board has launched a comprehensive project that will reassess generally accepted accounting principles that are applicable to sponsors of multiemployer pension plans. Because both of these major developments will substantively change many of the legal and accounting elements that Moody's proposal is founded on, we urge Moody's to develop its analytical approach in close coordination with the federal authorities involved so as to avoid further misalignment of elements when developing an appropriate and relevant methodology on which to assess companies.

***Methodology.*** Moody's proposed approach is unlikely to produce any reasonable degree of confidence in its methodology or meaningful information to users of credit rating data because of the following:

*Obsolete Data* — The proposed method relies on information from Forms 5500 that are at least two years out of date. During the intervening two-year period, the data most certainly will have changed materially due to fluctuations in investment markets, interest rates relevant for the measurement of present values of benefits, other economic factors that affect funding levels such as cost-of-living increases, contribution patterns, industry-specific factors, terms of collective bargaining agreements, participating employers, and other major influences.

*Average of Two Separate Measures* — Moody's proposes to base its methodology on an arithmetic average of RPA 94 and accrued liability. Each of those two measures represents specific numbers for specific purposes, not a range of potential numbers for a measure serving a third purpose. The average cannot produce consistent information from year to year nor can it yield information that is comparable from plan to plan.

*Industrywide Aggregation of Plans* — Moody's proposed approach aggregates different multiemployer plans within broad, loosely defined industry categories, without recognizing geographic differences, differences among collective bargaining agreements, distinct plan designs, unique measurement bases, and numerous other critical disparities. Moreover, several very large plans operate in more than one industry (e.g., transportation, foods, and construction). Even if there were to be a legal and accounting basis for imputing sponsor debt for the underfunding in a multiemployer plan, there is no basis for assigning any part of such debt to an employer that is not a sponsor of a particular plan solely on the basis of industry classification; nor does arithmetic

averaging of plans within an industry provide any reliable proxy for the company's obligation under the specific funds in which it does participate.

*Employer Versus Employee Share* — The proposed methodology inexplicably assumes a 25% share of underfunding assigned to employees versus a 75% share assigned to employers. This assumption does not represent actual terms of most multiemployer plans and collective bargaining agreements, nor does it reflect restrictions in current law and the pending legislation. Notably, for example, some plans automatically reduce future accruals if funding levels drop, materially or entirely shifting the share of underfunding to employees.

*Assignment of Employer to Industry Category* — Moody's proposal assigns an employer to a single industry, without attention to the specific multiemployer plans in which it actually participates. In numerous instances – notably those involving controlled groups of companies with subsidiaries in various industries – such an industry assignment is arbitrary and misleading, producing results that do not reliably represent the factual basis.

The number emerging from the proposed methodology will not represent the amount of multiemployer pension underfunding that it purports to represent, and therefore could be highly misleading. Moreover, year-to-year changes in that amount are likely to be highly volatile, without adequately or reliably representing a trend that would be of value to measurement of the company's credit.

### **Conclusion**

If, despite the flaws Milliman has identified, Moody's moves forward to devise a method to estimate an employer's obligation for underfunding in the multiemployer plans in which a company participates, Moody's should seek guidance and information from multiemployer pension plans, plan sponsors, and practitioners to develop a basis for providing timely and appropriate data that would support Moody's goals. Milliman will be pleased to assist Moody's in efforts to develop a methodology that would fairly, reliably, and consistently represent each company's own obligation.

We thank you for allowing us to present our views on this important matter. Please contact Rhonda Migdail, Director of Milliman's Employee Benefits Research Group (1401 Eye St., N.W., Suite 220, Washington, DC 20005-6551; telephone: 202-292-1196; email: [rhonda.migdail@milliman.com](mailto:rhonda.migdail@milliman.com)) if we can provide additional background materials or insights as you proceed.

Sincerely,

Rhonda Migdail  
Milliman, Inc.