

Structured Finance & Securitisation

Contributing editor
Patrick D Dolan



2018

GETTING THE
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Patrick D Dolan

Norton Rose Fulbright US LLP

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Preface

Structured Finance & Securitisation 2018

Fourth edition

Getting the Deal Through is delighted to publish the fourth edition of *Structured Finance & Securitisation*, which is available in print, as an e-book, and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Luxembourg, Spain and Turkey.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Patrick D Dolan of Norton Rose Fulbright US LLP, for his continued assistance with this volume.

GETTING THE
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London
February 2018

Global overview

Patrick D Dolan*

Norton Rose Fulbright LLP

The US securitisation market showed increased activity in most asset types during 2017. For example, securitisation of auto loans, collateralised loan obligations (CLOs) and commercial mortgage loans (CMBS) all showed increases over 2016 and there were even some signs of life in the private label residential mortgage loan securitisation (RMBS) market in 2017. Commercial real estate (CRE) CLOs also bounced back during 2017.

President Trump has either replaced or is in the process of replacing the directors of the regulatory agencies that issued the US risk retention rule and the Volcker rule (ie, the Securities and Exchange Commission, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Department of Housing and Urban Development). The Federal Housing Finance Agency is the only regulatory agency that issued those rules whose director has not been replaced by Trump.

In autumn 2017, the OCC issued a Request for Information (RFI) on the Volcker Rule and the questions in the RFI indicated that the OCC would like to limit the impact of the Volcker Rule in certain areas. A proposed revised Volcker Rule will likely be released by the regulatory agencies in the spring of 2018.

After the Volcker Rule is revised, the Trump administration will likely turn its attention to modifying the US risk retention rule. The breadth of the risk retention rule still presents challenges in securitisation transactions. Issues continue to arise regarding, among other things, the use of 'majority-owned affiliates' and the financing of risk retention interests.

Other securitisation-related issues likely to be faced during 2018 include the reform of Fannie Mae and Freddie Mac. US Senators Bob Corker and Mark Warner are leading the effort on government-sponsored enterprise reform. It is hard at this point in time to predict what reforms of Fannie and Freddie will be adopted, particularly since there have been so many different proposals since the credit crisis. Some have suggested that the non-qualified mortgage (QM) RMBS market may see an increase in activity during 2018.

One of the significant securitisation-related regulatory developments during 2017 was the resignation of Richard Cordray, the director of the Consumer Financial Protection Bureau (CFPB), in November and the appointment of Mick Mulvaney, the director of the Office of Management and Budget, as his successor. Mulvaney immediately instituted a 30-day hiring and policy-making freeze. On 28 November,

US District Judge Timothy Kelly denied a request by Leandra English, Cordray's senior deputy at the CFPB, to serve as director of the CFPB instead of Mulvaney. Under Mulvaney, the CFPB is likely to have a very different regulatory focus than it had under Cordray.

The Commodity Futures Trading Commission (CFTC) chairman, J Christopher Giancarlo, an Obama appointee who was elevated by President Trump, has taken a more subdued approach to Dodd-Frank-related derivatives regulations than many had expected. On 27 October, the CFTC issued no-action relief to registered swap dealers from compliance with the variation margin requirements when amending or novating swaps in existence prior to 1 March 2017 with issuers that are special purpose vehicles.

One piece of good news during 2017 is that in December, the Securities and Exchange Commission once again extended the exemption for foreign issuers from the application of Rule 17g-5 (the rating agency conflict of interest rule).

The Structured Finance Industry Group, in a letter to Congress dated 11 December 2017, suggested that new limits on interest deductions in the recently passed US tax legislation will make securitisations where the income is in the form of lease payments (rather than interest on customer receivables) uneconomical. That is because the bill limits the ability to deduct interest starting in 2018 to the extent interest expense exceeds 30 per cent of income, but interest expense can still be offset, despite the new limit, against interest income received in the same year. In a securitisation, interest income is received by a securitisation vehicle that makes interest payments to the lenders. No offset is possible against other forms of customer payments.

The following chapters outline the key issues and considerations in implementing a securitisation transaction in Canada, the Cayman Islands, Denmark, France, India, Japan, Portugal, Spain, Switzerland, Turkey, the United Kingdom and the United States. Each chapter answers a similar set of questions about, among other things, the securities law, the bankruptcy law and the tax law considerations of closing a securitisation transaction in the related jurisdiction. While the chapters are not designed to cover every possible issue that may be encountered in a securitisation transaction, they allow the reader to get up to speed on most of the relevant securitisation-related issues in each jurisdiction.

* The author would like to thank David Shearer, partner at Norton Rose Fulbright LLP (London), for his assistance with this overview.

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