

Chapman Client Alert

February 9, 2018

Current Issues Relevant to Our Clients

DC Circuit Court of Appeals Holds That Open Market CLO Managers Do Not Have to Comply With Dodd-Frank Risk Retention Requirements

The US Court of Appeals for the District of Columbia Circuit issued a significant decision today in the case of *LSTA v. SEC and Board of Governors of the Federal Reserve System*. The case involved a question of whether the risk retention requirements imposed by Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203, 124 Stat. 1376 (2010), “Section 941”) required open market CLO managers to retain risk in those transactions they managed.

The Court of Appeals held that the decision to apply Section 941’s credit risk retention requirements to open market managers of CLOs was incorrect given the nature of the transactions performed by those CLO managers. The court recognized that open market CLO managers neither originate the loans being securitized nor hold them as an asset at any point. The Court stated that the SEC and the Federal Reserve’s preferred interpretation seemed to stretch the statute beyond the natural meaning of what was written by Congress. In so finding, the Court of Appeals:

- (i) reversed the judgment of the district court and remanded the case with instructions to grant summary judgment to the LSTA on whether application of the rule to CLO managers is valid under Section 941,
- (ii) vacated summary judgment on the issue of how to calculate the five percent risk retention, and
- (iii) vacated the rule insofar as it applies to open market CLO managers.

[Click here](#) to view the court’s opinion.

The LSTA will be hosting a webinar for its members at 11:00 am on Monday, February 12, 2018 to summarize the court's decision and discuss the immediate implications of the decision as well as next steps. [Click here](#) for more information from the LSTA.

For More Information

If you have any questions or would like to discuss this ruling, the underlying regulations, or the prospects and timeline for any appeal in greater detail, please contact a member of the Asset Securitization Department or visit us online at chapman.com.

Chapman and Cutler LLP

Attorneys at Law · Focused on Finance®

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

To the extent that any part of this summary is interpreted to provide tax advice, (i) no taxpayer may rely upon this summary for the purposes of avoiding penalties, (ii) this summary may be interpreted for tax purposes as being prepared in connection with the promotion of the transactions described, and (iii) taxpayers should consult independent tax advisors.

© 2018 Chapman and Cutler LLP. All rights reserved. Attorney Advertising Material.