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Summary of key EU and US regulatory developments relating to securitization transactions

Our Global Securitization Practice

Introduction

Hogan Lovells' Structured Finance and Securitization practice handles every aspect of structured finance transactions. We have built the practice globally with lawyers in the major jurisdictions of the United States, Latin America, Europe and Asia. Our global team has advised on securitization transactions with assets originated in over 30 countries, including in the US, Latin America, the Caribbean, Europe, South Africa, the former CIS, the Middle East, Japan and Southeast Asia. Clients include issuers and originators of securitized assets, underwriters, managers and arrangers, trustees, investors, and collateral and portfolio managers.

We advise on the financing of a wide range of classic and innovative asset types, both as public and private stand-alone issues, master trusts, programs, and through conduit structures. We are regularly commended by independent market guides, particularly for our work in asset-backed financing and insurance-linked securitizations, and for our ability to advise on new and innovative transactions. In addition, we run one of the few practices able to offer dedicated and knowledgeable advice to capital markets trustees.

Our experience in structured finance and securitizations, combined with the resources dedicated to tax, regulatory, and US securities issues resident within Hogan Lovells' international offices, allows us to provide clients with a competitive, knowledge-based service for all structured finance transactions.

Our team is also involved in issues regarding the changing regulatory environment relating to structured finance, Dodd-Frank legislation in the US and the relevant EU directives, including, compliance counselling, disclosure and advocacy relating to the legislation. In addition, our team has experience advising clients on issues relating to derivatives related infrastructure, including clearing, data repositories, broker-dealer matter and exchange execution. Hogan Lovells' track record

"They respond quickly, advise wisely and negotiate effectively."

Chambers Global, 2015

We have acquired extensive experience advising originators and arrangers on securitization transactions on a wide range of asset classes, including:

- Infrastructure
- Auto and consumer loan and lease
- Residential mortgage backed (RMBS)
- Commercial mortgage backed (CMBS)
- Trading receivables
- Insurance
- Equipment leases and operating assets
- Future flow securitizations from emerging markets
- CLOs
- Whole business

Overview

Numerous regulatory developments have been enacted or proposed in the United States and the European Union over the past few years in response to the financial crisis. These developments continue to have a significant impact on the regulatory treatment of securitization transactions.

In the United States, the major regulatory reform impacting securitization transactions has been the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**"), which was signed into law on July 21, 2010 but continues, five years later, to require substantial ongoing rule-making in order to implement its specific provisions. The structure of the Dodd-Frank Act was to enact broad goals but then delegate specific regulatory reform to the various United States financial regulatory agencies.

In the European Union, the impact on securitization transactions has come from various regulatory reforms such as the Basel II and III Accords, various capital requirements including the latest Capital Requirements Directive and Capital Requirements Regulation (together the "**CRD**"), the Credit Agency Regulation (the "**CRA Regulation**"), the Alternative Investment Fund Managers Directive (the "**AIFMD**") and the Solvency II Directive, among others. This brochure summarizes and compares the regulatory developments in the United States and the European Union across the following areas: risk retention, due diligence, disclosure and the role of credit rating agencies and analyses the differences in the United States and the European reforms in these areas.

This brochure also provides a summary of several key United States reforms for which no European Union equivalent currently exists but which nonetheless have an important impact on the regulatory treatment of securitization transactions in Europe.

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Summary of key EU and US regulatory developments relating to securitization transactions

Key:

(yellow)	Rules which are currently in force
(blue)	Proposed rules
	No equivalent provision

Subject	Summary of EU provisions	Summary of US provisions
Retention of Risk	**Article 405 CRR and Article 51 of the Alternative Investment Fund Managers Regulation ("AIFMR")** On January 1, 2014, the securitization risk retention, due diligence and disclosure requirements under Article 122a of the Capital Requirements Directive 2009/111/EC ("**CRD II**") were replaced by Articles 404-410 of the Capital Requirements Regulation (EU)575/2013 ("**CRR**"). The new rules have direct effect in member states to reduce the risk of differences in the way that the rules are implemented and interpreted across member states. The provisions of Articles 404-410 of the CRR are broadly very similar to those contained in Article 122a of CRD II. However, despite this similarity, the new CRR regulatory technical standards (the "**risk retention RTS**") (which were published in the Official Journal on June 13, 2014 and came into force on July 3, 2014) differ in some significant respects to the guidance which existed under Article 122a of the CRD II regime. In December 2014, the European Banking Authority ("**EBA**") published an opinion and report on application of the risk retention rules. Some of the key conclusions of the opinion and report are set out below. • In addition to the "indirect approach" under which regulated investors must satisfy themselves that appropriate risk retention is in place, the EBA recommends introducing a "direct approach" whereby originators will be required to publish information on risk retention in a standard format.	**Dodd Frank Section 941** **12 CFR Parts 43,244,373,1234** **17 CFR Part 246** **24 CFR Part 267** On October 21, 2014 and October 22, 2014, in a series of separate meetings, the Board of Governors of the Federal Reserve System, the FDIC Board, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Office of the Comptroller of the Currency, and the Securities Exchange Commission (collectively, the "**Joint Regulators**") approved final risk retention rules under Section 941 of the Dodd-Frank Act. These rules will apply to private and Rule 144A transactions as well as public transactions if they involve asset-backed securities ("**ABS**"), a term also known as the "Exchange Act ABS" definition and broadly defined to mean a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset. The risk retention rules were originally proposed on March 29, 2011. After approximately 10,500 comment letters, many of which were highly critical of the original proposals, the Joint Regulators reproposed new rules on August 28, 2013 to address various concerns raised during the initial comment period. The final risk retention rules are substantially similar to the reproposed rules but incorporate certain additional changes based on comments received on the reproposal. The final risk retention rules were officially published by the Federal Regulators in the Federal Register on December 24, 2014 and will apply for

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The EBA recommends the scope of consolidation for testing risk retention should not be expanded beyond the current set of entities subject to a consolidated scope of regulatory supervision.
The EBA's view is that an originator should always be of real substance and hold some "actual economic capital" on its assets for a minimum (unspecified) period of time. The EBA was concerned that the current definition of "originator" was being interpreted without following the "spirit" of the regulation.
The EBA recognized that harmonization between the EU rules and non-EU legislation on risk retention is needed to avoid harming the ability of EU originators and investors.

Under the AIFMD and the related delegated regulation, AIFMR, alternative investment fund managers are now also subject to equivalent risk retention and due diligence requirements with respect to the alternative investment funds which they manage. These requirements are to be interpreted in a consistent manner with the new risk retention and due diligence requirements of the CRR.
Similarly, risk retention and due diligence requirements will ultimately apply to EU insurance and reinsurance undertakings when rules under the Solvency II Directive are implemented by member states, on January 1, 2016.
<u>Retention Requirements</u>
Article 405 provides that an EU credit institution or investment firm, collectively referred to as "institutions" (under Article 122a, the rules only applied to EU credit institutions) can be exposed to the credit of a securitization (as defined in Article 4(61) of the CRR only if an originator, sponsor or original lender has explicitly disclosed that it will retain a material net economic interest (with no sharing of retention) of at least 5% of the securitized exposure.
Similarly, Article 51 of the AIFMR requires alternative investment fund managers to ensure that they only invest in securitizations where the originator has disclosed a 5% risk retention.
<u>Interpretation of Key Definitions</u>
Regulators had issued guidance on how to apply or interpret Article 122a (the "Article 122a guidance") which, among other matters, introduced an element of flexibility into the
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residential mortgage-backed securities beginning December 24, 2015, and will apply for all other ABS beginning December 24, 2016.
Section 941 of the Dodd-Frank Act amended the Securities Exchange Act of 1934 (the "Exchange Act") by adding a new Section 15G, which mandates risk retention for a securitizer (or sponsor) of ABS and generally requires a securitizer (or sponsor) of ABS to retain at least 5% of the credit risk in the assets collateralizing the issuance. However, Section 15G exempts certain types of assets from the risk retention requirements and also authorizes the Joint Regulators to exempt or establish a lower risk retention requirement for other types of assets that are determined to meet underwriting standards that indicate a low credit risk. In addition, Section 941 also generally prohibits the securitizer from engaging in any direct or indirect hedging or other transfer of this required credit risk.
Overview of Risk Retention Requirement
Consistent with Section 15G, the final risk retention rule generally provides that sponsors of ABS are required to retain at least a 5% economic interest of the "fair value" of the aggregate interests in a transaction. A sponsor can satisfy the risk retention requirements by (i) retaining an "eligible vertical interest," whereby the sponsor holds a portion of each class (or tranche) of ABS interests issued as part of a single securitization transaction or a single eligible vertical security representing the same percentage of each class, (ii) retaining an "eligible horizontal residual interest," whereby the sponsor retains the first loss position, to ensure that the securitizer bears the risks of loss before the security holders, (iii) retaining an "eligible horizontal reserve account," whereby the sponsor holds cash or cash equivalents in a specified type of reserve account (interest-only reserve accounts do not qualify), or (iv) any combination of the above. "Fair value" of the retained interests is to be determined in accordance with U.S. GAAP, although a fair value calculation is not required for retention of an "eligible vertical interest." In addition, under the final rule, sponsors holding an "eligible horizontal residual interest" are required to disclose certain information related to the fair value calculation thereof prior to the sale of ABS, including a description of the methodology and assumptions used to make the fair value calculation. Within a reasonable time after closing, the sponsor must also disclose the actual fair value of the retained "eligible horizontal residual interest" at closing, the amount the sponsor was required to retain at closing, and any material differences between the actual methodology and assumptions and those used prior to sale. One important distinction from the reproposal is that the final rule does not require a sponsor holding an "eligible horizontal residual interest" to be subject to cash flow restrictions.
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Subject	Summary of EU provisions	Summary of US provisions
	definition of "originator" which facilitated CLOs and CMBS transactions by providing for the retention requirements to be satisfied by a third party entity whose interests were optimally aligned with those of the investors. This guidance was omitted from the risk retention RTS, potentially adversely affecting the ability to structure such transactions to ensure that they are compliant with the CRR rules. In addition, the EBA has recently stated that some transactions have been structured to meet the legal requirements to fit within the definition of "originator" while not adhering to the "spirit" of the rules. Some of those structures have prompted the EBA's proposal to reconsider the definition of originator again, with a view to adopting a more restrictive approach to the definition. The definition of "sponsor" in the CRR is defined to include both credit institutions and investment firms (under Article 122a, "sponsor" referred to credit institutions only). While this might appear to allow for additional flexibility when determining the identity of retainer, even collateral managers with sufficient capital to act as a retainer may not fall within the definition of investment firm (or sponsor) under the CRR as a result of being from a non-EU country, being authorized under the AIFM Directive or not having the right categories of authorization under the Markets in Financial Instruments Directive. ***<u>Aggregator Entities</u>*** The definition of "originator" under the CRR continues to cover entities purchasing receivables for their own account and then subsequently securitizing them, in a similar manner to Article 122a. Therefore the definition of "originator" under the CRR is still wide enough to cover aggregator entities which purchase portfolios of assets and subsequently securitize them although additional care needs to be taken given the EBA report referred to above. ***<u>Multiple Originators</u>*** The risk retention RTS provide that the retention requirement may be fulfilled by a single or multiple originators. Where there are multiple originators, the retention requirement may either be fulfilled by: • each originator in relation to the proportion of the total securitized exposures for which it is the originator; • a single originator, provided the originator	***<u>Hedging and Transfer of Risk Retention</u>*** Under the final risk retention rules, a sponsor is allowed to reduce its risk retention requirement by the portion of any risk retention assumed by an originator of the securitized assets, so long as such originator contributes more than 20% of the underlying asset pool. The sponsor, however, is not allowed to allocate to an originator any portion of the required risk retention amount exceeding the percentage of securitized assets contributed by such originator. The purpose of the 20% threshold is to cause an originator to retain a sufficient amount of risk to create an incentive for such originator to monitor the quality of the assets in the pool. While the final risk retention rules contain a general prohibition on hedging and transfer, a sponsor is allowed to transfer its retained interest to a majority-owned affiliate, or in the case of a revolving pool securitization, a wholly-owned affiliate. In addition, the final rule allows for the sponsor to take hedge positions that are not materially related to the credit risk of the particular securitization transaction, such as positions related to overall market interest rate movements and currency exchange rates. Hedge positions tied to securities that are backed by similar assets originated and securitized by other persons are also allowed. As with the reproposal, the final rule also contains certain hedging and transfer restriction time limits that terminate a sponsor's prohibition on hedging and transfer of the required risk retention once a specified time period has passed based on when delinquencies historically tend to peak. Finally, the final rule prohibits a sponsor or any affiliate from pledging any retained interest as collateral unless the obligation is with full recourse to the sponsor or affiliate. Any originator, originator-seller, or third-party purchaser that retains credit risk pursuant to the final rule will be required to comply with the hedging and transfer restrictions as if it were the sponsor. ***<u>Qualifications and Exemptions</u>*** The final rule allows for a securitization transaction to be exempt from the risk retention requirement if it is collateralized solely by a single class of qualifying assets and by servicing assets. Qualifying assets are assets meeting certain prescribed underwriting criteria including for commercial loans, commercial real estate loans, and auto loans as described in more detail below. For ABS issuances involving a blended pool of qualifying assets and non-qualifying assets, the final rule reduces the required risk retention percentage by the "qualifying asset ratio" (unpaid principal balance of the qualifying loans in the pool / total unpaid principal balance of all loans in the pool) at the cut-off date, but not to less than 2.5%. In addition, the sponsor must disclose the qualifying loans, the non-qualifying loans, and the material differences between them.

Subject	Summary of EU provisions	Summary of US provisions
	has established and is managing the program or securitization scheme or has established the program or securitization scheme and has contributed over 50% of the total securitized exposures. ***Hedging and Transfer of Risk Retention*** Article 405 of the CRR requires that the retention must be kept for the life of the securitization and hedging of the retained risk is not permitted (subject to certain exceptions). ***Methods of Retention*** Under Article 405, there are five different methods of retention (as opposed to four under Article 122a) which may not be combined or changed during the term of the transaction (except in exceptional circumstances such as a restructuring): • vertical slice; • pari passu share; • on balance sheet; • first loss tranche (similar to US horizontal slice option); and • first loss exposure to every securitized exposure in the securitization (which was not part of Article 122a). ***Disclosure of Retention*** The risk retention RTS confirm the need to disclose (i) the identity of the retainer and whether it retains as originator, sponsor or original lender, (ii) the form the retention will take, (iii) any changes to the method of retention and (iv) the level of retention at origination and of the commitment to retain on an on-going basis. Where transactions are exempt from the retention requirements (for example, the exposures are guaranteed by, among others, governments or central banks or the transaction involves correlation trading) then the exemption applied must be disclosed. Retention must be confirmed with the same frequency as that of the reporting in the transaction and at least annually. ***Unfunded Forms of Retention*** The risk retention RTS also introduce restrictions on unfunded forms of retention so that where an institution other than a credit institution acts as a retainer on a synthetic or contingent basis, the interest must be fully cash collateralized and held on a segregated basis as client funds. This restriction further limits the	*Residential Mortgage-Backed Securities* Under the final rule, residential mortgage loans that meet the definition of a "qualified residential mortgage" are exempt from the standard risk retention requirements. The final rule aligns this definition with the definition of "qualified mortgage" adopted by the Consumer Financial Protection Bureau, which became effective on January 10, 2014. Under the final rule, the Joint Regulators are required to review the definition of "qualified residential mortgage" to determine its adequacy at any time upon request by a Joint Regulator, or periodically beginning no later than four years from the effective date of the rule, and every five years thereafter. The final rule also contains a new exemption for securitization transactions collateralized solely by community-focused residential mortgage loans that are not otherwise eligible for "qualified residential mortgage" status and are exempt from the ability-to-pay rules under the Truth in Lending Act ("**TILA**"). In addition, the final rule exempts certain owner-occupied three-to-four unit residential mortgage loans that are exempt from the ability-to-pay rules under TILA but that otherwise meet the same requirements under the "qualified mortgage" definition as a one-to-two unit residential mortgage loan. *Qualifying Commercial Loans* To be deemed a "qualified commercial loan" under the final rule, among other things, (i) the borrower's total liabilities ratio must be 50% or less, the borrower's leverage ratio must be 3.0 times or less, and the borrower's debt service coverage ratio must be 1.5x or greater based on two years' projections, (ii) the borrower's primary repayment source must be its business operating revenue, and (iii) the borrower must make equal monthly payments that fully amortize a loan over a term that is no greater than five years from origination. *Qualifying Commercial Real Estate ("**CRE**") Loans* To be deemed a "qualified CRE loan" under the final rule, among other things, (i) the loan must be secured by a first mortgage on a commercial property, (ii) a debt service ratio of 1.25x for qualifying multi-family loans, 1.5x for qualifying leased loans, and 1.7x for other CRE loans is required, (iii) the amortization term must be less than 30 years for multi-family loans and 25 years for other loans, and (iv) there must be a maximum LTV ratio of 65% and combined LTV ratio of 70% at origination. One important modification under the final rule is that land loans (loans secured by improved land if the obligor owns the fee interest and the land is leased to a third-party that owns all improvements on the land) are now included in the CRE loan definition. Unfortunately, the "qualifying commercial loan" and "qualified CRE loan" exemptions will likely not be useful for many issuers since the manner in which such

Subject	Summary of EU provisions	Summary of US provisions
	methods of retention available to entities which are not banks and may also lead to difficulties for non-bank entities which have used unfunded forms of retention under the Article 122a CRD II rules and now find that they no longer are permitted to do so. ***Consolidation*** Under Article 122a and the CRR retention can be provided by any member of a group of specified financial entities supervised on a consolidated basis. The Article 122a guidance also allowed, in certain circumstances, for retention to be provided by any member of a consolidated group. The EBA expressly declined to provide for equivalent flexibility in the risk retention RTS on the basis that it did not fall within the scope delegated for the regulatory technical standards. The EBA has recently confirmed that it believes that the scope of consolidation should not be expanded. ***Nominal Value*** Article 405 and the risk retention RTS clearly state that the retained interest and securitized exposures should be calculated by reference to nominal value (i.e., par value, without taking into account and discount or premium). Note that under the proposed U.S. risk retention rules, a market value measurement (rather than nominal value) would apply. ***Consequences of Breach*** The recitals to the implementing technical standards on additional risk weights (which were published in the Official Journal on June 5, 2014 and came into force on June 25, 2014) provide that in considering whether an institution has failed, by reason of negligence or omission to meet the retention requirement and whether to apply additional risk-weighting as a consequence, competent authorities are not to be influenced by breaches by the retainer of its retention commitment so long as the investing institution can demonstrate that it has taken appropriate account of prior failures, if any, by the retainer in respect of earlier securitizations. ***Grandfathering under the CRR*** **Note: All provisions contained in Articles 404-410 of the CRR apply to "new" public and private securitizations issued on or after January 1, 2011 and, as of January 1, 2015 apply to existing public and private securitizations issued prior to January 1, 2011 with new underlying exposures.**	loans ordinarily originate would not enable them to qualify as "qualifying commercial loans" or "CRE loans." *Qualifying Auto Loans* With respect to auto loans, the requirements for being a "qualified automobile loan" under the final rule are substantially the same as those in the reproposal and, amongst other requirements, include (i) the borrower making equal monthly payments that fully amortize a loan over an expanded maximum allowable loan term that is no greater than (a) six years from the origination date for new cars or (b) 10 years minus the difference between the model year of the vehicle and the current model year for used cars, (ii) a minimum down payment requirement of approximately 10%, (iii) the borrower's debt-to-income ratio being less than or equal to 36%, and (iv) the borrower having at least 24 months of credit history, including no current 30-days delinquencies and no payments 60-days past due during the past two years. As with the "qualifying commercial loan" and "CRE loan" exemptions , the "qualified automobile loan" exemption will likely not be useful for many issuers since the manner in which automobile loans are currently originated in the industry would not enable them to qualify as "qualified automobile loans." For example, it is unusual to require a 10% down payment and the current underwriting standards used with respect to consumer reporting do not focus on the same criteria as those in the rule. One important exclusion from the "qualified automobile loan" definition is that auto leases are not included. *Other General Exemptions* In addition to the above qualifications and exemptions, the final risk retention rule also contains certain other complete and partial exemptions from the risk retention requirements for certain types of securitization transactions. These include, amongst others, residential, multi-family, and healthcare facility mortgage loan securitizations insured or guaranteed by the United States or by obligations of the United States government (including agencies thereof), securitization transactions collateralized solely by loans guaranteed by Fannie Mae and Freddie Mac, and several types of re-securitization transactions collateralized solely by servicing assets and meeting certain other requirements. ***Transaction Specific Risk Retention Rules*** In addition to the general risk retention requirements under the final rule, there are certain other risk retention rules applicable to specific types of ABS transactions.

Subject	Summary of EU provisions	Summary of US provisions
	The risk retention RTS do not provide for transitional arrangements for transactions that were structured to comply with the Article 122a guidance but are now required to comply with the CRR regime. However, the EBA has confirmed that the Article 122a guidance will remain relevant when a competent authority is determining whether or not additional risk weights should be applied in respect of a securitization issued on or after January 1, 2011 and before January 1, 2014. While this guidance is beneficial for entities that were already invested in securitizations that complied with the Article 122a guidance, it does not appear to apply to new investors acquiring a position in an existing deal which satisfied the Article 122a guidance but does not meet the requirements under the risk retention RTS. Further, while the risk retention RTS do not provide transitional arrangements for the application of the CRR requirements to pre-2011 transactions, the Article 122a guidance appears to remain relevant in assessing how to interpret substitution of exposures for transactions before January 1, 2011.	*Commercial Mortgage-Backed Securities ("**CMBS**")* Under the final rule, a third-party purchaser that meets the same risk retention standards as the securitizer and conducts due diligence on each asset prior to the issuance of the CMBS can retain the first-loss position (B-piece). In addition, the B-piece can be sold and held by no more than two third-party purchasers in certain circumstances. Furthermore, the sponsor or initial third-party purchaser is allowed to transfer the B-piece after five years from the date of closing. As with the reproposal, the risk retention requirement can be satisfied if the third-party purchaser holding the B-piece combines its interest with the sponsor that retains an additional required retention. However, for this option, an independent operating advisor must be appointed. *Collateralized Loan Obligations ("**CLOs**")* The Joint Regulators rejected attempts to exempt CLO managers from being deemed "securitizers" and thus not subject to the risk retention rules. The final rule does provide a risk retention option for open market CLOs that allows the 5% risk retention requirement to be satisfied by lead arrangers of loans purchased by the CLO, rather than the CLO manager. This option is available for an open market CLO (i) that is managed by a CLO manager, (i) that holds less than 50% of its assets in loans syndicated by lead arrangers that are affiliates of the CLO or originated by originators that are affiliates of the CLO, and (iii) whose assets consist only of CLO-eligible loan tranches and related servicing assets. This option is similar to the option proposed in the earlier proposals and is generally viewed by the CLO market as impractical. *Revolving Pool Securitizations* The final rule changes the definition of "revolving master trust" to "revolving pool securitization" and allows any type of legal entity to use this option, whether or not it is organized as a trust. Under this option, a sponsor of a "revolving pool securitization," such as a credit card deal, can satisfy the risk retention requirements by retaining a transaction level seller's interest of at least 5% of the unpaid principal balance of all outstanding ABS held by the investors in the issuing entity. In addition, the seller's interest can be reduced by combining it with a series level seller's interest or other horizontal forms of risk retention issued after the effective date of the risk retention rules (although the horizontal risk retention may only be held by the sponsor or a wholly-owned affiliate). The horizontal forms of risk retention are measured on a fair value basis and include an "eligible horizontal retained interest" or a residual interest in excess interest and fees meeting certain requirements, or a combination of the two. Under the final rule there is no time limit terminating a sponsor's prohibition on hedging and transfer of the required risk retention for "revolving pool securitizations." In addition, the seller's

Subject	Summary of EU provisions	Summary of US provisions
		interest must be maintained during the life of the securitization. *Asset-Backed Commercial Paper ("**ABCP**") Conduits* The final rule provides a separate risk retention option for ABCP conduits that is substantially similar to that under the reproposal. Under the final rule, the sponsor of an "eligible ABCP conduit" will satisfy the risk retention requirements if, for each ABS interest the ABCP conduit acquires from an intermediate special purpose entity (SPE), the originator-seller of the SPE retains an economic interest in the credit risk of the assets collateralizing the ABS interests being acquired in the same form, amount, and manner required under one of the standard risk retention options or revolving pool securitization risk retention options. The definition of "eligible ABCP conduit" under the final rule requires that the ABS interests acquired by an ABCP conduit are collateralized solely by ABS interests acquired from intermediate SPEs and servicing assets and are (i) ABS interests collateralized solely by assets originated by an originator-seller and by servicing assets, (ii) special units of beneficial interest (or similar ABS interests) in a trust or SPE that retains legal title to leased property underlying leases originated by an originator-seller that were transferred to an intermediate SPE in connection with a securitization collateralized solely by such leases and by servicing assets, (iii) ABS interests in a revolving pool securitization collateralized solely by assets originated by an originator-seller and by servicing assets, or (iv) ABS interests that are collateralized, in whole or in part, by assets acquired by an originator-seller in a business combination that qualifies for business combination accounting under U.S. GAAP, and, if collateralized in part, the remainder of such assets meet the criteria in items (i) through (iii). The ABS interests must also be acquired by the ABCP conduit in an initial issuance by or on behalf of an intermediate SPE either directly from the intermediate SPE, from an underwriter of the ABS interests issued by the intermediate SPE, or from another person who acquired the ABS interests directly from the intermediate SPE. In addition, the ABCP conduit must be bankruptcy remote from the sponsor of the ABCP conduit and any intermediate SPE and a single eligible liquidity provider is required to enter into a legally binding commitment to provide 100% liquidity coverage to all the ABCP issued by the ABCP conduit. As with the reproposal, the originator-seller will be considered the sponsor of the ABS issued by an intermediate SPE and therefore the use of the ABCP option by the sponsor of an "eligible ABCP conduit" does not relieve the originator-seller from its independent requirement to comply with risk retention obligations with respect to the assets collateralizing the ABS issued by the intermediate SPE. Some other notable differences between the final rule and the

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		reproposal are that the intermediate SPE can be an orphan rather than wholly-owned by the originator-seller, and the commercial paper tenor can be up to 397 days (the Rule 2a-7 standard) as opposed to nine months. *Foreign-Related Transactions* The final rule creates a safe harbor from the risk retention requirements for certain "foreign related" transactions that have limited connections to the United States and U.S. investors. The purpose of this safe harbor is to exclude certain transactions from the risk retention requirements in which the effects on U.S. interests are sufficiently remote so as not to significantly impact underwriting standards and risk management practices in the United States or the interests of U.S. investors. Under the final rule, a securitization transaction will be subject to the foreign-related transaction safe harbor if (i) registration is not required, and the transaction is not registered, under the Securities Act of 1933, (ii) not more than 10% of the value of all classes of ABS interests are sold to U.S. persons or for the account or benefit of U.S. persons, (iii) neither the sponsor nor the issuing entity is (A) organized under the laws of the United States (or any other possession of the United States), (B) an unincorporated branch of a U.S. entity, or (C) an unincorporated branch of a non-U.S. entity located in the United States, and (iv) not more than 25% of the securitized assets were acquired from an affiliate or branch organized or located in the United States. As with some of the other risk retention rules, market participants have indicated that having a 10% threshold on the sale of ABS interests to U.S. persons effectively makes this exception unworkable as it is difficult to know in advance what percentage of the transaction would be sold into the U.S. in a cross-border deal. In addition to the above transaction specific risk retention options, the final rule also provides separate risk retention options for certain other types of ABS transactions including those involving student loans.
Due diligence and disclosure: general	**Articles 406 and 409 CRR and Article 52 AIFMR** ***<u>Due diligence and disclosure requirements under the CRR</u>*** Under Article 406 of the CRR, there is an obligation on investors which are institutions to: • have a thorough understanding of the transaction, the risks and the structural features (e.g. waterfalls, triggers, defaults); • obtain information they require from the issuer, sponsor or originator; and • obtain an explicit statement from the originator, sponsor or original lender that it has made the necessary risk retention.	**Dodd-Frank Section 945 Rule 193 Securities Act** For registered ABS only, issuers are required: • to perform a review of assets underlying an ABS which is designed and effected to provide reasonable assurance that the disclosure regarding the pool assets in the prospectus is accurate in all material respects; and • to disclose the nature and the findings and conclusions of such review. Third parties may be engaged to conduct portions of the due diligence: • If the issuer attributes findings to the third party, the third party must consent to being named as an

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	Article 409 provides that an institution acting as originator, sponsor or original lender is required to ensure that institutions who are prospective investors have readily available access to all materially relevant data on the credit quality and performance of the underlying exposures supporting a securitization. The information enables investors to perform their own "stress test" both initially and on an on-going basis. ***<u>Loan Level Disclosure</u>*** Loan level disclosure is typically required but, for granular assets, data disclosure on a collective portfolio basis (e.g. stratification tables) should be technically sufficient under the risk retention RTS, although the desire to access central bank liquidity investor requirements may dictate otherwise. In addition loan level disclosure will be required under CRA3 for all asset types covered by CRA3 (subject to potential exemptions for private and bilateral securitizations). (**See the sections on** "**Due diligence and disclosure: loan level data**" **and** "**Rating agencies: general provisions relating to conflicts of interest and disclosure**" **below**). Loan level disclosure is also being driven by the Bank of England and ECB disclosure requirements for collateral eligibility (below). The risk retention RTS do not refer specifically to the loan level templates produced, for example, by the ECB and Bank of England, but they are considered to be a suitable method of meeting disclosure requirements in appropriate situations. ***<u>Due diligence and disclosure requirements under AIFMR</u>*** There are similar (but not identical) provisions under the AIFMR, requiring alternative investment fund managers to ensure that sponsors and originators: • have established sound processes for granting credit, managing on-going administration and monitoring of underlying loans; • have adequate loan portfolio diversity and written credit risk policies; • provide ready access to materially relevant data on credit quality and performance of underlying loans, cash flows and collateral and any other relevant data necessary for the AIFM to have a "comprehensive and thorough understanding" of credit risk of a securitization; and	"expert" in the prospectus; • the issuer may rely on a review by an affiliated (but not an unaffiliated) originator. If assets in the pool deviate from disclosed underwriting criteria, the issuer must disclose: • how the assets deviate, and the amount and characteristics of nonconforming assets; • which entity determined that the nonconforming assets should be included in the pool; and • if compensating or other factors were used to determine that assets should be included. This rule will affect entities which issue in the U.S. and may influence the way in which they present information in Europe.

Subject	Summary of EU provisions	Summary of US provisions
	• disclose the level of risk retention and any matters which could affect their ability to maintain it. In contrast, Article 408 of the CRR requires sponsor and originator institutions to apply sound and well-defined criteria for credit-granting, but there is no equivalent of the fore-going AIFMR obligation that requires an alternative investment fund manager to "ensure that sponsors and originators" satisfy the foregoing requirements. ***Provision of disclosure*** On a public deal: • disclosure in terms of retention are typically dealt with in the "Summary" and "Risk Factors" sections as well as in a dedicated risk retention section; and • disclosure of loan level data so investors can comply with the requirement to show on-going understanding of exposures invested are typically dealt with via posting to websites. In the context of a private deal where the listing is only made for withholding tax purposes and the investor is not buying "off the prospectus", the CRR requirements are typically met via direct provision of information and representations and covenants in transaction documents.	
Due diligence and disclosure: loan level data	**ECB and Bank of England Collateral Eligibility & Loan Level Data Initiatives** ***ECB Collateral Eligibility and Loan Templates*** On December 16, 2010 the ECB announced the establishment of loan-by-loan information requirements for ABS in the Eurosystem collateral framework. This loan level information is intended to increase transparency and contribute to more informed risk assessments of ABS and restore the weakened confidence in the securitization markets. The Eurosystem published the loan-by-loan information requirements on existing and newly issued ABS, firstly for residential mortgage-backed securities and gradually for other ABS thereafter (most recently for credit card receivables on September 19, 2013). Loan level data is submitted in accordance with an ECB specified template and at least on a quarterly basis on, or within one month of, the interest payment date for the relevant security. Further, the ECB has announced additional requirements for modifications to ABS that have	**Regulation AB II** **Dodd-Frank Section 942(b)** On August 27, 2014, the SEC adopted final revisions to Regulation AB ("**Reg AB II**") that significantly revised Regulation AB as it relates to disclosure, reporting and shelf registration of ABS. These final rules were initially proposed in 2010 and 2011. Enacted in January 2005, Regulation AB is a comprehensive set of rules that addresses the registration, disclosure and reporting requirements for ABS under the Securities Act of 1933, as amended (the "**Securities Act**"), and the Exchange Act. Reg AB II only applies to transactions sold in a registered public offering and does not apply to transactions exempt from registration under Rule 144A or otherwise. The Reg AB II regulations have not yet been published in the Federal Register and the effective date of Reg AB II will be based on the date of publication. Registrants must comply with the new rules and registration requirements (other than the asset-level disclosure requirements) **no later than November, 23 2015** and must comply with the asset-level disclosure requirements for all publicly offered ABS issued **no later than November, 23 2016.**

Subject	Summary of EU provisions	Summary of US provisions

been submitted as collateral. To facilitate reporting of loan level data, the assets must consist of a homogenous pool. The ABS data supplied via the templates is processed and disseminated as necessary by the European Datawarehouse.

As of 1 May 2015, counterparties are no longer required to inform the Eurosystem one month prior to any planned modifications to such ABS. Upon submission of any ABS that is "own-used", counterparties are no longer under an obligation to inform the Eurosystem of any modifications made to such ABS in the six months prior to its submission.

A summary of the implementation timeframes for the various loan level data templates introduced by the ECB is set out below. In relation to the effective date, such loan level data needs to be provided in respect of any relevant ABS from the effective date in order to comply, whether issued before or after the effective date (subject to the phasing in periods mentioned below).

Underlying asset	Publication Date*	Effective Date
RMBS	December 2011	January 3, 2013
SME loans	April 2011	January 3, 2013
CMBS	April 2011	March 1, 2013
Auto loans, consumer finance and leasing transactions	May 2012	January 1, 2014
Credit card receivables	September 2013	April 1, 2014

* Updated versions have subsequently been published for some of the templates.

Subject to the temporary derogations mentioned below, all existing and newly issued ABS must now fully comply with the loan level data requirements to qualify for Eurosystem eligibility.

As of October 2013, the Eurosystem may temporarily accept as collateral RMBS and SME ABS that do not comply with the required loan level data reporting requirements on a case by case basis and subject to the provision of adequate explanations for the failure to achieve the mandatory level of compliance.

Asset Level Disclosure

Reg AB II requires ABS issuers to disclose asset-level information for ABS backed by residential mortgages, commercial mortgages, auto loans, auto leases, and debt securities (including resecuritizations). Reg AB II asset-level disclosure does not apply to other types of ABS, including those backed by equipment loans and leases, student loans, floorplan financings, managed pools such as CLOs, and synthetic transactions (although the original proposals with respect to these asset classes have not been withdrawn and so they may be enacted in the future in some form). The number of data points required to be included in the asset-level data depends on the type of asset, and in some cases, such as ABS backed by residential mortgages, there are up to 270 different data points required to be included. Required asset-level data includes, among other items, information related to the terms of the asset, a unique identifying asset number, the identity of the servicer and the servicing advance methodology, the characteristics of the obligor, the underwriting of the asset, collateral related to each asset, and cash flows related to each asset, such as timing and amount of payments and expected changes to payment terms over time.

Asset-level disclosure is required to be made at the time of the offering as part of the preliminary and final prospectuses, and on an ongoing basis as part of periodic Form 10-D filings. This asset-level information is also required to be provided in standardized, tagged data format called eXtensible Mark-up Language (XML) and posted on EDGAR so that it can be made publicly available.

Securities Act Registration

Under Reg AB II, a complete preliminary prospectus must be filed under Rule 424(h)(1) at least three business days prior to the date of the first sale in an offering of ABS issued under a shelf registration statement. This preliminary prospectus must contain all information required in the final prospectus other than certain pricing and underwriting fee information. If there is any material change from the information set forth in the preliminary prospectus, a prospectus supplement must be filed at least 48-hours before the date and time of the first sale of the offering and must clearly state what material information has changed from the initial preliminary prospectus.

In order to distinguish the ABS registration system from the registration system for other securities, Reg AB II also establishes two new forms for registering ABS offerings, Form SF-1 for standalone ABS issuances and Form SF-3 for ABS shelf issuances. Unlike Form S-3 shelf registration statements that allow the use of a base prospectus and supplemental prospectus, Reg AB II, in an attempt to require issuers to make periodic assessments of their continued eligibility to conduct

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	In addition, as of October 2014, the Eurosystem may also temporarily accept as collateral non-compliant auto loan, leasing, consumer finance and credit card receivables ABS on a case by case basis and subject to the provision of adequate explanations for the failure to achieve the mandatory compliance score required. ***<u>Bank of England's Collateral Eligibility and Loan Templates</u>*** The Bank of England has published eligibility requirements for collateral as part of its market operations which cover CMBS, SME loans, RMBS, auto loans, consumer loans, leasing ABS, covered bonds and asset backed commercial paper ("**ABCP**") which are similar but not identical to the ECB criteria. The Bank of England eligibility requirements stipulate that, in addition to providing loan level data, transaction documents, transaction overviews, standardized monthly investor reports and cash flow models will also be required. The requirement for the publication of transaction documents has been in force since December 2011 for RMBS and Covered Bonds, January 2013 for CMBS, ABCP and SME Loans and January 2014 for Consumer Loan, Auto Loan and Leasing ABS. In each case, there was a twelve month transition period during which period securities not meeting the new requirements could remain eligible, but were subject to increasing haircuts. These phasing in periods have now come to an end and therefore any securities not meeting the transparency requirements are ineligible for use as collateral in any of the Bank of England's operations. **Please also refer to the Sections on "Due Diligence and disclosure: General" and "Rating agencies: general provisions relating to conflicts of interest and disclosure".**	shelf offerings, requires filings to be made under a single prospectus document in which the issuer will file an initial form prospectus at the time the registration statement filed on Form SF-3 becomes effective and an "integrated" prospectus at the time of each takedown. ***<u>Shelf Eligibility – Transaction Requirements</u>*** The requirement that ABS be rated investment grade in order to be eligible for shelf registration has been eliminated and has been replaced by the following criteria: • **<u>CEO Certification</u>:** The chief executive officer of the depositor must sign a certification as of the date of the final prospectus stating he/she has reviewed the prospectus and is familiar with the securitized asset, the structure and the material transaction documents and based on his/her knowledge, there is no untrue statement of material fact included or omitted. • **<u>Asset Review</u>:** The transaction documents must provide for the selection and appointment of an independent asset representations reviewer that must be engaged at the time of issuance and identified in the prospectus. The reviewer's responsibility will be to review the pool assets for compliance with the representations and warranties following specific trigger events, which must include at a minimum: (i) a threshold percentage of delinquent assets being reached on a pool-wide basis and (ii) an investor vote to direct a review. Regarding investor direction, the minimum investor percentage to trigger a vote shall not be set above 5% of the total pool interest and the percentage of investors needed to require review cannot be more than a simple majority of voting investors. • **<u>Dispute Resolution</u>:** The transaction documents must contain provisions allowing a party making repurchase demands not resolved after 180-days to refer the dispute to mediation or third-party arbitration. • **<u>Investor Communication</u>:** The transaction documents must contain provisions under which the party responsible for the Form 10-D filings must include in the report any request from an investor to communicate with other investors.

Subject	Summary of EU provisions	Summary of US provisions
		Shelf Eligibility – Registrant Requirements Prior to filing a registration statement on Form SF-3, to the extent the depositor, any issuing entity previously established by the depositor or any affiliate of the depositor was required to comply with the proposed transaction requirements of Form SF-3 with respect to a previous offering of ABS involving the same asset class during the preceding twelve months, such depositor, issuing entity or affiliate must meet certain registrant requirements at the time of filing the shelf registration statement. These requirements include the timely filing of all reports required under the Exchange Act as well as the filing of all required certifications and transaction agreements stated above during the preceding twelve months. In addition, there is a separate registrant requirement whereby the depositor must disclose its compliance with the registrant requirements. There is a 90-day cure period for late filings. An effective shelf on Form SF-3 will become ineffective if after 90-days following the depositor's fiscal year end prior to the offering, the requirements above, as well as certain other requirements stated in Form SF-3 are not met. ***Exchange Act Reporting*** Reg AB II also makes several changes to Exchange Act reporting requirements for ABS. With respect to Form 10-D, the final rules require pool level delinquency reporting in the periodic distribution report to be presented in 30-day or 31-day increments for not less than 120-days, rather than monthly information through charge-off. Material changes in a sponsor's interest in the ABS transaction resulting from a sale or purchase of the securities must also be reported. With respect to Form 10-K, added disclosure is required to be included if it has been determined that for any material noncompliance identified in the platform level assessment, such noncompliance involved the servicing of the assets in the pool. Any steps taken to remedy a material instance of noncompliance at the platform level must also be included.
Due diligence and disclosure: Disclosure of Repurchases	**There is no EU equivalent of the US provision.**	**Dodd-Frank Section 943 Rule 15Ga-1** Rule 15Ga-1 requires a securitizer to disclose (by means of periodic filing in tabular format) any repurchase activity relating to outstanding ABS including the number, outstanding principal balance and percentage by principal balance of assets: • that were the subject of a repurchase or replacement request (including investor demands upon a trustee); • that were repurchased or replaced; • that are pending repurchase or replacement because: (a) they are within a cure period or (b) the demand is currently in dispute; or

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		• which the demand was (a) withdrawn or (b) rejected. Although the SEC was asked to limit the extraterritorial scope of the Rule, the only guidance provided by the SEC was that an issuer or sponsor of ABS that is "subject to the SEC's jurisdiction" is required to comply with the Rule. Consequently anyone selling ABS to U.S. purchasers must comply with the Rule. This rule applies to a securitizer of ABS for which: • there is an outstanding ABS held by non-affiliates of the securitizer; and • the underlying agreements with respect to such ABS contain a covenant to repurchase or replace assets for a breach of representation or warranty. This rule applies to non-registered transactions (private placements including Rule 144A) and transactions registered with the SEC. The initial filing was required to include all repurchase activity for the three year period ending December 31, 2011; subsequent quarterly filings must include only the information for the preceding calendar quarter. If there is no repurchase activity in a quarter, quarterly filing is suspended until a demand occurs (but an annual filing must still be made).
Due diligence and disclosure: Third party due diligence reports	**There is no EU equivalent of the US provision.**	**Dodd-Frank Section 932** **Rule 17g-5, 17g-7, 17g-10** **Exchange Act Rule 15Ga-2** **Exchange Act** In August 2014, the SEC adopted a variety of rules relating to NRSRO's, which were originally proposed in May 2011. Rule 15Ga-2 requires that an issuer or underwriter of registered or unregistered ABS rated by an NRSRO make publicly available on EDGAR, the findings and conclusions of any report of a third-party due diligence service provider (a "**TPDDS Provider**") relating to "due diligence services" obtained by the issuer or underwriter. Under the new rules, "due diligence services" are defined as a review of the pool assets for the purposes of making findings with respect to (i) asset data accuracy, (ii) conformity of the assets with underwriting standards, (iii) the value of the assets, (iv) legal compliance by the originator, and (v) any other material factor related to the likelihood that the issuer will pay principal and interest as required. Rules 17g-7 and 17g-10 require a TPDDS Provider to provide a written certification to any NRSRO that produces a rating to which the due diligence services relate, if the TPDDS Provider was engaged by the NRSRO, an issuer or underwriter. This delivery requirement will primarily be done by providing the certification to the issuer or underwriter for posting on its Rule 17g-5 website.

<table>
<tr><th>Subject</th><th>Summary of EU provisions</th><th>Summary of US provisions</th></tr>
<tr><td></td><td></td><td> The new rules become effective on June 15, 2015. The rules include provisions on how NRSROs, issuers, underwriters and TPDDS Providers are to coordinate the required disclosure and certifications. Under Rule 15Ga-2, the issuer or underwriter will generally be required to furnish a Form ABS-15G to the SEC via EDGAR no later than five business days before the first sale of the offering. If the issuer or underwriters each obtain the same report, only one of them is required to file. These reporting requirements apply to both non-registered transactions (private placements) and transactions registered with the SEC. However, an ABS offering will be exempt from Rule 15Ga-2 if: The offering is not registered (or required to be registered) under the Securities Act;
The issuer is not a U.S. person; and
The securities will be offered and sold only in transactions that occur outside of the United States.</td></tr>
<tr><td>Rating agencies: general provisions relating to conflicts of interest and disclosure; increased competition</td><td> Credit Rating Agency Regulation The Credit Rating Agency Regulation ("CRA Regulation") (which came into force on December 7, 2009 although compliance with most provisions was only required from December 7, 2010) established a compulsory registration process for credit rating agencies ("CRAs") operating in the EU. The CRA Regulation also aimed to: ensure that CRAs avoid and manage appropriately any conflict of interest;
ensure the quality of rating methodology and ratings;
increase the transparency of CRAs; and
provide a mechanism by which EU registered CRAs can endorse ratings issued by non-EU CRAs. The CRA Regulation was amended by CRA 2, which transferred responsibility for registration and on-going supervision of credit rating agencies to the European Securities and Markets Authority ("ESMA"). The provisions of CRA 2 applied in EU member states from December 31, 2010. CRA 3 Amendments to the CRA Regulation (known as "CRA 3") came into force on June 20, 2013. </td><td> Franken Amendment Dodd Frank Section 939F Section 939F required the SEC to carry out a study of: the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and subscriber-pay models; and
the feasibility of establishing a system in which a public or private utility or a self-regulatory organization assigns NRSROs to determine the credit ratings of structured finance products (the "assigned NRSRO system"). Section 939F was written so that the SEC is required to implement the assigned NRSRO system unless the SEC "determines an alternative system would better serve the public interest and the protection of investors." The SEC needed to submit the findings of the study, along with any recommendations for regulatory or statutory changes that the SEC determines should be made, to Congress. The SEC has missed the deadline to submit this study. The study is also required to address a range of metrics that could be used to determine the accuracy of credit ratings for structured finance products, as well as alternative means for compensating NRSROs in an effort to create incentives for accurate credit ratings for structured finance products. </td></tr>
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	CRA 3 intends to reduce over-reliance on credit ratings and conflicts of interests and to increase competition among credit rating agencies. The main changes include:	On December 18, 2012, the SEC released the Franken Amendment Report, the key finding of which was to recommend that the SEC convene a round table to discuss the study and its findings. The round table took place on May 14, 2013.
	<u>New disclosure requirements for structured finance transactions</u> The new disclosure obligations set out in Article 8b of CRA 3 require the issuer, the originator and the sponsor to jointly publish on a website set up by ESMA, information on the structure, credit quality and performance of the underlying assets of a structured finance instrument as well as any information that is necessary to conduct comprehensive and well informed stress tests on the cash flows and collateral values supporting the underlying exposures. The regulation implementing regulatory technical standards relating to the Article 8b disclosure standards (the "**Article 8b RTS**") was published in the Official Journal on January 6, 2015 and came into force on January 26, 2015. **Scope:** The disclosure requirements under Article 8b apply to all structured finance instruments ("**SFI**") issued after the date of entry into force of the regulation implementing the Article 8b RTS. This includes ABCP where they fall within the definition of "a programme of securitization" under the CRR. The application of the new disclosure requirements to private and unrated transactions has caused market concern – market participants claim these obligations are not appropriate for private SFIs. **Grandfathering and transitional arrangements: For SFI issued:** • **before the Article 8b RTS came into force, the Article 8b RTS will not apply;** • **after the Article 8b RTS came into force but before January 1, 2017, the Article 8b RTS will apply but disclosure only needs to be made from January 1, 2017 (without the need to provide disclosure for the prior period);** • **on and after January 1, 2017, the Article 8b RTS will apply.**	**Nationally Recognized Statistical Rating Organizations Regulation** In August 2014, the SEC adopted a variety of rules relating to NRSRO's, which were initially proposed in May 2011. "**Look-Back**" **Review Dodd Frank Section 932(a)(4)** An NRSRO is required to have policies and procedures for conducting "look back" reviews to determine whether the prospect of future employment by an issuer or underwriter influenced a credit analyst in determining a credit rating and, if such influence is discovered, the NRSRO must promptly determine whether the current credit rating must be revised. Under new Rule 17g-8, in the event that an NRSRO determines that a conflict of interest influenced a credit rating while conducting "look-back" review the NRSRO must promptly publish a revised credit rating or affirmation, and, if the credit rating is not revised or affirmed within fifteen calendar days of the discovery of the improper influence, place the rating on credit watch or review. **Disclosure of Information about the Performance of Credit Ratings Dodd Frank Section 932(a)(8)** NRSROs are required to disclose enhanced performance statistics with respect to initial credit ratings and subsequent changes to those ratings, for the purpose of allowing users to evaluate the accuracy of those ratings and to compare the performance of ratings issued by different NRSROs. **Standards of Training, Experience, and Competence Dodd Frank Section 936** New Rule 17g-9(a) provides that an NRSRO must establish, maintain, enforce, and document standards of training, experience, and competence for its employees who determine credit ratings. New Rule 17g-9(b) identifies factors that an NRSRO would need to consider when establishing their standard of training, experience, and competence. Such factors include the ability to evaluate and process data relevant to creditworthiness, technical expertise, the ability to assess underlying asset level metrics and the complexity of the securities being rated.

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	Further, the disclosure requirements will not apply to a transaction until ESMA has produced a reporting template for the relevant asset class. Currently, templates exist for RMBS, CMBS, SME loans, auto loans, consumer loans, credit cards and leases. In addition, the Article 8b RTS provide that the disclosure requirements will not apply to private or bilateral SFIs until specific reporting obligations have been developed by ESMA and adopted by the European Commission. **Private and bilateral transactions:** In a Call for Evidence published in March 2015, ESMA initiated its work on preparing reporting templates for private and bilateral SFIs, by asking for: • information to assist it in defining private and bilateral SFIs; • evidence to assess whether the disclosure requirements in the Article 8b RTS could be used in their entirety for private and bilateral SFIs or whether they would need to be adapted; • information on which categories of information contained in the Article 8b RTS are deemed problematic to publicly disclose and why. While it is hoped that the reporting obligations applying to private and bilateral SFIs will be appropriate and proportionate, it is not yet known how far ESMA will be prepared to deviate from the current scope, form and mode set out in the Article 8b RTS. **Responsibility:** Although the Article 8b RTS no longer provide for joint responsibility of the issuer, originator and the sponsor for publishing the information required under the Article 8b RTS, Article 8b of CRA 3 still contains a requirement to "jointly publish information" so the position is not entirely clear. Entities falling within the definition of originator could also be subject to the disclosure obligation, even if they had no involvement or knowledge of the transaction. The parties may delegate this obligation, but will still remain jointly responsible for compliance. **Public disclosure:** Under the Article 8b RTS, all required information must be submitted to a website to be established by ESMA, where it will be publicly available. Currently, ESMA has not approved the use of hyperlinks to other websites, so unless and until further guidelines	**Universal Rating Symbols Dodd Frank Section 938(a)** Under new rule 17g-8, each NRSRO is required to establish written policies and procedures with respect to the use of rating symbols. Such rating symbols are to be designed to assess the probability of default. The rating symbols methodology must clearly define each symbol, number or score, and apply such symbol, number or score consistently. **Amendments to Rule 17g-2 of the Exchange Act** Elimination of the "10% rule", which required disclosures with respect to 10% of the outstanding issuer-paid credit ratings in each class for which the NRSRO is registered. Modification to the "100% rule" requiring disclosures for all types of credit ratings from those initially determined on or after June 26, 2007, to those outstanding as of or initially determined on or after three years before the effective date of the new rules. **Amendments to Rule 17g-7 of the Exchange Act** Under revised Rule 17g-7(a), when taking a credit rating action (including publication of a preliminary credit rating, an initial credit rating, an upgrade or downgrade to a credit rating, and an affirmation or withdrawal of a credit rating), an NRSRO is required to publish a form containing a variety of prescribed information about the credit rating. Revised Rule 17g-7(a)(1)(iii) prohibits NRSRO personnel involved in sales or marketing, or who are "influenced by sales or marketing considerations," from also participating in the determination or monitoring of a credit rating or in the development of credit rating methodologies. **Amendments to Rule 17g-3 of the Exchange Act** Under revised Rule 17-g3(a)(7), an NRSRO is required to furnish an annual report to the SEC with respect its internal control structure. Such report must include any material weakness identified in the internal control structure and how such weakness was addressed.

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	provide for the use of hyperlinks, all relevant information will need to be uploaded directly to the ESMA website. Such public disclosure is one of the key concerns with applying the Article 8b RTS as it currently stands to private and bilateral transactions. **Loan Level Data:** There is considerable concern regarding the application of the quarterly loan level data reporting to all transactions, regardless of the structure or nature of the underlying assets. Although the disclosure wording of Article 8b is similar to that of Article 409 of the CRR, under which the EBA has adopted a principles-based approach to asset disclosure, recognizing that pool-level data might be appropriate on certain transactions, ESMA has not adopted a similar approach. It is also unclear whether templates developed under other regulatory regimes (eg, Regulation AB II in the US) will be recognized. This raises the prospect of multiple sets of data having to be prepared. More positively though, the forms of the templates in the RTS are virtually identical to the ECB's loan level data templates. **Transaction Documents and Transaction Summary**: Under the Article 8b RTS, key transaction documents and (for SFIs where a Prospectus Directive compliant prospectus is not prepared) a transaction summary must be provided without delay after the issue of an SFI. Transaction parties should consider the implications of such disclosures and whether it would be appropriate to remove details of, e.g., confidential fee arrangements from any documents which might have to be disclosed. Such public disclosure is one of the key concerns with applying the Article 8b RTS as it currently stands to private and bilateral transactions. **Investor Reporting:** Investor reports must be provided on a quarterly basis or no later than one month after each interest payment date. ESMA will publish further technical requirements for the content of investor reports. The Article 8b RTS no longer require submission of a cash flow model, as had been proposed in the draft Article 8b RTS. **Event Based Reporting:** For SFI to which the Market Abuse Regulation does not apply, event based reporting under the RTS remains a requirement. Issuers, originators and sponsors must jointly disclose any such events without delay but the RTS do not provide	

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	further detail on the types of information covered by this provision nor the circumstances in which an issuer can delay the publication of such information. Issuers, originators and sponsors of SFI to which the Market Abuse Regulation does apply will still need to publish a copy of announcements made under that regulation on the ESMA website. **Harmonization of due diligence and disclosure requirements:** On 12 May 2015, the European Supervisory Authorities (**"ESAs"**) published a report detailing their recommendations regarding the current EU due diligence and disclosure requirements for SFIs. The report recommends that common due diligence requirements be introduced across investor types, calling for harmonization of the due diligence and disclosure obligations contained in the CRA Regulation, the CRR, the Solvency II Directive and the AIFMD. The report recommends that the Article 8b RTS should be the basis for disclosure of loan level data of SFIs, that disclosure requirements must reflect investors' due diligence needs and that investors should be able to tailor the data they obtain from the SFI website to meet their due diligence requirements.	
	<u>Requirement for two rating agencies for structured finance transactions</u> CRA 3 introduced a two ratings requirement for securitizations requiring issuers or related third parties of structured finance instruments to obtain ratings from two credit rating agencies where issuers pay for those ratings. ***<u>Rotation for re-securitizations</u>*** CRA 3 introduced a four-year rotation rule for re-securitizations. This requirement does not apply where at least four rating agencies each rate more than 10% of the total number of outstanding rated re-securitizations or where the credit rating agency has fewer than 50 employees or an annual turnover of less than EUR10 million at group level. ***<u>Small and medium-sized rating agencies</u>*** CRA 3 requires that when an issuer or related third party intends to mandate at least two credit rating agencies it must consider mandating an agency with 10% or less of total market share "which can be evaluated by the issuer or a related third party as capable of rating the relevant issuance or entity". The requirement includes a proviso which seems to condition the requirement on there being a	

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	credit rating agency available for such purpose from a list maintained by ESMA. Where the issuer or related third party does not appoint at least one credit rating agency with no more than 10% of the market share, this needs to be documented. Views differ over whether that needs to be in the prospectus or just relevant board minutes. In the UK the FCA issued a letter reminding parties of these obligations, which may foreshadow greater regulatory scrutiny of such decisions. ***Own risk assessment*** CRA 3 reduces over-reliance on external credit ratings by requiring: (i) firms to make their own credit risk assessments and (ii) the EU Commission to undertake a review of references to credit ratings in EU law with a view to deleting all such references for regulatory purposes by January 1, 2020. ***Sovereign debt*** CRA 3 imposes additional requirements on CRAs relating to sovereign debt ratings. ***Shareholdings*** CRA 3 introduces limits on shareholdings in credit rating agencies and prevents credit rating agencies from rating those entities in which its largest shareholders have an interest. ***Civil liability standard*** CRA 3 harmonizes the civil liability of CRAs across the EU. ***Methodologies*** CRA 3 introduces measures to improve CRAs' methodologies and processes. ***Market Share*** In December 2014, ESMA published its most recent annual report listing all EU registered credit rating agencies at that date. The report also included data of each credit rating agency's total market share and the types of credit ratings issued by them, as required by Article 8d of CRA 3, In December 2014, there were 23 registered credit rating agencies. There are also 4 certified credit rating agencies. As at December 2014, twenty credit rating agencies each had a total market share of 10% or less. Three rating agencies collectively had a total market share of 90.44%. Six of the registered credit rating agencies had issued ratings for structured finance products during the course of 2014.	

Subject	Summary of EU provisions	Summary of US provisions
Credit rating agencies: **Requirement for Description of Representations and Warranties in Reports**	**There is no EU equivalent of the US provision although the rating agencies may in practice nonetheless make Rule 17g-7 disclosure.**	**Dodd-Frank Section 943 Rule 17g-7 Exchange Act** NRSROs must include in any report accompanying a credit rating a description of: • the representations, warranties and enforcement mechanisms available to investors; and • how they differ from the representations, warranties and enforcement mechanisms in issuances of "similar securities". For purposes of the Rule "credit rating" includes any expected or preliminary credit rating issued by an NRSRO (i.e., a pre-sale report). Rating agencies have published asset class specific model provisions against which they evaluate transaction provisions. This rule applies to non-registered transactions (private placements including Rule 144A) and transactions registered with the SEC. The SEC was requested to provide, but did not provide, an exclusion for non-U.S. transactions and rating agencies are therefore providing this report for both U.S. and non-U.S. transactions.
Proprietary trading; affiliated transactions; separation of investment banks	**There is no exact EU equivalent of the US provision.** On December 18, 2013 the Financial Services (Banking Reform) Act received Royal Assent in the United Kingdom. The Act will implement key recommendations of the Independent Commission on Banking chaired by Sir John Vickers which recommended that retail and investment banking activities be separated. The ring fencing regime will come into full effect on January 1, 2019. The Prudential Regulation Authority and the Financial Conduct Authority are currently consulting on the detail of the ring fencing rules and expect to finalize their rules during the course of 2016. The Financial Services (Banking Reform) Act 2013 does not include a prohibition on proprietary trading, but requires reviews of proprietary trading activities by the PRA and an independent body once the ring fencing regime is in effect to see whether restrictions on proprietary trading should be imposed. The European Commission published its legislative proposal on reforms of the structure of EU banks on January 29, 2014, following the publication of its consultation paper in May 2013. The conclusion of the legislative process (agreement between the European Parliament and the Council of Ministers) is expected to occur in late 2015. Currently, the European	**THE VOLCKER RULE** **Dodd-Frank Section 619 12 CFR Parts 44, 248,351 17 CFR 255** ***<u>Prohibited activities</u>*** The Volcker Rule generally prohibits "banking entities" from: • engaging in proprietary trading; • acquiring and retaining any "ownership interest" in or sponsoring "covered funds"; • entering into (or their affiliates entering into) "covered transactions" with a covered fund that the banking entity sponsors or to which it provides investment advice or investment management services (the so-called "Super 23A prohibition" because it incorporates the restrictions under Section 23A of the Bank Holding Company Act but without the benefit of that provision's exclusions); and • engaging in transactions otherwise permitted under specified provisions of the Volcker Rule if the transaction involves or results in specified conflicts of interest

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<tr><th>Subject</th><th>Summary of EU provisions</th><th>Summary of US provisions</th></tr>
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Parliament procedure file indicates that the European Commission's proposal will be considered by the European Parliament in its plenary session taking place on September 8, 2015.
The European Commission's legislative proposal (which takes the form of a draft regulation) will apply to only the largest and most complex EU banks with significant trading activities and will:

ban proprietary trading in financial instruments and commodities;
grant powers to national regulators to require separation of certain trading activities when they consider that the activity in question threatens the financial stability of the bank in question or of the EU.

The European Commission has suggested in its legislature proposal that the ban on proprietary trading should take effect on January 1, 2017 and the separation powers for national regulators should take effect on July 1, 2018. The legislative proposal follows the publication of the Liikanen report on October 20, 2012 which recommended the legal separation of certain activities such as proprietary trading of securities and derivatives from deposit-taking banks within the banking group. The report proposed that the separation should be mandatory for banks with more than a €100bn of trading assets, representing between 15 and 25 per cent of the relevant bank’s total balance sheet. The legally separated deposit bank and trading entity can operate within a bank holding company structure.
</td><td>
<u>Covered funds and exclusions</u>
"Covered funds" include all entities that rely on Section 3(c)(1) or Section 3(c)(7) of the U.S. Investment Company Act of 1940 as an exemption from registration under such Act.

Most ABCP conduits and some ABS issuers rely on Section 3(c)(1) less than 100 investors or Section 3(c)(7) only qualified institutional buyers/qualified purchasers exemptions and thus are likely to be "covered funds" unless the fund falls within an exclusion from the covered fund definition.
Excluding a fund from the definition of covered funds has significant beneficial consequences including that a banking entity may acquire and retain any "ownership interest" in or sponsor such fund and may engage in activities with the fund that would otherwise be prohibited covered transactions.
The final rule includes several exclusions which are relevant to structured finance transactions.

Under the "loan securitization exclusion" a banking entity is allowed to own an interest in and sponsor a fund that is an issuing entity for asset-backed securities, the assets or holdings of which are comprised solely of:

loans (defined as any loan, lease, extension of credit, or secured or unsecured receivable that is not a security (as defined in the Exchange Act) or a derivative);
rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of such securities and rights or other assets that are related or incidental to purchasing or otherwise acquiring and holding the loans;
interest rate or foreign exchange derivatives that (i) by the written terms of the derivative directly relate to the loans, the asset-backed securities, or the contractual rights of other assets permitted under the loan securitization exclusion; and (ii) reduce the interest rate and/or foreign exchange risks related to the loans, the asset-backed securities, or the contractual rights or other assets permitted under the loan securitization exclusion; and
special units of beneficial interest ("SUBIs") and collateral certificates that meet the following requirements:

(A) The special purpose vehicle that issues the SUBI or collateral certificate (collectively, a "SUBI issuer") itself meets the requirements in the loan securitization exclusion;

(B) The SUBI or collateral certificate is used for the

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Subject	Summary of EU provisions	Summary of US provisions
		sole purpose of transferring to the issuing entity for the loan securitization the economic risks and benefits of the assets that are permissible for loan securitizations under the loan securitization exclusion and does not directly or indirectly transfer any interest in any other economic or financial exposure; (C) The SUBI or collateral certificate is created solely to satisfy legal requirements or otherwise facilitate the structuring of the loan securitization; and (D) The SUBI issuer and the issuing entity are established under the direction of the same entity that initiated the loan securitization. Under the loan securitization exclusion, the issuing entity (or SUBI issuer) may hold securities only if those securities are (i) cash equivalents held in relation to the servicing rights or (ii) securities received in lieu of debts previously contracted with respect to the loans supporting the asset-backed securities. In addition, the assets or holdings of the issuing entity (or SUBI issuer) may not include any: (i) security, including an asset-backed security, or an interest in an equity or debt security other than as permitted above; (ii) derivative, other than a derivative that meets the requirements set forth above; or (iii) a commodity forward contract. There is also an **exclusion for "qualifying asset-backed commercial paper conduits"** which are defined as an issuing entity for asset-backed commercial paper that satisfies all of the following requirements: • The asset-backed commercial paper conduit holds only: (1) Loans and other assets permissible under the loan securitization exclusion; and (2) Asset-backed securities supported solely by assets that are permissible under the loan securitization exclusion and acquired by the asset-backed commercial paper conduit as part of an initial issuance either directly from the issuing entity of the asset-backed securities or directly from an underwriter in the distribution of the asset-backed securities; • The asset-backed commercial paper conduit issues only asset-backed securities, comprised of a residual interest and securities with a legal maturity of 397 days or less; and • A regulated liquidity provider has entered into a legally binding commitment to provide full and unconditional liquidity coverage with respect to all

Subject	Summary of EU provisions	Summary of US provisions
		of the outstanding asset-backed securities issued by the asset-backed commercial paper conduit (other than any residual interest) in the event that funds are required to redeem maturing asset-backed securities. A regulated liquidity provider includes: depository institutions; bank holding companies and their subsidiaries; savings and loan holding companies meeting specified requirements and their subsidiaries; foreign banks whose home country supervisor has adopted capital standards consistent with the Basel Capital Accord that are subject to such standards, and their subsidiaries; and the United States or a foreign sovereign. Full and unconditional liquidity support is not intended to include liquidity support which is subject to the credit performance of the underlying assets or reduced by other credit support provided to the asset-backed commercial paper conduit. There is also an **exclusion for** "**qualifying covered bonds**" which excludes from covered funds any entity (the "**covered bond entity**") owning or holding a dynamic or fixed pool of loans or other assets as provided in the loan securitization exclusion for the benefit of the holders of covered bonds, provided that the assets in the pool are comprised solely of assets that meet the conditions in the loan securitization exclusion. For these purposes, a covered bond is defined as: • A debt obligation issued by an entity that meets the definition of foreign banking organization, the payment obligations of which are fully and unconditionally guaranteed by a covered bond entity; or • A debt obligation of a covered bond entity, provided that the payment obligations are fully and unconditionally guaranteed by an entity that meets the definition of foreign banking organization and the covered bond entity is a wholly-owned subsidiary of such foreign banking organization. A "**wholly-owned subsidiary**" **exclusion** applies to an entity, all of the outstanding ownership interests of which are owned directly or indirectly by the banking entity (or an affiliate thereof), except that: • Up to 5% of the entity's outstanding ownership interests, less any amounts outstanding under the following paragraph, may be held by employees or directors of the banking entity or such affiliate (including former employees or directors if their ownership interest was acquired while employed by or in the service of the banking entity); and • Up to 0.5% of the entity's outstanding ownership interests may be held by a third party if the ownership interest is acquired or retained by the third party for the purpose of establishing corporate

Subject	Summary of EU provisions	Summary of US provisions
		separateness or addressing bankruptcy, insolvency, or similar concerns. ***Covered transactions and Section 23A prohibitions*** "**Covered transactions**" are: • loans or other extensions of credit; • investments in securities (other than fund ownership interests permitted under the Volcker Rule); • purchases of assets from the fund (including repos); • acceptance of securities from the covered fund as collateral for a loan or other extension of credit made by the banking entity; • issuances of guarantees, acceptances or letters of credit on behalf of the covered fund; and • exposure to the covered fund arising out of derivative, repo and securities lending transactions. For ABCP conduits and certain other ABS issuers, the Super 23A prohibition as written in the proposed rule was problematic because it would have prevented a bank sponsor/investment adviser/manager from providing credit, hedging or liquidity facilities to support such transactions. By excluding various structures from the definition of covered fund, the final rule will resolve this issue for many structured finance transactions. ***Conflicts of interest*** Banking entities cannot engage in permitted covered transactions or permitted proprietary trading activities if they would: • involve or result in a material conflict of interest between the banking entity and its clients, customers, or counterparties; • result, directly or indirectly, in a material exposure by the banking entity to a high-risk asset or a high-risk trading strategy; or • pose a threat to the safety and soundness of the banking entity or to the financial stability of the United States. A material conflict exists if the bank enters into any transaction, class of transactions or activity that would involve or result in the bank's interests being materially adverse to the interests of its client, customer or counterparty with respect to such transaction, class of transactions or activity, unless the bank has appropriately addressed and mitigated the conflict through timely and effective disclosure or informational barriers.

Subject	Summary of EU provisions	Summary of US provisions
		<u>Conformance period</u> ***The regulations under the Volcker Rule came into effect on April 1, 2014 but provide for a "conformance period" through July 21, 2015 subject to extensions for certain assets as described below.*** The Federal Reserve Board has issued guidance which provides that banking entities by statute have to conform all of their activities and investments to the Volcker Rule, and that "during the conformance period, banking entities should engage in good-faith planning efforts, appropriate for their activities and investments, to enable them to conform their activities and investments to the requirements of [the Volcker Rule] and final implementing rules by no later than the end of the conformance period." The proposed Volcker Rule regulations generated more than 16,000 comments. The final regulations included substantial changes and were adopted without the benefit of a re-proposal comments period. The final regulations are not always clear on how different aspects of securitization should be treated and market participants continue to evaluate how the final regulations will apply, particularly to existing transactions. On April 7, 2014, the Federal Reserve Board granted two additional, one-year extensions of the "conformance period" originally set to expire on July 21, 2015 for certain FDIC-insured banking entities. Under this extension, banking entities existing on December 31, 2013 will now have until July 21, 2017 to divest certain CLO interests as required under the Volcker Rule. The reaction to this announcement has been met with strong criticism as many market participants had hoped for a permanent exemption for these types of CLO interests. The Volcker Rule is otherwise scheduled to become effective as of the end of the original "conformance period" on July 21, 2015. In addition, on December 18, 2014, the Federal Reserve Board announced an extension of the conformance period with respect to investments in "legacy covered funds", being funds for which an investment was in place prior to December 31, 2013. The extension does not apply to secondary transactions resulting in a new investment after December 31, 2013. The extension applies for an initial 1 year period ending July 21, 2016, but the Board also stated that it will act to extend the conformance period for legacy covered funds for a further 1 year period to July 21, 2017.

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<tr><th>Subject</th><th>Summary of EU provisions</th><th>Summary of US provisions</th></tr>
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<td>Conflict of interest rule</td>
<td>There is no EU equivalent of the US provision.</td>
<td>
Dodd-Frank Section 621

Section 27B Securities Act

Rule 127B Securities Act

The proposed rule prohibits, subject to certain exceptions,

an underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity (each, a "covered person");
of an asset-backed security including synthetic ABS (a "covered product");
during the period ending on the date that is one year after the date of the first closing of the sale of such asset-backed security (a "covered timeframe");
from engaging in a transaction that present conflicts of interest between a covered person and an investor in the covered product that arise as a result of or in connection with the related ABS transaction." (a "covered conflict"); and
which is a material conflict of interest.

The commentary in the proposing release – but not the actual text of the proposed rule – includes a two-prong test for determining whether an ABS transaction is viewed as "involving or resulting in [a] material conflict of interest," provided that the other conditions described above are also satisfied.

The test is that:
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<td>a securitization participant would benefit directly or indirectly from the actual, anticipated or potential:

adverse performance of the asset pool supporting or referenced by the relevant ABS,
loss of principal, monetary default or early amortization event on the ABS, or
decline in the market value of the relevant ABS;
</td>
<td rowspan="2">AND</td>
<td rowspan="2">there is a "substantial likelihood" that a "reasonable" investor would consider the conflict important to his or her investment decision (including a decision to retain the security or not).</td>
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<tr><td>OR</td></tr>
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Subject	Summary of EU provisions	Summary of US provisions		
		a securitization participant, who directly or indirectly controls the structure of the relevant ABS or the selection of assets underlying the ABS, would benefit directly or indirectly from fees or other forms of remuneration, or the promise of future business, fees, or other forms of remuneration, or the promise of future business, fees, or other forms of remuneration, as a result of allowing a third party, directly or indirectly, to structure the relevant ABS or select assets underlying the ABS in a way that facilitates or creates an opportunity for that third party to benefit from a short transaction as described above.		

This comparison table is for guidance only and should not be relied upon as legal advice in relation to a particular transaction or situation. This paper reflects key EU and US regulatory developments relating to securitization transactions as at 8 June 2015.

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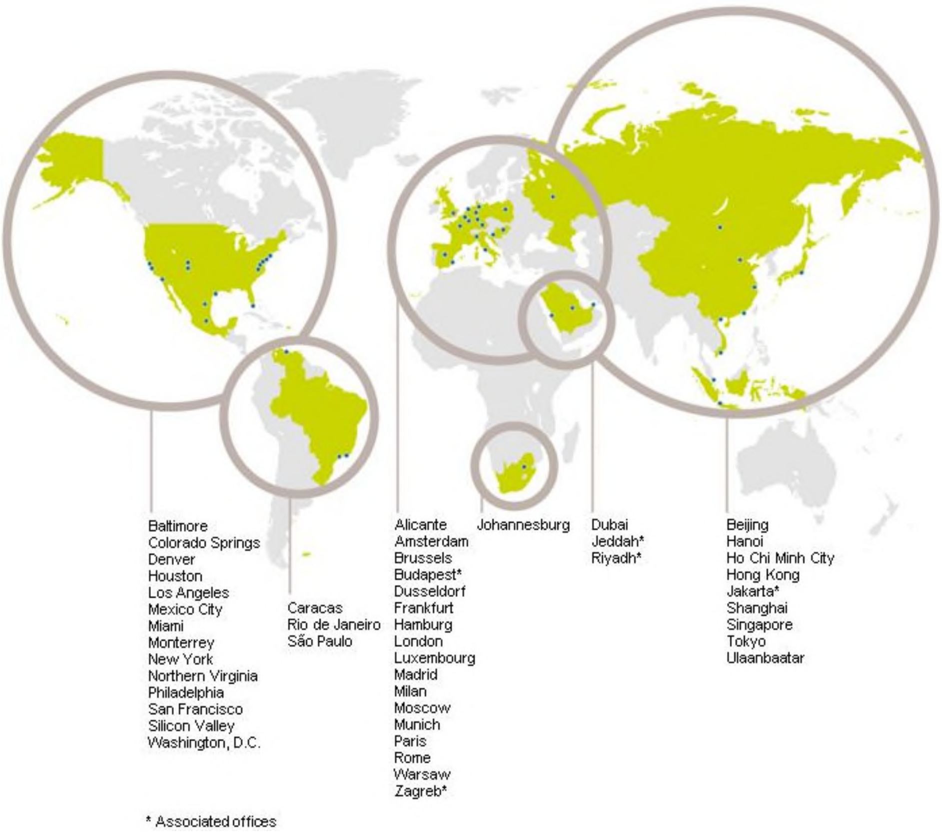

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