Executives Update on Compliance Issues

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ABS Issuance 2014 Actual vs. 2015 Estimate ($BN)

- **Equipment Lease/Loan**: $11.50 (2013 Actual), $12.80 (2014 Actual), $13.00 (2015 Estimate)
- **Marine Containers**: $3.25 (2013 Actual), $2.80 (2014 Actual), $3.00 (2015 Estimate)
- **Structured Settlements**: $0.65 (2013 Actual), $0.67 (2014 Actual), $0.70 (2015 Estimate)
- **Small Business**: $0.12 (2013 Actual), $0.63 (2014 Actual), $1.00 (2015 Estimate)
- **EE/RE***: $0.05 (2013 Actual), $0.50 (2014 Actual), $1.10 (2015 Estimate)

*EE/RE = Energy Efficiency/Renewably Energy

Source: DBRS, Inc.
Securitization: Opportunities

• Chart shows growth of energy efficiency/renewable energy sector – spotlighted in Foundation Report
• Small business loans; alternative finance (AF)
  *2015 Foundation Report on AF
  *Spring 2015 JELF article on AF
  *Emerging because banks not lending
• Security alarms, backup data centers
• Mining, agricultural and construction equipment (MAC)
• Foundation survey responder: Executive Summary: “Even after the crisis, we have seen that this market remains robust...as long as equipment leases perform which historically they have, the securitization markets will remain open to our industry.”
Securitization: Threats

- Foundation survey responder: “Transaction Costs (legal, underwriting, rating agency, etc.)...are starting to materially impact overall cost of funds.”
- Another survey responder: “If loan-level disclosure is required by the SEC for Equipment ABS, it will cause a major disruption to the sector due to competitive issues with releasing confidential marketing data.”
- A third responder: “Regulatory issues (i.e., Reg AB II asset level disclosure)” pose greatest threat to Equipment ABS.
- The more significant threats are:
  * Risk Retention
  * Data Disclosure
  * Ratings Roulette
Securitization: Risk Retention

- Final Regulation RR published December 24, 2014
  * Effective for non-RMBS issued on and after December 24, 2016
  
  * Eligible horizontal retained interest (EHRI) “must equal at least 5% of the fair value of all ABS interest in the issuing entity issued as part of the securitization transaction,” determined in accordance with GAAP
  
  * RR to be held by sponsor, originator, seller or a majority-owned affiliate
  
  * Can use vertical and/or horizontal RR but total percentage of those retained interests must equal at least 5%
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• ELFA Accomplishments
  1. SEC permitted EHRI to include any combination of overcollateralization, equipment residuals, and reserve accounts
  2. SEC rejected any prohibition on sponsor’s receiving any payments at a faster rate than investors receive (especially since equipment residuals produce “lumpy” cash flow)
  3. SEC rejected forbidding a sponsor from receiving payments on its retained interest that would reduce its original percentage of risk retention – even if the reduced percentage would have exceeded the 5% minimum
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• But final rule does require:

1. Sponsors will have to disclose methodology (including internal data and projections) used to calculate fair value of sold and retained interests

2. Sponsors using “horizontal” risk retention option will have to disclose “historical information [to] enable investors. . .to assess reasonableness of the key cash flow assumptions underlying the fair value [. . .including] default, prepayment and recovery”

3. RMBS disclosure, required on and after 12/24/15, may provide guidance about how this can be accomplished
Securitization: Data Disclosure

- Dodd-Frank Section 942 and SEC Regulation AB II
- SEC Memorandum issued February 25, 2014
- Controversy: individual asset disclosure v. grouped v. current pool-wide fields
- Industry concerns:
  1. Competitor data mining
  2. Significant financial burden on lessors to develop and maintain private Web site
  3. Customer Privacy
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• Reg AB II Release Amendments issued September 4, 2014
  1. Only apply to registered public offerings
  2. But proposals “remain outstanding:”
     a. Requiring issuers to provide the same disclosure for Rule 144A offerings as required for registered offerings
     b. Making the asset-level requirements applicable to all asset classes, including asset-class specific requirements for equipment loans and leases, student loans, and floorplan financings
     c. Filing of a waterfall computer program of the contractual cash flow provisions of the securities
  3. Foundation survey responder: “If loan-level disclosure is required by the SEC for Equipment ABS, it will cause a major disruption to the sector due to competitive issues with releasing confidential marketing data.”
Ratings Roulette

• Dodd-Frank Section 939F(d) requires SEC, by rule, to “establish a system for the assignment of NRSROs... that prevents the issuer, sponsor, or underwriter... from selecting the NRSRO that will determine the initial credit ratings and monitor such credit ratings.”

• SEC “shall implement the Section 939D system “unless the [SEC] determines that an alternative system would better serve the public interest and the protection of investors”

• Section 939D: would require SEC to establish Credit Rating Agency Board (CRAB)
• CRAB to:
  - select qualified nationally recognized statistical rating organizations (NRSRO)
  - Assign at least one qualified NRSRO to provide initial ratings “with respect to [each] category of structured finance products”

• CRAB to consider method for selecting the NRSRO assigned to issue an initial credit rating, “including a lottery or rotating assignment system

• Issuer seeking an “initial credit rating for a structured finance product... may not request [such] rating from” its preferred NRSRO, but must submit a request therefor to CRAB

• Issuer is permitted to hire additional NRSRO only if the initial credit rating is provided in accordance with Section 939D