# ASF2013 DAILY

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**INSIDE**



**WHAT'S UP? WHERE AM I?**




Institutional Investor Intelligence


# Forecast: Mostly Clear With A Chance For RMBS Growth

*By Marissa Capodanno*

The recent rally across a number of asset classes bodes well for this year, according to panelists at Monday's 2013 Securitization Market Outlook session. "Investors have returned to many sectors with a level of enthusiasm and demand that we haven't seen in years," said moderator **Michael Binz**, managing director, North America ABS at **Standard & Poor's**.

The change in both tone and makeup of the market is palpable compared to a few years ago, said **Gagan Singh**, executive v.p. and cio at **PNC Bank.** "When you combine wide spreads at the start of last year—which is big value—with high levels of liquidity and low yield levels in other parts of fixed income and some positive economic and macro data, that's


*2013 Securitization Market Outlook panel*


*(Continued on page 23)*


**SING IT!**

## Let's Talk About Reg AB

*By Graham Bippart*

Plenty of work remains to be done on the regulatory front, and panelists at Monday's general session Global Securitization Policy Reforms, outlined some key areas of pending rules that still threaten to fundamentally alter the landscape for securitization.

Among the meatier topics under discussion at the session: the proposal under Regulation AB II that would require the chief executives of entities intending to issue publicly registered securitizations to submit a certification of the quality of the underlying assets.

Such a requirement, part of the Dodd-Frank Act's intention to rein in investor reliance on ratings from credit rating agencies, could potentially force issuers into the private 144a market, according to **Christian Greco**, executive director and assistant general counsel with **JPMorgan Chase.** Dodd-Frank's enactment—


*(Continued on page 23)*


## REO-To-Rental: Closer Than You Think?

*By Marissa Capodanno*

Market players looking under the hood of the REO-to-rental market say discussions have progressed further than expected in the last 12 months. "A year ago the idea of lending against a portfolio of leased homes was a really foreign concept, whereas people now have really gotten their heads around the combination of the security and the assets and the cashflow generated," **Gary Beasley**, managing director of REO company **Waypoint Homes**, said in Monday's REO-To-Rental Financing breakout session.

A recurring theme at the panel was how various firms approach the play—as a trade or as a business—which is critical in decisions over whether to outsource or integrate operations and property management.

"If you don't do it with some kind of systemized approach, the cost will kill you," **Frank Terzuoli**, director, credit data and analytics advisory at


*(Continued on page 23)*

## 8:00 AM – 8:45 AM

KEYNOTE ADDRESS

*Pinyon Ballrooms 4 & 5*

*Speaker*: **Troy Paredes**, Commissioner, U.S. Securities and Exchange Commission

## 8:45 AM – 9:45 AM

**GENERAL SESSION**

***Overview of the U.S. Housing Market and the Consumer Economy***

*Pinyon Ballrooms 4 & 5*

*A macro look at the economic factors affecting the U.S. housing market and the broader capital markets for consumer credit.*

*Moderator*: **Ralph Daloisio**, Managing Director, Natixis

## 9:45 AM – 10:00 AM

BREAK

*Bristlecone Ballroom*

## 10:00 AM – 11:00 AM

**GENERAL SESSION**

***Global Securitization Market Review***

*Pinyon Ballrooms 4 & 5*

*A broad look at the structured credit markets outside of the U.S.*

*Moderator*: **Lynn Maxwell**, Managing Director, Structured Finance, Global Capital Financing, HSBC

## 11:00 AM – 11:20 AM

FEATURED ADDRESS

*Pinyon Ballrooms 4 & 5*

*Speaker*: **Michael Stegman**, Counselor to the Secretary of the Treasury for Housing Finance Policy, U.S. Department of the Treasury

## 11:20 AM – 12:20 PM

**GENERAL SESSION**

***FHFA Common Securitization Platform and the Potential for GSE Risk-Sharing***

*Pinyon Ballrooms 4 & 5*

*An overview of the key challenges and potential benefits of the FHFA initiative.*

*Moderator*: **Stephen Kudenholdt**, Partner, SNR Denton US LLP

## 12:20 PM – 1:30 PM

LUNCH

*Bristlecone Ballroom*

## 1:30 PM – 2:30 PM

**CONCURRENT BREAKOUT SESSIONS**

***New Origination RMBS — Governance and Standards***

*Pinyon Ballrooms 1 & 2*

*An overview of emerging trends and issues for new origination RMBS.*

*Moderator*: **Douglas MacInnes**, Managing Director, BNY Mellon

***CFPB Servicing Standards and Future Economics of Servicing***

*Pinyon Ballrooms 6 & 7*

*A discussion of the complex task of ensuring robust protection of all parties in the mortgage servicing process.*

*Moderator*: **Kathleen Tillwitz**, Senior Vice President, U.S. & European Operational Risk, DBRS

***Credit Rating Agency Reforms***

*Pinyon Ballroom 3*

*A discussion of recent developments for credit rating agencies and outstanding regulatory initiatives.*

*Moderator*: **David Perl**, Director & Senior Counsel, Crédit Agricole Corporate and Investment Bank

***Student Loan ABS Sector Review***

*Pinyon Ballroom 8*

*A discussion of the student loan ABS market and the potential impacts of regulatory reform.*

*Moderator*: **Kieran Brady**, Managing Director, Barclays

## 2:35 PM – 3:35 PM

**CONCURRENT BREAKOUT SESSIONS**

***Mortgage Litigation Update***

*Pinyon Ballrooms 1 & 2*

*A debate on current litigation risks and trends with a heightened focus on RMBS.*

*Moderator*: **Susan DiCicco**, Partner, Bingham McCutchen LLP

***Government-Backed Securitization Programs***

*Pinyon Ballrooms 6 & 7*

*A discussion of the issuance and structures of government-sponsored residential mortgage securitizations.*

*Moderator*: **Jeremy Diamond**, Managing Director, Head of Research and Corporate Communications, Annaly Capital Management, Inc.

***Volcker Rule—Navigating the Compliance Period and Potential Rule Outcomes***

*Pinyon Ballroom 3*

*A discussion of Dodd-Frank Section 619 and its implications for structuring and issuing asset-backed securities.*

*Moderator*: **Stephany Bushweller**, Contractor engaged at Credit Suisse LLC

***Emerging ABS Sector Review***

*Pinyon Ballroom 8*

*A review of new and re-emerging asset classes and their outlook for 2013.*

*Moderator*: **Kenneth Morrison**, Partner, Kirkland & Ellis LLP

## 3:35 PM –3:55 PM

BREAK

*Bristlecone Ballroom*

## 3:55 PM – 4:55 PM

**CONCURRENT BREAKOUT SESSIONS**

***Non-Performing Loan Securitizations and Other Distressed Opportunities***

*Pinyon Ballrooms 1 & 2*

*A look at the non-performing loan (NPL) securitization market and other distressed opportunities.*

*Moderator*: **Jon Van Gorp**, Partner, Co-Head of Structured Finance, Mayer Brown LLP

***RMBS Traders and Researchers Roundtable***

*Pinyon Ballrooms 6 & 7*

*A discussion of the fundamental and technical drivers for RMBS.*

*Moderator*: **Richard Cooperstein**, Managing Director, Gleacher-RangeMark

***Risk Retention for Structured Finance***

*Pinyon Ballroom 3*

*A discussion of the various regulatory proposals for risk retention.*

*Moderator*: **Lewis Cohen**, Partner, Clifford Chance US LLP

***Equipment Loan and Lease ABS Sector Review***

*Pinyon Ballroom 8*

*A review of current issues and challenges facing the equipment ABS market.*

*Moderator*: **Henry Morriello**, Chair, Finance Department, Kaye Scholer LLP

## 5:00 PM – 6:00 PM

**CONCURRENT BREAKOUT SESSIONS**

***Mods, Short Sales, Eminent Domain & Other Mortgage Loan Workouts***

*Pinyon Ballrooms 1 & 2*

*An in-depth look at loss mitigation programs and other workouts in 2013 and beyond.*

*Moderator*: **R.J. Carlson**, Partner, Sidley Austin LLP

***REITs—Past, Present & Future***

*Pinyon Ballrooms 6 & 7*

*A discussion of the role of mortgage REITs in the mortgage finance industry.*

*Moderator*: **John Arnholz**, Partner, Bingham McCutchen LLP

***Reg AB II Proposals and Potential Rule Outcomes***

*Pinyon Ballroom 3*

*A review of the SEC's key proposals relating to offering, disclosure and reporting requirements for asset-backed securities.*

*Moderator*: **Jay Knight**, Associate, Bass, Berry & Sims PLC

***Consumer ABS Traders and Researchers Roundtable***

*Pinyon Ballroom 8*

*An overview of the past year in consumer ABS and a discussion of what is to come in 2013.*

*Moderator*: **Mary Kane**, Head of Global Securitized Products Research, Citigroup

## 6:00 PM – 7:30 PM

NETWORKING RECEPTION

*Convention Center Foyer, Level 3*

# OCC's Curry Paints Improving Picture

*By Marissa Capodanno*

A well-functioning securitization market is critical to economic recovery and two things are happening to help that along, **Thomas Curry**, comptroller of the currency, said Monday morning in his keynote address. Both the housing market and certainty in the regulatory landscape stand on better footing than just a year ago, he said, and improvements in those areas provide a much-needed shot in the arm for the securitization market. "Getting the securitization pipeline flowing again is a critical component in turning this picture around," Curry said.

He expanded on what needs to happen. "First, there needs to be clear evidence of stability in the value of the underlying assets. In other words, evidence that the precipitous decline in home values from 2006 to 2009 is over," Curry said, calling the outlook promising. He highlighted signs of stabilization and home price increases, as well as a deceleration in foreclosures and defaults in some areas. "Housing today is lending strength to the economic recovery, rather than sapping it."


*Thomas Curry*

The second silver lining in the last 12 months for the sector has been steps toward resolving the legal and regulatory uncertainties that have kept many investors on the sidelines, Curry said. "Important settlements have been concluded between a number of large banks and the [government-sponsored enterprises] regarding putbacks of defaulted mortgages," he said, using **Bank of America-Merrill Lynch**'s recent $11 billion settlement with **Fannie Mae** over legacy **Countrywide** loans as an example.

Further, even as the process of rule making has been "complicated and protracted," one foot is finally coming down in front of the other. The **Consumer Financial Protection Bureau**'s final rule on qualified mortgages earlier this month, for example, was long-awaited by the industry. "Having a final rule goes a long way to delivering the clarity and certainty the industry has been calling for," Curry said.

Still, he urged the market not to get ahead of itself, even as the discussion gets increasingly optimistic. "As the financial crisis starts to recede into history, it is important to keep in mind the path that got us there," he said.

# Housing Finance Reform Seen Unlikely In 2013

*By Max Adams*

The chances for U.S. housing finance reform in the coming year are slim, panelists said Monday afternoon. "It is highly unlikely that we will see [government sponsored enterprise] reform this year," said **Robert Bostrom**, shareholder at **Greenberg Traurig.** "As things go forward, I think the financial statements of the GSEs could improve, so there is much less incentive to change." Much of the conversation during the panel revolved around how exactly to reduce the footprint of the **Federal Housing Administration** and the GSEs, **Fannie Mae** and **Freddie Mac**, in the home mortgage market. The prospect, however, is dim because regulatory, economic and demographic factors make the issue deeply complex.

> "As things go forward, I think the financial statements of the GSEs could improve, so there is much less incentive to change."
>
> —Robert Bostrom, Greenberg Traurig

"The administration acknowledges that the whole housing issue is very complex, so we cannot speak to any timeline for reform," said **Theodore Tozer**, president of **Ginnie Mae, U.S. Department of Housing and Urban Development**. The government continues to dominate the home mortgage market, with an approximately 80% market share in single-family lending and 65% in multifamily. Panelists agreed that there needed to be a target for reducing the presence of government-guaranteed mortgages, but could not nail down a methodology for doing so. "The FHA now has a maximum loan limit above that of the GSEs. That limit should be pulled back. Pulling back loan limits would reduce the FHA's shadow," noted **Barry Zigas**, director of housing policy at the **Consumer Federation of America**.

The panelists discussed raising the so-called guarantee fees in order to make private loans more attractive to borrowers. "Our goal here is to reduce the footprint of the government in the mortgage market. We're gradually raising G-fees and we're seeing some return of the private sector," said **Patrick Lawler**, chief economist at the **Federal Housing Finance Agency**.

What then, is the ideal level of involvement the government should have in the home mortgage market? There was no clear answer, but all panelists agreed that it had to be reduced and private mortgage lending needs to return. "The FHA should be 10-15% of the market and focused on low wealth, modest homes," said **Edward Pinto**, resident fellow at the **American Enterprise Institute**. Zigas noted that the government has been involved in the residential mortgage market for 75 years, and would benefit from looking back on that history.

# Mortgage Players Wrestle With QM Uncertainty

*By Max Adams*

Panelists looking to pin down the impact of the new Qualified Mortgage rule found themselves faced with two basic questions. "How safe is safe harbor, and how do we prove compliance with QM?" **Michael Malloy**, mortgage policy and counterparty relations executive at **Bank of America-Merrill Lynch,** asked. **"**And if we prove compliance, what will courts do with that evidence?"

Mortgage originators have expressed concern over how exactly to prove that they have done the required underwriting for a qualified mortgage. A defaulted borrower is expected to challenge every aspect of a foreclosure proceeding, which will require originators to prove step-by-step that they assessed every aspect of a loan under the QM rule. "Oral evidence and recordings—do they count as admissible evidence? Originators are going to do everything they can to to squeeze everyone into the safe harbor," said panel moderator **Scott Samlin**, partner at **SNR Denton**. Proof of compliance could entail that lenders record calls with borrowers to better show that they have sufficiently underwritten a home mortgage.

What, then, do all of these rules mean from the standpoint of a securitization? "As I look at these regulations, I honestly find much to like about this. You have to step back and say, 'What are the ingredients for a healthy securitization market?'" said **Gyan Sinha**, partner at **KLS Diversified Asset Management**. He noted that the rules could make residential mortgage securitizations safer and more predictable than they have been in the past. "Also, this gets us closer to what we have set out to do, which is get **Fannie Mae** and **Freddie Mac** out of the business. To do that, we have to create a secondary market system that is just as predictable as a government guarantee," he added.

# Citi Aims To Shorten Investor Notification Process

*By Graham Bippart*

**Citi** is launching an electronic notification service for structured finance investors that executives at the bank say bypasses the current process of notifying investors of changes to deal documentation via the **Depository Trust Company**. The program, Investor Direct Notification Service, was announced last week and will allow investors in deals for which Citi serves as trustee to receive alerts of amendments, waivers and consents via their **Bloomberg** terminals.

AWCs include changes in transaction parties, such as the special servicer of a commercial mortgage-backed securities deal, changes in transaction structure, changes to representations and warranties and delays in payments, financial statements or servicing reports.

"What we found in the crisis, as an industry, [is that] the system of communication [between issuer and investor] is not efficient," **Paul Burke**, North America head of sales, agency and trust services at Citi, told *SI* at the ASF2013 conference.

Citi was approached by a public sector client two years ago to develop the platform, Burke said. He declined to identify the client, but said the request was made in connection with a deal mandate.

The DTC process of notification for AWCs can be a long one, going through a chain of custodians before reaching investors. "It isn't always efficient and [the AWC request] doesn't always get to the end user," Burke said.

It can take weeks or even months, in some cases, for notifications to reach investors via the DTC's current platform, on which custodians holding securities on behalf of investors have to parse thousands of notices manually before passing the relevant ones onto the investors they represent, according to Burke.

That problem was highlighted during the crisis, and since, when late payments, structural changes and changes in transaction parties happened frequently and bondholders could be difficult to find.

And though the platform was designed to address the problems of issuer-to-investor communication in securitization, Citi and Bloomberg plan to expand the platform to other areas of fixed-income, and perhaps even to deals on which Citi does not serve as trustee.

"There's a lot that can be added onto [the platform] as the market develops, and we're asking ourselves, 'What else can we do with this?'" said **Michael Morcom**, head of Latin American agency and trust sales at Citi. "It has applicability across fixed-income products, including project bonds and plain-vanilla corporate bonds."

Morcom pointed to project bonds in Latin America, which are often issued by a syndicate of banks and tend to require covenant changes as a project develops. "These infrastructure projects can have any number of timing delays or cost overruns that could violate covenants," he said. That means investors need to be notified of requested amendments, waivers and consents quickly and definitely.

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>
> —Paul Burke, Citi

# Another Go 'Round For Reg AB II

*By Leslie Kramer*

There are three key areas securitization market players are focusing on coming out of the re-proposal of Regulation AB II. They include shelf registration requirements, loan-level data fields and the new proposed private placement disclosure rules for Rule 144A and Rule 506 offerings. All these topics are sure to be addressed during today's Reg AB II Proposals and Potential Rule Outcomes panel. "The theme of the panel discussion will also be the tensions among the **Securities and Exchange Commission**'s commissioners, between the SEC and Congress and between market participants with different interests in the outcome of the rules and within the rules themselves," noted panelist **Charles Sweet**, partner, **Bingham McCutchen.**

Reg AB II was originally proposed by the SEC in April 2010 to enhance investor protection by substantially revising the original Reg AB and other rules regarding the offering process, disclosure and reporting for publicly issued asset-backed securities, as well as to impose new disclosure standards for privately placed ABS. "It was a comprehensive set of proposals related to, among other things, providing investors with more transparency through loan-level disclosure and replacing investment grade ratings in the current shelf eligibility rules with new requirements that enhance the enforceability of representations and warranties and improve investor communication," said panelist **Jay Knight**, an attorney at **Bass, Berry & Sims** and former special counsel in the SEC's Office of Structured Finance.


*Charles Sweet*

The passage of the Dodd–Frank Wall Street Reform and Consumer Protection Act in July 2010, however, affected some of the proposals that were in Reg AB II. In response, the SEC opened up some of the proposed regulations for more comment and discussion in a re-proposal of Reg AB II in July 2011. "Some of the things that were originally proposed to be in the shelf eligibility requirements of Reg AB II, like credit risk retention and ongoing reporting for ABS deals, was now covered by Dodd Frank and required for all securitizations, whether they were registered for the shelf or not," said Sweet. "So the legislative landscape superseded the regulatory landscape," he explained. The SEC also felt the scope of the proposed new rules on registered private securitization transactions needed to be addressed by the re-proposal, Sweet noted.

Since the SEC's July 2011 opening of a re-proposal of Reg AB II, many dealers in the industry have been preparing for and putting programs in place that they hope will be compliant with what may lie ahead. Such is the case with the details of the new reps and warranties regime that is being developed. "The enforceability and resolution of outstanding reps and warranties claims has been a recurring headline since the financial crisis," said Knight. "As the private label residential mortgage-backed securities market gains momentum, many dealers are already in the process of adding Reg AB II structural features into their deals, such as the addition of an independent party responsible for reviewing the reps and warranties underlying the assets," he noted. Many investors are in favor of these proposals, so dealers are responsive to them, he said.

The topic of loan level-data fields is also an important area that is yet to be resolved by the SEC. The Reg AB II proposal would require disclosure of a wide variety of specific data fields about the underlying pool in a deal, varying by the type of underlying collateral, in an effort to allow sophisticated investors to run their own analysis, remarked Sweet. "They would no longer have to rely on just the ratings and other previously disclosed information," he said.


*Jay Knight*

Additionally, investors in private 144A offerings may also be entitled to receive from issuers the same loan-level disclosure and other information that would be required if the transaction were publicly registered with the SEC, said Knight.

During the panel, he plans to address recent developments related to the 144A proposal as well as some potential tensions between Reg AB II's proposed regulation of private offerings and the JOBS Act (Jumpstart Our Business Startups Act), passed by Congress last year, which will relax the rules related to private offerings on the corporate side, said Knight.

The JOBS Act affected private offerings by requiring the SEC to lift the ban on general solicitation in certain offerings, which has been a restriction on private offerings. But this proposal continues to generate a great deal of discussion in the securitization market. "While the private placement rules for equity investments and in startups are being significantly liberalized by the JOBS Act and SEC's proposed rules for that Act, at the same time the commission is proposing to tighten down on private offerings of asset-backed securities," said Sweet. "Among the biggest questions is the scope of the disclosure that will be required for a private offering of esoteric classes of securities, because, as proposed, Reg AB II doesn't even tell us everything we would have to disclose in such a registered offering," Sweet said.

The SEC has said the passage of Reg AB II is of high priority this year and many are looking for the agency to adopt the regulation in early 2013. One hiccup could be "the impact of recent commission politics on what might happen with Reg AB II, given that the former chairman of the commission [**Mary Schapiro**] has left and it's now an even split between the two Republican and two Democratic members," noted Sweet.

# Panel To Tackle Loan Mods, Eminent Domain And Workouts

***By Andrew Bloomenthal***

The U.S. housing market is showing signs of recovery, with a pronounced spike in housing prices over the last 16 months. In the wake of this upward swing, the loan modification initiatives assisting millions of underwater borrowers who owe more on their mortgages than their houses are worth, may no longer shoulder the load they once did. The rebound may also frustrate the efforts of San Francisco investment fund **Mortgage Resolution Partners** in its bid to acquire delinquent loans through eminent domain—a measure some deem unorthodox to begin with. MRP's plan is expected to be just one of the topics kicked about at today's panel dealing with loan modifications, short sales, eminent domain and other mortgage loan workouts.

According to the **Standard & Poor's** Case–Shiller National Home Price index, 18 of the 20 U.S. cities it tracks have shown substantial increases in home values. Phoenix, Ariz., leads the charge, with values rocketing up 22% in the 12 months ending October 2012. And as prices recovered, underwater borrowers fell by almost four million last year to seven million, with **JPMorgan** forecasting another four million-person drop over the next two years.

*Paul Willen*

"When you see these rising prices statistics, you begin to understand that principal reduction may not be the favored loss-mitigation technique with investors right now," said panel moderator **R.J. Carlson**, partner at global law firm **Sidley Austin**. "If homeowners have been paying their mortgages throughout the downturn, there's little incentive for them to walk away from their homes right now."

In any case, the overall success of the loan modification initiative is a topic of debate. While the U.S. government's bellwether Home Affordable Modification Program (HAMP) has so far aided some 874,000 struggling homeowners, this number falls radically short of the seven to eight million it initially projected.

"These programs do work," said panelist **Arlene Hyde**, executive v.p. of loan administration services at **CoreLogic**. "As long as you're running net present value calculations correctly, it's a successful campaign. You just have to make sure borrowers qualify."

But identifying well-suited candidates is easier said than done. **Paul Willen**, senior economist and policy advisor with the **Federal Reserve Bank of Boston**, maintains that ferreting out borrowers likely to adhere to modified loans versus those likely to default is an inexact science at best. Furthermore, calculating the discount needed to induce borrowers is an equally challenging guessing game.

"Some borrowers need a 20% reduction; some need 50%. You really don't know which is which," said Willen, who likened this dilemma to the reverse problem inherent with underwriting loans. "People inflate their assets and earning potentials to win loans. With loan modifications, they downplay their assets to disguise the maximum they can pay. They may have an income earner living in their house they neglect to tell you about."

## Eminent Domain: Failure To Launch?

Mortgage Resolution Partners' fledgling campaign to seize and restructure underwater mortgage loans through eminent domain is an approach many find suspect for a host of reasons. Not the least of which: MRP is offering discounts at about 40 cents on the dollar—far below the mandatory fair market value.

"Eminent domain is a non-starter, and I can't believe it's gotten as much attention as it has," says Willen. "And I cannot imagine a scenario where a court constitutionally supports it."

But in the doldrums of the housing market decline, eminent domain held enough allure for many communities to contemplate going that route. Municipalities such as Brockton, Mass., Wayne, Mich., and San Bernardino, Calif., all vetted this idea at committee level.

**Vincent Fiorillo**, portfolio manager at **DoubleLine Capital**, understands the temptation. "If you're an ailing community and someone walks up to you with this offer—even if it's a too-good-to-be-true proposition—you'd be crazy not to at least talk to these folks," says Fiorillo, who recounts how his firm was approached by MRP to help broker such a deal. "I remember thinking, 'Have you guys ever heard of reputational risk?' The door is behind you."

Ultimately, most municipalities share this sentiment about such an experimental methodology. **Tim Cruise**, president of the Brockton, Mass., city council, said, "I don't want us to be testing the waters on this. I don't even know if it's feasible."

## An Alternative Solution

Against a backdrop of dwindling loan modifications and MRP's proposal, there may be a more practical solution for underwater borrowers, namely: shared appreciation. This is where lenders and borrowers agree to slash principal, with an eye toward sharing profits on the eventual home sale.

"Say there's a $250,000 loan. Right away you cut the principal to $200,000 so the borrower is no longer underwater," explained Carlson. "Then a few years down the road, the property sells for $280,000 and both parties divide the profit. You're not giving the borrower a windfall, but they still benefit from this approach."

"There's no magic bullet here," Willen said. "But I can safely say we're at the endgame of the foreclosure crisis."

# The Current Status of CMBS and CRE Finance In Europe: An Update For 2013

***By Conor Downey & Charles Roberts, partners, Paul Hastings***

While the U.S. commercial mortgage-backed securities market is well on track to recovery with issuance of almost $50 billion in 2012, Europe's CMBS market remains significantly disrupted. Nonetheless, 2012 was the most active year for CMBS in Europe since 2007 and early expectations are that 2013 will easily surpass this.

New CMBS issuance in Europe remained relatively low in 2012 but the deals that completed were significant in a number of respects. **Deutsche Bank** remained the only active conduit issuer in the market with DECO 2012-MHILL, a U.K. single-loan deal backed by a large shopping center, early in the year. This transaction largely followed the form of its 2011 deal DECO 2011-CSPK and showed further favorable investor reaction to the implementation of CMBS 2.0 techniques in Europe.

More importantly, in September the €754 million ($1 billion) Florentia CMBS transaction achieved a number of notable firsts. Since 2007, this was the largest CMBS to complete in Europe, the first German transaction, the first multi-family deal and, most importantly, the first agency CMBS, with Deutsche Bank acting as arranger and lead manager. As a relatively large transaction, Florentia is important in that it shows that investor demand in Europe is sufficiently deep to allow deals of this size to be fully placed. Additionally, it shows appetite for German multi-family properties. This is a significant asset class within legacy European CMBS with over €10 billion ($13.31 billion) of outstanding transactions maturing over the next 12 months. It is widely expected that transactions such as the €2.18 billion ($2.90 billion) **GAGFAH** transaction and **Deutsche Annington**'s jumbo €4.5 billion ($5.99 billion) GRAND securitization will look to new CMBS as possible sources of refinancing in the course of 2013.

Regulated investors in European CMBS transactions issued since the beginning of 2011 could face penal capital treatment on their investments unless a specified transaction party has retained at least 5% of the bonds issued. Until the Florentia deal, it was unclear which party should make this retention on an arranged transaction. In particular, there was considerable uncertainty as to whether the rules might require the arranging bank to hold the retention which would clearly be uneconomic for a bank taking no principal position in the transaction. The Florentia transaction involved the equity investors in the borrower holding the retained bonds, in what is believed to be an acceptable form of retention by the relevant European regulators. This is a major development and clears the way for what is expected to be a flow of arranged deals for large property owners in coming months.

The other significant securitization transaction in 2012 was the securitization of a vendor finance loan provided by **Royal Bank of Scotland** to a purchaser of a non-performing loan portfolio from it. The £463 million ($733.07 million) Isobel Finance transaction was the first non-performing loan securitization seen in Europe in the current cycle. Sales of European real estate loans increased significantly in 2012 with more than €11 billion ($14.65 billion) in loans by face value changing hands. It has been reported that sellers such as **Lloyds Banking Group**, **Allied Irish Bank, National Asset Management Agency** and **Société Générale** sold portfolios to private equity investors including **Lonestar**, **Blackrock**, **Kennedy Wilson**, **Orion Capital** and **Apollo**. 2012 also saw a variety of investment banks providing the first third-party finance seen for such transactions since the start of the credit crunch. As this market becomes increasingly competitive, the securitization market may provide an attractive alternative source of funding for these sales.

Elsewhere in the European capital markets, the first signs emerged that commercial real estate owners may be able to access the high-yield markets for finance. In June 2012 a £525 million ($831.24 million) offering—comprised of £350 million ($554.13 million) senior secured and £175 million ($277.07 million) senior notes—was issued by **Elli Finance** and **Elli Investments**, vehicles established by **Terra Firma** to secure the financing for the acquisition of the U.K. **Four Seasons** nursing home business. This deal formed part of the refinancing of a CMBS which previously financed the assets. The Four Seasons deal was a classic New York law-governed high-yield issuance on standard high-yield terms.

In November 2012, the **Annington Homes Group** issued £550 million ($870.82 million) of payment-in-kind notes backed by the equity interest in a large portfolio of residential properties occupied by married U.K. defence services personnel and leased to the **Ministry of Defence**. The transaction was issued to partly finance the acquisition by Terra Firma of the part of the business held by **Nomura**. This transaction, too, is associated with CMBS transactions, with the PIK note issuer receiving cashflow primarily from the holding company of two CMBS bond issues with significant outstanding transactions.

The initial purchaser extensively pre-marketed the PIK notes to both real estate debt and high-yield investors. Investors therefore had the rare opportunity to comment on early drafts of the transaction documents, a process which resulted in a number of innovative changes being made to the otherwise standard high-yield terms. These changes largely reflect (i) the relatively passive nature of real estate businesses compared to the more complex operating businesses of traditional high-yield bond issuers and (ii) techniques and structures commonly seen in real estate financing.

In addition to the elimination of some standard high-yield concepts which are not relevant to real estate assets, the transaction saw the introduction for the first time in a high-yield transaction of a form of "lock-box" bank account arrangement, a limited waterfall and real estate reporting.

As the first high-yield transaction with clear real estate finance features, the extent to which the Annington deal will be a precedent for future similar transactions is not clear at this stage. The protections given to investors by typical real estate covenants will have to be weighed against the need of the issuer to retain sufficient flexibility to maximize the returns from the business. Much will depend on the investors in future transactions and whether these are offered exclusively to traditional high-yield bond investors or whether real estate debt investors continue to be attracted to these investment opportunities. However, given the large amounts of real estate debt falling to be refinanced in coming years in Europe, these transactions provide a potentially interesting option for at least some borrowers.

2012 saw a significant increase in CMBS servicing activity in Europe and considerable innovation by servicers and borrowers as they struggle to resolve almost €32 billion ($42.62 billion) in CMBS loans maturing over the next two years.

Deutsche Annington's €4.3 billion ($5.73 billion) GRAND German multi-family CMBS (which is the largest CMBS ever issued in Europe) backed by over 180,000 properties became the first CMBS to restructure via a solvent scheme of arrangement. This is believed to be the largest ever real estate restructuring in Europe and involved an equity injection of over €500 million ($665.90 million), a five-year program of sales and refinancings and a margin increase in return for a five-year extension to bond maturity. This deal is expected to produce a series of further transactions in coming years which could potentially include further CMBS transactions.

Enforcement action was taken on a series of high-profile CMBS transactions over the course of 2012. These included Gemini (Eclipse) 2006-3, REC 6 and the Mapeley Loan in DECO 6. Many of the enforcements relate to poorly performing portfolios of secondary properties. Private equity buyers have some interest in acquiring these, as was seen in the sale of the REC 6 portfolio to Kennedy Wilson, but enforcements on many other transactions are expected to result in long-term asset management strategies with piecemeal disposals.

Opera Uni-Invest became the first European CMBS to enter actual default when it failed to refinance by its maturity date. A joint venture between **TPG** and **Patron Capital** took control of the equity and in an innovative move persuaded the class A bondholders to accept new bonds with increased margins in a structure into which they had made a fresh equity injection of €144 million ($191.80 million).

On the corporate side, considerable activity was also seen in the European CMBS market. In September, Deutsche Bank sold its European CMBS servicing business to **Situs**. Deutsche Bank's European servicing team followed the assets to Situs. The transaction involved 17 CMBS transactions and 83 loans with a face value of over €6 billion ($7.99 billion). In the process, Situs has cemented its position as a major real estate servicer in Europe. Following the acquisition of **LNR Property** by **Starwood Capital Group**, it has been reported in the press that Starwood may seek to sell on LNR's European CMBS servicing arm, **Hatfield Philips**.

Overall, 2012 was seen as a positive year for CMBS in Europe with modest but appreciable steps being made in the right direction as regards issuance, asset types and jurisdictions. It was also a year of consolidation with the market adapting to the new regulatory framework, as was seen in the Florentia transaction. The work-out of legacy deals has become a less controversial subject with market practices starting to develop and a realization spreading that there will be no quick and easy solutions. The outlook for 2013 remains positive. Concerns as to the appetite of investors for new product seems to have somewhat diminished and many in the market expect U.S. investors to show increasing interest in European deals in the coming year. It remains difficult to predict accurately what may happen but 2013 is expected to see at least some increase in new issuance over 2012.

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*Conor Downey and Charles Roberts are partners with Paul Hastings in London, one of the leading advisers to banks, investors and servicer clients on CMBS issuance, restructuring and enforcement.*

## Global ABS (ex CDO)

| Rank | Bookrunner | Value $m | No. | % share |
|---|---|---|---|---|
| 1 | JPMorgan | 36,645 | 98 | 15.7 |
| 2 | Barclays | 24,580 | 79 | 10.5 |
| 3 | Bank of America Merrill Lynch | 23,574 | 92 | 10.1 |
| 4 | Citi | 19,174 | 69 | 8.2 |
| 5 | RBS | 15,128 | 78 | 6.5 |
| 6 | RBC Capital Markets | 13,277 | 50 | 5.7 |
| 7 | Credit Suisse | 12,881 | 54 | 5.5 |
| 8 | Deutsche Bank | 11,403 | 50 | 4.9 |
| 9 | HSBC | 6,898 | 24 | 3 |
| 10 | Wells Fargo Securities | 6,752 | 40 | 2.9 |
| | **Subtotal** | **170,311** | **318** | **73.0** |
| | **Total** | **233,213** | **445** | **100.0** |

## U.S. ABS (ex CDO) *

| Rank | Bookrunner | Value $m | % share |
|---|---|---|---|
| 1 | JPMorgan | $32,746 | 19% |
| 2 | Barclays | $21,660 | 12% |
| 3 | BAML | $19,791 | 11% |
| 4 | Citigroup | $17,605 | 10% |
| 5 | Deutsche Bank | $14,413 | 8% |
| 6 | RBC | $12,919 | 7% |
| 7 | Credit Suisse | $12,666 | 7% |
| 8 | RBS | $11,303 | 7% |
| 9 | Morgan Stanley | $8,023 | 5% |
| 10 | Wells Fargo | $7,723 | 4% |
| | **Subtotal** | **$158,849** | |
| | **Total** | **$173,608** | |

*SI Deal Flow Database*

## Europe ABS (ex CDO)

| Rank | Bookrunner | Value $m | No. | % share |
|---|---|---|---|---|
| 1 | Natixis | 4,262 | 9 | 10.8 |
| 2 | Lloyds Banking Group | 4,121 | 7 | 10.4 |
| 3 | Credit Agricole CIB | 3,560 | 11 | 9 |
| 4 | HSBC | 3,468 | 10 | 8.8 |
| 5 | SG Corporate & Investment Banking | 3,108 | 8 | 7.9 |
| 6 | RBS | 2,502 | 12 | 6.3 |
| 7 | Barclays | 2,404 | 4 | 6.1 |
| 8 | JPMorgan | 1,666 | 5 | 4.2 |
| 9 | Citi | 1,426 | 6 | 3.6 |
| 10 | Santander | 1,384 | 5 | 3.5 |
| | **Subtotal** | **27,902** | **49** | **70.5** |
| | **Total** | **39,591** | **66** | **100.0** |

## Global CMBS

| Rank | Bookrunner | Value $m | No. | % share |
|---|---|---|---|---|
| 1 | JPMorgan | 9,003 | 20 | 16.1 |
| 2 | Deutsche Bank | 8,340 | 16 | 14.9 |
| 3 | Wells Fargo Securities | 7,651 | 16 | 13.7 |
| 4 | Bank of America Merrill Lynch | 4,459 | 10 | 8 |
| 5 | Barclays | 4,297 | 10 | 7.7 |
| 6 | Morgan Stanley | 3,878 | 8 | 6.9 |
| 7 | RBS | 3,746 | 8 | 6.7 |
| 8 | Credit Suisse | 3,208 | 6 | 5.7 |
| 9 | Goldman Sachs | 3,055 | 5 | 5.5 |
| 10 | UBS | 2,446 | 6 | 4.4 |
| | **Subtotal** | **50,083** | **67** | **89.5** |
| | **Total** | **55,943** | **70** | **100.0** |

## U.S. CMBS

| Rank | Bookrunner | Value $m | No. | % share |
|---|---|---|---|---|
| 1 | JPMorgan | 9,003 | 20 | 17.0 |
| 2 | Wells Fargo Securities | 7,651 | 16 | 14.5 |
| 3 | Deutsche Bank | 7,050 | 14 | 13.3 |
| 4 | Bank of America Merrill Lynch | 4,459 | 10 | 8.4 |
| 5 | Barclays | 4,297 | 10 | 8.1 |
| 6 | Morgan Stanley | 3,878 | 8 | 7.3 |
| 7 | RBS | 3,276 | 7 | 6.2 |
| 8 | Credit Suisse | 3,208 | 6 | 6.1 |
| 9 | Goldman Sachs | 3,055 | 5 | 5.8 |
| 10 | UBS | 2,446 | 6 | 4.6 |
| | **Subtotal** | **48,324** | **64** | **91.3** |
| | **Total** | **52,948** | **64** | **100.0** |

## Europe CMBS

| Rank | Bookrunner | Value $m | No. | % share |
|---|---|---|---|---|
| 1 | Deutsche Bank | 1,290 | 2 | 50 |
| 2 | RBS | 470 | 1 | 18.2 |
| 3 | Rabobank | 410 | 1 | 15.9 |
| 3 | ABN AMRO Bank | 410 | 1 | 15.9 |
| | **Subtotal** | **2,580** | **4** | **100.0** |
| | **Total** | **2,580** | **4** | **100.0** |

## Global RMBS

| Rank | Bookrunner | Value $m | No. | % share |
|---|---|---|---|---|
| 1 | Deutsche Bank | 52,644 | 54 | 12.4 |
| 2 | Barclays | 44,423 | 71 | 10.5 |
| 3 | Credit Suisse | 37,432 | 78 | 8.8 |
| 4 | Goldman Sachs | 34,077 | 39 | 8 |
| 5 | Bank of America Merrill Lynch | 33,812 | 56 | 8 |
| 6 | Citi | 30,469 | 53 | 7.2 |
| 7 | JPMorgan | 28,580 | 58 | 6.7 |
| 8 | Nomura | 22,398 | 50 | 5.3 |
| 9 | Morgan Stanley | 22,280 | 42 | 5.3 |
| 10 | Wells Fargo Securities | 19,323 | 45 | 4.6 |
| | **Subtotal** | **325,439** | **500** | **76.7** |
| | **Total** | **424,576** | **734** | **100.0** |

## U.S. RMBS

| Rank | Bookrunner | Value $m | No. | % share |
|---|---|---|---|---|
| 1 | Deutsche Bank | 47,759 | 40 | 14.8 |
| 2 | Barclays | 37,361 | 54 | 11.6 |
| 3 | Credit Suisse | 35,574 | 73 | 11 |
| 4 | Goldman Sachs | 31,741 | 35 | 9.8 |
| 5 | Bank of America Merrill Lynch | 31,110 | 49 | 9.6 |
| 6 | Citi | 25,584 | 41 | 7.9 |
| 7 | JPMorgan | 19,353 | 43 | 6 |
| 8 | Wells Fargo Securities | 19,323 | 45 | 6 |
| 9 | Nomura | 18,975 | 44 | 5.9 |
| 10 | Morgan Stanley | 16,001 | 30 | 5 |
| | **Subtotal** | **282,780** | **447** | **87.6** |
| | **Total** | **323,010** | **596** | **100.0** |

## Europe RMBS

| Rank | Bookrunner | Value $m | No. | % share |
|---|---|---|---|---|
| 1 | JPMorgan | 8,850 | 13 | 20.6 |
| 2 | Barclays | 5,746 | 14 | 13.4 |
| 3 | Rabobank | 5,271 | 8 | 12.2 |
| 4 | Citi | 4,261 | 8 | 9.9 |
| 5 | Deutsche Bank | 3,675 | 8 | 8.5 |
| 6 | RBS | 2,906 | 8 | 6.8 |
| 7 | Santander | 2,317 | 4 | 5.4 |
| 8 | Lloyds Banking Group | 1,728 | 4 | 4 |
| 9 | Bank of America Merrill Lynch | 1,373 | 4 | 3.2 |
| 10 | SG Corporate & Investment Banking | 1,227 | 2 | 2.9 |
| | **Subtotal** | **37,354** | **32** | **86.8** |
| | **Total** | **43,052** | **40** | **100.0** |

** U.S. ABS Data from SI Deal Flow Database*

***PROVIDED BY DEALOGIC***

# JPM Leads The Books In 2012

***By Graham Bippart***

**JPMorgan** emerged as the top bookrunner of global asset-backed securities deals in 2012, deposing **Bank of America-Merrill Lynch**, which had taken the top seat the last two years, according to league tables compiled by *SI* and **Dealogic**.

JPM took down $32.75 billion in ABS business in the U.S.—the most active region for securitization—for a 18.9% market share, according to *SI*'s Deal Flow Database. Credit was divided equally when co-leads were involved on a transaction. The bank's U.S. market share increased five points year-over-year—a 137.12% increase by volume—in a year when overall ABS issuance climbed 75% from the 2011 total, a comparison of Dealogic and *SI* data shows. ***See League Tables, page 14.***

B of A, meanwhile, saw its market share drop by 3.5 points to 11.4%, growing its year-over-year volume by only 34.03%, and landing it in third place in the U.S.

**Barclays** climbed two spots from Dealogic's 2011 league tables to take second place in the U.S. The bank ran the books on $21.66 billion, or a 12.5% market share, according to *SI* data. Its bookrunning business saw a year-over-year volume increase of 114.29%.

**Citibank**, which dropped out of the top three in ABS, took an overwhelming lead in arranging collateralized loan obligations, of which there was a total of $55.71 billion in 2012. Citi benefited from being one of the only primary CLO shops to remain intact through the crisis, and it took 20% of the market share at $11.32 billion, according to *SI*, followed by B of A at $7.45 billion.

JPM also kept its lead in private-label commercial mortgage-backed securities, which it has maintained on a yearly basis since 2010. The bank had a 20% market share, with $9 billion in deals, according to Dealogic. **Wells Fargo** took second place with $7.65 billion, pushing **Deutsche Bank** to third at $7.05 billion.

Dealogic recorded a 20.49% year-over-year decrease in global residential MBS, including an approximately $20 billion drop in activity out of Europe, and an $81.4 billion drop in the U.S. Deutsche Bank sprang to the top bookrunning spot from fifth place, switching places with B of A. Barclays, **Credit Suisse** and **Goldman Sachs** retained their second, third and fourth place spots, respectively.

Some market players suggested that JPM's strong balance sheet and relative continuity of staffing helped push it to the top this year. "They took the $6 billion 'London Whale' losses like it was a flesh wound," one source said, referring to losses the bank incurred from bad derivatives bets made in its chief investment office unit last year. That the bank emerged from the trade and ensuing controversy without debilitating effects on its balance sheet may have helped it preserve market share from issuers, who often choose underwriters based on their ability to provide warehousing lines of credit and to create liquidity for the bonds on the secondary market.



# Trends In The Use Of Loan-Level And Collateral Performance Data

***By Douglas Long, EVP Business Strategy, Principia***

Principia surveyed 115 EU and U.S. investors about their use of loan-level and collateral performance data.

As regulatory clarity increases around securitization, those providing the data to investors have a vital role to play. However, with an expanding ocean of data from issuers and vendors of performance and loan-level data, the due diligence challenge for investors is now an operational one. Gaining an efficient way to access and make use of all this information across their portfolio management and risk oversight functions is a key priority for investors.

58% of EU investors and 45% of U.S. investors said that their operational systems were not effective at enabling them to access, update, analyze and monitor deal, performance and loan level data across their ABS/MBS portfolios.

## How Low Can You Go?

Accessing dynamic deal information and on-going collateral performance data is now a given for investors. 95% said that they analyzed aggregate pool statistics and performance data in their analysis and surveillance of securitization exposures. Loan-level data was mainly used by investors in private-label EU and U.S. RMBS, CMBS and CDOs.

Only 61% of investors use loan level data for EU RMBS however, contrasting with the 87% who accessed loan-level data for U.S. non-agency RMBS.

Enhanced loan level data was used most in the analysis of U.S. non-agency RMBS, where 66% of investors said they looked to layer in this level of detail into their analysis.

The view that loan level analysis is less vital for assets backed by large, homogenous asset pools (e.g. credit card ABS) was upheld. Only 50% said they accessed loan level data for consumer ABS.

## Beyond The Deal Structure: Obtaining Collateral Performance Data

Today's global capital requirements and proposed regulation affecting insurance companies and investment managers have written this level of analysis into the rulebook. It is a pre-requisite for the initial and on-going understanding of structured finance transactions.

78% of U.S. investors calculate performance statistics in-house. This drive in the

**THE FOUR KEY LEVELS OF DATA IDENTIFIED FOR THE ANALYSIS OF STRUCTURED FINANCE**

- Deal and tranche information: (underwriter, coupon payments, factors, credit enhancement, performance triggers, hedge counterparty)
- Aggregate pool statistics and performance data: (collateral stratifications, KPI's for prepay, delinquency, foreclosure & loss severity rates)
- Loan level data: (property/asset type, loan type, loan purpose, occupancy status)
- Enhanced loan level data: (updated property values, credit scores, additional loan information)

Fig. 1: Vendor sources of collateral performance data

Relative market share of vendors used

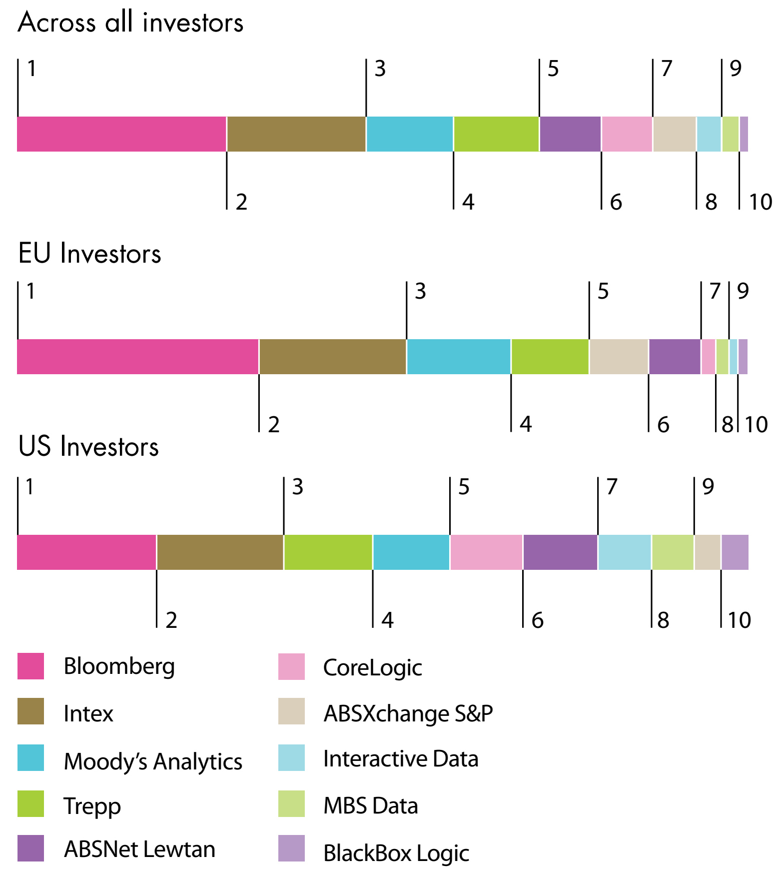
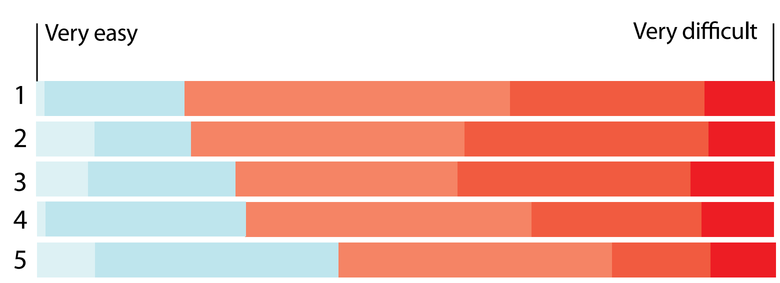



Fig. 2: Challenges in using performance data

Ranked by order of difficulty




1. Normalizing performance data from multiple sources for consistency
2. Getting a complete dataset for key performance indicators you monitor
3. Standard integration to systems for consistent quant analysis across assets
4. Ensuring accuracy of the data you receive
5. Monitoring triggers/flags for key performance indicators across portfolios

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U.S. to independently analyze pool performance is supported by the greater availability and commoditization of historical loan-level data.

In comparison, only 64% of EU investors said they calculated performance statistics in-house.

On average, investors made use of between three and four different performance data sources across the assets they invested in, combining vendor-provided data, in-house calculated statistics and trustee-provided performance data.

Over 50% of U.S. investors used five or more sources, compared with just 25% of EU investors.

Here the complexity of the workflows associated with managing and monitoring the key performance indicators necessary across a portfolio begins to unfold. An investor must first identify and then obtain performance data for all the assets they invest in - in a timely manner appropriate for each asset. This comes in a variety of formats on a variety of platforms and, while standardization is increasing, there is still much manual work to compare apples with apples.

These (see fig. 1) providers all deliver different services around their data, with different delivery methods and levels of deal coverage.

That the majority of investors don't rely on a single vendor demonstrates that the provision of performance data is far from commoditized or sufficiently provided from any single source. Indeed, while **Bloomberg** and **Intex** have market share there is still a lot of competition and jostling for position amongst data providers, with each significantly ramping up their coverage, delivery and value-added services since the crisis.

## The Challenges Associated With Performance Data Integration

Investors were asked to rank the following operational issues around performance data in order of the degree of the challenge posed.

Across the industry, normalizing data across data sources proved to be the biggest challenge. This was followed by being able to get a complete dataset of performance metrics across assets and the operational integration of performance statistics into the portfolio and risk management environment.

80% of investors said it wasn't easy to normalize performance data across data sources.

79% said it wasn't easy to get a complete dataset for Key Performance Indicators across their assets.

Investors ranked integration as one of the more important considerations when selecting their performance data providers (see fig. 2).

## Drilling Down Into The Detail: Accessing Loan-Level Data

Here we can see the different vendors investors use to access loan-level data.

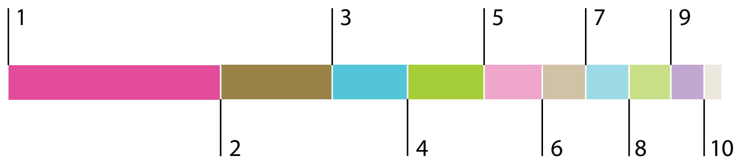
Of EU investors that seek access to loan-level data, 86% still take the raw data directly from the issuer. In the U.S., where there are more diversified sources, many established for a long time, 79% rely on issuer provided loan-level info, but combine this with value-added data provided by experienced data vendors.

Intex came out as the most used third party source of loan-level data in the EU and U.S., with **Trepp** and Bloomberg mainly used for CMBS loan-level data.

When we look at individual asset classes, there is much greater competition amongst data providers, with certain vendors preferred for their coverage and analysis of loan-level data on certain assets. For example **CoreLogic** and **Lewtan** ranked much more competitively when we just looked at the data for U.S. RMBS (see fig. 3).

Fig. 3: Vendor sources of loan level data

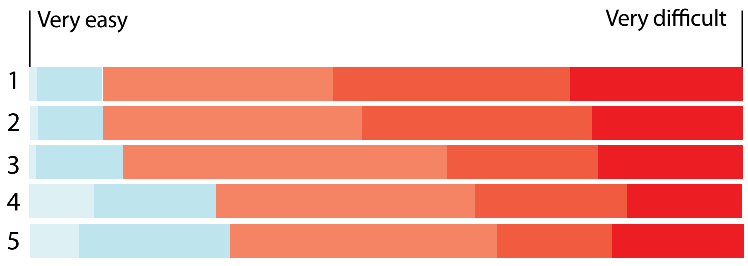
Relative market share of vendors used




1. Intex
2. Trepp
3. ABSNet Lewtan
4. CoreLogic
5. ABSXchange S&P
6. LPS McDash Loan Level Data
7. MBS Data
8. EuroABS
9. Bloomberg
10. Blackbox Logic

Fig. 4: Challenges in using loan level data

Ranked by order of difficulty




1. Manually cleansing the data for consistent analysis
2. Different standards in the disclosure of loan level information
3. Reconciling pool level reports with data from loan level files
4. Obtaining loan level data for pre-crisis transactions
5. Processing large volumes of data in bond analysis

## The Challenges Associated With Loan-Level Data Integration

Investors were asked to rank the following operational issues around loan-level data by the extent of the challenge posed.

Across the industry, manually cleansing the data for consistent analysis proved to be the biggest challenge. This was followed by interpreting different standards in loan-level disclosure across assets and reconciling pool-level reports with data from loan-level files.

90% of all investors said it was not easy to standardize and normalize loan-level data for efficient and consistent analysis.

54% of EU investors stated that integrating loan-level data into overall portfolio and risk management was operationally difficult or very difficult, compared with just 26% of U.S. investors (see fig. 4).

## Dealing With The Data: Operational Effectiveness

While the data is available to investors to analyze and perform the necessary analysis on a deal-by-deal level for structured finance assets, the findings of the survey highlight that operationally managing this data across a structured finance business or portfolio is a continued challenge.

58% of EU investors said that their operational systems were not effective at enabling them to access, update, analyze and monitor deal, performance and loan-level data across their ABS/MBS portfolios.

In the U.S., 45% of investors also classed their systems as not effective in this regard.

In 2010, Principia conducted a survey with a similar sample size, asking the same question and the good news is that investor operational effectiveness has slightly improved. In 2010, 65% of investors believed that their systems were operationally ineffective to manage these key aspects of structured finance.

## More Than Just The Data

A 2012 Principia survey highlighted that for market pricing data alone, an investor may use anywhere between two and five pricing sources across a structured finance portfolio. In this study we see investors will also access a similar multitude of sources for performance and loan-level data, in a plethora of formats. In addition, this data requires the expertise, cash-flow models and powerful systems to effectively calculate deal performance, deliver a picture of risk and flow valuations through to accounting at the deal or portfolio level. Gaining a handle on all this information is the first step towards independent valuation and diligent risk management of structured finance investments.

# CFTC's Broad Interpretive Exclusion From Commodity Pool Regulation For Securitizations

**By Charles Sweet, Partner, Bingham McCutchen**

*Charles Sweet*

On Dec. 7, 2012, the **Commodity Futures Trading Commission** released interpretive guidance that certain securitization vehicles are not commodity pools and are not required to have a registered commodity pool operator. Under this guidance, securitization vehicles that do not qualify for the CFTC's previous interpretive relief may still be excluded from the definition of "commodity pool" if their use of swaps is no greater than that contemplated by Regulation AB and Rule 3a-7, and those swaps do not create investment exposure.

The CFTC grandfathered many securitization vehicles, indicating that it will not recommend enforcement for failure to register as a commodity pool operator of a vehicle that issued fixed income asset-backed securities before Oct. 12, 2012, has not issued new securities, and provides to the CFTC upon request electronic copies of certain transaction documents. The CFTC also extended its previous Dec. 31, 2012 deadline for filing documentation to register as a commodity pool operator, indicating that it will not recommend enforcement action against the operator of any securitization vehicle for failure to register as a commodity pool operator until March 3.

## Background

The Commodity Exchange Act and the CFTC's rules require the commodity pool operator of a commodity pool to register with the CFTC, unless an exemption is available. The Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Commodity Exchange Act to include within the definition of "commodity pool" any investment vehicle "operated for the purpose of trading in commodity interests, including any . . . swap." The new definition, including the reference to swaps, became effective on Oct.12, 2012.

Many securitization vehicles include interest rate, currency or other swaps. Absent relief, such a vehicle could fall within the definition of "commodity pool" and be required to have a registered commodity pool operator.

Registration as a commodity pool operator involves oversight by a new regulator, as well as the time and expense of registration and of ongoing compliance. These costs and burdens likely will seem unjustified to many securitization sponsors, especially since it often is not apparent which entity in a securitization structure should register or how its expenses would be paid. Moreover, a commodity pool is a "covered fund" for purposes of the Volcker Rule and may be subject to the rule's covered fund ownership restrictions, proprietary trading restrictions, and prohibitions on covered transactions with a covered fund.

## October Interpretive Letter

The CFTC's Oct. 11, 2012 interpretive letter concluded that a securitization vehicle would not be included within the definition of "commodity pool" and its operator would not be required to register as a commodity pool operator, subject to five conditions.

First, the entity must be "operated consistent with the conditions set forth in" Regulation AB or Rule 3a-7 under the Investment Company Act of 1940. This condition was widely interpreted as covering any private offering of ABS so long as the securities meet the Regulation AB definition of "asset-backed security," a view that the CFTC appears to have confirmed.

Second, the entity's activities must be limited to passively holding a pool of fixed or revolving receivables or other financial assets that by their terms convert to cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to security holders. Because "financial asset" does not include an asset that is not transferred to the asset pool, synthetic ABS do not satisfy this condition.

Third, the entity's use of derivatives must be limited to those permitted under Regulation AB, including credit enhancement and alteration of the payment characteristics of cash flows (*i.e.*, currency and interest rate swaps).

Fourth, the entity must make payments to its security holders only from cash flow generated by pool assets, not based upon changes in asset value.

Fifth, the entity may not acquire or dispose of assets for the primary purpose of realizing gain or minimizing loss due to changes in the market value.

The October exemption was not broad enough to include covered bonds, asset-backed commercial paper vehicles, collateralized debt obligations, collateralized loan obligations, insurance-related securities or synthetic securitizations.

## Interpretive Guidance In December Letter

After extended discussions with industry representatives, the CFTC concluded that "certain securitization vehicles that do not satisfy the operating or trading limitations contained in Regulation AB or Rule 3a-7 may be properly excluded from the definition of commodity pool, provided that the criterion with respect to the ownership of financial assets continues to be satisfied and the use of swaps is no greater than that contemplated by Regulation AB and Rule 3a-7, and such swaps are not used in any way to create an investment exposure." Because "the criterion with respect to the ownership of financial assets" still must be satisfied, the entity's activities must be limited to holding a pool of fixed or revolving receivables or other financial assets that by their terms convert to cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to security holders.

A "standard" asset-backed commercial paper conduit likely would not qualify for the CFTC's

October interpretive relief, because ABCP notes generally are not Regulation AB asset-backed securities and may not meet the requirements of Rule 3a-7. However, an ABCP conduit generally would qualify for the relief in the December letter.

A "traditional" cash collateralized debt obligation permits trading in pool assets, so it generally would not meet the fixed pool requirements of Regulation AB's definition of asset-backed security, Rule 3a-7 or the October letter. However, a CDO whose pool assets consist only of "corporate loans, corporate bonds, or investment grade, fixed income mortgage-backed securities, asset-backed securities or CDO tranches issued by vehicles that are not commodity pools" generally would qualify for the CFTC's December guidance. This exemption would not extend to any structure in which investors have investment exposure to swaps, so investor payments could be affected by swaps only as credit enhancement (within reason), or an interest rate or currency swap. A CDO that has even a five percent bucket for synthetic assets would not qualify for the exemption.

A repackaging vehicle that issues credit-linked or equity-linked notes and owns financial assets, but also sells credit protection on a broad-based index or obtains exposure to a broad-based stock index through a swap, would not qualify for the December interpretive relief. Other examples of repackaging vehicles where investors gain a significant portion of their return from swaps include a vehicle that acquires a bond and uses swaps to extend the bond's investment experience, and a vehicle that pairs a bond with a swap to provide inflation rate protection.

A covered bond transaction would not involve a commodity pool if it contains no commodity interests other than any swaps that are used only for permitted purposes (*i.e.,* credit enhancement or interest or exchange rate swaps), and bondholders are entitled to receive only interest and principal payments, without any condition based upon derivative exposure.

Swaps that are used to provide credit support "to the extent contemplated by" Regulation AB should not be viewed as creating investment exposure, but a commodity pool may exist if swaps are "commercially unreasonable as credit support." According to the CFTC, if a trust owns bonds rated CCC and enters into a swap that provides credit support sufficient to obtain AA, the swap would be a significant aspect of the investment and the vehicle would be a commodity pool.

A "traditional" cash collateralized debt obligation permits trading in pool assets, so it generally would not meet the fixed pool requirements of Regulation AB's definition of asset-backed security, Rule 3a-7 or the October letter.

## No-Action Advice In December Letter

The CFTC concluded that many securitization vehicles formed before Oct.12, 2012 would face significant operational difficulties if they were required to have a registered commodity pool operator. Therefore, the CFTC will not recommend enforcement action against any operator of a legacy securitization vehicle for failing to register as a commodity pool operator, if the vehicle meets three criteria.

First, the entity must have issued fixed income securities before Oct. 12, 2012 that are backed by payments on or proceeds from, and whose creditworthiness primarily depends upon, cash or "synthetic assets" owned by the entity. (The undefined term "synthetic assets" appears to be susceptible to broad, albeit reasonable, interpretation.)

Second, the entity must not have issued new securities on or after Oct. 12, 2012.

Third, the entity must, promptly upon request and in any event within five business days, provide to the CFTC electronic copies of certain transaction documents, including its offering document, amendments to its transaction documents, the most recent distribution statement, and any required Rule 144A information. An entity that does not provide the required information must demonstrate that it cannot be obtained through reasonable commercial efforts.

On Oct. 12, 2012, the CFTC issued a no-action letter providing temporary relief from the obligation to register as a commodity pool operator where the registration requirement arises solely from swaps activity, so long as the registration application was filed by Dec. 31, 2012. The December letter extended this no-action relief, stating that the CFTC will not recommend enforcement action against the operator of any securitization vehicle for failure to register as a commodity pool operator until March 31, 2013.

A securitization vehicle relying on no-action advice (as opposed to one of the interpretive exemptions), or the CFTC's "de minimis" exemption, may still be deemed to be a commodity pool and a "covered fund" under the Volcker Rule. The Volcker Rule's implementing regulations are not yet final, and the regulators may yet provide an exemption from the covered fund restrictions for some securitization vehicles. In the meantime, sponsors of securitization vehicles that do not qualify for an outright exemption from the definition of "commodity pool" should consider the possible impact of the Volcker Rule.

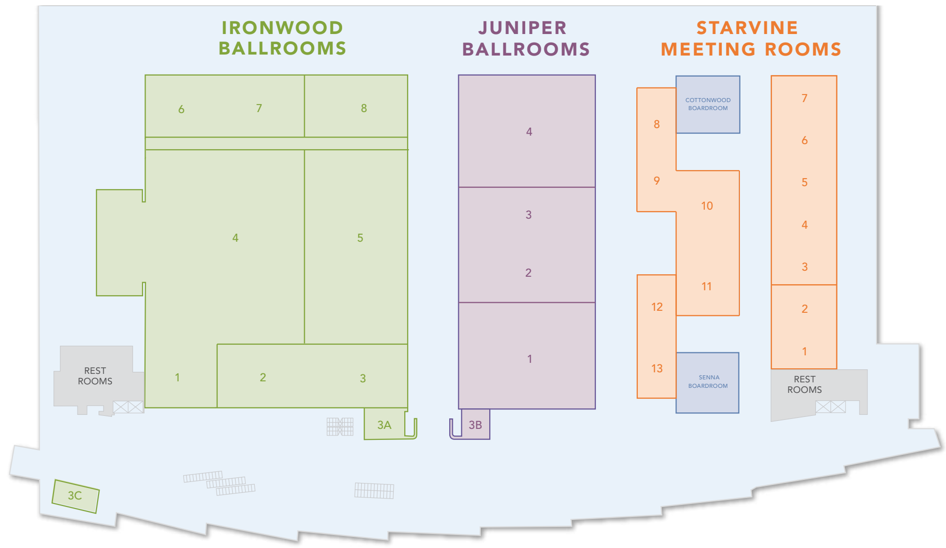
It has been reported that the CFTC may yet issue some form of additional relief for certain specific securitization vehicles that may not qualify for the existing guidance.

The CFTC issued a no-action letter providing temporary relief from the obligation to register as a commodity pool operator where the registration requirement arises solely from swaps activity, so long as the registration application was filed by Dec. 31, 2012.

*Charles A. Sweet is a partner in Bingham McCutchen's Washington office. He counsels public and private companies, their directors and officers, investment banks and investors regarding securities registration and reporting matters relating to both corporate and asset-backed securities as well as governance issues, stock exchange listing requirements and insider trading restrictions.*

# CONVENTION CENTER MAP

LEVEL 3

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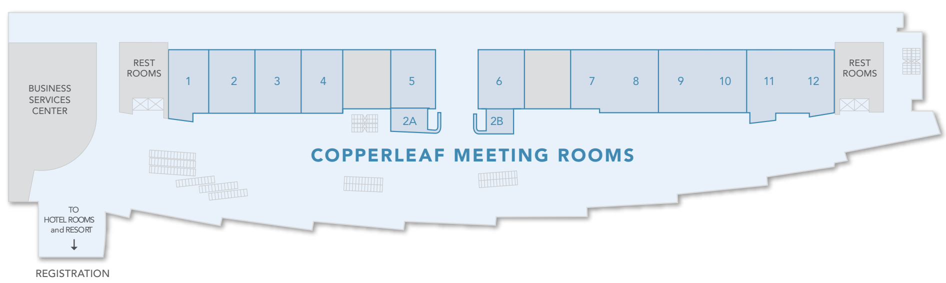


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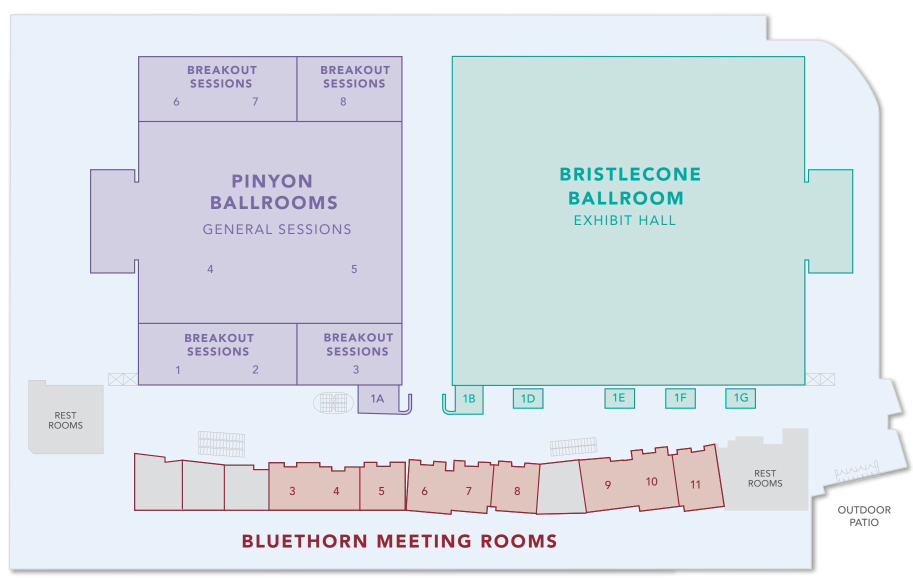



## IRONWOOD

| | |
|---|---|
| JP Morgan Securities, LLC | 1 & 4 |
| RBC Capital Markets | 2 & 3 |
| Morningstar Credit Ratings, LLC | 3C |
| Bank of America Merrill Lynch | 5 |
| Citigroup | 6 & 7 |
| BNP Paribas | 8 |

## JUNIPER

| | |
|---|---|
| Morgan Stanley | 1 |
| Credit Suisse | 2 & 3 |
| Barclays | 4 |

## STARVINE

| | |
|---|---|
| Goldman Sachs | 1 & 2 |
| Wells Fargo | 3 - 7 |
| RBS | 8 - 11 |
| UBS | 12 & 13 |
| HSBC Securities (USA) Inc. | Cottonwood Boardroom |
| ASF Meeting Room | Senna Boardroom |

## COPPERLEAF

| | |
|---|---|
| CoreLogic | 1 |
| PWC | 2 |
| Securitization Intelligence | 2A |
| Fitch Ratings | 3 |
| Crédit Agricole | 4 |
| U.S. Bank National Association | 5 |
| Jefferies & Company, Inc. | 6 & 2B |
| Moody's Investors Service | 7 & 8 |
| Nomura | 9 & 10 |
| Deutsche Bank | 11 & 12 |

## PINYON

| | |
|---|---|
| Speaker Ready Room | 1A |

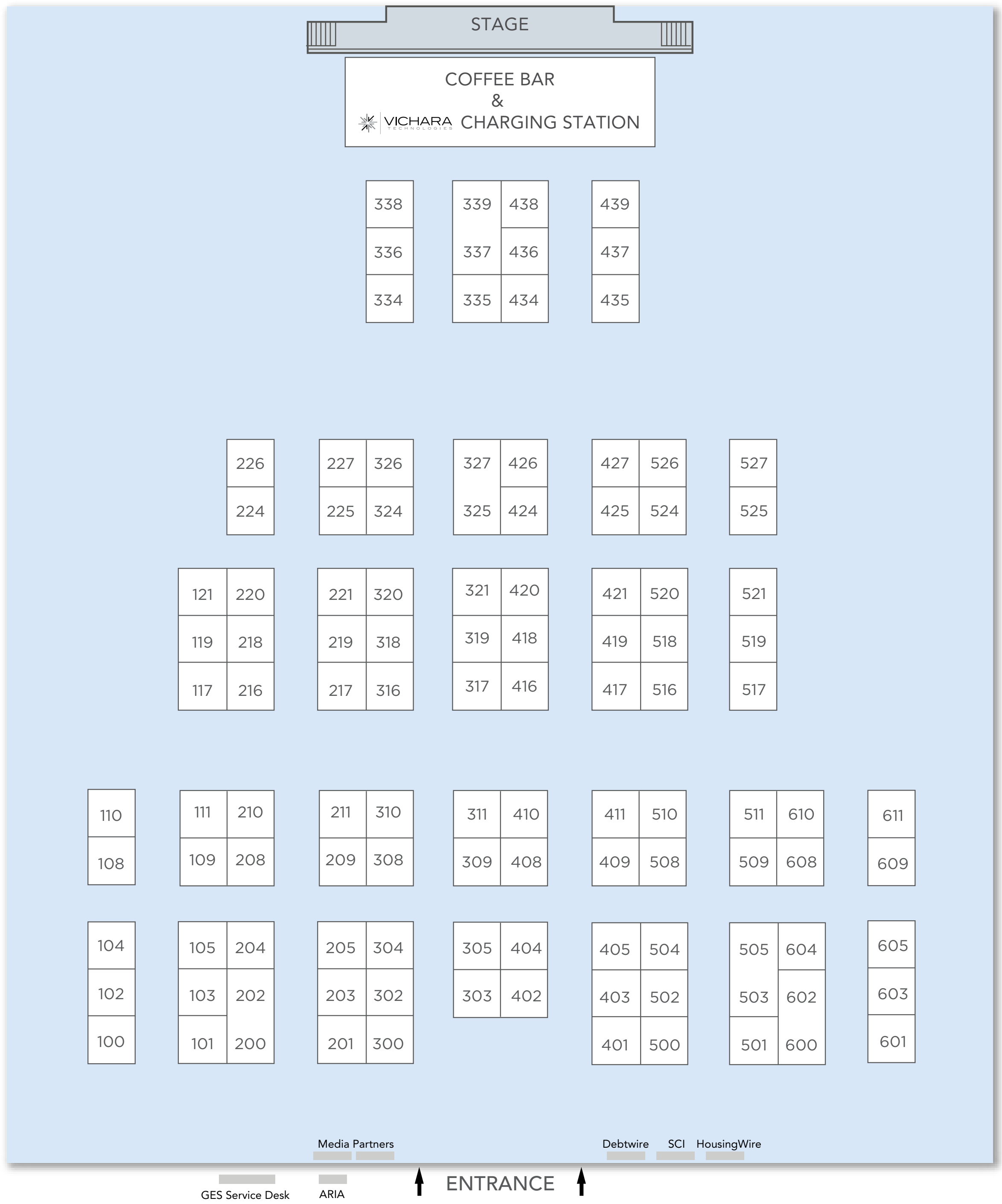
## BRISTLECONE

| | |
|---|---|
| Information | 1B |
| Société Générale Corporate & Investment Banking | 1D |
| DBRS | 1E |
| BNY Mellon | 1F |
| Kroll Bond Rating Agency, Inc. | 1G |

## BLUETHORN

| | |
|---|---|
| PNC | 3 & 4 |
| Cadwalader, Wickersham & Taft LLP | 5 |
| Bingham McCutchen LLP | 6 & 7 |
| Standard & Poor's | 8 |
| BMO Capital Markets | 9 & 10 |
| SNR Denton | 11 |

## LEVEL 1 BRISTLECONE BALLROOM




| FIRM | BOOTH NUMBER |
|---|---|
| 1010data | 104 |
| Allen & Overy LLP | 511 |
| Allonhill | 336 |
| Alston & Bird LLP | 610 |
| Andrew Davidson & Co., Inc. | 211 |
| Ashurst LLP | 320 |
| Assured Guaranty | 103 |
| Australian Securitization Forum | 119 |
| Baker & McKenzie LLP | 434 |
| Baker Tilly | 420 |
| Bingham McCutchen LLP | 401 |
| Black Mountain Systems | 226 |
| BlackBox Logic, LLC | 425 |
| Blake, Cassels & Graydon LLP | 203 |
| Bloomberg L.P. | 503, 505 |
| BNY Mellon | 200, 202 |
| Brean Capital | 437 |
| Cadwalader, Wickersham & Taft LLP | 404 |
| CBIZ MHM, LLC | 218 |
| Chapman and Cutler LLP | 309 |
| Christiana Trust | 438 |
| Citigroup | 501 |
| Clayton Holdings LLC | 601 |
| Clear Capital | 217 |
| Clifford Chance | 527 |
| CoreLogic | 303 |
| Cortland Capital Market Services | 424 |
| Crédit Agricole | 311 |
| CSC Trust | 225 |
| DataQuick | 111 |
| DBRS | 410 |
| Debtwire | Table |
| Dechert LLP | 209 |
| Deloitte & Touche LLP | 402 |
| Deutsche Bank | 403 |
| Direct Access Partners | 611 |
| Equifax | 338 |
| Ernst & Young LLP | 408 |
| Fitch Ratings | 300 |
| Fitch Solutions | 302 |
| FNC, Inc. | 117 |
| Gleacher & Company, Inc. | 405 |
| Global Securitization Services, LLC | 205 |
| Greenberg Traurig, LLP | 208 |
| GreensLedge Capital Markets LLC | 604 |
| Guggenheim Securities | 509 |
| Hogan Lovells | 219 |
| HousingWire | Table |
| Interactive Data | 201 |
| Intesa Sanpaolo | 227 |
| Intex | 427 |
| K&L Gates LLP | 439 |
| Katten Muchin Rosenman LLP | 600, 602 |
| Kaye Scholer LLP | 335 |
| Kirkland & Ellis LLP | 417 |
| KPMG LLP | 321 |
| Kramer Levin Naftalis & Frankel LLP | 105 |
| Kroll Bond Rating Agency, Inc. | 318 |
| Lewtan | 324 |
| Locke Lord LLP | 121 |
| LordSPV | 526 |
| Lowenstein Sandler LLP | 517 |
| LPS Applied Analytics | 337, 339 |
| Maples and Calder | 516 |
| Markit | 605 |
| Mayer Brown LLP | 500 |
| MBSData | 210 |
| McCarthy Tétrault LLP | 421 |
| Milbank, Tweed, Hadley & McCloy LLP | 524 |
| Mischler Financial Group | 108 |
| Moody's Analytics | 310 |
| Moody's Investors Service | 308 |
| Morningstar Credit Ratings, LLC | 508 |
| Natixis | 411 |
| Nixon Peabody LLP | 224 |
| NORD/LB | 504 |
| Nykredit | 518 |
| Orrick, Herrington & Sutcliffe LLP | 334 |
| Potter Anderson & Corroon LLP | 326 |
| Principia | 204 |
| Pro Teck Valuation Services | 435 |
| PWC | 305 |
| Raymond James | 221 |
| Richards, Layton & Finger | 316 |
| Sapient Global Markets | 608 |
| Schulte Roth & Zabel LLP | 319 |
| Scotiabank | 510 |
| SecondMarket | 317 |
| Securitization Intelligence | 109 |
| Seward & Kissel LLP | 426 |
| Sidley Austin LLP | 100 |
| SNR Denton | 409 |
| Société Générale Corporate & Investment Banking | 419 |
| SoFi | 436 |
| Solve Advisors, Inc. | 609 |
| SourceMedia / Asset Securitization Report | 603 |
| Sperlonga Data & Analytics | 502 |
| Standard & Poor's | 325, 327 |
| StormHarbour Securities | 519 |
| Stroock & Stroock & Lavan LLP | 216 |
| Structured Credit Investor | Table |
| The Seaport Group | 101 |
| Thetica Systems Inc. | 520 |
| Thomson Reuters | 220 |
| TransUnion | 521 |
| U.S. Bank National Association | 416 |
| Vichara Technologies | 525 |
| Weil, Gotshal & Manges LLP | 418 |
| Wells Fargo | 304 |
| Wilmington Trust | 110 |

# Forecast:

(Continued from page 1)

a pretty powerful combination to create spread narrowing," Singh said.

Across the asset classes, **Claire Mezzanotte**, head of global structured finance at **DBRS**, said to expect continued growth in 2013, with autos and credit cards predictably leading the way. She said new and returning issuers will tap the market, cross-border deals will gain traction and student loan deals will term out collateral from the U.S. **Department of Education**'s Straight-A Funding conduit.

In the residential space, **Peter Sack**, managing director, securitized products at **Credit Suisse**, said by this time next year **Redwood Trust** and Credit Suisse should no longer be the only two private-label sponsors. "There have been two issuers in the last few years and I think it's very likely that that's going to increase in 2013," Sack said. Still, he said a healthy RMBS market won't look like 2006 in terms of issuance simply because a number of those products, such as subprime and pay options, are not likely to return. "But we will … see an increase in issuance in the coming year," Sack said.

Panelists also referenced emerging asset classes, such as REO-to-rental, excess servicing interest-only transactions, servicer advance receivables and unsecured consumer loans to fill the void of a subprime credit card market. But Singh judged servicer advance receivables as the only "solid investment-grade asset class" among them.

# REO-To-Rental

(Continued from page 1)

**KPMG**, said. By way of example, he pointed to areas such as Florida, where prices are so low the operating costs of fixing a roof could exceed the costs of a property.

But from the financing perspective, **Ryan Stark**, director at **Deutsche Bank**, said his team was agnostic in the trade-versus-business debate. "Let's try to create a financing product, and ultimately a securitization market, to feed both of those strategies," Stark said.

Stark said in the REO market's nascent stages, structural concerns are secondary to merely getting it off the ground. "Guys just want to buy well-structured deals," Stark said, as investors tire of legacy paper and want exposure to the recovering real estate market. But potential buysiders are nevertheless curious about structure and tenor. "What we've tried to say is: 'Look, it could have different structures, and, at least in the early days, it's not going to be as commoditized as some of the residential markets,'" Stark said.

Still top of mind for many is how long it will take to build a securitization market around REO from the ground up. "There's a chance this could be a very large asset class with a number of operators with 20, 30, 40, 50,000 homes and all of a sudden you start talking about $5-10 billion market capital companies," Beasley said. He added that the timeline could be much shorter than some originally anticipated. "Maybe it's two or three years because of the capital that can flow in."

## SEEN 'N HEARD

### In The Mood

Monday morning kicked off with a long line of industry folk looking to sign in and hit the conference circuit. More than 5,500 attendees are expected to make an appearance this week. "I can remember years after 2008 when there were maybe 1,000 of us here. It's good to see everyone back," one investor told *SI* over breakfast. "You can feel it in the air. The mood is just more upbeat."

### Partied Out

The bulk of the evening events at this year's conference were being held on Monday, leaving some investors wondering how they were going to make it to all of them and mingle with their peers without getting too burnt out. "It's exhausting!" said one attendee. "These guys should spread them over the length of the conference."

### Time To Shine

**Katten Muchin Rosenman** offered an old fashioned shoe shine to those stopping by its presentation hall booth Monday, while **SecondMarket** went artisanal, rolling cigars by hand for prospective clients.

### It's No Walk In The Park

Eager to drive home the point that regulatory implementation remains a major hurdle in his opening remarks Monday, ASF boss **Tom Deutsch** said implementation of new rules in 2013 would make Reg AB I implementation look like **Georges Pierre Seurat**'s famous painting *A Sunday Afternoon on the Island of La Grande Jatte.*

# Let's Talk

(Continued from page 1)

and the subsequent refusal of rating agencies to provide "expert" ratings to deals in order to avoid liability under securities law—temporarily impeded issuance.

"A credit rating by a [nationally recognized statistical rating organization] and a CEO performance certification are effectively both assessments of whether a securitization is expected to generate cash flows at times and in amounts sufficient to service the offered ABS in accordance with their terms," said moderator **Michael Mitchell**, partner at law firm **Chapman and Cutler** and former special counsel with the **Securities and Exchange Commission**. "We can be fairly assured that executive officers are not going to be more willing than a rating agency" to accept securities law liability, he added.

**Katherine Hsu**, chief of the office of structured finance in the division of corporate finance at the SEC, responded that the SEC appreciates the comments it has received and is working to address them, but that "The blanket statement… that an officer in charge of a securitization does not have the…oversight to give the certification, is… surprising to me." She added, "The financial crisis demonstrated real problems with the way these deals were put together," and that the certification is not meant to act as a guarantee of future cash flows.

Only 48% of the Dodd-Frank Act's 236 provisions require rulemaking, according to a **Government Accountability Office** report last week. And though SEC Deputy Director of Policy and Capital Markets **Paula Dubberly** has said on the record that the SEC's staff should "soon" be able to make recommendations for final rules on Regulation AB II, according to Hsu, market players question how current proposals such as the CEO certification and required information disclosure on underlying assets can take effect without hindering the momentum the market is just now beginning to see.

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## THE DAY IN PICTURES


Kevin Miller of the Federal Deposit Insurance Corporation

Alex Villacorta of Clear Capital


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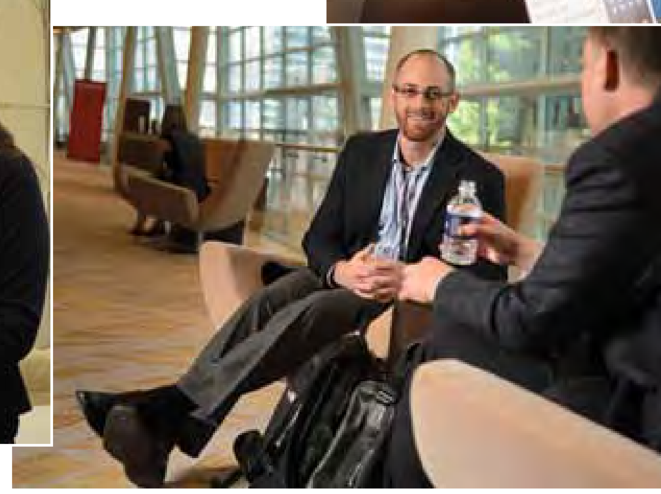
Matt Healy of Fidelity Investments


Samantha Gomes and Donna Garcia of LPS Applied Analytics

Emily Ryan of Wells Fargo



Mike Bengs of Nordstrom fsb

Photos: Stephen Elliot

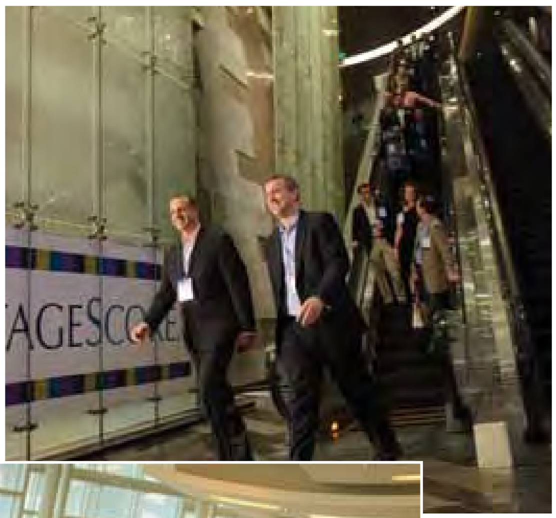
## THE DAY IN PICTURES


Jennifer Madara of Wells Fargo

Karlyn Knieriem of First National Bank of Omaha

*Mark Lengel of Goldman Sachs*


*Christy Paluf of Nomura Securities International*

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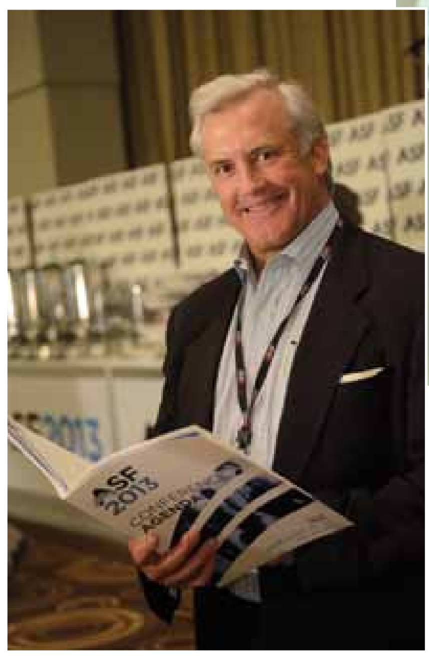
## THE DAY IN PICTURES

*Serhan Secmen of Citi Capital Advisors*



*Tim Connors of Integrated Asset Services*

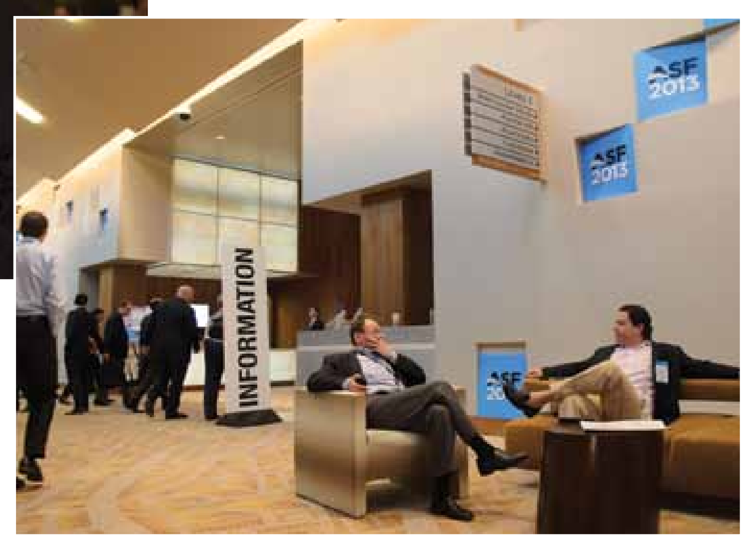
*Patrick Tuttle of Pepper*

*Deb Murin of Fitch Ratings*



*Amanda Baker of Mayer Brown*


*Roger Klepper of Credit Agricole and Jim Ahern of Societe Generale*




*Seth Robbins of Bracebridge Capital*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