Hogan Lovells

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

February 2020

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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 originating 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 warehouse and 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 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.

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.

Hogan Lovells track record

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

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

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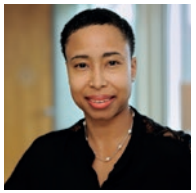

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Overview

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) or are subject to on-going re-evaluation (e.g., adjustments to the Volcker Rule), new regulatory framework applicable to securitizations appears largely settled for the time being. In the EU, implementation of the new securitization framework on January 1, 2019 marked a significant milestone in the development of a more harmonized regulatory approach to securitization within the EU and the creation of a new "simple, transparent and standardized" securitization label, although many of the detailed technical standards are still in the process of being finalized. Other international developments include the introduction of a risk retention regime in Japan from March 31, 2019.

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 ten 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 IV**"), the Credit Agency Regulation (the "**CRA Regulation**"), the Alternative Investment Fund Managers Directive (the "**AIFMD**") , the Alternative Investment Fund Managers Regulation ("**AIFMR**") and the Solvency II legislation, among others. Most significantly, on January 1, 2019, the new European securitization framework came into effect in EU member states.

The new European securitization framework has been implemented by way of two regulations. The first regulation (the "**Securitization Regulation**") harmonizes rules on risk retention, due diligence and disclosure across the different categories of European institutional investors. It applies to all securitizations (subject to grandfathering provisions) and also introduces a new framework for simple, transparent and standardized ("**STS**") securitizations. The second regulation (the "**CRR Amending Regulation**") largely implements the revised Basel framework for securitization in the EU and has introduced a more risk sensitive prudential treatment for STS securitizations.

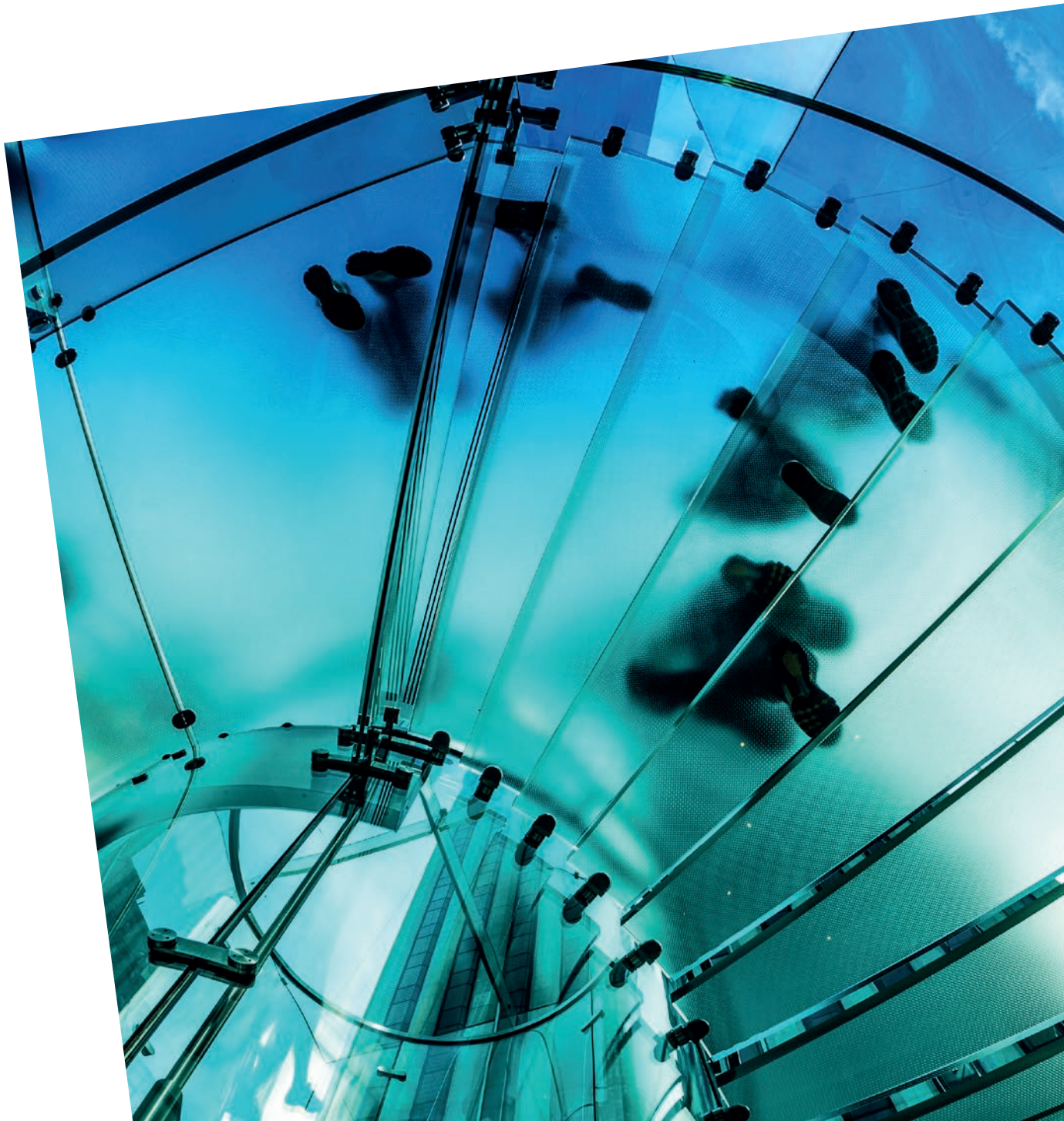
The new EU regulations have an impact on securitization markets far beyond the borders of Europe, as issuers and investors in the U.S., Canada, Australia and elsewhere grapple with the consequences of a two-track securitization regime very different from what is and likely will be in place in their home countries.

The creation of a label for securitizations and ABCP meeting specified high standards of simplicity, transparency and standardization/ comparability and related adjustments to capital treatment have 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 the 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. In a similar fashion, the brochure also summarizes the new STS framework for securitizations, for which no U.S. equivalent currently exists.

On January 31, 2020, the United Kingdom ("**UK**") ceased to be a member of the EU. Under the terms of a withdrawal agreement entered into by the EU and the UK, which has been implemented in the UK by virtue of the European Union (Withdrawal) Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020, EU law, rules and regulations (save for certain limited exceptions) continue to apply in the UK during the transitional period, which is currently set to end on December 31, 2020. The UK and the EU are currently negotiating the terms of the new relationship that will exist between them after December 31, 2020 and therefore how the existing EU regime will interact with the securitization regime in force in the UK after December 31, 2020 remains uncertain.



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

Key

- Rules which are currently in force
- Proposed Rules
- No equivalent provision

Subject	Summary of U.S. Provisions	Summary of EU Provisions
Retention of Risk	**Dodd-Frank Section 941** **12 CFR Parts 43, 244, 373 and 1234** **17 CFR Part 246** **24 CFR Part 267** 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 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.	**Article 6 of the Securitization Regulation** **General** On January 1, 2019, the securitization risk retention, due diligence and disclosure requirements under Articles 404-410 of the Capital Requirements Regulation (EU) 575/2013 ("**CRR**"), and equivalent risk retention and due diligence requirements under the Alternative Investment Fund Managers Directive ("**AIFMD**"), the Alternative Investment Fund Managers Regulation ("**AIFMR**") and Solvency II legislation were, subject to grandfathering provisions, repealed and replaced by Articles 5-7 of Regulation (EU) 2017/2402 (the "**Securitization Regulation**"). The rules set out in the Securitization Regulation have direct effect in member states and further detailed rules will be contained in technical standards and guidance to ensure uniformity of application and interpretation across member states. The Securitization Regulation has implemented several of the key recommendations set out in the EBA's opinion and report on application of the risk retention rules published in December 2014 (the "**EBA 2014 Risk Retention Report**"), specifically regarding the new direct risk retention obligation on originators and the need for an originator to be an entity of substance. While the key provisions relating to risk retention are set out in Article 6 of the Securitization Regulation, detailed requirements relating to risk retention are contained in regulatory technical standards (the "**SR Risk Retention RTS**"). To date, they have not been published in the Official Journal and therefore do not yet apply. This position has been contemplated under the Securitization Regulation which provides that the pre-existing risk retention technical standards promulgated under the CRR ("**CRR Risk Retention RTS**") will apply until such time

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	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% 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.	as the SR Risk Retention RTS are finalized and apply. Although many of the provisions in the SR Risk Retention RTS are broadly similar to those in the CRR Risk Retention RTS, there are a few key differences; most notably, the new sole purpose test for originators and the "no adverse selection test" for underlying assets. While the sole purpose concept is one that was addressed and discussed in the 2014 EBA Risk Retention Report, and therefore is relatively familiar to the European securitization market, the new "no adverse selection test" is not one that has applied before and therefore market participants will need to carefully consider these requirements. In the absence of any clarity on whether or not transactions issued between January 1, 2019 and the application date of the SR Risk Retention RTS will be grandfathered, market participants face the challenge of either trying to ensure that transactions meet the requirements of both sets of RTS or the consequences of having a transaction which does not meet the SR Risk Retention RTS requirements once they apply. In light of this, it may be sensible to adopt a more cautious approach and delay the issuance of securitizations involving more complex retention structures until the SR Risk Retention RTS apply. Note: Much of the discussion below on risk retention assumes that the SR Risk Retention RTS will be implemented in their current form; if further amendments are made, the analysis below may no longer reflect the final detailed rules on risk retention. **Retention Requirements** 5% retention remains: Despite much political debate during the legislative process of the Securitization Regulation, the level of risk retention has remained at 5% for all the five current methods of retention; therefore there has been no change from the CRR provisions that previously applied. "Direct" retention requirement added: In addition to the indirect requirement upon institutional investors under Article 5 (carried over from the previous CRR, AIFMR and Solvency II regimes) which requires such investors to verify that the retention requirement and related disclosure requirements have been met, Article 6 contains a new direct risk retention requirement on originators, sponsors and original lenders to retain, on an ongoing basis, a material net economic interest in a securitization of not less than 5%.

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	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 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	**Retainer** Originator retainer by default: Where an originator, sponsor or original lender have not agreed between them who will retain the material net economic interest, the originator shall be the retainer by default. Failure on the part of the retainer to retain on an on-going basis does not create an obligation for another transaction party to retain. Changes in retainer only in exceptional circumstances: Changes in retainer can only occur in a very limited number of exceptional circumstances where the retainer can no longer perform its role and the intention of the change of retainer is to continue to ensure the quality of the securitization transaction and its attractiveness to investors. The EBA has confirmed that the change of retainer cannot be a voluntary decision (as this would constitute a breach of the prohibition on sale/transfer provisions in the SR Risk Retention RTS) but must be the "*necessary and unavoidable consequence due to the transfer of a direct or indirect holding in the retainer or for legal reasons beyond the control of the retainer itself and of its shareholders*". Originator cannot be solely established to be retainer: In line with recommendations set out in the EBA 2014 Risk Retention Report, the new risk retention rules have introduced a requirement that an entity cannot be an originator where it has been "*established or operates for the sole purpose of securitizing exposures*". The SR Risk Retention RTS expand upon the new "sole purpose" test for originators by providing that "appropriate consideration" must be given to various principles including the entity's business strategy and capacity to meet payment obligations, that it has been established and operates for purposes consistent with a broader business enterprise and that it has responsible decision makers with required expertise to enable it to pursue the established business strategy. The principles-based nature of this test allows for the conditions of the sole purpose test to be given different weighting depending on the structure and type of securitization. **Portfolio Purchases and Aggregator Entities** The definition of "originator" under the Securitization Regulation continues to cover entities purchasing receivables for their own account and then subsequently securitizing them, in a same way as under the CRR. Therefore the definition of "originator" under the Securitization Regulation is wide enough to cover entities which purchase portfolios of assets and subsequently securitize them

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	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 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 "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	although additional care needs to be taken given the new sole purpose test applying to originators. **Multiple Retainers** The SR Risk Retention RTS provide that the retention requirement may be fulfilled by a single or multiple originators, sponsors or original lenders but must not be split amongst different types of retainers. There should be no multiple applications of the retention requirement. Where there are multiple originators/original lenders, the retention requirement may either be fulfilled by: • each originator/original lender in relation to the proportion of the total securitized exposures for which it is the originator/ original lender; • a single originator or original lender, provided the originator/ original lender 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. Where there are multiple sponsors, the retention requirement must be fulfilled by either each sponsor proportionately or the sponsor whose economic interest is most appropriately aligned with investors (as agreed by the multiple sponsors on the basis of objective criteria). There does not need to be an express written retainer agreement; the recitals to the SR Risk Retention RTS clarify that the disclosure of the identity of the retainer will be considered sufficient evidence of a decision on which entity is to retain. **No Adverse Asset Selection Test** Article 6 provides that originators must not select assets with the aim of rendering losses on those assets transferred to the SSPE higher than the losses on comparable assets held on the balance sheet of the originator unless disclosure of this is made to investors and potential investors and, upon request, competent authorities. The recitals to the Securitization Regulation also provide that there is no presumption that securitized assets should perform similarly to the average assets on the originator's balance sheet. The SR Risk Retention RTS also state that no breach of the adverse selection rules will occur where it could reasonably have been expected that the performance of the assets would not be

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	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 1.5 times 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 1.25 times for qualifying multi-family property loans, 1.5 times for qualifying leased loans, and 1.7 times 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." *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	significantly different, providing some comfort that the test relates to the selection process rather than actual asset performance. While the risk retention rules do generally apply to non-performing loans ("**NPLs**"), the recitals to the SR Risk Retention RTS provide that NPLs and other cases where there are no comparable assets are considered to meet the requirements of the "no adverse selection test" provisions, provided investors are informed that the comparability test cannot be performed. In addition, the SR Risk Retention RTS provide that when assessing the intent of the originator as regards adverse asset selection, and where no communication to investors or potential investors has taken place, such assessment must take into account the actions the originator has taken to comply with the "no adverse selection test", including any policies and procedures that the originator has put in place and applies internally in order to ensure that the securitized assets would reasonably have been expected not to lead to higher losses than the losses on comparable assets held on its balance sheet. Any policies and processes followed by the originator should be clearly documented and such records retained for future reference. **Hedging and Transfer of Risk Retention** Hedging of the retained risk is not permitted (subject to certain exceptions). The retainer is also prohibited from selling or otherwise transferring the retained net economic interest. Accordingly, lending (especially limited recourse lending) secured on the retained piece is likely to be problematic. The instrument representing the retained risk may be used as collateral for secured funding purposes subject to certain conditions. **Methods of Retention** The five different methods of retention specified in Article 405 have been retained in Article 6 of the Securitization Regulation. As was the case under the CRR regime, these methods may not be combined or changed during the term of the transaction (except in exceptional circumstances where the change is not used as a means to reduce the amount of the retained interest). The EBA has confirmed that "exceptional circumstances" do not include the implementation of the Securitization Regulation. The five methods of retention are: • vertical slice; • pari passu share;

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	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. *Securitizations of Seasoned Loans* The risk retention rules include an exemption for securities collateralized by servicing assets and "seasoned loans" that (i) have not been modified since their origination and (ii) have never been delinquent for 30 days or more. "Seasoned loans" include (a) residential mortgage loans that have been outstanding and performing for either (1) the longer of five years or the period until the loan's outstanding principal balance has been reduced to 25% of its original principal balance or (2) at least seven years and (b) any loan that is not a residential mortgage loan and that has been outstanding and performing for the longer of either (1) two years or (2) the period until the loan's outstanding principal balance has been reduced to 33% of its original principal balance. *Qualifying Resecuritizations* Although resecuritizations are generally subject to the risk retention requirements, a single-class pass-through resecuritization exemption does exist. If a transaction involves the issuance of a single class of notes, provides for the pass-through of all principal and interest payments received on the underlying ABS interests (net of issuer expenses), and the underlying ABS was fully compliant with the risk retention rules or was exempt pursuant to another exemption in the risk retention rules, then risk retention is not required on the resecuritization. *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,	• on balance sheet; • first loss tranche (similar to U.S. horizontal slice option but sized on the basis of nominal rather than market values); and • first loss exposure to every securitized exposure in the securitization. **Disclosure of Retention** The SR Risk Retention RTS confirm the need to disclose (i) the identity of the retainer, the capacity in which it retains (i.e. as originator, sponsor or original lender), and if it retains as originator, how it fulfils the conditions to show it has not been established for the sole purpose of securitizing exposures (ii) the form the retention will take, and (iii) 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. On a public transaction, disclosure in terms of retention is typically dealt with in the "Summary" and "Risk Factors" sections as well as in a dedicated risk retention section of the prospectus. In the context of a private deal the retention requirements are typically met via direct provision of information and representations and covenants in transaction documents. **Restrictions on Unfunded Forms of Retention** The SR Risk Retention RTS also place 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. **Consolidated Retention for Certain Regulated Entities** Under the Securitization Regulation, retention can be provided by any member of a group of specified financial entities supervised on a consolidated basis; this is the same as the position under the previous Article 122a CRD II and CRR regimes. Retention on a consolidated basis is only permitted where a consolidated group is headed by an EU parent credit institution, EU financial holding company or EU mixed financial holding company included within the scope of supervision.

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	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. **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, (ii) 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 (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.	**Nominal Value** Article 6 and the SR 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 any discount or premium). This is in contrast to the U.S. risk retention rules, under which a market value measurement would apply. Neither the acquisition price of assets, nor excess spread can be taken into account when measuring the retained interest. **Consequences of Breach** Member states are required to implement appropriate administrative sanctions which are "effective, proportionate and dissuasive" (in addition to criminal sanctions) in the event of negligence or intentional infringement where the originator, sponsor, original lender or SSPE has failed to comply with the requirements relating to risk retention, disclosure, criteria for credit-granting, STS criteria or if the originator or sponsor has made a misleading STS notification or failed to notify ESMA and their competent authority that a transaction is no longer STS compliant. Sanctions may take the form of a public censure statement, a temporary ban from producing STS notifications or a ban against any member of the originator's, sponsor's or SSPE's management body from exercising management functions or a fine (these can vary in size with maximum amounts of at least EUR5m (or the equivalent) or up to 10% of annual net turnover or at least twice the amount of the benefit derived from the infringement (even if this exceeds EUR5m or 10% of annual net turnover)) and criminal measures. **Grandfathering under the Securitization Regulation** The Securitization Regulation applies to those transactions the securities of which are issued on or after January 1, 2019. All securitizations which closed before January 1, 2019 are grandfathered. However, the grandfathering protection will be lost if there is a new issue of securities which could potentially occur in a variety of ways, for example, if new securities are actually issued, additional investors are added, investor commitment is changed and extensions of maturity. Grandfathered transactions remain subject to the pre-existing rules under the CRR, the AIFM Directive, AIFMR and the Solvency II Directive, as appropriate. Although every transaction must be considered individually, it is generally thought that transactions with redrawing

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	The Loan Syndications and Trading Association challenged the application of the rule to CLO managers of open market CLOs, in which the CLO manager is unaffiliated with the origination of the loans and purchases loans in the open market. On February 9, 2018, in Loan Syndications & Trading Ass'n v. SEC, 882 F.3d 220 (D.C. Cir. 2018) the U.S. Court of Appeals for the D.C. Circuit concluded that CLO managers of open market CLOs are not subject to the Exchange Act's risk retention rules. In reaching this conclusion, the court asserted that retention, conceptually speaking, implies some pre-existing possessory interest in the assets in question. Risk retention rules, in combination with the definition of "securitizer," "*have the effect of authorizing requirements that an entity which transfers assets to an issuer retain a portion of the credit risk from the underlying assets that it transfers*"; this, however, implies that a securitizer "*at some point possesses or owns the assets it is securitizing*" so that it may "*continue to hold some portion of those assets or the credit risk those assets represent...*" In contrast, the court pointed out that: *"...CLO managers do not hold the securitized loans at any point. Instead of being a financial institution originating or acquiring assets and then securitizing them, a CLO manager meets with potential investors and agrees to the terms of its performance as well as the risk profiles and tranche structures the CLO will ultimately take. The manager then directs a Special Purpose Vehicle ("**SPV**")...to issue notes in exchange for capital from the investors, the various notes reflecting the terms of the agreement and the kind and size of the investments. Only then does the SPV—using the investors' money and operating at the recommendation of the manager—purchase the assets to securitize them."* Further, the court could find no trace of a legislative intent to conflate "retain" and "obtain" in the provision. In fact, the court said, it would be "*an astonishing stretch of language to read a mandate to 'retain' to apply to one who would never hold the item at all apart from the mandate, with no congressional text mandating the prior acquisition.*" Id. at 226 (emphases in original). The court continued: "*Occasionally cases may arise, such as this one, in which those 'organizing and initiating' the securitization do not do so 'by transferring' the securitized assets to the issuer, while those that do transfer the assets are not the entities who organize or initiate the securitization in any meaningful way. However, if that is a 'loophole,' it is one that the*	or advance features (e.g. VFNs or RFCs) will not be considered new issuances of securities for these purposes, so deals issued before January 1, 2019 should be grandfathered. Some transactions issued before January 1, 2019 can become eligible for STS status if they meet certain conditions. *Please refer to the section below* 'Simple, Transparent and Standardized Securitizations: STS Criteria' *for more information.*

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	statute itself creates, and not one that the agencies may close with an unreasonable distortion of the text's ordinary meaning." Although the Court's decision related only to open market CLO managers, its interpretation of the definition of securitizer may also apply to exclude other managers or sponsors in securitization structures in which the manager/sponsor does not transfer assets into the structure or hold them prior to the transaction funding. Such transactions in other contexts need to be evaluated on a case by case basis. The period for appeal of the court's decision passed without appeal from any of the Joint Regulators and is therefore final. *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 be 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 acquired in the same form, amount, and manner required under one of the standard risk retention options or revolving pool securitization risk retention options.	

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	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 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	

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	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 "U. S. 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" 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.	

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Due Diligence and Disclosure: General	**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; – 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.	**Articles 5, 7 and 9 of the Securitization Regulation** **Due Diligence** The harmonized due diligence obligations on institutional investors are broadly similar to those contained in pre-existing financial services legislation, such as the CRR, AIFMD, AIFMR and Solvency II legislation, albeit they now apply to a wider range of investors, including undertakings for collective investment in transferable securities ("**UCITS**") and pension funds. Unlike for other key provisions of the Securitization Regulation, there are no technical standards relating to investors' due diligence obligations providing additional detail on the requirements. Under Article 5 of the Securitization Regulation, prior to holding a securitization position, institutional investors (other than the originator, sponsor or original investor) must verify that: • sound credit-granting criteria: where the originator is established in the EU but is not a credit institution or an investment firm, or • where the originator or original lender is established in a third country, that the underlying loans have been granted on the basis of "sound and well-defined criteria" and have clearly established processes and effective systems for the approval, amendment, renewal and refinancing of loans. Note that in the case of fully supported ABCP transactions and where the originator or original lender is established in the EU but is not a credit institution, the sponsor must verify that the appropriate credit-granting requirements have been met; • compliance with retention: the originator, sponsor or original lender has retained a material net economic interest of not less than 5% and has disclosed this to investors; and • compliance with disclosure requirements: the originator, sponsor or securitization special purpose entity ("**SSPE**") has complied with its disclosure obligations under Article 7 of the Securitization Regulation. There remains considerable uncertainty over the application of these rules to investments by EU institutional investors in non-EU transactions that do not comply with the underlying asset disclosure requirements under Article 7.

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		Institutional investors (other than the originator, sponsor or original lender) must carry out a due-diligence assessment that considers at least the following: • risk characteristics: the risk characteristics of the securitization and underlying exposures; • structural features: all the structural features of the securitization that can materially impact the performance of the securitization position, including the contractual priorities of payment, priority of payment-related trigger, credit enhancements, liquidity enhancements, market value triggers and definitions of default; and • compliance with STS criteria: with regards to an STS securitization, the compliance of the securitization with the relevant STS criteria. Institutional investors are permitted to rely to "an appropriate extent" on the STS notification and the information disclosed by the originator, sponsor and SSPE on compliance with the STS requirements, but cannot "solely or mechanistically" rely on such notification or information. Institutional investors are also required to: • written procedures: establish appropriate written procedures in order to monitor ongoing compliance of the originator, original lender or sponsor with their obligations under the Securitization Regulation (e.g., the requirements to comply with the risk retention and transparency provisions) and the performance of the securitization and the underlying exposures; • stress tests: regularly perform stress tests on the cash flows and collateral values supporting the underlying exposures (or in the case of fully supported ABCP, on the solvency and liquidity of the sponsor); • management of risk: ensure its management body is aware of the material risks and that such risks are adequately managed; and • demonstration to competent authorities: be able to demonstrate to competent authorities, upon request, that it has a comprehensive and thorough understanding of the securitization position and its underlying exposures (or in the case of fully supported ABCP, that is has a comprehensive and thorough understanding of the sponsor and of the terms of the liquidity facility.

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		An institutional investor may delegate its due diligence obligations to a third party if such entity is also an institutional investor and has authority to make investment management decisions on behalf of the delegating investor's behalf; in this situation, the managing entity may face sanctions if it fails to fulfil the due diligence obligations of an institutional investor. As stated above, institutional investors are required, among other matters, to verify that the originator, sponsor or original lender has complied with the 5% risk retention requirement and that the originator, sponsor or SSPE has complied with the disclosure obligations. Given that the technical standards have not been finalized in relation to these obligations, institutional investors will need to consider the impact on their due diligence of securitization parties being required to comply with the pre-existing CRR and CRA 3 requirements, the challenges these are posing for such parties (discussed below) and the impact of the November 2018 statement of the European Supervisory Authorities ("**ESAs**") regarding disclosure compliance on investors' due diligence obligations. **Credit-Granting** Article 9 of the Securitization Regulation includes credit-granting criteria, which apply to both STS and non-STS securitizations, requiring originators, sponsors and original lenders to apply the same "sound and well defined" criteria relating to securitized exposures as they apply to non-securitized exposures. Originators, sponsors and original lenders are required to have clearly established processes and effective systems for the approval, amendment, renewal and refinancing of loans and to ensure that the credit-granting is based on a thorough assessment of the obligor's creditworthiness. The recitals to the Securitization Regulation indicate that credit-granting criteria need not be met with respect to trade receivables that are not originated in the form of a loan. Where the originator or original lender is either (a) established in the EU but is not a credit institution or an investment firm in accordance with the CRR or (b) is established in a third country, institutional investors are required to verify that appropriate credit-granting criteria, systems and processes have been applied to underlying exposures. In addition, where the originator or original lender is not a credit institution or investment firm under the CRR established in the EU, the STS notification must be accompanied by confirmation from the originator or original lender that (i) its credit-granting is done

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		on the basis of sound and well-defined criteria and well-established processes in accordance with the credit-granting provisions of the Securitization Regulation and (ii) whether or not such credit-granting is subject to supervision. The Securitization Regulation provides that where an originator acquires and then securitizes exposures from a third party, it 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 requirements specified in the Securitization Regulation, although this requirement does not apply if the original agreement was created before the entry into force of the Mortgage Credit Directive on March 21, 2014 and the credit-granting criteria set out in the CRR Risk Retention RTS are complied with. This particular provision has raised concerns for older portfolios, where records may no longer be available and also in relation to its impact on the secondary market for NPLs; often it is impossible to verify the credit-granting criteria for such loans due to the number of times they have changed hands and, in the event, that such credit-granting criteria are identified, they may not be of an appropriate standard. The credit-granting provisions also provide that where the underlying exposures are residential loans made after the entry into force of the Mortgage Credit Directive on March 21, 2014, the pool will not be able to include any self-certified loans. This has caused some concern over securitization of older loan portfolios as the Mortgage Credit Directive did not apply in member states until March 21, 2016 and therefore there are self-certified residential loans that were made between 2014 and 2016 that will not be eligible for inclusion in a securitization pool. **General Disclosure Requirements** The new disclosure obligations applying to all securitizations are much more detailed than the general disclosure requirements under the previous CRR regime and are more akin to the requirements in the Article 8b CRA 3 RTS and include disclosure of the following: • information on the underlying exposures, on a quarterly basis, or, in the case of ABCP, information on the underlying receivables or credit claims, on a monthly basis; • the offering document/prospectus and all underlying transaction documentation (or a summary thereof) that is essential for the understanding of the transaction, including a detailed description

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		of the priority of payments of the securitization, before pricing; • for private transactions (i.e. where no prospectus is available), a transaction summary of the main features of the securitization, before pricing; this could take the form of an amended and expanded term sheet, initialed for identification purposes; • quarterly investor reports, or, in the case of ABCP, monthly investor reports; and • any inside information required to be made public under the Market Abuse Regulation ("**MAR**") or where MAR does not apply, any significant event such as a material breach, change in structural features or risk characteristics that can materially impact the performance of the securitization, loss of STS status (where relevant) or material amendment of the transaction documents, without delay. Such information must be provided to investors and competent authorities and, upon request, to potential investors. There are additional disclosure requirements in the case of STS securitizations. These include the provision, before pricing, of the STS notification, at least five years static and dynamic historical default loss data and a data liability cash flow model. For more information on transparency requirements for STS transactions, please refer to the section below "*Simple, Transparent and Standardized Securitizations: STS Criteria*". While the direct disclosure obligations fall on the originator, sponsor and SSPE, EU institutional investors need to verify compliance with these obligations under Article 5. This may mean that non-EU originators, sponsors and SSPEs need to provide the information required by Article 7 so that any EU institutional investors in the transaction can comply with their obligations. For more information on the due diligence obligations of investors, please refer to the section above "*Due Diligence and Disclosure: General- Due Diligence*". **Disclosure Technical Standards & ESMA Q&As** Detailed rules on disclosure and the templates relating to the disclosure of loan level data, investor reporting, inside information and significant events are included in the disclosure RTS and ITS (together the "**Disclosure Technical Standards**"). These have not yet been published in the Official Journal, despite the new disclosure rules coming into effect on January 1, 2019. The Disclosure Technical Standards were adopted by the Commission in October 2019,

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		and publication in the Official Journal is now expected imminently. The Disclosure Technical Standards are likely to enter into force towards the end of Q1 2020 and are expected to apply immediately; it is unlikely that there will be a delayed or phased implementation period for the reporting templates. The provisions in the Disclosure Technical Standards are split into those provisions which apply to all securitizations and those provisions which apply to public securitizations only. While it was initially hoped that private transactions would be exempted from many of the disclosure requirements set out in Article 7, this is not the case. In addition, the Disclosure Technical Standards confirm that the templates for underlying exposures and investor reporting apply to both public and private transactions. The templates relating to inside information and significant events apply only to public securitizations but private transactions still have to disclose such information. The European Securities and Markets Authority ("**ESMA**") has also published some Q&As on the disclosure requirements under the Securitization Regulation ("**ESMA Q&As**"), which are designed to deal with those issues where additional guidance is required to facilitate a smooth transition to the new disclosure regime. The ESMA Q&As address various issues concerning securitization repositories, STS notifications and confirm the templates are relevant for both private and public securitizations. They also cover certain matters common to many of the disclosure templates as well as issues relating to particular template fields. It should be noted that while the delay in the publication of the Disclosure Technical Standards has impacted upon the ability to complete the requisite data templates (discussed further below), it does not prevent the provision of other information required under the Securitization Regulation, such as the disclosure of transaction documents, the prospectus/offering document, the transaction summary (for private transactions) and the STS notification (though the process for submitting STS notifications is also in an interim form due to the delayed publication of the technical standards relating to format and content of STS notifications (the "**STS Notifications Technical Standards**"). **Transitional Arrangements** The Securitization Regulation provides that in the event that the Disclosure Technical Standards are not finalized by January 1, 2019 the

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		templates contained in CRA 3 must be completed until such time as the Disclosure Technical Standards apply. This means that originators, sponsors and SSPEs may need to prepare for disclosure using the CRA 3 templates and then under the Disclosure Technical Standards, once they apply. The CRA 3 loan level data templates were only intended for use in relation to public securitizations with certain types of underlying assets. This is confirmed in the recitals to CRA 3 but these recitals have not been imported into the Securitization Regulation and therefore it is assumed that market participants are meant to use these templates for both public and private transactions. The ESAs have acknowledged that they are aware of the severe operational challenges facing Reporting Entities in complying with these transitional provisions (in particular for those reporting entities that have never provided information set out in the CRA3 templates) and have attempted to provide limited comfort regarding compliance with the CRA3 templates by calling for competent authorities to "*generally apply their supervisory powers in their day-to-day supervision and enforcement of applicable legislation in a proportionate and risk-based manner*". The ESAs further elaborate by stating that "*This approach entails that [competent authorities] can, when examining reporting entities' compliance with the disclosure requirements of the Securitization Regulation (which will apply from 1 January 2019, albeit in a non-standardized manner), take into account the type and extent of information already being disclosed by reporting entities. This approach does not entail general forbearance, but a case-by-case assessment by the [competent authorities] of the degree of compliance with the Securitization Regulation.*" It is thought that competent authorities will follow the general approach suggested by the ESAs. For public securitizations with one of the more usual asset types, the completion of the corresponding CRA3 template should not be too difficult, particularly as originators of these transactions are likely to have been familiar with producing similar templates under the ECB and Bank of England liquidity schemes. For other deals, though, including private transactions, this may prove more challenging. While firms need to be able to show regulators that they have acted in good faith when trying to comply with the requirements in the transitional provisions, it should be noted that the provision of information does not necessarily have to be in the same form as the templates, particularly if it has been provided in another format in the past.

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		Originators, sponsors and SSPEs may wish to consider conducting a gap analysis, to assess how many template fields they cannot provide information for and then provide explanations for why they cannot complete them. This approach should, in the absence of the entry into force and application of the final disclosure technical standards and templates, satisfy competent authorities of an entity's good faith efforts to comply with the transitional provisions, in line with the ESA's statement. In addition, given that the Commission has now adopted the Disclosure Technical Standards, parties may also wish to consider using the forms of the revised templates as these may be more suited to the specific type of transaction involved and such action may facilitate compliance with the new templates when they apply and highlight any areas that will present difficulty. *For more information on the disclosure templates, please refer to section "Due Diligence and Disclosure of Loan Level Data, Investor Reports, Inside Information and Significant Events".* **Provision of Disclosure : Reporting Entities & Data Submission** *Reporting entities* Article 7 requires the originator, sponsor and SSPE to designate amongst themselves one entity (the "**Reporting Entity**") to fulfil the disclosure requirements (although they each remain responsible for the completeness and accuracy of the information). In relation to public transactions, such information must be made available via submission to a securitization repository. If no repository yet exists, disclosure must be made on a website meeting certain specified criteria. Private transactions are exempt from the requirement to submit data to a securitization repository, but all other disclosure requirements apply to them. The ESMA Q&As confirm that while the Reporting Entity may outsource the task of reporting to a third party, such delegation does not affect the liability of the originator, sponsor and SSPE for such responsibilities under the Securitization Regulation. *Public securitizations & securitization repositories* The Securitization Regulation contains rules on the registration, authorization and supervision of securitization repositories, operational standards (which includes verification of the completeness and accuracy of the information) and to whom securitization repositories must provide "*direct and immediate and*

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		free of charge access" to certain stored information (this includes the ESAs, ECB, supervisory authorities as well as investors and potential investors). These requirements, which include a requirement for all securitization repositories to be established in the EU, are broadly consistent with those which already exist for data repositories under the European Market Infrastructure Regulation ("**EMIR**") and the Securities Financing Transactions Regulation. The detailed technical standards for securitization repositories were adopted by the Commission in November 2019 but have not yet been published in the Official Journal and consequently do not currently apply. In December 2019, ESMA published guidance on registering securitization repositories. The guidance provides information on ESMA's registration process for entities that intend to apply to become securitization repositories (including information on fees, timelines, deadlines and details of the application and assessment process and notification). The guidance confirms that ESMA will not begin assessment of applications until the technical standards relating to securitization repositories have entered into force. Since ESMA does not have a legal mandate to receive and assess applications for authorizations of securitization repositories until the technical standards are published in the Official Journal, there is currently no EU-authorized securitization repository to which data relating to public securitizations can be submitted. Consequently, any public securitizations closing before the technical standards are published will need to make relevant disclosures available via a website, meeting the conditions specified in the Securitization Regulation. Most Reporting Entities will not have websites that meet these requirements, so will use the services of one of the entities which currently provide such facilities. Such entities may well apply for registration as a securitization repository, which will ease the transition to the new securitization repository regime, with Reporting Entities not then having to consider migration from a website provider to a securitization repository. The ESMA Q&As confirm that once at least one securitization repository is registered by ESMA, information on public securitizations must be made available by means of a securitization repository. A Reporting Entity is not required to re-report to a securitization repository previously reported information submitted

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		to a website prior to the registration of the first securitization repository. The ESMA Q&As also confirm that a Reporting Entity is not required to re-report previously reported information using the templates in the Disclosure Technical Standards once they apply. The templates must be used from the date of their application but "*do not have retroactive effect on previously reported information*". However, ESMA does emphasize that preparing previously reported information and re-reporting it to a securitization repository using the templates in the Disclosure Technical Standards "*is expected to substantially facilitate investors' and potential investors' ability to thoroughly monitor and conduct due diligence on the securitization transaction in question*". The ESMA Q&As recommend "at a minimum" that to the extent a securitization repository can host information previously reported using other templates, transmitting such information to a securitization repository would substantially benefit investors, potential investors and other users of securitization data. *Private securitizations* Private transactions are exempt from the requirement to submit data to a securitization repository; the Securitization Regulation does not specify how information for private transactions is made available to investors, competent authorities or potential investors. Therefore, market participants will need to check whether their national competent authorities publish any directions, specifying requirements and consider how they will make information available to investors and potential investors. The UK's FCA and PRA have issued a joint direction which provides that, for private transactions, a summary of information may be submitted to them (in accordance with prescribed templates and timeframes), provided that all information required in accordance with the transparency requirements of the Securitization Regulation, is available to them upon request. The direction came into force on January 31, 2019 but applies to all private transactions as if it had taken effect from January 1, 2019.

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Due Diligence and Disclosure: Loan Level Data, Investor Reports, Inside Information and Significant Events	**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 and the asset-level disclosure requirements became mandatory on November 23, 2016. **Asset Level Disclosure** Reg. AB II requires ABS issuers to disclose asset-level information for ABS backed by residential mortgages, commercial mortgages, auto loans, auto leases, and debt securities (including resecuritizations). Reg. AB II asset-level disclosure does not apply to other types of ABS, including those backed by equipment loans and leases, student loans, floorplan financings, managed pools such as CLOs, and synthetic transactions (although the original proposals with respect to these asset classes have not been withdrawn and could be enacted in the future in some form). The number of data points required to be included in the asset-level data depends on the type of asset, and in some cases, such as ABS backed by residential mortgages, there are up to 270 different data points required to be included. Required asset-level data includes, among other items, information related to the terms of the asset, a unique identifying asset number, the identity of the servicer and the servicing advance methodology, the characteristics of the obligor, the underwriting of the asset, collateral related to each asset, and cash flows related to each asset, such as timing and amount of payments and expected changes to payment terms over time. Asset-level disclosure is required to be made at the time of the offering as part of the preliminary and final prospectuses, and on an ongoing basis as part of periodic Form 10-D filings. This asset-level information is required to be provided in standardized, tagged data	**Article 7 of the Securitization Regulation** **Disclosure Technical Standards** *Loan Level Disclosure* In preparing the underlying exposure reporting templates, ESMA took the ECB's loan level data templates (discussed below) as a starting point, adopting the same level of granularity (loan/lease-level depth) and amending them to reflect recent developments and the different scope of disclosure requirements under the Securitization Regulation, particularly in relation to credit risk and the variety of entities receiving the information. The new templates require significant investment of resources on the part of originators and sponsors to implement internal processes to accommodate the new reporting templates and there are also concerns that large amounts of the required data will be difficult for some originators to provide, particularly given that the templates apply to private transactions as well. In the ESMA Opinion, ESMA indicates that it has tried to address some of these issues by making minor adjustments to certain template fields and also by increasing the number of fields that may use "No Data" options. However, market participants continue to have significant concerns with the templates. In the ESMA Q&As, ESMA has cautioned that the 'No Data' options should not be used as a means to seek an exemption from reporting requirements. Further, the ESMA Q&As state that the provision of empty fields in a data submission would be a violation of the Disclosure Technical Standards and would lead to a rejection of the data by the securitization repositories (for public securitizations) and to possible action by the relevant national competent authority. On January 17,2020, ESMA published a consultation paper setting out proposed guidelines on securitization repositories data completeness and consistency thresholds. The draft guidelines specify the extent to which "No Data" options 1-4 can be used and propose different thresholds for the use of such "No Data" options for each of the underlying exposure templates. The thresholds will not apply to those templates relating to investor reporting, inside information or significant events. If the thresholds are exceeded, the securitization repository will be required to reject the data submission on the basis of it not being sufficiently representative of the underlying exposures in the securitization. Some of the initial thresholds proposed are based upon historical data collected by the ECB. Due to a lack of historical ECB data for ABCP, non—performing exposures and esoteric exposures, no initial

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	format called eXtensible Mark-up Language (XML) and posted on EDGAR so that it is publicly available. Securities Act Registration Under Reg. AB II, a complete preliminary prospectus must be filed under Rule 424(h)(1) at least three business days prior to the date of the first sale in an offering of ABS issued under a shelf registration statement. This preliminary prospectus must contain all information required in the final prospectus other than certain pricing and underwriting fee information. If there is any material change from the information set forth in the preliminary prospectus, a prospectus supplement must be filed at least 48-hours before the date and time of the first sale of the offering and must clearly state what material information has changed from the initial preliminary prospectus. In order to distinguish the ABS registration system from the registration system for other securities, Reg. AB II also establishes two new forms for registering ABS offerings, Form SF-1 for standalone ABS issuances and Form SF-3 for ABS shelf issuances. Unlike Form S-3 shelf registration statements that allow the use of a base prospectus and supplemental prospectus, Reg. AB II, in an attempt to require issuers to make periodic assessments of their continued eligibility to conduct 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: • CEO Certification: The chief executive officer of the 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. • 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	restrictions will apply to the use of "No Data" options, although this is likely to change over time. The initial thresholds for data completeness proposed in the consultation paper may be gradually tightened, once the market participants have had time to improve data collection and reporting protocols. However, there is no indication in the consultation paper of how significant the adjustments to the thresholds will be or how quickly they would be implemented. While only public deals have to report to securitization repositories, there remains some uncertainty regarding the extent to which securitizers or investors will apply the thresholds to private transactions. *Investor reports* Two investor report templates are provided for in the Disclosure Technical Standards (one applicable generally and one applicable for ABCP securitizations). The investor report templates include disclosure on the following (among other matters): • securitization-level information: e.g. type of securitization (true sale/ synthetic, standalone/master trust), exposure type, risk retention method, information on exposures , risk weight approach, arrears; • triggers/events: e.g. description of the trigger/event, threshold level, cure period, consequence of breach; • cash-flow information: this includes information on asset and liability related cash flows. It is only required for non-ABCP securitizations; For ABCP transactions, the investor reporting template requires the disclosure of program-level and transaction-level information. *Inside information/significant event templates* The Disclosure Technical Standards contain templates for the reporting of inside information and significant events. There is just one template each for ABCP and non-ABCP, covering both inside information and significant events. ESMA has confirmed that the inside information and significant event templates are only relevant for public securitizations; private transactions still have to disclose such information but do not need to use the prescribed template.

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	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. • 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. • 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. *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 set out in the section "Shelf Eligibility- Transaction Requirements" above 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	**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. The Eurosystem published the loan-by-loan information requirements on existing and newly issued ABS, firstly for residential mortgage-backed securities and then gradually for SME loans, CMBS, auto loans, consumer financing and leasing transactions and credit card receivables. 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. The ECB announced additional requirements for modifications to ABS that have been submitted as collateral. To facilitate reporting of loan level data, the assets must consist of a homogenous pool. The ABS data supplied via the templates is processed and disseminated as necessary by the European Datawarehouse. As of 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 mandatory compliance score required. From April 16, 2018, CMBS were no longer accepted as collateral. On March 22 2019, the ECB announced that it will be amending the loan-level data reporting requirements for the Eurosystem collateral framework to more closely reflect the disclosure requirements and registration process for securitization repositories set out in the Securitization Regulation. In particular, in order to be eligible as collateral, loan level data must be provided in the templates prescribed in the Disclosure Technical Standards and must be submitted to a Securitization Repository. These amendments will not come into effect until the Disclosure Technical Standards have entered into force and at least one securitization repository has been registered with ESMA; it is anticipated that this will occur during

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	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 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.	H1 2020. Submission of loan level data to a repository other than a securitization repository using the ECB loan-level data reporting templates will be permitted for a period of three years and three months after the new requirements apply, but after such time ABS reporting in this manner will be ineligible as collateral. *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".*

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Due Diligence and Disclosure: Disclosure of Repurchases	**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 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).	There is no EU equivalent of the U.S. provision, but repurchase information is required for the new investor reports under Article 7 of the Securitization Regulation.

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Due Diligence and Disclosure: Third Party Due Diligence Reports	**Dodd-Frank Section 932 and Exchange Act Rules 15Ga-2, 17g-5, 17g-7, 17g10** 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 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	**Article 22 of the Securitization Regulation** For STS securitizations only, before issuance of the securities, an audit of a sample of underlying exposures must be undertaken by an appropriate and independent party. Although common for some asset classes, file audits have not been universally undertaken in the past for securitizations and were not required until applicable regulations. The STS Guidelines clarify that those underlying exposures selected should be from the provisional portfolio from which the securitized pool is extracted and which is in reasonably final form. For multiple issuance securitizations, including master trusts, a new verification should be completed prior to issuance, where a year has passed since the previous verification. The STS Guidelines also clarify that while disclosure is required that the verification has occurred and that no significant adverse findings have been found, no details need to be provided of the parameters of the verification or the criteria applied for determining the representative sample. *For further information on STS transparency requirements and the STS criteria more generally, please refer to the section "Simple, Transparent and Standardized Securitizations: STS Criteria".*

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	• 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. Rule 17g-5 provides that a rating agency that is not hired by an issuer, sponsor, or underwriter of a security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction is able to obtain the same information that the issuer, sponsor, or underwriter provides to a rating agency hired to determine a credit rating for such security or money market instrument. The rule requires a hired rating agency to maintain on a password-protected website a list of each structured finance product for which it currently is in the process of determining an initial credit rating and to provide free and unlimited access to any rating agency that, among other things, certifies it will access the website solely for the purpose of determining and monitoring credit ratings. As a consequence, Rule 17g-5 is that all information furnished to a rating agency needed to be posted on the relevant website. In August 2019, the SEC approved changes to Rule 17g-5 amending Rule 17g-5 to exclude certain non-U.S. transactions from the requirements of Rule 17g-5. The modifications effectively implement into Rule 17g-5 the relief which had previously been granted by the SEC as a temporary conditional exemption. Under the amended regulation the requirements of Rule 17g-5 do not apply if: • the issuer of the relevant security is not a U.S. person (as defined in Regulation S of the Securities Act); and • the hired rating agency has a reasonable basis to conclude that all offers and sales of the relevant security by any issuer, sponsor, or underwriter linked to the security will occur outside the U.S. (as that phrase is used in Regulation S under the Securities Act).	

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Restrictions on Types of Securitizations	There is no specific U.S. equivalent of the EU provision.	**Article 8 of the Securitization Regulation** Re-securitizations are prohibited under Article 8 of the Securitization Regulation, except in limited circumstances ("legitimate purposes"). While the Securitization Regulation does not appear to impose an obligation to ensure that no re-securitizations are entered into on any particular entity or transaction party, it is pertinent for all transaction parties and investors to avoid issuing/investing in re-securitizations. Fully supported ABCP programs will not be classified as re-securitizations for the purposes of the prohibition, provided that none of the ABCP transactions within the relevant program is a re-securitization and that the credit enhancement does not establish a second layer of tranching at the program level.
Rating Agencies: General Provisions Relating to Conflicts of Interest and Disclosure; Increased Competition	**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."	**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.

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	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 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. **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.	**CRA 3** Further amendments to the CRA Regulation (known as "**CRA 3**") came into force on June 20, 2013. CRA 3 was introduced to reduce over-reliance on credit ratings and conflicts of interests and to increase competition among credit rating agencies. The main changes included requirements for two CRAs for structured finance transactions, consideration of small and medium-sized CRAs and disclosure requirements for structured finance transactions. *Disclosure requirements for structured finance transactions* From January 1, 2019, the CRA 3 disclosure provisions were, repealed and replaced by similar provisions set out in Article 7 of the Securitization Regulation. The disclosure obligations set out in Article 8b of CRA 3 required the issuer, the originator and the sponsor to jointly publish on a website information on the structure, credit quality and performance of the underlying assets of a structured finance instrument as well as any information that is necessary to conduct comprehensive and well informed stress tests on the cash flows and collateral values supporting the underlying exposures. They were supplemented by regulatory technical standards (the "**Article 8b RTS**"). The disclosure requirements under CRA 3 and the Article 8b RTS were never fully implemented due to the lack of a website on which issuers, originators and sponsors were required to publish information. In addition, the disclosure requirements did not apply to transactions of an asset class until ESMA has produced a reporting template for that asset class. While templates were produced for RMBS, CMBS, SME loans, auto loans, consumer loans, credit cards and leases, these were specifically stated as not applying to private or bilateral securitizations. The Securitization Regulation and the Disclosure Technical Standards, among other matters, amend and restate many of the disclosure requirements set out in Article 8b of the CRA 3 Regulation and the related Article 8b RTS and provide further clarity on the reporting obligations applicable to securitization transactions.

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	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.	Although repealed and replaced by the Securitization Regulation, the templates in the Article 8b RTS remain relevant due to the transitional provisions in the Securitization Regulation which provide that in the event that the Disclosure Technical Standards do not yet apply, the disclosure templates from the Article 8b RTS must be completed. *For further information on the transitional arrangements applying to disclosure under the Securitization Regulation, please refer to section "Due Diligence and Disclosure: General- Transitional Arrangements".* *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 ("**SFIs**") to obtain ratings from two credit rating agencies where an issuer pays for those ratings. In April 2016, 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 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 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

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	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, 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 of prescribed information about the credit rating. **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.	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 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. ESMA's 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. *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.

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		Methodologies CRA 3 introduces measures to improve CRAs' methodologies and processes. *Market Share* In November 2019, ESMA published its most recent annual report listing all EU registered credit rating agencies at that date. The report also included data on 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 November 2019, there were 28 registered credit rating agencies. Based upon the figures provided in the 2018 audited financial statements submitted by the CRAs to ESMA, all but three of the credit rating agencies each had a total market share of 10% or less. Three rating agencies collectively had a total market share of 92.1%. Ten of the registered credit rating agencies offer ratings services for structured finance products. 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 has included information relating to the type of ratings provided by the different rating agencies and has suggested that issuers and related third parties consider this additional information before appointing CRAs. The latest annual report includes data on the proportion of EU financial instruments with specific asset classes rated by an EU CRA.

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Credit Rating Agencies: Requirement for Description of Representations and Warranties in Reports	**Dodd-Frank Section 943 and Exchange Act Rule 17g-7** NRSROs must include in any repor t 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". For the 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.	**There is no EU equivalent of the U.S. provision although CRAs may in practice nonetheless make Rule 17g-7 disclosure.**
Restrictions on Investments in Securitizations	**There is no specific U.S. equivalent of the EU provision although the existing requirements of Rule 2a-7 address many of the same issues (e.g., WAL and concentration limits).**	**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, the MMF Regulation was finally published in the OJ on June 30, 2017. It entered into force on July 20, 2017 and, for the most part, applied from July 21, 2018. Technical standards and guidelines relating to the MMF (including the qualitative and quantitative indicators relating to securitizations which need to be referred in the credit quality assessment methodology of a manager of an MMF and reporting templates for MMF managers) have been published in the Official Journal. The aim of the MMF Regulation is to ensure that MMFs are able to withstand 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.

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		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 quality assessment and must either be: • a securitization which meets the requirements of Article 13 of the Liquidity Coverage Requirement ("**LCR**") Delegated Regulation for Level 2B securitizations which addresses (among other matters) the credit quality, seniority, deal structure and nature of the underlying assets; • an ABCP issued by an ABCP Program 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 do not include any securitization position; and – does not include synthetic securitizations. • a STS securitization or ABCP. The Securitization Regulation was negotiated separately from the MMF Regulation and the negotiation of the Securitization Regulation concluded several months after the MMF Regulation had been finalized. Consequently, the MMF Regulation provided for the adoption of a delegated act (the "**MMF Delegated Act**") within six months of the Securitization Regulation entering into force in order to incorporate appropriate cross references to the STS criteria into the MMF Regulation. On July 13, 2018, a delegated regulation was published in the Official Journal which, among other matters, amended the MMF Regulation to incorporate reference to the STS criteria from January 1, 2019. *Maturity and Weighted Average Life* The MMF Regulation draws a distinction between: • "Short-term MMFs"- which may only invest in a securitization and 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

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		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 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 and concentration* Articles 17 and 18 of the MMF Regulation include investment and concentration limits on the percentage of assets that a MMF may invest in securitizations and ABCP. Until the Securitization Regulation came into force and the MMF Delegated Act applied, the aggregate of all exposures to securitizations and ABCPs could not exceed 15% of the assets of a MMF. From January 1, 2019, MMFs are permitted to invest no more than 20% of their assets

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		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 including: • 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	**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: • 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. Certain securitization swaps that have "optionality" or bespoke or unique early termination events may not be eligible for clearing and should be reviewed on a case by case basis.	**European Market Infrastructure Regulation** **EMIR requirements** 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 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

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	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 and who notify the CFTC on how it generally meets its financial obligations associated with entering into non-cleared swaps. (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; • 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.	• 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).
EMIR and Dodd Frank: Clearing and Margin obligations – Hedging in Securitization	**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	**Classification of SPVs** Under EMIR, a securitization special purpose vehicle is generally classified as an NFC and therefore is not subject to the clearing obligation and only needs to comply with less stringent requirements so long as the notional of its aggregate eligible swap liabilities (ie excluding hedging transactions) remains below the relevant threshold (an NFC-).

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	– variation and initial margin – came 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 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.	**STS Transactions** Article 42 of the Securitization Regulation amends EMIR to provide that derivatives entered into by SSPEs in relation to STS transactions should not be subject to the clearing obligation provided certain conditions are met, including that the OTC derivative contract is used only to hedge interest rate or currency mismatches under the securitization and that the securitization arrangements adequately mitigate counterparty credit risk. Article 42 of the Securitization Regulation further amends EMIR to provide that in respect of non-cleared derivatives, the level of collateral required should take into account the specific nature of securitization arrangements and any impediments faced in exchanging collateral. The recitals to the Securitization Regulation state that the clearing and margin requirements in EMIR should be amended to ensure consistency of treatment between derivatives associated with covered bonds (for which there are already certain exemptions in EMIR) and derivatives associated with securitizations. In December 2018, the ESAs published two final reports containing final draft RTS seeking to amend the clearing obligation and risk mitigation techniques for uncleared derivatives in order to provide specific treatment for STS securitization and ensure a level playing field with covered bonds. The final draft RTS on amendments to the EMIR Clearing obligation under the Securitization Regulation provide that the clearing obligation will not apply to derivatives entered into by SSPEs in relation to STS transactions which adequately mitigate credit risk following conditions where: • the counterparty to the OTC derivative concluded with the SSPE ranks at least pari passu with the holders of the most senior tranche in the securitization except where the counterparty to the OTC is the defaulting or affected party; and • the SSPE is subject to a level of credit enhancement of the most senior securitization of at least 2% of the outstanding notes on an ongoing basis. In addition, any such derivatives must be used to hedge interest rate or currency mismatches.

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		The final draft RTS amending the risk mitigation techniques for uncleared derivatives in the context of STS securitizations sets out which STS securitizations or covered bonds could be granted an exemption with regard to risk mitigation techniques for OTC derivative contracts not cleared by a CCP (specifically, no need to exchange initial margins and collection only of variation margins), providing the following conditions are met: • the counterparty to the OTC derivative concluded with the SSPE ranks at least pari passu with the holders of the most senior tranche in the securitization except where the counterparty to the OTC is the defaulting or affected party; • the SSPE is subject to a level of credit enhancement of the most senior securitization of at least 2% of the outstanding notes on an ongoing basis; and the netting set does not include OTC derivative contracts unrelated to the securitization; The RTS have not yet been published in the Official Journal and therefore do not currently apply. **EMIR REFIT Regulation** On May 4, 2017, the EC published a proposal for a regulation to amend EMIR ("**EMIR REFIT Regulation**"). It was published in the Official Journal on 28 May 2019 and entered into force on June 17, 2019. EMIR REFIT introduced a broad range of changes, including expanding the definition of FC to include additional market participants, creating a new sub-categorisation of "small FCs" and modifying rules for NFCs in relation to (a) monitoring of notional amounts and (b) the type of trades that need to be cleared once clearing thresholds are exceeded. Most of the requirements under EMIR REFIT entered into force immediately and FCs, as well as NFCs, are expected to calculate their aggregate month-end average position for the previous 12 months and so will need to be in a position to collate all the necessary data every 12 months. A draft version of the EMIR REFIT Regulation contained a proposal to extend the definition of FC in EMIR to include a securitization special purpose entity as defined in the CRR but this was not included in the final text of the EMIR REFIT Regulation. This proposal could have resulted in securitization SPVs being required to clear derivative transactions they enter into and to post margin,

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		even where the swap counterparty is a senior or super senior secured creditor of the SPV, as is usually the case in securitizations. 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-. Given many SSPEs will remain NFC-s, they should not be subject to the clearing or margin requirements.
Investor Protection	There is no specific U.S. equivalent of the EU provision.	The Markets in Financial Instruments Directive II ("**MiFID II**") framework (consisting of an EU regulation and an EU directive) applied from January 3, 2018 and introduced certain requirements that are intended to protect investors, such as the product governance rules, rules around conflicts of interest and allocations, record keeping and inducements. Under Regulation (EU) No 1286/2014, as amended, (the "**PRIIPs Regulation**"), a key information document must be prepared if the notes issued under a securitization are to be made available to retail investors in the EEA. Where notes issued under a securitization are not intended to be made available to retail investors in the EEA, the prospectus must include disclosure about the PRIIPs Regulation clearly stating this. Article 3 of the Securitization Regulation sets out the conditions that must be met if securitization positions are to be sold to retail investors. These conditions include the performance and satisfaction of a suitability test under MiFID II and investment limits on the proportion of a retail client's portfolio that can be invested in securitization positions.
Proprietary Trading, Affiliated Transactions; Separation of Investment Banks	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);	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 has been 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 came into full effect on January 1, 2019.

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	• 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 service (the so-called "Super 23A prohibition" because it incorporates the restrictions under Section 23A of the Federal Reserve Act but without the benefit of that provision's exclusions); and • engaging in transactions otherwise permitted under specified provisions of the Volcker Rule if the transaction involves or results in specified conflicts of interest. *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	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 Council published its general approach to the proposed regulation in June 2015. In October 2017, the Commission announced that it would be withdrawing the proposal from the legislative agenda on the grounds that the file had not progressed since 2015 and that the main financial stability rationale of the proposal has been addressed by other regulatory measures, such as the entry into force of the Banking Union's supervisory and resolution mechanisms. The Commission formally withdrew the legislative proposal in July 2018.

Subject	Summary of U.S. Provisions	Summary of EU Provisions
	sponsor such fund and may engage in 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, 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 ("servicing assets"); • 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: – the SUBI issuer itself meets the requirements of the loan securitization exclusion; – 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; – the SUBI or collateral certificate is created solely to satisfy legal requirements or otherwise facilitate the structuring of the loan securitization; and – 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 only hold securities 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.	

Subject	Summary of U.S. Provisions	Summary of EU Provisions
	Under a rule proposed by the federal agencies charged with implementing the Volcker Rule (the "**Volcker Agencies**") in February 2020 (the "**2020 Proposed Rulemaking**"), the types of permitted securities would be further expanded to allow issuing entities to hold up to 5% of non-loan assets. Additionally, the proposed rule seeks to codify existing agency guidance which clarifies that a "servicing asset" need not be a security. If the servicing asset is a security, however, the asset must be a permitted security. 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: – loans and other assets permissible under the loan securitization exclusion; and – asset-backed securities supported solely by assets that are permissible under the loan securitization exclusion and acquired by the asset-backed commercial paper conduit as part of an initial issuance either directly from the issuing entity of the asset-backed securities or directly from an underwriter in the distribution of the asset-backed securities; • The asset-backed commercial paper conduit issues only 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	

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

Subject	Summary of U.S. Provisions	Summary of EU Provisions
	Defining Ownership Interest The Volker Rule defines an ownership "interest" in a covered fund to be any equity, partnership, or other similar interest. An "other similar interest" is an interest in a covered fund that has any one of an enumerated list of equity-like characteristics. One such characteristic is the creditors' possession of a right to participate in the removal of an investment manager (excluding the rights of a creditor to exercise remedies upon the occurrence of an acceleration event). The 2020 Proposed Rulemaking proposes to amend the parenthetical to this characteristic to specify that creditors' remedies include the ability to remove an investment manager and as such, such remedy cannot be considered, on its own, a reason for characterizing a debt interest an ownership interest in a covered fund. The proposal also sets out a three-part safe harbor rule to further limit the ability to construe a debt interest as an ownership interest. A senior debt interest featuring all of the following could not be considered an "ownership interest" in a covered fund under the 2020 Proposed Rulemaking: • The holders of such interest do not receive any profits of the covered fund except: (i) interest payments which are not dependent on the performance of the covered fund; and (ii) fixed principal payments on or before a maturity date; • The entitlement to payments on the interest is absolute and may not be reduced because of the losses arising from the covered fund; and • The holders of the interest are not entitled to receive the underlying assets of the covered fund after all other interests have been redeemed. This change, if adopted, would allow conventional senior debt obligations issued by securitization SPVs not to be considered "ownership interests". Accordingly, transactions that may not clearly fall within the most commonly used securitization exemptions under the Investment Company Act (Rule 3a-7 and Section 3(c)(5) could utilize Sections 3(c)(1) or Section 3(c)(7) as their exemptions under the Investment Company Act without adverse Volcker Rule consequences.	

Subject	Summary of U.S. Provisions	Summary of EU Provisions
	Small Entity Exclusion The Economic Growth, Regulatory Relief and Consumer Protection Act (the "**EGRRCPA**"), signed into law in May of 2018, excluded depository institutions and their holding companies with less than $10 billion in assets from the prohibitions of the Volcker Rule. In July 2019, a final rule issued by the Volcker Agencies gave effect to this community bank exclusion. The rule excludes any institution that has (i) $10 billion or less in assets and (ii) trading assets of 5% or less from being a "banking entity". **Covered transactions and Section 23A prohibitions** "Covered transactions" are: • loans or other extensions of credit; • investments in securities (other than fund ownership interests permitted under the Volcker Rule); • purchases of assets from the fund (including repos); • acceptance of securities from the covered fund as collateral for a loan or other extension of credit made by the banking entity; • issuances of guarantees, acceptances or letters of credit on behalf of the covered fund; and • exposure to the covered fund arising out of derivative, repo and securities lending transactions. For ABCP conduits and certain other ABS issuers, the Super 23A prohibition as written in the proposed rule was problematic because it would have prevented a bank sponsor/investment adviser/manager from providing credit, hedging or liquidity facilities to support such transactions. By excluding various structures from the definition of covered fund, the final rule 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.	

Subject	Summary of U.S. Provisions	Summary of EU Provisions
	A material conflict exists if the bank enters into any transaction, class of transactions or activity that would involve or result in the bank's interests being materially adverse to the interests of its client, customer or counterparty with respect to such transaction, class of transactions or activity, unless the bank has appropriately addressed and mitigated the conflict through timely and effective disclosure or informational barriers. **Foreign covered funds** 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. Most of the extensions expired on July 21, 2017. However, on that expiration date, the Volcker Agencies issued a joint press release to announce their intention to withhold enforcement of the Volcker Rule against a foreign banking entity based on the activities of an affiliated qualifying foreign excluded fund until July 21, 2018 which was extended by the Volcker Agencies until July 21, 2021 with the publication of a policy statement restricting their ability to take action against foreign banking entities based on the investments of a qualifying foreign excluded fund to the foreign banking entity or against a qualifying foreign excluded fund as a banking entity. The "covered fund" definition excludes foreign funds which are not sold in the United States from enforcement with respect to foreign banks in order to limit the extraterritorial impact of the Volcker Rule. While this exclusion allowed for foreign banks subject to the Volcker Rule to sponsor such funds more freely, if such a fund was "controlled" by the foreign bank, then the statute by its terms would subject the excluded foreign fund to the Volcker Rule's restrictions on covered fund and proprietary trading activities in the United States as an affiliate of a foreign banking entity. 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."	

Subject	Summary of U.S. Provisions	Summary of EU Provisions
Conflict of interest rule	**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: (a) As a result of such transaction, a securitization participant would benefit directly or indirectly from the actual, anticipated or potential: (i) adverse performance of the asset pool supporting or referenced by the relevant ABS, (ii) loss of principal, monetary default or early amortization event on the ABS, or (iii) decline in the market value of the relevant ABS; or (b) 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 (c) 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).	**There is no specific EU equivalent of the U.S. provision**

Simple, Transparent and Standardized Securitizations: STS Criteria

The summary provides a brief description of the STS criteria under the Securitization Regulation.

The creation of a label for securitizations and ABCP meeting specified high standards of simplicity, transparency and standardization/comparability and related adjustments to capital treatment have 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 the Basel proposals have been published in the U.S. to date.

Articles 18-28 of the Securitization Regulation

General

The Securitization Regulation draws a distinction between STS term securitizations and STS ABCP (which meet the STS criteria) and those term securitizations and ABCP which do not meet the criteria (non-STS securitizations). The main benefit of a securitization complying with the STS criteria is preferential regulatory capital treatment for institutional investors under the CRR and Solvency legislation and their eligibility as LCR assets after April 30, 2020.

The grandfathering provisions in the Securitization Regulation provide that some term securitizations outstanding at the time the Securitization Regulation came into effect in EU member states may use the STS designation if they meet certain requirements relating to simplicity, standardization and transparency. Some of these criteria are measured at the time of issuance and others at the time of notification of STS status. Therefore, various criteria may prove difficult for legacy transactions to meet, given they were not envisaged at the time that the transaction was issued.

There are separate but broadly similar requirements relating to simplicity, transparency and standardization for term securitizations and asset backed commercial paper ("**ABCP**"), which are intended to take account of their structural differences.

Currently, only "true sale" securitizations can be STS securitizations, although there are now proposals to extend STS status to some synthetic securitizations (*see the section "Synthetic securitizations and CMBS" below for more information*).

EBA Guidelines on STS Criteria

Following a recommendation by the ECB, the Securitization Regulation mandated the ESAs with the task of preparing guidelines and recommendations to ensure the harmonized interpretation and application of the STS criteria (the "**STS Guidelines**") by originators, sponsors, SSPEs, investors and competent authorities throughout the EU. The final STS Guidelines were published by the EBA in December 2018; there are separate but similar guidelines for term securitizations and ABCP. The STS Guidelines are not published as legislative acts and are therefore non-binding in nature. The final reports accompanying the final form STS Guidelines states that recommendations (again, non-binding) may be published in due course, in order to address specific issues arising from the practical application of the Securitization Regulation or the guidelines themselves. The STS Guidelines, which it is generally agreed could be relied on from January 1, 2019, officially applied from May 15, 2019 (to allow time for translation into all the EU languages).

Originator, SSPE and Sponsor Requirements

Each of the originator, SSPE and sponsor must be established in the EU for a securitization to be STS eligible, which therefore excludes any securitizations with a non-European element. For non-STS securitizations, none of the originator, sponsor, original lender or SSPE need to be established in the EU.

There is no third country equivalence regime included in the final text of the Securitization Regulation, which means that securitizations with non-EU transaction parties cannot have STS status. When the UK leaves the EU in 2019, transactions involving a UK originator, sponsor or SSPE will no longer be eligible for STS status, unless the EU makes provision otherwise. Given the current uncertainty regarding the terms on which the UK will exit the EU and its continuing ongoing relationship with the EU, the issue of the UK's equivalence across a wide spectrum of financial services legislation is far from settled. It is worth noting that the review provisions in the Securitization Regulation provide for third country equivalence to be considered more generally in the Commission's three year review of the regulation.

In addition to the originator, sponsor and SSPE being established in the EU, the following requirements must be met in order for a securitization to be awarded STS status:

- the transaction must meet the appropriate criteria relating to simplicity, transparency and standardization;
- ESMA must have received notification from the originator and sponsor that the transaction meets such requirements; and
- the transaction must have been added to the list of STS transactions maintained by ESMA on its website.

STS and ABCP

The criteria for ABCP are divided into those criteria which apply at a transaction level and those that apply at a program level. Despite lobbying by market participants during the course of the legislative process, some criteria (such as those relating to the provision of historical data, maturity and WAL limits) remain of concern to the ABCP industry. The STS criteria require the originator and sponsor make available data on static and dynamic historical default and loss performance to cover a period of at least five years, or three years in the case of trade receivables or other short term receivables. In addition, the maturity limits and weighted average life limits will restrict the types of underlying transactions in which an ABCP program can invest. The pool of underlying assets must have a weighted average life of not more than one year and none of the underlying exposures must have a maturity of more than three years, except for pools of auto loans and leases and equipment lease transactions. Underlying assets comprising auto loans

and leases and equipment leases must have a remaining exposure weighted average life of not more than three and a half years and a residual maturity of no more than six years. 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 remaining weighted average life of the underlying pool of an ABCP program must not be more than two years and the ABCP program must be fully supported by a sponsor.

There are also extensive disclosure obligations under the rules applying to all securitizations, including those in relation to the disclosure of information on the underlying exposures, which will threaten the ability of ABCP transactions to maintain anonymity in relation to underlying assets. The Disclosure Technical Standards provide that the templates must be completed for both private and public transactions and include (i) a specific underlying exposures disclosure template for ABCP to reflect the aggregation requirements under the Securitization Regulation and the presence of a sponsor, (ii) a specific investor reporting template for ABCP which includes fields to cover transaction and program level information and (iii) a template for the disclosure of inside information and significant events relating to ABCP (though this last template only needs to be completed for public transactions).

In January 2019, ESMA published further amendments to the Disclosure Technical Standards (including some minor adjustments and clarifications to the disclosure requirements in the template fields and some revisions to the "No Data" options for certain fields in the ABCP template (for example, to take account of pre-existing contractual arrangements between sponsors and originators that do not cover the provision of such information) and these revisions were incorporated into the Disclosure Technical Standards adopted by the Commission in October 2019. It remains to be seen whether or not such revisions will be sufficiently helpful for ABCP, particularly given that ESMA will be closely monitoring the use of "No Data" options and expects the use of "No Data" options to reduce over time; this approach was recently confirmed in the draft guidelines on data completeness thresholds published by ESMA in January 2020 (*see section on Transparency Requirements - Disclosure Technical Standards for more information on disclosure*).

In addition to the specific transaction-level and program-level requirements for ABCP, the STS criteria include specific requirements relating to the sponsor. The Securitization Regulation requires the sponsor to (among other things):

- be a credit institution supervised under the Capital Requirements Directive;
- be a liquidity facility provider supporting all securitization positions on an ABCP program level, by covering all liquidity and credit risks, material dilution risks and costs, who discloses a description of the level of support provided at transaction level (including a description of liquidity facilities provided) to investors;
- demonstrate to its competent authority that its role as sponsor does not endanger its solvency and liquidity even under extremely stressful market situations; and
- satisfy the risk retention requirements and transparency obligations applying to ABCP.

Institutional investors must also be able to demonstrate that they have a comprehensive and thorough understanding of the credit quality of the sponsor and the terms of the liquidity facility provided.

STS Simplicity Requirements

The STS simplicity criteria for term securitizations include the following requirements:

- **true sale:** there must be a true sale (or assignment or transfer with the same legal effect);

- **no clawback:** assets are not subject to "severe clawback" provisions or encumbered;
- **active portfolio management:** assets must meet predetermined, clear and documented eligibility criteria which do not allow for active management of exposures on a discretionary basis. Substitution of defaulted exposures is not treated as active portfolio management;
- **homogeneity:** homogeneity in terms of asset type (taking into account their contractual, credit risk, prepayment characteristics that determine cash flows on those assets). The regulatory technical standards relating to homogeneity (which were published in the Official Journal and entered into force in November 2019) contain further details on these requirements;
- **defined periodic payment streams:** underlying assets must have defined periodic payment streams;
- **originated in the ordinary course of business:** the pool must include assets originated in the ordinary course of the originator's or original lender's business;
- **no exposures in default or exposure to credit-impaired debtors or guarantors:** 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 been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination or has undergone a debt restructuring process with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures unless either (a) a restructured underlying exposure has not presented new arrears since the date of the restructuring which must have taken place at least one year before the date of transfer or assignment to the SSPE or (b) the originator, sponsor and SSPE disclose the proportion of restructured underlying exposures, the time and details of the restructuring and performance since that time, (ii) was at the time of origination on a credit registry of persons with adverse credit history or (iii) has a credit assessment or score indicating that the risk of payments not being made is significantly higher than for comparable exposures held by the originator which are not being securitized.
- **at least one payment:** debtors must have made at least one payment, except in the case of some revolving securitizations; and
- **repayment must not depend "predominantly" on sale of assets:** repayment of the holders of the securitization positions must not have been structured to depend "predominantly" on the sale of assets, but this does not prevent such assets from being rolled over or refinanced. Therefore, it appears that underlying assets comprising receivables with residual values, such as auto finance or lease assets will be eligible for STS status.

STS Standardization Requirements

The standardization requirements include requirements that:

- **risk retention;** risk retention requirements have been met;
- **mitigation of interest rate and currency risks:** interest rate and currency risks must be appropriately mitigated and disclosed;
- **basis of referenced interest payments:** referenced interest payments under the securitization assets and liabilities must be based on "generally used market interest rates" or "generally used sectoral rates reflective of the cost of funds". In light of the changes currently taking place in the market relating to benchmarks and the replacement of LIBOR and EURIBOR, the STS Guidelines reference other recognized

benchmarks among the referenced rates; reference to standard variable rates has also been included; and

- **no cash trapping:** when an enforcement or acceleration notice has been delivered, no amount of cash shall be trapped in the SSPE "beyond what is necessary to ensure the operational functioning of the SSPE or the orderly repayment of investors in accordance with the contractual terms of the securitization", unless exceptional circumstances require that an amount be trapped to be used in the best interests of investors and there must be no provisions requiring the 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;
- 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;
- 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; and
- clearly specify priorities of payment and events triggering changes in priorities of payment as well as the obligation to report such events.

Servicers must have expertise in servicing exposures similar to the securitized exposures and must have well-documented and adequate policies, procedures and risk-management controls relating to the servicing of exposures.

STS Transparency Requirements

For STS securitizations, the following information must be made available:

- **historical default loss and performance data:** to potential investors before pricing- static and dynamic historical default and loss performance data for "substantially similar" exposures to those being securitized in respect of a period of no less than five years. 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;
- **sample audit:** before issuance of the securities- an audit of a sample of underlying exposures must be undertaken by an appropriate and independent party. Although common for some asset classes, file audits have not been universally undertaken in the past; and
- **liability cash flow model:** to potential investors before pricing-a liability cash flow model which precisely represents the contractual relationship between the underlying exposures and the payments flowing between the originator, sponsor, investors, other third parties and the SSPE. After pricing, the originator or sponsor must provide such models to investors on an on-going basis and to potential investors, upon request. The requirement for liability cash flow models was removed, following consultation with the industry, from the CRA 3 regulatory technical standards on disclosure requirements for structured finance instruments, but has been included in the Securitization Regulation, despite industry concerns.

In addition:

- **environmental performance data:** where the underlying exposures are residential loans or auto loans or leases, the originator and sponsor are required to regularly publish "the available information related to the environmental performance of the assets" financed by such loans and leases, as part of the

information disclosed on the underlying exposures on a quarterly basis; and

- **general requirements:** the information required under the general transparency obligations must be available to potential investors before pricing at least in draft or initial form (including, upon request, information on the underlying assets) and final documentation must be made available to investors within 15 days of the transaction closing.

Determination of STS status and notification

To the extent that STS status is claimed, originators and sponsors are jointly responsible (or in the case of ABCP, the sponsor is responsible) for notifying ESMA that a securitization is compliant with the STS criteria. The STS notification must include an explanation by the originator and sponsor of how each of the relevant STS criteria has been complied with. Where the originator or original lender is not an EU credit institution or investment firm, the STS notification must also be accompanied by confirmation that credit-granting was carried out accordance with the credit-granting criteria set out in the Securitization Regulation and whether such credit-granting is subject to supervision. Originators and sponsors are required to store information sent to ESMA for at least five years and correct errors once identified without delay. Under the Securitization Regulation, ESMA is required to maintain on its website a list of STS securitizations and to update the list in the event that a securitization has been determined to no longer be compliant with the STS criteria. Originators, sponsors and SSPEs are under an obligation to inform ESMA and their competent authority as soon as a securitization becomes non-compliant with the STS criteria.

The STS Notifications Technical Standards contain detailed rules on the content and format of the STS notification. To date, they have not been published in the Official Journal. The STS Notifications Technical Standards provide separate notification templates for non-ABCP securitizations, ABCP transactions and ABCP programs. Two STS templates should be completed for private transactions; one anonymized version for publication on ESMA's website and one fully completed one for ESMA's records. ESMA has streamlined the information to be provided in the anonymized templates to ensure that securitizations cannot be identified from the information being provided.

ESMA has published interim STS notification reporting instructions and related templates as well as some guidance on how STS notifications should be reported to ESMA's interim register until the application of the STS Notifications Technical Standards and the STS Register is operational. ESMA notes that these interim arrangements may need to be revised once the final STS Notifications Technical Standards are published in the Official Journal. In addition to ESMA providing specific guidance on the notification requirements for private and public transactions, there are also precise instructions regarding how the STS notification should be sent to ESMA.

Third party verifiers and reliance

The originator, sponsor or SSPE may appoint a third party verifier to check STS compliance but liability under the Securitization Regulation remains with the originator, sponsor or SSPE. Investors can place "appropriate reliance" on the STS notification and related information but cannot solely or mechanistically rely on it, even in the event a third party verifier is used. The technical standards specifying the information to be provided by entities seeking to register as third party verifiers have now been published in the Official Journal and will apply from June 18, 2019

Synthetic securitizations and CMBS

As a result of poor performance by some and the inherent refinancing risk of the commercial mortgage-backed securities ("**CMBS**") market during the last financial crisis, the recitals to the Securitization Regulation provide that CMBS should not

be considered to be STS securitizations. However, this position is modified by the STS criteria in the Securitization Regulation, which address the concerns regarding CMBS by requiring that repayment must not be structured to depend predominantly on the sale of assets from underlying exposures.

Currently all synthetic securitizations are also not STS eligible, though this may change in the future for those synthetic securitizations that are genuinely used by institutions to transfer the credit risk of their lending activity off-balance sheet (balance sheet synthetic securitizations), given the current work being carried out by the EBA on STS eligibility for synthetic securitizations.

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. In September 2019, the EBA published for consultation a discussion paper proposing a list of STS criteria for balance sheet synthetic securitizations follow the structure of the existing STS criteria for traditional non-ABCP securitization, with adaptations for the specificities of synthetic securitizations, where appropriate, The proposed framework would not permit arbitrage securitizations to be STS eligible. The EBA is expected to submit its final report on the proposed STS framework for synthetic securitizations to the Commission.

The Securitization Regulation mandates the ESAs to prepare a report on the feasibility of a STS framework for balance sheet synthetic securitizations by July 18, 2018 and that within twelve months, the Commission 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.

STS and the LCR

Under the Capital Requirements Regulation, credit institutions and investment firms are required to hold sufficient liquid assets to cover net cash outflows under stressed conditions over a period of 30 days. (the liquidity coverage requirement ("**LCR**").

The LCR Delegated Regulation specifies the types of assets which are eligible for use as liquid assets for LCR purposes and the conditions they must meet. Securitizations meeting certain specified requirements are eligible for use as LCR liquid assets.

In October 2018, a delegated regulation was published in the Official Journal which, among other matters, amended the LCR Delegated Regulation to include a requirement for eligible securitizations to comply with the STS criteria. Therefore, from April 30, 2020, only securitizations meeting the STS criteria and therefore having STS status will be eligible for use as LCR eligible assets. Non-STS- securitizations (both newly issued and legacy deals) will no longer be eligible for use as LCR assets.

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 U.S and EU regulatory development relating to securitization transactions as at February 14, 2020.

Acronyms and definitions

Acronym	Definitions
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 June 8 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	The regulatory technical standards supplementing Article 8b of CRA 3
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
Capital Requirements Regulation	Regulation (EU) 575/2013 of the European Parliament and of the Council of June 26 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012
CCP	Central Counterparty
CFTC	U.S. Commodity Futures Trading Commission
CLOs	Collateralized loan obligations
CMBS	Commercial mortgage-backed securities

Acronym	Definitions
CRAs	Credit rating agency
CRA 3	Regulation (EU) No 462/2013 of the European Parliament and of the Council of May 21 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies
CRA Regulation	Regulation (EC) No 1060/2009
CRAs	Credit rating agencies
CRD II	The Capital Requirements Directive 2009/111/EC
CRD IV	The CRR and Directive 2013/36/EU of the European Parliament and of the Council of June 26, 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 June 26 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012
CRR Amending Regulation	Regulation (EU) 2017/2401 of December 12, 2017 amending the CRR
CRR Risk Retention RTS	Commission Delegated Regulation (EU) No 625/2014 specifying the CRR regulatory technical standards, relating to risk retention published in June 2014
Disclosure Technical Standards	The regulatory and implementing technical standards relating to disclosure prepared by ESMA pursuant to a mandate under the Securitization Regulation

Acronym	Definitions
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
EBA	European Banking Authority
EBA 2014 Risk Retention Report	The EBA report and opinion on the application of the CRR risk retention rules published in December 2014
EC / Commission	The European Commission
ECB	European Central Bank
EGRRCPA	The European, Regulatory Relief and Consumer Protection Act
EHCRA	Eligible horizontal reserve account
EHRI	Eligible horizontal residual interest
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
EMIR REFIT Regulation	The regulation amending EMIR published in the Official Journal on May 28, 2019
EP	European Parliament
ESAs	The European Supervisory Authorities being ESMA, the EBA and EIOPA
ESMA	European Securities and Markets Authority
ESMA Q&As	The Q&As relating to the Securitization Regulation published by ESMA.

Acronym	Definitions
ESAs	The European Supervisory Authorities being ESMA, the EBA and EIOPA
ESMA	European Securities and Markets Authority
ESMA Q&A	The Q&A relating to the Securitization Regulation published by ESMA on January 31, 2019
EVI	Eligible vertical interest
Exchange Act	The U.S. Securities Exchange Act of 1934
FC	Financial Counterparty
Federal Banking Agencies	The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency
Housing Agencies	The Department of Housing and Urban Development and the Federal Housing Finance Agency
ITS	Implementing technical standards
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
LCR Delegated Regulation	Delegated Regulation (EU) 2015/61 of October 10 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions
MAR	The Market Abuse Regulation: Regulation (EU) No. 596/2014

Acronym	Definitions
MiFID II	Markets in Financial Instruments Directive (2014/65/EU) and the Markets in Financial Instruments Regulation (Regulation 600/2014), which repeal and recast the Markets in Financial Instruments Directive (2004/39/EC)
MMF Delegated Act	The delegated act published in the Official Journal on July 13, 2018 which incorporates the criteria for simple, transparent and standardised securitizations into the MMF Regulation, among other matters.
MMF Regulation	The regulation on money market funds, Regulation (EU)2017/1131
NFC	Non-financial counterparty
NFC-	NFC below the clearing threshold
NFC+	NFC above the clearing threshold
NPL	Non-performing loan
NRSRO	Nationally recognized statistical rating organization
PRIIPs Regulation	Regulation (EU) No 1286/2014, as amended
Reg AB II	Amendments to Regulation AB issued by the SEC in August 2014
Reporting Entity	The entity designated amongst the originator, sponsor and SSPE to fulfil the disclosure obligations in Article 7 of the Securitization Regulation
RMBS	Residential mortgage-backed securities
RTS	Regulatory technical standards
SEC	U.S. Securities and Exchange Commission

Acronym	Definitions
Securities Act	The U.S. Securities Act of 1933
Securities Financing Transactions Regulation	Regulation 2015/2365
Securitization Regulation	Regulation (EU) 2017/2042 of December 12, 2017 laying down a general framework for securitization and creating a specific framework for STS securitization
SFI	Structured finance instruments
SME	Small and medium enterprises
Solvency II	Directive 2009/138/EC and Delegated Regulation (EU) 2015/35 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
SPE	Special purpose entity
SPV	Special purpose vehicle
SR Risk Retention RTS	Regulatory technical standards relating to risk retention prepared by the EBA pursuant to a mandate under the Securitization Regulation
SSPE	Securitization special purposes entity
STS	Simple, transparent and standardized
STS Guidelines	The guidelines published by the EBA on December 12, 2018 on the STS criteria for ABCP and non-ABCP securitizations
STS Notifications Technical Standards	Technical standards relating to the format and content of STS notifications prepared by ESMA pursuant to a mandate under the Securitization Regulation

Acronym	Definitions
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 April 6 2017 setting out a common approach to the Credit Rating Agency Regulation's provisions for encouraging the use of smaller CRAs.
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
Volcker Agencies	The U.S. federal agencies charged with implementing the Volcker Rule
WAL	Weighted average life

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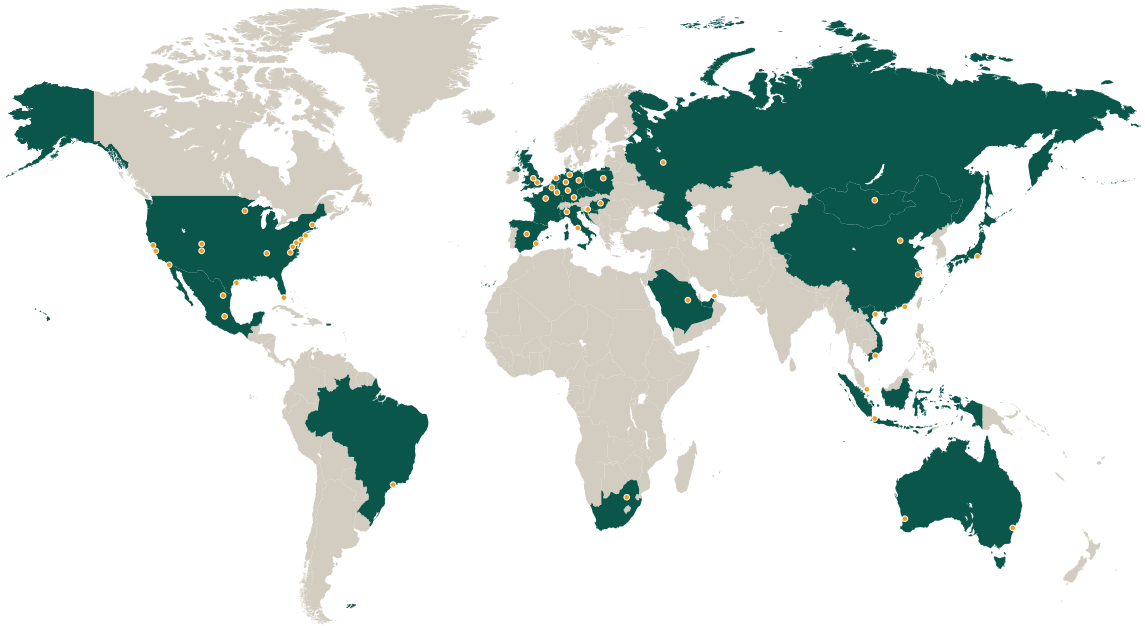

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