Hogan Lovells

Summary of key EU and U.S. regulatory developments relating to securitization transactions

June 2017

Contents

Our Structured Finance and Securitization practice 1

Meet the team 2

Overview 3

Summary of key EU and U.S. regulatory developments relating to securitization transactions 4

The EU Proposed Securitization Regulation 52

Acronyms and definitions 62

About us 65

Our Structured Finance and Securitization practice

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 U.S., 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, investors, credit enhancement providers, trustees, rating agencies, 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 U.S. securities laws issues resident within Hogan Lovells' international offices, allows us to provide clients with a competitive, knowledge-based service for all structured finance transactions.

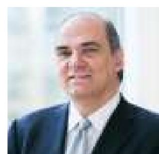
Our team is also involved in issues regarding the changing regulatory environment relating to structured finance, Dodd-Frank legislation in the U.S. and the relevant EU directives, including, compliance counseling, disclosure and advocacy relating to the legislation. In addition, our team has experience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

Hogan Lovells' track record

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

- Infrastructure
- Auto and consumer loans and leases
- Trade receivables
- Equipment leases and operating assets
- Future flow securitizations from emerging markets
- Insurance
- Credit card receivables
- Market place lending
- Whole business
- Commercial mortgages (CMBS)
- Residential mortgages (RMBS)
- CLOs

Meet the team



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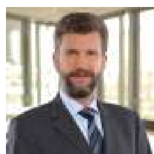

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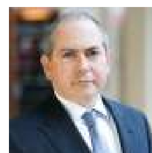

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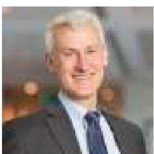

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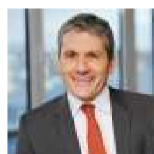

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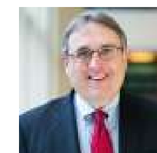

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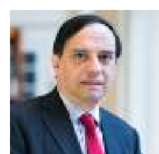

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Overview

Numerous regulatory developments were enacted or proposed in the United States and the European Union in response to the financial crisis. Although some of the proposed changes are still in the process of being adopted or implemented in the U.S. (*e.g.*, protections against conflicts of interest in certain securitization that have been in consideration since 2011) the new regulatory framework applicable to securitizations appears largely settled for the time being. In the EU the adoption of final rules regarding simple, transparent and standardized securitizations will mark a key milestone in the development of a new European securitization framework.

In the United States, the major legislative reform impacting securitization transactions in the aftermath of the financial crisis was the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**"), which was signed into law on July 21, 2010 and established a lengthy list of regulatory goals to be carried into effect via the adoption of extensive regulatory reforms by the various United States financial regulatory agencies. Almost seven years later, the majority of the rule-making processes instituted by the agencies have been completed.

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.

Building on those regulatory changes, on September 30, 2015, the European Commission ("**EC**") published two draft regulations on securitizations as part of the implementation of its Action Plan ("**Action Plan**") on Building a Capital

Markets Union. If implemented, these regulations will make some major changes to European securitization rules.

The first regulation (the "**Securitization Regulation**") will harmonize rules on risk retention, due diligence and disclosure across the different categories of European institutional investors which will apply to all securitizations (subject to grandfathering provisions) and will introduce a new framework for simple, transparent and standardized ("**STS**") securitizations. The second regulation (the "**CRR Amending Regulation**") will implement the revised Basel framework for securitization in the EU and implement a more risk sensitive prudential treatment for STS securitizations.

The draft EU regulations, if implemented largely as proposed, will likely have an impact on securitization markets far beyond the borders of Europe, as issuers and investors in the U.S., Canada, Australia and elsewhere grapple with the consequences of a two-track securitization regime very different from what is and likely will be in place in their home countries. Some of the key changes proposed by the draft EU regulations are discussed in the section at the end of this brochure headed "*The EU Proposed Securitization Regulation*". Please note that this section does not reflect the final form of the text of the Securitization Regulation which was agreed during the trilogue meeting on May 30, 2017 but which has not yet been published.

The creation of a label for securitizations meeting specified high standards of simplicity, transparency and standardization/comparability has also been proposed at an international level by the Basel Committee on Banking Supervision. The EU has taken the lead in implementing these proposals, although in a form adapted to the European securitization market. No legislative proposals to adopt these new Basel proposals have been published in the U.S. to date.

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.

Summary of key EU and U.S. regulatory developments relating to securitization transactions

Key:

	Rules which are currently in force
	Proposed rules
	No equivalent provision

Subject	Summary of EU Provisions	Summary of U.S. provisions
Retention of Risk	**Article 405 CRR, Article 51 of the Alternative Investment Fund Managers Regulation ("AIFMR") and Article 254 of the Solvency II Delegated Act**	**Dodd-Frank Section 941** **12 CFR Parts 43, 244, 373 and 1234** **17 CFR Part 246** **24 CFR Part 267**
	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	In October 2014 the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency (together, the "**Federal Banking Agencies**"), acting in coordination with the Department of Housing and Urban Development and the Federal Housing Finance Agency (together, the "**Housing Agencies**"), and with the Securities and Exchange Commission (the "**SEC**" and, together with the Federal Banking Agencies and the Housing Agencies, the "**Joint Regulators**") approved final risk retention rules under Section 941 of the Dodd-Frank Act. These rules apply to private and public offerings of asset-backed securities ("**ABS**"), a term 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 in March 2011 and published for comment the following April. After approximately 10,500 individuals, groups and institutions submitted comments, many of which were highly critical of the original proposals, the

Subject	Summary of EU Provisions	Summary of U.S. provisions
	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. • 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. In the EBA's annual report, published in April 2016, the EBA noted that, broadly, all of its recommendations set out in its December 2014 opinion had been incorporated into the Commission's proposed Securitization Regulation. **(For more information on the key proposed changes to the rules relating to risk retention and disclosure, see the section on "The EU Proposed Securitization Regulation: Harmonized Rules applying to all Securitizations")**. Under the AIFMD and the related delegated regulation, AIFMR, alternative investment fund managers are 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 risk retention and due diligence requirements of the CRR.	Joint Regulators published reproposed new rules on September 20, 2013 to address various concerns raised during the initial comment period. The final risk retention rules were officially published by the Joint Regulators in the Federal Register on December 24, 2014. **The new rules became effective for residential mortgage-backed securities on December 24, 2015, and apply to all other ABS since 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 – Standard Requirement*** *General* Consistent with Section 15G, the final risk retention rules generally require sponsors of ABS to retain at least a 5% economic interest in the credit risk of the securitized assets. A sponsor can satisfy this requirement by retaining (i) an "eligible vertical interest," ("**EVI**") whereby the sponsor holds either a single vertical security representing an interest equal to at least 5% of all ABS interests issued by the securitization vehicle, or at least a 5% portion of each class (or tranche) of ABS interests issued in the securitization transaction, (ii) an "eligible horizontal residual interest," ("**EHRI**") whereby the sponsor retains a first loss position equal to at least 5%

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	As of January 1, 2016, similar risk retention and due diligence requirements now also apply to EU insurance and reinsurance undertakings under the Solvency II Directive and the Solvency II Delegated Act. If implemented, the proposed Securitization Regulation will harmonize rules on risk retention, due diligence and disclosure across the different categories of European institutional investors and the rules will apply to all securitizations (subject to grandfathering provisions). The Securitization Regulation will also repeal existing provisions which would otherwise become overlapping in legislation relating to the banking, asset management and insurance sectors. **(For more information on the key proposed changes to the rules relating to risk retention and disclosure, see the section on "The EU Proposed Securitization Regulation: Harmonized Rules applying to all Securitizations")**. ***Retention Requirements*** 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 and Article 254 of the Solvency II Delegated Act respectively require alternative investment fund managers and insurance and reinsurance undertakings to ensure that they only invest in securitizations where the originator has disclosed a 5% risk retention.	of the "fair value" at all ABS interests issued in the securitization transaction, (iii) an "eligible horizontal reserve account," ("**EHCRA**") whereby the sponsor holds cash or cash equivalents in a specified type of reserve account (interest-only reserve accounts do not qualify) equal to at least 5% of the "fair value" of all ABS interests, or (iv) any combination of the above. The key distinction among the base risk retention requirements is that a sponsor holding retention solely in form of an EVI does not need to calculate "fair value" while a sponsor holding any part of the retention in the form of EHRI or EHCRA must calculate the required amount of retention using "fair value". "Fair value" of the retained interests is to be determined in accordance with U.S. GAAP. The complexity of determining "fair value" is significant and has influenced sponsors to use EVI in the preponderance of transactions that have been reported so far. *Disclosure Requirements* Sponsors are required to disclose to prospective investors in a securitization transaction, a reasonable period of time prior to the sale of the ABS, the percentage of risk retention applicable to the transaction and the material terms of the interest they expect to retain, together with (i) if the retained interest is in the form of an EHRI or an EHCRA, the expected "fair value" of such interest at the time of closing of the securitization transaction, and (ii) if the retained interest is in the form of an EVI, the percentage that the sponsor expects to retain at the closing of the securitization transaction. Sponsors holding retention in the form of EHRI or EHCRA are required to disclose specified information related to the fair value calculation of such retention interest, 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: (i) for an EHRI or EHCRA, the actual fair value of the retained EHRI or EHCRA at closing, the amount the sponsor was required to retain at closing, and any material

Subject	Summary of EU Provisions	Summary of U.S. provisions
	Interpretation of Key Definitions 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 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 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 Securitization Regulation proposes to make changes to the definition of "originator" for risk retention purposes. **(For more information on the proposed changes, see the section on "The EU Proposed Securitization Regulation: Harmonized Rules applying to all Securitizations".)** 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. ***Aggregator Entities*** The definition of "originator" under the CRR continues to cover	differences between the actual methodology and assumptions and those used prior to sale or (ii) for an EVI, the amount of the vertical interest retained at closing if that amount is materially different from the amount disclosed prior to sale. *Hedging and Transfer of Risk Retention* 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. The final rules also contain 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 rules prohibit 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

Subject	Summary of EU Provisions	Summary of U.S. provisions
	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. ***Multiple Originators*** 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 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). Accordingly, lending (especially limited recourse lending) secured on the retained piece is likely to be problematic. ***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;	rule will be required to comply with the hedging and transfer restrictions as if it were the sponsor. ***Exemptions for Certain Qualifying and Other Assets*** The final rules allow 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 rules reduce 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. *Residential Mortgage-Backed Securities* Under the final rules, residential mortgage loans that meet the definition of a "qualified residential mortgage" are exempt from the standard risk retention requirements. The final rules align this definition with the definition of "qualified mortgage" under the provisions of the Truth in Lending Act ("**TILA**"). Under the final rules, the Federal Banking Agencies, in consultation with the Housing Agencies, are required to review the definition of "qualified residential mortgage" to determine its adequacy at any time upon request by a Joint Regulator, and periodically beginning no later than four years from the effective date of the rules with respect to securitization of residential mortgages, and every five years thereafter. The final rules also contain exemptions for securitization transactions collateralized solely by (i) community-focused residential mortgage loans that are not otherwise eligible for

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pari passu share;
on balance sheet;
first loss tranche (similar to U.S. 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 methods of retention available to entities which are not banks and may also lead to difficulties for non-bank entities which used unfunded forms of retention under the Article 122a CRD II rules and 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
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"qualified residential mortgage" status and are exempt from the ability-to-pay rules under TILA, or (ii) certain owner-occupied three-to-four unit residential mortgage loans that are exempt from the ability-to-pay rules under TILA, including, in each case, the corresponding servicing assets.
Qualifying Commercial Loans
To be deemed a "qualified commercial loan" under the final rules, among other things, the lender must have determined prior to the origination of the commercial loan that (i) based on the prior two years' actual performance, the borrower's total liabilities ratio was 50% or less, the borrower's leverage ratio was 3.0 times or less, and the borrower's debt service coverage ratio was 1.5x or greater, and that, after giving effect to the loan, based on reasonable projections for the next two years, each of such ratios is expected to remain within those limits, (ii) the borrower's primary repayment source must be its revenue from the business operations of the borrower, and (iii) the borrower must make at least quarterly payments that fully amortize the 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 rules, 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 property loans, 1.5x for qualifying leased loans, and 1.7x for other CRE loans is required, (iii) the amortization term must not exceed 30 years for multi-family property 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.
Unfortunately, the "qualifying commercial loan" and "qualified CRE loan" exemptions will likely not be useful for many issuers since the manner in which such loans ordinarily originate would not enable them to qualify as "qualifying commercial loans" or "CRE loans."
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Subject	Summary of EU Provisions	Summary of U.S. provisions
	consolidated basis. The Article 122a guidance also allowed, in certain circumstances, for retention to be provided by any member of a consolidated group. Article 405 is more restrictive, only allowing for retention on a consolidated basis where a consolidated group are headed by an EU included within the scope of supervision within a parent credit institution, EU financial holding company or EU mixed financial holding company. The EBA expressly declined to provide for flexibility equivalent to that found in the Article 122a guidance 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 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 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.	*Qualifying Auto Loans* With respect to auto loans, the requirements for being a "qualified automobile loan" include, amongst other requirements (i) the borrower making equal monthly payments that fully amortize the 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 at least 10% of the purchase price, plus title, tax, registration and dealer fees, (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, no current 30-days delinquencies and not having had during the past 24 months payments 60-days past due. 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* The risk retention rules also contain 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 pass-through re-

Subject	Summary of EU Provisions	Summary of U.S. provisions
	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.** 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 remains 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.	securitization transactions collateralized solely by servicing assets and asset-backed securities in respect of which risk retention requirements were complied with or did not apply. ***Transaction Specific Risk Retention Rules*** In addition to the general risk retention requirements under the final rules, there are certain other risk retention rules applicable to specific types of ABS transactions. *Commercial Mortgage-Backed Securities ("**CMBS**")* Under the final rules, a CMBS sponsor's risk retention obligation is deemed satisfied in whole or in part to the extent that no more than two unaffiliated third-party purchasers buy and retain (subject to the same requirements applicable to risk retention held by a sponsor) horizontal first-loss positions (B-piece) in the securitization transaction, and certain additional conditions are satisfied, including: (i) each such third-party purchaser must conduct due diligence review of each securitized asset and pay for its B piece investment in full at the time of closing, (ii) an independent operating advisor is appointed and required to act in the best interest of the investors as a whole, and (iii) specified disclosure is provided to prospective investors regarding the third-party purchasers and their experience as CMBS investors. *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 rules 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 the CLO manager or originated by originators that are affiliates of the CLO or the CLO manager, and

Subject	Summary of EU Provisions	Summary of U.S. provisions
		(iii) whose assets consist only of CLO-eligible loan tranches (*i.e.*, tranches in which the lead arranger of the loan has retained at least 5% of the face amount subject to the same conditions that apply to a sponsor's risk retention requirement) and related servicing assets. This exemption is generally viewed by the CLO market as impractical. *Revolving Pool Securitizations* 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 rules 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 interest must tested at the time of each issuance of ABS and at least monthly thereafter; any deficiency identified on any testing date must be cured within the shorter of the time provided in the securitization transaction documents or one month. *Asset-Backed Commercial Paper ("**ABCP**") Conduits* Under the final rules, the sponsor of an "eligible ABCP conduit" may 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

Subject	Summary of EU Provisions	Summary of U.S. provisions
		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" requires that the ABS interests acquired by an ABCP conduit be 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. The originator-seller is 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

Subject	Summary of EU Provisions	Summary of U.S. provisions
		the ABS issued by the intermediate SPE. *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 state (or any 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 the proposing release the federal regulators stated that the definition of "***US person***" is substantially the same as the definition in Regulation S. However, the difference between the definition of U.S. person in Regulation S and the U.S. risk retention rules has posed some issues. The differences between the two definitions in relation to entities formed "principally for the purpose of investing in securities not registered under the [Securities] Act"

Subject	Summary of EU Provisions	Summary of U.S. provisions
		has created a gap between verification procedures currently used under Regulation S and the information that will be necessary to verify if an investor is not a U.S. person under the risk retention safe harbor. Parties in current transactions continue to feel their way through in determining how (if at all) they can confirm the U.S. person status of investors and the level of assurance (if any) that arrangers will subsequently provide to sponsors. In addition to the above transaction specific risk retention options, the final rules also provide 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, Article 52 AIFMR and Article 256 of the Solvency II Delegated Act** ***Due diligence and disclosure requirements under the CRR*** 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. 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. ***Loan Level Disclosure***	**Dodd-Frank Section 945, Securities Act Rule 193 and Item 1111 of Regulation AB** For SEC-registered offerings of 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 "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;

Subject	Summary of EU Provisions	Summary of U.S. provisions
	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 or liquidity investor requirements may dictate otherwise. In addition loan level disclosure will be required under CRA 3 for all asset types covered by CRA 3 (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 driven by the Bank of England and ECB disclosure requirements for collateral eligibility. (**For more information, see section: "Due diligence and disclosure: loan level data" 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.	• 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 U.S. provisions
	Due diligence and disclosure requirements under AIFMR and the Solvency II Delegated Act	
	There are similar (but not identical) provisions under the AIFMR and the Solvency II Delegated Act, respectively, that apply to alternative investment fund managers and insurance and reinsurance undertakings 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 or insurance or reinsurance undertaking to have a "comprehensive and thorough understanding" of credit risk of a securitization; and • 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 above obligations under AIFMR and the Solvency II Delegated Act that require entities subject to those rules to "ensure that sponsors and originators" satisfy the above 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	

Subject	Summary of EU Provisions	Summary of U.S. provisions
	are typically dealt with via posting to websites. In the context of a private deal where the listing (if any) 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. If implemented, the proposed Securitization Regulation will harmonize rules on due diligence and disclosure across the different categories of European institutional investors and the rules will apply to all securitizations (subject to grandfathering provisions). The Securitization Regulation will also repeal existing provisions which would otherwise become overlapping in legislation relating to the banking, asset management and insurance sectors. **(See the section on "The EU Proposed Securitization Regulation: Harmonized Rules applying to all Securitizations" for more information).**	
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 been submitted as	**Regulation AB II** **Dodd-Frank Section 942(b)** On August 27, 2014, the SEC adopted final revisions to the rules governing the registration of ABS and to Regulation AB, the comprehensive disclosure regime adopted in 2005 for offerings of ABS. These final rules were initially proposed in 2010 and 2011. By their terms, the amended Reg. AB ("**Reg. AB II**") only applies to registered public offerings of ABS and does not apply to transactions exempt from registration under Rule 144A or otherwise. The Reg. AB II regulations were officially published in the Federal Register on September 24, 2014. The Reg. AB II regulations became effective on November 24, 2014. The new rules on registration and reporting requirements (other than the asset-level disclosure requirements) became mandatory on November 23, 2015

Subject	Summary of EU Provisions	Summary of U.S. provisions
	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. A summary of the implementation timeframes for the various loan level data templates introduced by the ECB is set out below. 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.

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

Subject	Summary of EU Provisions	Summary of U.S. provisions
	mandatory compliance score required. **For more information on ABS collateral eligibility, please refer to our client note on ECB collateral criteria eligibility for asset backed securities.** ***Bank of England's Collateral Eligibility and Loan Templates*** 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 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".**	***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 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. ***Shelf Eligibility – Transaction Requirements*** 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 requirements: (a) **CEO Certification**: The chief executive officer of the

Subject	Summary of EU Provisions	Summary of U.S. provisions
		depositor must sign a certification (which is required to be filed as an exhibit to the final prospectus) stating that 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. (b) **Asset Review**: 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. (c) **Dispute Resolution**: 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. (d) **Investor Communication:** 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 U.S. provisions
		Shelf Eligibility – Registrant Requirements To the extent the depositor or any issuing entity previously established by the depositor or any affiliate of the depositor was, during the preceding twelve months and any portion of a month immediately preceding a filing on Form SF-3, required to comply with the transaction requirements of Form SF-3 with respect to a previous offering of ABS involving the same asset class, or otherwise required to comply with the general reporting requirements of the Exchange Act, such depositor, issuing entity or affiliate must have timely satisfied the requirements in paragraphs (a) through (d) above in the section"Shelf Eligibility-Transaction Requirements" with respect to such prior securitizations and must have timely complied with such periodic reporting requirements (except that certain current filings on Form 8-K do not need to have been timely filed). As is the case with shelf registration statements for offerings of non-ABS issuers, the issuer of ABS is required to test the continued eligibility for offerings under an effective shelf on Form SF-3 by verifying compliance with all required reporting requirements by the depositor or any issuing entity previously established by the depositor or any affiliate within ninety days following the end of the depositor's fiscal year end. ***Exchange Act Reporting*** Reg. AB II also makes several changes to Exchange Act reporting requirements for ABS. With respect to distribution reports on 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

Subject	Summary of EU Provisions	Summary of U.S. provisions
		must also be reported. With respect to annual reports on Form 10-K, added disclosure is required to be included regarding a servicer's failure to comply with servicing standards. The Form 10-K filed for the particular pool in respect of which the servicer's failure was identified will need to specify this fact. Any steps taken to remedy a material instance of servicer's noncompliance at the platform level must also be included.
Due diligence and disclosure: Disclosure of Repurchases	**There is no EU equivalent of the U.S. provision.**	**Dodd-Frank Section 943 and Exchange Act 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 • for 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

Subject	Summary of EU Provisions	Summary of U.S. provisions
		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 U.S. provision.**	**Dodd-Frank Section 932 and Exchange Act Rules 15Ga-2, 17g-5, 17g-7, 17g-10** In August 2014, the SEC adopted a variety of rules relating to rating agencies registered with the SEC as nationally recognized statistical rating organizations ("**NRSROs**"), 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

Subject	Summary of EU Provisions	Summary of U.S. provisions
		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. **The new rules became 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 furnish the form to the SEC. 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, and any underwriter or arranger participating in the issuance will effect secondary trading on the securities, only in transactions that occur outside of the United States.

Subject	Summary of EU Provisions	Summary of U.S. provisions
Rating agencies: general provisions relating to conflicts of interest and disclosure; increased competition	***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. 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: ***New disclosure requirements for structured finance transactions*** 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 SFI website ("**SFI Website**") (to be set up by ESMA), information on the structure, credit quality and performance of the underlying assets of a	**Dodd-Frank Section 939F (Franken Amendment)** 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 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. The SEC was required to submit to Congress, by July 21, 2012, the findings of the study, along with any recommendations for regulatory or statutory changes that the SEC determines should be made, to Congress. 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.

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<tr><th>Subject</th><th>Summary of EU Provisions</th><th>Summary of U.S. provisions</th></tr>
<tr><td></td><td>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 program 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.

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</td><td>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.

Dodd-Frank Section 932(a)(4) - "Look-Back" Review

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 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.

Dodd-Frank Section 932(a)(8) - Disclosure of Information about the Performance of Credit Ratings

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.

Dodd-Frank Section 936 - Standards of Training, Experience, and Competence

Rule 17g-9(a) provides that an NRSRO must establish, maintain, enforce, and document standards of training,</td></tr>
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Subject	Summary of EU Provisions	Summary of U.S. provisions
	developed by ESMA and adopted by the European Commission. It was anticipated that ESMA would issue the technical standards for submitting data by July 1, 2016. On April 27, 2016, ESMA issued a statement confirming that neither the SFI Website nor the technical standards are expected to be ready on time. The statement did not comment on the impact this would have on compliance by originators with the Article 8b disclosure obligations applying from January 1, 2017. However, given there is no SFI Website then practically originators are not be able to post information on that website and therefore originators should not be required to do anything to try to comply with Article 8b CRA 3 obligations until the SFI Website is established. (Of course, as a practical matter much of the information required continues to be produced by originators due to investor requirements and/or for ECB and BoE collateral eligibility). It is expected that the Securitization Regulation will provide further clarity on the future obligation regarding reporting of SFIs and will effectively restate and amend Article 8b CRA 3. There is, however, no certainty on this and the Securitization Regulation was not finalised ahead of the 1 January 2017 implementation date for the Article 8b CRA 3 requirements. **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.	experience, and competence for its employees who determine credit ratings. 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. **Dodd-Frank Section 938(a) - Universal Rating Symbols** Under 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 Exchange Act Rule 17g-2** 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 Exchange Act Rule 17g-7** 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

Subject	Summary of EU Provisions	Summary of U.S. provisions
	While it is hoped that the reporting obligations applying to private and bilateral SFIs will be appropriate and proportionate, it is not known how far ESMA will be prepared to deviate from the current scope, form and mode set out in the Article 8b RTS. In the European Supervisory Authorities' Joint Report on Securitization dated May 12, 2015, it was acknowledged that there may be legitimate cases in which it would be appropriate to adopt disclosure requirements to the specificities of private and bilateral SFIs. It is highly likely that the disclosure requirements relating to SFIs in Article 8b of CRA3 will be revised and included in the proposed Securitization Regulation (Article 8b of CRA 3 and the Article 8b RTS would be repealed once the new rules come into effect). The scope of disclosure obligations for private and bilateral SFIs in the Securitization Regulation is currently unclear and the current draft does not provide for obligations tailored to meet the specificities of private and bilateral transactions. However, there is an ESMA workstream already in existence on this topic and it is anticipated that its recommendations will be taken into account when determining the rules. In addition, the ECB has commented on the need for transparency requirements for private and bilateral transactions to be balanced against the need for confidentiality and the ECB has recommended exempting intra-group securitization transactions and securitizations where there is only one investor from unnecessarily burdensome disclosures. It is worth noting that the European Parliament's plenary report on the Securitization Regulation (" **EP Plenary Report**") comments that the requirement for participants to release public information should not prevent private securitizations *"in which the originator, sponsor and SSPE at least makes available all underlying documentation that is essential for the understanding of the transaction and sufficiently informs investors*". How this would work from a practical perspective for private transactions remains unclear. **(For more information,**	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 Exchange Act Rule 17g-3** Under revised Rule 17g-3(a)(7), an NRSRO is required to file with the SEC an annual report containing an assessment by management of the effectiveness of the NRSRO's internal control structure. Such report must include any material weakness identified in the internal control structure and how such weakness was addressed.

Subject	Summary of EU Provisions	Summary of U.S. provisions
	see the section on "The EU Proposed Securitization Regulation: Harmonized Rules applying to all securitizations"). **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 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 U.S.) 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	

Subject	Summary of EU Provisions	Summary of U.S. provisions
	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 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 May 12, 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 recommended that common due diligence requirements be introduced across investor	

Subject	Summary of EU Provisions	Summary of U.S. provisions
	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 recommended 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. It appears that some of these recommendations have been included in the text of the proposed Securitization Regulation (see the section on "**The EU Proposed Securitization Regulation: Harmonized Rules applying to all Securitizations**"). ***Requirement for two rating agencies for structured finance transactions*** 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 an issuer pays for those ratings. In April 2017, ESMA published a supervisory briefing setting out a common approach to the CRA 3's provisions for encouraging the use of smaller CRAs (the "**Supervisory Briefing**"). The Supervisory Briefing is non-binding for market participants. As part of its common supervisory approach, the Supervisory Briefing confirms that supervision of the requirement for two CRAs for SFIs should apply at least to those issuers or related third parties who intend to solicit a credit rating for an SFI that is issued, or proposed to be issued, to the public within the EU or admitted to trading on a trading venue situated within the EU. ***Rotation for re-securitizations*** 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	

Subject	Summary of EU Provisions	Summary of U.S. provisions
	employees or an annual turnover of less than EUR10 million at group level. ***Small and medium-sized rating agencies*** 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 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. ESMA recently confirmed this position in its Supervisory Briefing. Views differ over whether the requirement to document the decision needs to be reflected in the prospectus or just relevant board minutes. ESMA included in its Supervisory Briefing a standard form template for documenting an issuer's related third party's decision not to appoint a smaller CRA which is designed to provide regulators with information on why smaller CRAs are not being appointed and to avoid the need for transaction parties to develop their own templates. However, it appears it is not mandatory to use the new ESMA template as the Supervisory Briefing is non-binding for market participants. In the UK the FCA issued a letter reminding parties of these obligations, which may foreshadow greater regulatory scrutiny of such decisions. More recently, the Supervisory Briefing confirmed, as part of its common supervisory approach, that supervision of the requirement to consider a smaller CRA should apply to at least those issuers and third parties who intend to appoint at least two CRAs for the credit rating of an issuance that is issued or proposed to be issued to the public within the EU or that is admitted to trading on a trading venue situated in the EU.	

Subject	Summary of EU Provisions	Summary of U.S. provisions
	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 2016, 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 2016, there were 26 registered credit rating agencies. Based upon the figures provided in the 2015 accounts submitted by the CRAs to ESMA, 23 credit rating agencies each had a total market share of 10% or less. Three rating agencies collectively had a total market share of 92.85%. Eleven of the registered credit rating agencies had	

Subject	Summary of EU Provisions	Summary of U.S. provisions
	issued ratings for structured finance products during the course of 2015. In its Technical Advice to the EC published on September 30, 2015, ESMA stipulated that the market share calculation under Article 8d of CRA 3 should be used with caution as there is currently no single market for credit ratings. For this reason, ESMA included additional information in its latest market share calculation relating to the type of ratings provided by the different rating agencies has suggested that issuers and related third parties consider this additional information before appointing CRAs. According to 2015 EU wide share of supply data obtained from the CEREP database, three rating agencies supplied 92% of all credit ratings data for SFIs. The remaining 8% was split between three other rating agencies. ESMA has also used CEREP data to show the CRAs' 2015 share of supply by category of credit rating in the five largest national markets by issuance volume. This is the first time ESMA has included country-by-country data in the market share calculation. Subject to the feedback received on the usefulness of this data, ESMA intends to expand the list of countries presented in the market share calculation report in future years.	
Credit rating agencies: **Requirement for Description of Representations and Warranties in Reports**	There is no EU equivalent of the U.S. provision although the rating agencies may in practice nonetheless make Rule 17g-7 disclosure.	**Dodd-Frank Section 943 and Exchange Act Rule 17g-7** NRSROs must include in any report accompanying a credit rating a description of: — the representations and warranties given in respect of the securitized assets, and any enforcement mechanisms available to investors; and — how they differ from the representations, warranties and enforcement mechanisms in issuances of "similar securities".

Subject	Summary of EU Provisions	Summary of U.S. provisions
		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.
Restrictions on investments in securitizations	**Money Market Funds Regulation** Following the publication of its green paper on shadow banking activities in March 2012, the EC published a proposal for a regulation on money market funds ("**MMF Regulation"**) in September 2013. After a lengthy legislative process and the recent completion of the trilogues, the MMF Regulation was adopted by the EP on April 5, 2017 and by the Council on May 16, 2017. It is anticipated that the MMF Regulation will be published in the Official Journal of the EU shortly. The aim of the MMF Regulation is to ensure that MMFs are able to withstand future market turmoil by introducing requirements on portfolio structure, establishing a capital buffer, improving transparency, risk management and reporting and reducing overreliance on CRAs. Among other matters, the MMF Regulation will impose requirements on the investment policies of MMFs as regards investments in securitizations and ABCP. **General eligibility requirements:** In order for MMFs to make future investments in securitizations or ABCP, a securitization or an ABCP must be sufficiently liquid and have received a favorable credit	

Subject	Summary of EU Provisions	Summary of U.S. provisions

	quality assessment and must either be:
	• a securitization which meets the requirements of Article 13 of the Liquidity Coverage Requirement Delegated Regulation for Level 2B securitizations which address (among other matters) the credit quality, seniority, deal structure and nature of the underlying assets.
	• an ABCP issued by an ABCP Programme which:
	  ○ is fully supported by a regulated credit institution;
	  ○ is not a re-securitization and the exposures underlying the securitization at the level of each ABCP transaction does not include any securitization position; and
	  ○ does not include synthetic securitizations
	• a simple, transparent and standardized ("**STS**") securitization or ABCP.
	The text of the Securitization Regulation contains the framework for STS securitizations (including ABCP) and was separately negotiated under the trilogue procedure which concluded on May 30, 2017 (but has not yet been published) . Consequently, the criteria for STS securitizations will be determined by the Securitization Regulation's requirements relating to simplicity, transparency and standardization for both securitizations and ABCP (**For more information, see the section on "The EU Proposed Securitization Regulation"**).
	In order to accommodate potential changes to the STS criteria, the MMF Regulation provides for an amendment to be made to the MMF Regulation by way of a delegated act (the "**MMF Delegated Act**") once the Securitization Regulation has been finalized to incorporate appropriate cross references to the STS criteria.
	Maturity and Weighted Average Life: The MMF Regulation draws a distinction between:
	• "Short-term MMFs"-which may only invest in a securitization and	

Subject	Summary of EU Provisions	Summary of U.S. provisions
	ABCP if: ◦ the legal maturity is less than or equal to 2 years and the time remaining until the next interest rate reset date is less than or equal to 397 days; ◦ the residual maturity or the legal maturity at issuance is 397 days or less; or ◦ the securitization is an amortizing instrument and has a weighted average life of less than or equal to 2 years; • "Standard-MMFs", which may invest in a securitization and ABCP if either: ◦ the legal maturity at issuance or residual maturity is less than or equal to 2 years and the time remaining until the next interest rate reset date is less than or equal to 397 days; or ◦ the securitization is an amortizing instrument and has a weighted average life of less than or equal to 2 years. The provisions of the MMF Regulation provide for the weighted average life ("**WAL**") of a securitization to be taken into account when determining whether or not a securitization is a suitable investment for an MMF. The MMF Regulation provides for two WAL tests to applied when determining the eligibility of securitizations and ABCP as permitted investments for MMFs for inclusion in their portfolios: • WAL of the securitization: an MMF is only entitled to invest in securitizations with a WAL of less than or equal to two years • WAL of the portfolio: the rules governing the composition of a portfolio of MMFs provide that a Short-term MMF portfolio must at all times have a WAL of no more than 120 days. The portfolio of a Standard MMF must at all times have a WAL of no more than 12 months. However, when calculating the WAL for securitizations	

Subject	Summary of EU Provisions	Summary of U.S. provisions
	and ABCP the MMF may, in the case of amortizing instruments, base the maturity calculation on either the contractual amortization profile of the securities or the amortization profile of the cash generating underlying assets. **Investment limits:** Article 14 of the MMF Regulation includes limits on the percentage of assets that a MMF may invest in securitizations and ABCP. Until the Securitization Regulation is finalized and the MMF Delegated Act is in effect, the aggregate of all exposures to securitizations and ABCPs must not exceed 15% of the assets of a MMF. Once the MMF Delegated Act is in effect, MMFs may invest no more than 20% of their assets in securitizations and ABCPs, up to 15% of which are not required to meet the STS criteria. There are also further limitations on the investments that a MMF may make in securitizations and ABCP: • a MMF must not, generally, invest more than 5% of its assets in money market instruments, securitizations and ABCPs issued by the same body; • a MMF may not hold more than 10% of the money market instruments, securitizations and ABCPs issued by a single body; • a MMF may not combine investments in money market instruments, securitizations, ABCP with deposits and OTC derivatives where that would result in the investment of more than 15% of its assets in a single body.	
EMIR and Dodd-Frank: Clearing and margining obligations- Hedging in Securitization	**European Market Infrastructure Regulation** The European Market Infrastructure Regulation on over-the-counter derivatives, central counterparties ("**CCPs**") and trade repositories ("**EMIR**") which came into force on August 16,2012 introduced a range of new measures relating to: • new clearing obligations and risk mitigation techniques for certain	**The Dodd-Frank Wall Street Reform and Consumer Protection Act** The Dodd-Frank legislation broadened the powers and respective mandates of the SEC and the U.S. Commodity Futures Trading Commission (the "**CFTC**"), specifically empowering such commissions to issue and introduce new regulations and requirements into the marketplace such as:

Subject	Summary of EU Provisions	Summary of U.S. provisions
	derivative transactions; • trade reporting; • registration, financial and risk management requirements for clearing; and • new trade execution requirements. The extent to which requirements under EMIR apply depends upon which of the following categories an entity falls in: • financial counterparties (broadly, banks, insurers, investment firms, pension schemes, certain alternative investment funds and UCITS funds) established in the EU ("**FCs**"); • non-financial counterparties ("**NFCs**") established in the EU whose aggregate positions exceed the clearing thresholds (see below) (NFC+s) (this is conceptually analogous to the "major swap participant" designation in U.S. regulations); and • NFCs established in the EU whose aggregate positions are below the clearing threshold ("**NFC-**"). NFC+s (i.e. NFCs that exceed the clearing threshold) must notify ESMA and their EU Member State competent authority (NFC notification). Under EMIR, a securitization special purpose vehicle is generally classified as an NFC and therefore only needs to comply with less stringent requirements as long as the notional of its aggregate eligible swap liabilities (ie excluding hedging transactions) falls below the relevant threshold (an NFC-). However, on May 4, 2017, the EC published a proposal for a regulation to amend EMIR. The main change of significance to the securitisation industry is the proposal to extend the definition of FC in EMIR to include a securitization special purpose entity as defined in the CRR. These proposals could result in securitization SPVs being required to clear derivative transactions they enter into and to post margin, even where the swap counterparty is a senior or super senior secured	• clearing obligations and risk mitigation techniques for certain derivative contracts; • trade reporting; • registration, financial and risk management requirements for clearing organizations; and • trade execution requirements. **Mandatory Swap Clearing** Mandatory clearing for specified classes of interest rate and credit default swaps went into effect in March 2013 for certain entities; however exceptions to such clearing requirements may apply to certain swaps. **Commercial End-user Exception** For instance, a commercial end-user exception applies to counterparties who are non-financial entities that are using security-based swaps to hedge or mitigate commercial risk. (15 USC 78c-1(3C)(g)(1)). **Captive Finance Companies** **Commodity Exchange Act (7 USC 2(h)(7)(C))** **CFTC Letter No. 15-27** A "captive finance company" is permitted to elect the commercial end-user exception because it is excluded from the definition of "financial entity". To be a captive finance company, an entity must satisfy a four-prong test: • the entity's primary business is providing financing; • the entity uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures;

Subject	Summary of EU Provisions	Summary of U.S. provisions
	creditor of the SPV, as is usually the case in securitizations. If reclassified as FCs, SPVs would be subject to the clearing and margin requirements unless other exemption was available. FCs are required to clear any OTC derivative trades that are subject to the clearing obligation through a CCP and to do so they would need to post collateral to the CCP. Under the margin requirements, certain counterparties are required to post collateral in respect of any trades not cleared by a CCP. Currently, most SPVs are exempt from these requirements by virtue of being an NFC-. If reclassified as FCs, SPVs could therefore be required to post collateral in respect of their derivatives contracts regardless of whether they are used for hedging liabilities. This will have huge implications for SPV issuers as SPVs will not have eligible collateral available to post and may therefore find themselves unable to hedge mismatches on transactions. The Capital Markets Union Action Plan proposed high level amendments which contemplated relief to EMIR for simple, transparent and standardised (STS) securitizations and covered bond swaps. However, there has been little further concrete detail on this since then. It is thought that there is some appetite for aligning the treatment of derivatives used for hedging purposes associated with STS and covered bonds such that they may benefit from an exemption. The Securitization Regulation is currently progressing through trilogue negotiations between the European Commission, European Council and European Parliament so there may be more clarity on this once these discussions have concluded. **For more information on the EMIR and the impact of the proposed changes to EMIR for securitization transactions, please refer to our client note on Risk of margin posting and clearing for securitization SPVs.**	• 90% or more of such exposures arise from financing that facilitates the purchase or lease of products; and • 90% or more of such products are manufactured by the parent company or another subsidiary of the parent company. The CFTC has also taken a position, in an interpretive letter dated May 4, 2015 that a wholly-owned securitization special purpose vehicle of a captive finance company can also be treated as a captive finance company and rely on the commercial end-user exception. **Margin Requirements for Non-Centrally Cleared Over-the-Counter Derivatives** **Dodd-Frank Sections 731 and 764** Rule 17 CFR Parts 23 and 140; Rule 12 CFR Parts 45, 237, 349, 624, 1221 In October 2015 and December 2015, the prudential regulators and the CFTC adopted their respective margin requirements for uncleared swaps. The rules containing these requirements – variation and initial margin – went into effect on April 1, 2016, with staggered compliance dates beginning on September 1, 2016, and ending on September 1, 2020. The rules set forth staggered compliance dates depending on the combined average daily aggregate notional amount of exposure of covered swaps for March, April and May of a particular year, which started from September 1, 2016 between a Covered Swap Entity and its counterparty. Covered Swap Entities under the CFTC's and prudential regulators' rules include swap dealers and major swap participants. However, a new category of entity is also introduced in these rules and is referred to as a "financial end user." Financial End Users, whose swap trades will be subject to margin requirements, include securitization SPVs, among

Subject	Summary of EU Provisions	Summary of U.S. provisions
		other types of entities. However, a securitization SPV entering into an uncleared swap may still rely on an exemption or exclusion from the margin requirements such as the aforementioned Captive Finance Company exception if the entity's and its swap is so eligible. Alternatively, the securitization SPV may potentially be excluded from the margin requirements if its swap qualifies under the prudential regulators' or the CFTC's rules as sufficiently foreign in nature and therefore beyond the regulatory purview of the prudential regulators or the CFTC.
Proprietary trading; affiliated transactions; separation of investment banks	**There is no exact EU equivalent of the U.S. provision.** On December 18, 2013 the Financial Services (Banking Reform) Act received Royal Assent in the United Kingdom. The Act implements 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 be implemented through amendments made to the Financial Services and Markets Acts 2000, new rules made by the FCA and PRA and statutory instruments made by HM Treasury. The new ring fencing regime will come into full effect on January 1, 2019. 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 in the form of the proposed Banking Structural Reform Regulation, following the publication of a consultation paper in May 2013. The timeframe for the conclusion of the legislative process remains uncertain. The Council published its general approach to the proposed regulation in June 2015. The European Parliament ("**EP**") has yet to reach agreement on its negotiating position and therefore the negotiations between the EP, EC and Council to reach political agreement have not yet commenced.	**THE VOLCKER RULE** **Dodd-Frank Section 619** **12 CFR Parts 44, 248,351** **17 CFR 255** ***Prohibited activities*** The Volcker Rule generally prohibits "banking entities" (broadly defined as including insured depository institutions, their holding companies and the affiliates or subsidiaries of both) from: • engaging in proprietary trading (*i.e.*, trading for their own account in securities, derivatives or other financial instruments); • acquiring or 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

Subject	Summary of EU Provisions	Summary of U.S. provisions
	It is hoped that the text of the regulation will be finalised during the course of 2017. The European Commission's legislative proposal 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 suggested in its original legislative 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. However, given the delays in finalizing the text of the regulation, these timeframes will now be subject to significant delay and change. 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.	specified provisions of the Volcker Rule if the transaction involves or results in specified conflicts of interest. ***Excluded and other permitted proprietary trading*** The following (among others) are allowed under the Volcker Rule: • Repo and reverse repo transactions; • Security lending and borrowing transactions; • Purchases or sales of securities pursuant to a liquidity management plan of the banking entity that meets specified requirements; • Purchases and sales by a banking entity acting as a clearing agency; • Risk-mitigating hedging activities; and • Underwriting and market-making activities. ***Covered funds and exclusions*** "**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) (*i.e.,* having not more than 100 investors) or Section 3(c)(7) (*i.e.,* having all securities held by qualified purchasers) exemption 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

Subject	Summary of EU Provisions	Summary of U.S. provisions
		activities with the fund that would otherwise be prohibited covered transactions. • The final rules include several exclusions which are relevant to structured finance transactions. Under the "**loan securitization exclusion**" a banking entity is allowed to own an interest in or sponsor a fund that issues ABS and the assets 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 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 directly relate to, and reduce the interest rate or foreign exchange risk of the loans, the ABS or any other permitted rights or assets; and • special units of beneficial interest ("**SUBIs**") and collateral certificates issued by a special purpose vehicle (the "**SUBI issuer**") if: (a) The SUBI issuer itself meets the requirements of the loan securitization exclusion; (b) The SUBI or collateral certificate is used for the 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;

Subject	Summary of EU Provisions	Summary of U.S. provisions
		(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 ABS. 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

Subject	Summary of EU Provisions	Summary of U.S. provisions
		securities; • The asset-backed commercial paper conduit issues only ABS, 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 of the outstanding ABS 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

Subject	Summary of EU Provisions	Summary of U.S. provisions
		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 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);

Subject	Summary of EU Provisions	Summary of U.S. provisions
		• 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 resolves 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

Subject	Summary of EU Provisions	Summary of U.S. provisions
		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. ***Conformance period*** **The regulations under the Volcker Rule came into effect on April 1, 2014 but provided for a "conformance period" through July 21, 2015 subject to extensions for certain assets as described below. The current extension is scheduled to expire on July 21, 2017.** 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." 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 have until July 21, 2017 to divest certain CLO interests as required under the Volcker Rule. 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

Subject	Summary of EU Provisions	Summary of U.S. provisions
		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 is scheduled to expire on July 21, 2017.
Conflict of interest rule	**There is no EU equivalent of the U.S. provision.**	**Dodd-Frank Section 621** **Section 27B Securities Act** **Rule 127B Securities Act** Section 621 of the Dodd-Frank Act added Section 27B to the Securities Act banning financial intermediaries participating in the distribution of an ABS (including a synthetic ABS) and their affiliates and subsidiaries (collectively, a "**securitization participant**") from engaging within one year from the closing of the distribution in transactions resulting on a material conflict of interest with an investor in the ABS (or synthetic ABS). The Section directed the SEC to adopt implementing regulations within 270 days. On September 19, 2011, the SEC proposed Securities Act Rule 127B. The proposing release included a proposed test to ascertain when a material conflict of interest exists as a result of a transaction. Under the proposal, such a conflict would exist with respect to a transaction if: Either i. As a result of such transaction, a securitization participant would benefit directly or indirectly from the actual, anticipated or potential: a. adverse performance of the asset pool supporting or referenced by the relevant ABS, b. loss of principal, monetary default or early

Subject	Summary of EU Provisions	Summary of U.S. provisions
		amortization event on the ABS, or c. decline in the market value of the relevant ABS; or ii. a securitization participant that controls the structure of the relevant ABS or the selection of assets underlying the ABS, would benefit from fees or other forms of remuneration as a result of allowing a third party 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 the transaction and iii. 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).

The EU Proposed Securitization Regulation

Subject	Summary of EU provisions
The EU proposed Securitization Regulation	**Please note that this section does not reflect the final form of the text of the Securitization Regulation which was agreed during the trilogue meeting on May 30, 2017 but which has not yet been published.** On September 30, 2015, the EC published the draft Securitization Regulation and the CRR Amending Regulation. If implemented, these regulations will make some major changes to European securitization rules. The key provisions of the two regulations proposed by the EC and further amendments proposed by the Council and EP are discussed briefly below, along with some of the further amendments proposed in respect of the Securitization Regulation by the ECB in its opinion issued in March 2016 and the draft report of the European Parliament's ECON Committee published in June 2016 (the "**ECON Committee Report**"). The proposals in the EP Plenary Report, represent a significant departure from the positions adopted by the Commission and the Council. Both regulations are subject to the trilogue procedure (during which the EC, the EP and Council will reach agreement on the text of the regulations). Therefore, the provisions of the final regulations could differ from the text discussed below. **Next Steps and Timing** In September 2015, the proposed regulations were sent to the EP and the Council for review and adoption under the co-decision procedure. The Council finalized its compromise proposal on 30 November 2015 but the EP took longer with its review on the regulations, with the plenary vote taking place on 19 December 2016. Following a series of trilogue meetings in recent months, the EC, the Council and the EP reached agreement on the final texts of the Securitization Regulation and CRR Amending Regulation on May 30, 2017. It is anticipated that the EP and Council will vote to formally adopt the regulations in late 2017 and the regulations will then be published in the Official Journal. Both the Securitization Regulation and the CRR Amending Regulation will be directly applicable in member states from the day of entry into force. The ESAs will be required to prepare the related regulatory technical standards within prescribed time frames of between six months and a year after the entry into force of the regulations. It is anticipated that the regulations will not apply until mid-late 2018 at the earliest as a consequence of the time frames for the preparation and subsequent adoption of the regulatory technical standards. The liquidity coverage ratio requirements ("**LCR**") under the CRR and the treatment of securitizations under Solvency II will also need to be updated to reflect the final STS criteria once the Securitization Regulation is finalised.

Subject	Summary of EU provisions
	Harmonized Rules applying to all Securitizations **Risk retention, due diligence and disclosure requirements:** The Securitization Regulation if implemented, will repeal the disclosure, due diligence and risk retention provisions in the CRR, AIFMD and Solvency II legislation and replaces them with one set of shorter, harmonized rules to apply across all financial sectors to banks, investment firms, insurers, alternative investment managers, UCITS and Institutions for Occupational Retirement Provision, where relevant. The risk retention provisions in the draft regulation adopt a direct approach as recommended by the EBA in its report published in December 2014. Under this direct approach the originator, sponsor or original lender are directly required to make the retention and (along with the SSPE) to disclose this information to investors. This is in addition to the current indirect approach, which requires investors to verify the retention requirement has been met. Detailed provisions relating to risk retention will be set out in regulatory technical standards to be developed by the European Supervisory Authorities. One of the most significant proposals in the EP Plenary Report (and which was first mentioned in the ECON Committee Report, in a slightly varied form) is the proposal to introduce a risk retention requirement which varies between 5% and 10% depending on the method of retention chosen for a transaction. The EP Plenary Report also seeks to give the EBA the power to vary retention rates and suggests that the EBA should be permitted to increase the retention requirement up to 20% where it determines market conditions require it. If adopted this proposal would likely have significant negative implications for the European securitization market. Given the EC and Council were both of the view that the current 5% risk retention requirement is sufficient, the question of risk retention levels may well be one of the more contentious issues to resolve during the trilogues. The harmonized due diligence requirements on investors are broadly similar to those currently contained in the CRR, AIFMD and Solvency II delegated act. The disclosure requirements in the Securitization Regulation are more detailed than the current general disclosure obligation in Article 409, which refers to "all materially relevant data" and are more akin to those contained in the Article 8b CRA 3 RTS. The EP Plenary Report proposes that in order to enhance transparency, securitization repositories should be established which would be authorized and supervised by ESMA. The repositories would hold data and reports, including information on underlying loans (which would in all likelihood be based on existing disclosure templates). The text of the EP Plenary Report indicates that the disclosures required by originators, sponsors and SSPEs would need to be provided to a securitization repository as well as to relevant authorities, potential investor and investors as required under the Securitization Regulation. Investors would also be required to make their disclosures available through the securitization repositories. The EP Plenary Report proposes that ESMA should develop regulatory technical standards detailing (i) the procedures that securitization depositories should apply in order to verify the completeness and accuracy of disclosures provided by originators, sponsors and SSPEs, (ii) the format and detail of information that originators, sponsors and SSPEs are required to provide in order to comply with their disclosure obligations. While it appears that the securitization repositories would be required to ensure the

Subject	Summary of EU provisions
	confidentiality, integrity and protection of the information provided by originators, sponsors and SSPEs, it is currently unclear what precise requirements or derogations would apply to private transactions. The EP Plenary Report also proposes that ESMA should publish an overview of the securitization market using the information from issuers, investors and repositories in an effort to safeguard the transparency of the securitization market for market participants and supervisory authorities. Again, it is unclear whether there would be some derogations from disclosure of information relating to private transactions. **Credit granting provisions:** The Council has proposed the inclusion of credit granting criteria, requiring originators, sponsors and original lenders to apply the same sound and well defined criteria relating to securitized exposures as they would apply to non-securitized exposures. They will be required to have clearly established processes and effective systems for the approval, amendment, renewal and refinancing of loans, to ensure that the credit-granting is based on a thorough assessment of the obligor's creditworthiness. In addition, where an originator acquires and then securitizes exposures from a third party, it is proposed that originators will be required to verify that the entity that was involved (either directly or indirectly) in the creation of the original loan agreement creating the exposures met the credit granting criteria set out above. The EP has proposed that information about the credit granting and credit scoring process for the underlying assets and the historical evolution of non-performing loans underwritten by the originator must be provided to potential investors. As currently drafted, those requirements appear to apply regardless of whether a Prospective Directive compliant prospectus has been prepared leading to concerns regarding duplication of information or potential mismatches of information if differing standards are applied. **Definition of "Originator"**: The Securitization Regulation amends the definition of "originator" for the purposes of the risk retention provisions by providing that "an entity shall not be considered to be an originator where the entity has been established or operates for the sole purpose of securitizing exposures". This amendment appears to address some of the concerns outlined by the EBA in its report dated December 2014. Although it appears that the EC has softened this provision during the course of drafting this legislative proposal, this definition of "originator" may well still be of concern to those market participants involved in issuance of securitizations involving portfolio sales and marketplace lending as well as CLOs, particularly given the statement in the explanatory memorandum to the EC's draft of the Securitization Regulation that "the entity retaining the economic interest has to have the capacity to meet a payment obligation from resources not related to the exposures being securitized". It is hoped that this definition will be clarified further in regulatory technical standards. The amendments proposed in the EP Plenary Report would remove the "sole purpose" requirement. The EP has proposed that at least one of the originator, sponsor or original lender must be an EU regulated entity determined by reference to the Financial Conglomerates Directive (therefore either an EU credit institution, investment firm or insurance entity), a creditor as defined in the Mortgage Credit Directive, a financial institution under the CRR that conducts certain lending or financial leasing activities or a multilateral development bank as defined in the CRR. This requirement for originators would prevent investors from investing in securitizations where the originator, sponsor or original lender is not an EU regulated entity.

Subject	Summary of EU provisions
	The EP Plenary Report also proposes that for STS securitizations the originator, sponsor and SSPE must be established in the EU or in a third country where it has been determined that the supervisory and regulatory frameworks are equivalent to those in the EU. **SSPEs:** The EP Plenary Report proposes prohibiting the use of non-EU SSPEs where the third country does not meet certain requirements (including if it promotes itself as an off-shore financial center fails to meet certain taxation or transparency requirements or does not cooperate regarding money laundering requirements). **Investors:** The EP Plenary Report contains a proposal that investors in securitizations must be "institutional investors" or third country institutions where those countries' supervisory and regulatory requirements have been determined to be equivalent to those in the EU. The report defines "institutional investors" to include credit institutions or investment firms as defined in the CRR, insurance and reinsurance undertakings, regulated occupational pension schemes, alternative investment fund managers, certain UCITS management companies and internally managed UCITs which are investment companies, money market funds as defined in the MMF Regulation and multilateral development banks as defined in the CRR, international organizations or promotional entities. The EP Plenary Report also proposes a requirement for investors in the secondary market to notify the relevant competent authority of their ultimate beneficial owner and the size and tranche of their investment and provide relevant information to a supervised securitization repository. Further details of these investor reporting obligations would be set out on regulatory technical standards prepared by ESMA. This new disclosure requirement could give rise to concerns from investors considering to invest in securitizations. It is also not clear whether such a requirement would apply solely to public securitizations and how originators, sponsors and original lenders could be expected to ensure compliance with such a requirement (especially given the way cleared notes are held). **Private and bilateral transactions:** In relation to disclosure standards, it appears that, as currently drafted, the disclosure requirements would apply to all securitizations, including private and bilateral securitizations. Although the Council's proposed wording appears to make exceptions from disclosure for confidential information and data protection purposes, it does not address concerns relating to commercially sensitive information, a concern most usually associated with disclosure of information relating to private and bilateral transactions. It is hoped that this position will be clarified, given ESMA's existing workstream on disclosure obligations for private and bilateral transactions relating to Article 8b of CRA 3 and that appropriate derogations from disclosure obligations for private and bilateral securitization transactions will be included in the final form of the Securitization Regulation. In its opinion on the proposed Securitization Regulation, the ECB commented on the need for transparency requirements to be balanced against the confidentiality of private and bilateral transactions. The ECB also recommended exempting intra-group securitization transactions, retained securitizations and securitizations where there is only one investor from unnecessary burdensome disclosure. The EP Plenary Report notes that the requirement for participants to release public information should not prevent private securitizations "in which the originator, sponsor and SSPE at least makes available all underlying documentation that is essential for the understanding of the transaction and sufficiently informs investors". How this would work from a practical perspective for private transactions remains unclear.

Subject	Summary of EU provisions
	Industry participants have raised concerns that if disclosure standards are not adapted to take account of key confidential and market sensitive information which is common to many private transactions, then securitization may not continue to be a sustainable form of funding for the private market. **New regulatory technical standards:** While it appears that regulatory technical standards will be prepared in due course in relation to risk retention and disclosure standards (among other matters), the Securitization Regulation does not confirm that such standards will also be prepared in relation to the new due diligence requirements. The ECB and the EP has also recommended that regulatory technical standards should also be prepared to provide further clarity and detail in relation to some of the STS criteria and to address potential issues regarding interpretation. The European Supervisory Authorities have been tasked with developing the new regulatory technical standards for risk retention and disclosure. There is concern that until the new standards are developed, the current standards would apply to new transactions; this could lead to difficulties ensuring that transactions comply with the differing requirements under the two sets of regulatory technical standards. **Rules applying to STS Securitizations** The Securitization Regulation draws a distinction between STS securitizations (which meet the STS criteria) and those securitizations which do not meet the criteria (non-STS securitizations). The main benefit of a securitization complying with the STS criteria will be preferential regulatory capital treatment for institutional investors (which is provided for in the CRR Amending Regulation). The grandfathering provisions in the draft Securitization Regulation provide that securitizations outstanding at the time the Securitization Regulation comes into force may use the STS designation if they meet certain requirements. The EP Plenary Report appears to support this approach for securitizations sold to investors after January 1, 2011 but before the date of entry into force of the Securitization Regulation. **STS criteria**: There are separate but broadly similar STS criteria for term securitizations and asset backed commercial paper ("**ABCP**"), which are intended to take account of their structural differences; this differs from those criteria published by the Basel Committee on Banking Supervision ("**BCBS**") and the International Organization of Securities Commissions, which do not take account of ABCP at this time. Currently, only "true sale" securitizations can be STS securitizations (**See the Section "STS and synthetic securitizations" below for more information**). The ECB commented on the importance of clarity in the STS criteria and has suggested that some require clarification and interpretation. The ECB proposed that the ESAs be mandated to prepare regulatory technical standards on the STS criteria to provide further clarification where needed. This suggestion has been supported by the EP, which proposed that ESMA should work with the EBA and national competent authorities to develop guidelines to ensure a common and consistent understanding and interpretation of the STS requirements throughout the EU. The most recent draft of the Securitization Regulation published by the Council proposes that the originator, sponsor and securitization special purposes entity ("**SSPE**") involved in an STS securitization must be established in the EU, which therefore excludes any securitizations with a non-European element. The EP Report adopts a wider approach, proposing that the originator, sponsor and

Subject	Summary of EU provisions
	SSPE can be established in the EU or in a third country for which the Commission has adopted a delegated act in recognition of supervisory and regulatory equivalence. **(See the Section "Harmonized Rules applying to all Securitizations: Definition of "Originator" for more information).** **STS and ABCP**: The criteria for ABCP, as currently drafted, contain some issues of significant concern to the ABCP industry. There are extensive disclosure obligations, including those in relation to the disclosure of information on the underlying exposures, which would threaten the ability of ABCP transactions to maintain anonymity in relation to underlying assets. While the ECB recognized in its opinion that some data relating to ABCP transactions may need to be redacted, the extent to which this will happen is unclear. In addition, the proposed maturity limits and weighted average life limits will limit the types of underlying transactions in which an ABCP program can invest. To date, the ECB has recommended a one-year residual maturity cap for underlying assets of STS ABCP programs, while the Commission had suggested three years and the Council had suggested up to a 6 year residual maturity cap. The EP has proposed a residual maturity cap of no more than three years, except for auto loan and auto and equipment leases which may have a residual maturity cap of up to six years. The ECB has argued that a maturity mismatch between underlying assets and commercial paper liabilities would expose investors and sponsors to potential losses and liquidity strains and that lax caps could give rise to arbitrage opportunities between term STS and STS ABCP programs. For an ABCP program to meet the STS requirements, each transaction in the ABCP program would have to be STS compliant - a test unlikely to be met by most (if any) ABCP programs. The EP Plenary Report proposes introducing additional requirements for sponsors of ABCP programs, including requirements regarding stress testing and disclosure. In addition, a sponsor must be an EU credit institution, regulated fund or asset manager, as well as a liquidity provider covering all liquidity and credit risks and must disclose to investors the level of support provided in relation to each transaction. **STS simplicity requirements:** Currently, the STS simplicity criteria include the following requirements: • there must be a true sale (or assignment or transfer with the same legal effect) • homogeneity in terms of asset type. The EP has expanded on this to clarify that underlying exposures in a pool will be considered homogenous where their contractual, credit risk, prepayment and other characteristics that determine cash flows on those assets are sufficiently similar. • no active management of exposures on a discretionary basis • assets not subject to "severe clawback" provisions or encumbered • must include assets originated in the ordinary course of the originator's or original lender's business. The EP has commented that such assets should be comparable in economic substance and creditor classes to exposures originated but not securitized. • underlying exposures must not be in default nor be exposures to credit-impaired debtors or guarantors who, to the best knowledge of the originator or original lender, among other matters (i) has declared insolvency or had a court grant his creditors a right of enforcement or material damaged as a result of a missed payment within three years prior to that indicating a risk of payments not

Subject	Summary of EU provisions
	being made is significantly higher than for the average debtor of the same type of loan. Discussion between the EC, the Council and EP on this issue has continued as regards the time at which the assessment for such matters should be made. • debtors/guarantors must have made at least one payment • repayment must not depend "substantially" on the sale of assets. The Council and the EP have proposed that repayment must not depend "predominantly" on the sale of the assets, with the EP clarifying that assets guaranteed or fully mitigated by a repurchase obligation do not depend on the sale of assets. The ECB recommended that any securitizations that are dependent on collateral liquidation should not be STS eligible. This would result in certain types of securitizations, such as those involving personal contract plans or residual value auto leases not being eligible for STS status. The criteria relating to homogeneity and the restrictions on defaulted loans could also be problematic for some types of securitizations. **STS standardization requirements:** The standardization requirements currently include requirements that: • risk retention requirements have been met • interest rate and currency risks must be mitigated and disclosed • referenced interest payments under the securitization assets and liabilities must be based on "generally used market interest rates" or "sectoral rates reflective of the cost of funds" • there is no substantial trapping of cash and no automatic liquidation of underlying exposures at market value. In addition, transaction documents are required to: • include appropriate early amortization events or triggers for revolving securitizations. • specify provisions that facilitate timely resolution of conflicts between different classes of investors • include definitions, remedies and actions relating to performance of the underlying exposures • clearly specify priorities of payment and events triggering changes in priorities of payment as well as the obligation to report such events • clearly specify the responsibilities of the servicer, trustee and other service providers • include provisions for the replacement of derivatives counterparties, liquidity providers and the account bank upon their default, or insolvency. **STS transparency requirements:** In addition to the information which is currently required under the CRA 3 regulatory technical standards, for STS securitizations, the following transparency requirements will need to be compiled with: • The originator, sponsor or SSPE shall provide access to static and dynamic historical default and loss performance data for "substantially similar" exposures to those securitized in respect of a period of no less than five years (according to the latest draft

Subject	Summary of EU provisions
	prepared by the Council). Disclosure must also be made of the basis for claiming similarity. The requirements for the provision of historical data could mean that new types of ABS may struggle to achieve STS status. • A file audit by an independent party to a 95% confidence level is required. Although common for some asset classes file audits are not universally undertaken at present. • The originator or sponsor shall provide or procure a liability cash flow model to potential investors before pricing and after pricing shall provide such models to investors on an on-going basis and to potential investors, upon request. This requirement was removed, following consultation with the industry, from the CRA 3 regulatory technical standards on disclosure requirements for structured finance instruments. The Council has also proposed that a liability cash flow model should be made available to potential investors. The EP has elaborated on these requirements, proposing that the cash flow model must precisely represent the contractual relationship between the underlying exposures, and the payments flowing between the originator, sponsor, investors, other third parties and the SSPE. The EP Plenary Report also proposes that the originator and the sponsor should be required to disclose information on the long-term sustainable nature of the securitization for investors, using environmental, social and governance criteria, describe how the securitization contributed to real economy investments and the way in which the original lender used the freed-up capital. It is unclear how extensive or precise this disclosure would need to be, or what reliance investors would be expected to place on such disclosure or the consequences of such disclosure proving to be incorrect after the fact. The ECB has suggested that higher standards of investor reporting should be mandatory for STS securitizations. The ECB has also recommended that a statement should be included in the offering document as to whether and how the STS criteria have been complied with. **Determination of STS status:** To the extent that STS status is claimed, the originators, sponsors and SSPEs will be jointly responsible for determining that a securitization complies with the STS criteria and for notifying EMSA accordingly using a template created by the ESAs. The Council has proposed that the STS notification must include an explanation of how each of the STS criteria has been complied with. The European Supervisory Authorities will have 12 months following the entry into force of the Regulation to provide further detail of the information to be provided in the STS notification and to determine the form of the template. The original draft of the Securitization Regulation provides that investors "may place appropriate reliance" on the STS notification and on the information disclosed by the originator, sponsor and SSPE on the compliance with the STS requirements but it does not clarify the extent of investors' due diligence obligations in this regard. The EP Plenary Report takes a similar position. However, the Council has proposed that investors should however not solely and mechanistically rely on such a notification and information. Despite the inclusion of self-certification provisions regarding STS status in the Securitization Regulation, there have been suggestions by market participants that a third party certification regime would be more appropriate and may provide investors with greater levels of comfort. The Council has proposed that originators, sponsors and SSPEs might use the services of an approved third party to assess

Subject	Summary of EU provisions
	whether their securitization complies with the STS criteria. The EP Plenary Report also proposes permitting the use of a third party to check for compliance with the STS criteria but provides that liability for the STS determination remains with the originator, sponsor and SSPE. The ECB does not support the inclusion of a role for third parties in the provisions of the regulation. **Liability for STS status**: Perhaps one area of greatest concern is that originators and sponsors will be liable for any loss or damage resulting from incorrect or misleading STS notifications. The proposed sanctions are severe (including large fines and criminal liability) and would apply on a strict liability basis. The ECB and the rapporteur Paul Tan's preliminary report published before the ECON Committee Report both recommended reducing the severity of the sanctions and considering the imposition of sanctions only in the event of negligence. ESMA will be required to maintain a list of STS securitizations and a list of securitizations which have been determined to no longer be compliant with the STS criteria. Originators, sponsors and SSPEs will be under an obligation to inform ESMA as soon as a securitization becomes non-compliant with the STS criteria. **STS and synthetic securitizations, re-securitizations and CMBS:** On December 18, 2015, the EBA published a report summarizing the findings of its analysis and market practice assessment of the synthetic securitization market. The report supported the extension of STS capital requirements on senior synthetic tranches of SME portfolios that banks decide to retain when transactions benefit from financial guarantees by public bodies or credit default swaps provided by private investors that are fully cash collateralized. The EBA advised the EC to introduce a list of eligibility criteria that take into account the specificities of synthetic securitization and to include, among eligible transactions, those in which private investors provide credit protection in the form of cash. The EBA is currently preparing draft criteria for synthetic securitizations for review by the EC. The Council and the EP have both proposed that the EC should present a report and if appropriate a legislative proposal to the EP and to the Council on the eligibility of synthetic securitizations as STS securitizations within 18 months of the entry into force of the Securitization Regulation. The EP is of the view that such a framework should be limited to balance sheet securitizations The EP Plenary Report proposes that re-securitizations should not be permitted under the Securitization Regulation. The Council has also proposed that CMBS securitizations should be excluded from STS status as a result of the poor performance of parts of the CMBS market during the financial crisis. **Application and Grandfathering Arrangements** Although there are strong arguments in favor of just applying the new rules to new transactions entered into after the Securitization Regulation comes into effect, the EC's original proposal did not provide for this. Indeed the position on grandfathering of existing securitizations was not entirely clear, in particular in relation to those securitizations entered into on or after January 1, 2011 (or to which new exposures were added or substituted after December 31, 2014) but before entry into force of the Securitization Regulation. The EP Plenary Report proposes amending the EC's provisions to provide that legacy securitizations would continue to be subject to existing due diligence requirements rather than the requirements implemented under the Securitization Regulation.

<table>
<tr><th>Subject</th><th>Summary of EU provisions</th></tr>
<tr><td></td><td>The Council's amendments to the Securitization Regulation proposed that the Securitization Regulation would just apply to new securitizations which are issued on or after the date of its entry into force.

<u>Capital Requirements</u>

The CRR Amending Regulation will implement a new hierarchy of the three approaches for calculation of capital requirements, under the CRR, following the recommendations set out in the revised Basel framework for securitizations, which was published by the BCBS in December 2014. The CRR Amending Regulation will also adopt a more risk-sensitive prudential treatment for STS securitizations, broadly similar to that proposed by the EBA in its report on qualifying securitizations. The three approaches are re-calibrated in order to generate lower capital charges for positions in transactions qualifying as STS securitizations. In addition, senior positions in STS securitizations will also have the advantage of being subject to a lower floor of 10% (a floor of 15% which will continue to apply to non-senior positions in STS securitizations and to non-STS securitizations).

The EC proposed that the methods to calculate risk-weighted exposure amounts for securitizations should be applied in the following order: internal ratings based approach ("SEC-IRBA"), external ratings based approach ("SEC-ERBA"), standardized approach ("SEC-SA"). The EC suggested that SEC-ERBA may be replaced by the SEC-SA in relation to positions held in STS securitisations where the risk-weighted exposure amounts resulting from the application of SEC-ERBA is not commensurate to the credit risk embedded in the exposures underlying the securitisation. The Council has adopted a slight deviation from the Commission position, proposing that institutions may use SEC-SA rather than SEC-ERBA provided the securitisation position is a senior position where the requirement for a risk weight of 25% or lower is calculated in accordance with the SEC-SA, it is an STS securitisation and the application of SEC-ERBA would lead to risk-weighted exposure amounts in excess of 25% relative to SEC-SA. The EP has proposed that SEC IRBA should be used and then where it cannot be used, SEC-SA should be applied ahead of SEC-ERBA. Where SEC-SA may not be used or where its application results in a risk-weighted exposure amount of 25% in excess of the amount if SEC-ERBA was applied, the EP has suggested that the SEC-ERBA approach may be used, subject to conditions. The EP has also proposed that the SEC-ERBA approach could be generally used for auto loans and leases and equipment lease transactions.</td></tr>
</table>

These comparison and summary tables are 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 U.S. regulatory developments relating to securitization transactions as at June 1, 2017.

Acronyms and definitions

Acronym	Definition
ABCP	asset backed commercial paper
ABS	asset-backed securities
AIFM	Alternative investment fund manager
AIFMD	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (AIFMs)
AIFMR	Commission Delegated Regulation No. 231.2013 supplementing the AIFMD with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision
Article 122a guidance	Guidance issued by regulators on how to apply or interpret Article 122a of the Capital Requirements Directive
Article 8b RTS	Commission Delegated Regulation (EU) 2015/3 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments.
Assigned NRSRO System	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
BCBS	Basel Committee on Banking Supervision
CCP	Central Counterparty
CLOs	collateralized loan obligations
CMBS	commercial mortgage-backed securities
CRA	credit rating agency
CRA 3	Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies
CRA Regulation	the Credit Rating Agency Regulation
CRAs	credit rating agencies
CRD II	the Capital Requirements Directive 2009/111/EC
CRD IV	Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC
CRE Loans	qualifying commercial real estate loans
CRR	Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012
CRR Amending Regulation	the proposed regulation published by the European Commission on 30 September 2015, which will amend the CRR
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
EBA	European Banking Authority

Acronym	Definition
EC / Commission	the European Commission
ECB	European Central Bank
ECON Committee Report	the report published by the ECON Committee on the Securitization Regulation in June 2016
EIOPA	European Insurance and Occupational Pensions Authority
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories.
EP	European Parliament
EP Plenary Report	the report published by the European Parliament on the Securitization Regulation following its plenary vote on 19 December, 2016
ESAs	the European Supervisory Authorities being ESMA, the EBA and EIOPA
ESMA	European Securities and Markets Authority
Exchange Act	the U.S. Securities Exchange Act of 1934
FC	Financial Counterparty
Institutions	EU credit institutions or investment firms
Joint Regulators	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 and Exchange Commission
LCR	the liquidity capital requirement
MMF Delegated Act	the delegated act under the MMF Regulation which will incorporate the criteria for simple, transparent and standardised securitizations and will be adopted by the Commission following the publication of the Securitization Regulation in the Official Journal
MMF Regulation	the regulation on money market funds regulation, which is due to be published in the Official Journal imminently, following the completion of the trilogues in December, 2016
NFC	Non-financial counterparty
NFC+	NFC above the clearing threshold
NRSRO	Nationally recognized statistical rating organization
Reg AB II	Amendments to Regulation AB issued by the SEC in August 2014
Risk Retention RTS	CRR regulatory technical standards published in June 2014
RMBS	Residential mortgage-backed securities
SEC	U.S. Securities and Exchange Commission
SEC-ERBA	External ratings based approach
SEC-IRBA	Internal ratings based approach
SEC-SA	Standardized approach
Securities Act	the U.S. Securities Act of 1933
SFI	structured finance instruments
SFI Website	the website to be established by ESMA under CRA 3 to which information must be submitted by issuer, originators and sponsor in compliance with Article 8b of CRA 3
SME	Small and medium enterprises
Solvency II Delegated Act	Commission Delegated Regulation (EU) 2015/35

Acronym	Definition
	supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance
Solvency II Directive	Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance
SPE	special purpose entity
SSPE	securitization special purposes entity
STS	simple, transparent and standardized securitizations.
SUBI Issuer	the special purpose vehicle that issues a SUBI or collateral certificate
SUBIs	special units of beneficial interest
Supervisory Briefing	The briefing paper published by ESMA on 6 April 2017 setting out a common approach to the Credit Rating Agency Regulation's provisions for encouraging the use of smaller CRAs.
Securitization Regulation **CRR Amending Regulation**	the draft regulation published on September 30, 2015, by the Commission on securitizations as part of the implementation of its Action Plan (Action Plan) on Building a Capital Markets Union.
TILA	the Truth in Lending Act
TPDDS Provider	a third-party due diligence service provider under Rule 15 Ga-2
UCITS	Undertakings for Collective Investment in Transferable Securities
WAL	weighted average life

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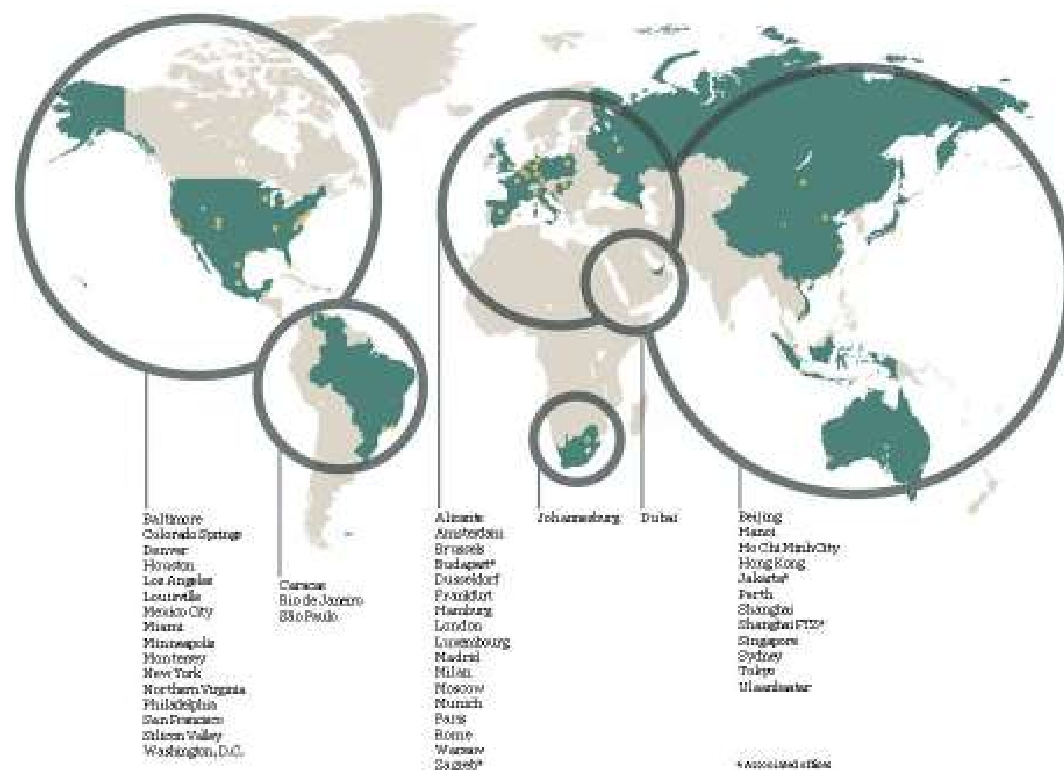

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