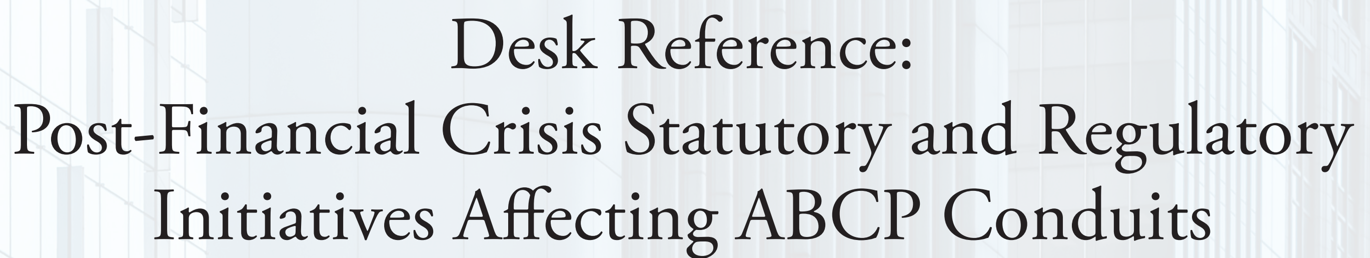


Desk Reference: Post-Financial Crisis Statutory and Regulatory Initiatives Affecting ABCP Conduits

August 2017 Update

CHAPMAN

Focused on Finance®

DESK REFERENCE: POST-FINANCIAL CRISIS STATUTORY AND REGULATORY INITIATIVES AFFECTING ABCP CONDUITS

August 2017 Update

Craig Fishman
Preetha Gist
Felicia B. Graham
Timothy P. Mohan

This document has been prepared by Chapman and Cutler LLP attorneys for information 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. The publication and receipt of this document do not constitute legal advice or establish an attorney-client relationship with any person. Attorney advertising material.

© 2017 Chapman and Cutler LLP

Table of Contents

SECTION PAGE

Preface iii

Bank Capital Regulation 1

Basel III – Revisions to the Securitization Framework 1

BCBS – Capital Treatment for 'Simple, Transparent and Comparable' Securitizations 3

Dodd-Frank Use of Ratings in Capital Rules and Other Regulations 5

Dodd-Frank Collins Amendment 6

Revisions to European Capital Rules 7

European Commission – Differentiated Capital Treatment For Simple, Transparent and Standardized Securitizations 8

Basel III Leverage Ratio 9

U.S. Supplementary Leverage Ratio 10

Basel Supervisory Framework re: Large Exposures 11

U.S. Federal Reserve Single Counterparty Credit Limits 13

Basel Step-in Risk 16

Bank Liquidity Regulation 17

U.S. – Liquidity Coverage Ratio 17

Canada – Liquidity Coverage Ratio 18

Europe – Liquidity Coverage Ratio 19

Basel III Net Stable Funding Ratio 20

U.S. Net Stable Funding Ratio 21

Dodd-Frank FDIC Assessments 23

Derivatives Regulation 25

Dodd-Frank Derivatives Provisions 25

Risk Retention Regulations 27

Dodd-Frank Risk Retention 27

EBA Risk Retention 28

Securities Regulation 29

Dodd-Frank Conflicts of Interest 29

Dodd-Frank Franken Amendment 30

Revisions to SEC Rule 3a-7 31

Reg AB II 33

Amendments to SEC Rule 2a-7 34

Credit Rating Agency Reforms and Rule 15Ga-2 and Rule 17g-10 (Section 932 of Dodd-Frank)......... 36

Volcker Rule......... 37

Dodd-Frank Volcker Rule: Sponsorship of, or Holding Ownership Interests in, Covered Funds......... 37

Dodd-Frank Volcker Rule: Section 23A and 23B Application......... 39

Dodd-Frank Foreign Banking Organization's Formation of Intermediate Holding Company......... 40

For More Information......... 41

Preface

Clients and Friends:

As we are all too aware, there are many regulatory developments affecting asset-backed commercial paper ("ABCP") conduits and their sponsors. Keeping track of these is a daunting task. We hope this desk reference will be helpful.

The primary sources for the regulatory initiatives affecting the ABCP market are the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") and the comprehensive set of reform measures developed by the Basel Committee on Banking Supervision to strengthen the regulation, supervision and risk management of the banking sector known as "Basel III."

Reliance on short-term wholesale funding by banks is widely viewed by financial system regulators as one of the main contributors to the financial crisis. Not surprisingly, therefore, like other forms of wholesale funding, ABCP has attracted the specific attention of regulators in many contexts. For example, the prudential bank regulators have eliminated most of the regulatory capital advantages of funding customer securitization transactions through ABCP conduits and have imposed liquidity coverage requirements on banks that sponsor or otherwise support ABCP conduits. Also, the Securities and Exchange Commission ("SEC") has enacted amendments to Rule 2a-7 of the Investment Company Act of 1940 that would further restrict the ability of money market funds—historically, major purchasers of ABCP—to invest in the ABCP of a single ABCP conduit or a single ABCP conduit sponsor.

In other contexts, the activities of ABCP conduits are being regulated as part of the broader regulation of securitization. Risk retention rules, the Volcker Rule, credit rating agency reform and other regulatory initiatives arising out of Dodd-Frank affect both activity at the ABCP conduit level and most of the underlying securitization transactions with bank customers. Often, these regulations were designed without specific consideration of the ABCP conduit structure and therefore do not fit neatly with market practices in that sector. Even where specific rules and exemptions from rules have been established for ABCP conduits, many of these specific rules and exemptions fail to accommodate existing ABCP structures and practices and, therefore, force ABCP conduits to seek other solutions.

The prospects of further regulation have become murkier with the change of Presidential administration. Several proposed regulations remain in limbo, and legislation has been introduced that could reverse regulations affecting the industry. We are following these developments closely. We hope this update proves useful and we look forward to being of assistance to you in interpreting these regulations and analyzing how best to conduct your business going forward.

Bank Capital Regulation

Basel III – Revisions to the Securitization Framework

The Basel Committee on Banking Supervision ("BCBS") published final revisions to the securitization framework for determining regulatory capital requirements for banks holding exposures arising from securitization transactions. The most significant revisions in Basel III to the existing securitization framework include:

- Revised Hierarchy of Approaches: The revised hierarchy reduces reliance on external ratings and also simplifies and limits the number of approaches. The new hierarchy is (1) Internal Ratings- Based Approach ("IRBA"); (2) External Ratings-Based Approach (where the applicable jurisdiction permits the use of credit ratings) that would include an internal assessment approach ("IAA") for unrated exposures in ABCP conduit transactions; and (3) Standardized Approach.

- Added Risk Drivers: The revised securitization framework introduces additional risk drivers to address weaknesses in the existing securitization framework that resulted in under-capitalization of certain securitization exposures. For example, the revised securitization framework adds an explicit adjustment to take into account the maturity of a securitization's tranche.

- Increased Required Amount of Regulatory Capital Banks Must Hold for Securitization Exposures: The revised framework would increase the risk weight floor for securitization exposures of banks using the IRBA from 7% to 15%. The incorporation of the maturity adjustment would also result in increased capital for many securitization exposures.

  The definition of "ABCP programme" used in determining whether IAA may be used for a securitization exposure has been revised in the Basel III framework to include only programs that issue ABCP "predominantly" to third-party investors. Depending on how national regulators interpret the term "predominantly," this could adversely affect the ability of conduit sponsors to use the IAA that also need to buy ABCP (for example, to comply with risk retention requirements).

U.S. Bank Programs Covered?	Yes, if adopted by U.S. regulators.
Foreign Bank Programs Covered?	Yes, if adopted by applicable national regulators.
Non-Bank U.S. Programs Covered?	No, unless consolidated with a financial institution in an adopting jurisdiction for capital measurement purposes.
Status	The final revised framework was issued by BCBS in December 2014.[1] Unclear when national regulators will take action to implement the revised framework in their jurisdictions.
Effective Date	The new securitization framework will come into effect as an international standard in January 2018. However, it is uncertain what the effective date will be for rules implementing the framework in any jurisdiction.

1 Revisions were made to the Framework in July of 2016, but such revisions only added alternative capital treatment for "simple, transparent securitizations." The 2016 revisions did not alter any other provisions of the Framework.

BCBS – Capital Treatment for "Simple, Transparent and Comparable" Securitizations

In July 2016, BCBS published revisions to its Securitization Framework providing for reduced capital treatment for securitization exposures that meet its "simple, transparent and comparable" (STC) securitization criteria. By their terms, the STC securitization criteria do not apply to ABCP transactions or programs. BCBS did indicate in a November 2015 consultative paper, however, that it was considering publishing a separate consultative paper for ABCP.

On July 6, 2017, the BCBS issued two consultative documents entitled "Criteria for Identifying Simple, Transparent and Comparable Short-Term Securitisations" (the "Criteria Document") and "Capital Treatment for Simple, Transparent and Comparable Short-Term Securitisations" (the "Capital Document" and, together with the Criteria Document, the "Consultative Documents").

The use of the proposed short-term STC criteria would be limited to exposures to qualifying ABCP conduits. ABCP programs are defined as programs that predominantly issue (i) commercial paper with a maturity of one year or less, or (ii) notes to third parties backed by assets or loans held in a bankruptcy remote special purpose entity.

The Criteria Document sets forth 17 criteria for STC securitizations that are focused primarily on investors in ABCP. The Capital Document supplements the 17 criteria with more specific requirements and adds two additional criteria and provides for more favorable capital treatment for exposures to qualifying ABCP conduits for both investors and sponsors. The criteria address asset risk and quality, structural risk, and fiduciary and servicer risk.

For commercial paper notes issued by ABCP conduits that meet the short-term STC capital criteria, capital would equal that of STC risk positions of comparable maturity in the BCBS Revised Capital Framework. Only the commercial paper notes of fully-supported ABCP conduits would be eligible for STC capital treatment for investing banks.

Banks providing credit or liquidity funding to qualifying ABCP conduits are treated as if they had taken a risk position in an STC term securitization, and the capital treatment would follow the capital treatment for STC term securitizations in the Revised Capital Framework. For banks using the internal ratings-based approach for determining capital, the risk weight would be determined by applying a 0.5 scalar to the "p" factor with a "p" factor floor of 0.3, and a risk weight floor of 10% for senior positions and 15% for other positions. For banks applying the external ratings-based approach or the internal assessment approach for determining capital, the risk weight applicable to an equivalent position in an STC term securitization would be used.

Importantly, the Consultative Documents take an "all or nothing" approach to qualifying for STC status and capital treatment. All of the conduit level and transaction level criteria must be met for *all*

transactions in an ABCP conduit, except that an ABCP conduit need not be fully supported in order for STC capital treatment to apply to exposures of the sponsor bank to the ABCP conduit. BCBS does raise the possibility of separating conduit level and transaction level capital treatment in a final standard and has asked for comment on this issue.

U.S. Bank Programs Covered?	Yes, if adopted by U.S. regulators. U.S. regulators have shown no willingness to date to consider STC securitization criteria.
Foreign Bank Programs Covered?	Yes, if adopted by applicable national regulators. (Note that the European Commission has proposed its own "simple, transparent and standardized" (STS) criteria that are not based on the BCBS STC criteria. The STS criteria are discussed below.)
Non-Bank U.S. Programs Covered?	No, unless consolidated with a financial institution in an adopting jurisdiction for capital measurement purposes.
Status	Uncertain. Comments are due on the Consultative Documents on October 5, 2017.
Effective Date	Unknown.

Dodd-Frank Use of Ratings in Capital Rules and Other Regulations

Section 939A of Dodd-Frank generally requires U.S. regulators to replace regulatory requirements linked to credit ratings with alternative standards of creditworthiness. As a result, U.S. bank regulations (including capital rules) must eliminate the use of ratings. U.S. banking agencies issued the final Basel III rule in July 2013, which replaces the ratings-based approach with the supervisory formula approach or the simplified supervisory formula approach and requires that securitization exposures be calculated based on relative level of exposure and performance of underlying assets.

The final rule allows eligible ABCP liquidity to be risk-weighted at the highest risk weight applicable to underlying exposure.

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	No
Non-Bank U.S. Programs Covered?	No
Status	The final rule was issued in July 2013.
Effective Date	January 1, 2014, for advanced approaches banks and January 1, 2015, for standardized approach banks.

Dodd-Frank Collins Amendment

Section 171 of Dodd-Frank (known as the Collins Amendment) requires that risk-based capital requirements imposed on U.S. banks not be lower than the requirements that were in effect as of July 21, 2010.

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	No
Non-Bank U.S. Programs Covered?	No, unless consolidated with a financial institution in an adopting jurisdiction for capital measurement purposes.
Status	Final Basel III regulations were issued by U.S. bank regulators in July 2013.
Effective Date	Basel III Standardized Approach became the floor in January 1, 2015.

Revisions to European Capital Rules

Capital Requirements Directive IV ("CRD IV") implements Basel III framework for securitization exposures. Use of IAA still allowed for qualifying unrated exposures to ABCP programs.

U.S. Bank Programs Covered?	No
Foreign Bank Programs Covered?	Yes, applies to European financial institutions and investment firms.
Non-Bank U.S. Programs Covered?	No, unless consolidated with a European financial institution for capital measurement purposes.
Status	CRD IV was adopted by European Parliament in June 2013.
Effective Date	January 1, 2014.

European Commission – Differentiated Capital Treatment For Simple, Transparent and Standardized Securitizations

The European Commission has published a proposed regulation intended to encourage "simple, transparent and standardized" (STS) securitizations. The STS criteria include criteria for ABCP transactions and ABCP programs. ABCP transactions would in general be required to meet STS criteria applicable to other securitization transactions with some accommodations in recognition of the privately negotiated nature of these transactions. ABCP may also be considered STS if certain criteria are met including: (1) all transactions in the ABCP program are STS, (2) all transactions in the ABCP program are issued by liquidity and credit support from a single provider that covers all credit, liquidity and dilution risks, and (3) the ABCP conduit is not permitted to issue extendible or callable securities.

Banks that invest in STS securitizations would be entitled to capital treatment that is more favorable than that available for other securitization exposures. Exposures meeting the STS criteria would be eligible for a reduction in the risk weight floor from 15% to 10% for exposures with one year maturities and from 20% to 15% for exposures with five year maturities. The capital surcharge or "p factor" applied to those exposures would be reduced to 0.5 from the 1.0 set forth in the BCBS revisions to the securitization framework.

U.S. Bank Programs Covered?	No
Foreign Bank Programs Covered?	Yes, applies to European financial institutions and investment firms.
Non-Bank U.S. Programs Covered?	No, unless consolidated with a European financial institution for capital measurement purposes.
Status	Proposed regulations issued on September 30, 2015. The European Commission and Parliament reached political agreement on the STS framework on May 30, 2017. Final text must be approved by the European Parliament and Council.
Effective Date	Uncertain. Effective 20 days following publication of final regulations in the Official Journal of European Union.

Basel III Leverage Ratio

BCBS has adopted a leverage ratio (ratio of Tier 1 capital to assets plus adjusted off-balance sheet items) internationally for the first time. Unfunded commitments are included in the denominator when determining required Tier 1 capital. Certain unfunded commitments are assigned credit conversion factors ("CCFs") less than 100%. The original BCBS leverage ratio framework contained unclear language regarding the treatment of unfunded commitments in securitization transactions; but appeared to apply a 100% CCF to these commitments (except for "Eligible Liquidity Facilities," which are assigned a 50% CCF). In April 2016, BCBS published a consultative document that provides that for purposes of calculating the leverage ratio denominator, off-balance sheet exposures are to be treated the same as they are under the BCBS Revised Securitization Framework (100% CCF).

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	Yes
Non-Bank U.S. Programs Covered?	No, unless a bank provides credit or liquidity support.
Status	The final international supervisory framework was issued in January 2014.
Effective Date	For initial leverage ratio, variable. National regulators must adopt implementing regulations. Timing of revisions to the BCBS leverage ratio framework based on the April 2016 consultative document is unclear. The European Commission adopted a leverage ratio that is based on the BCBS leverage ratio as part of CRD IV in June 2013. This leverage ratio was further revised in November 2014 to take into account changes to the leverage ratio in the January 2014 BCBS framework. Public disclosure of the leverage ratio commenced in January 2015. Final adjustments to the leverage ratio are to be made by the first half of 2017, with full implementation of the 3% minimum leverage ratio on January 1, 2018. Canada's Office of the Superintendent of Financial Institutions adopted a Leverage Requirement Guideline in October 2014. Beginning with the first quarter of 2015, Canadian financial institutions are expected to maintain a minimum leverage ratio of 3% at all times.

U.S. Supplementary Leverage Ratio

Supplementary leverage ratio ("SLR") (Tier 1 capital to balance sheet assets plus adjusted off-balance sheet exposures) was adopted by U.S. bank regulators as part of the Basel III capital rules. It includes off-balance sheet items (including unfunded commitments) in the denominator. Advanced-approaches banks are subject to a 3% SLR. Adopted U.S. regulations subject bank holding companies for global systemically important banks ("G-SIBs") to a 5% SLR and their subsidiary banks to a 6% SLR.

The final rule provides for CCFs for unfunded commitments. All unfunded commitments with original terms of one year or less are assigned a 20% CCF and all unfunded commitments with original terms in excess of one year assigned a 50% CCF.

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	No
Non-Bank U.S. Programs Covered?	No, unless a U.S. bank provides credit or liquidity support.
Status	U.S. G-SIB SLR regulations were issued in April 2014. U.S. final rule re: SLR denominator was issued in September 2014.
Effective Date	SLR will become effective January 1, 2018.

Basel Supervisory Framework re: Large Exposures

The BCBS framework re: large exposures would impose a hard Pillar 1 large exposure limit of 25% of either total Tier 1 capital or common equity Tier 1 capital for banks and 10-15% of capital for G-SIBs. Banks must also report to supervisors exposures exceeding 5% of capital.

With respect to securitization exposures, a bank may assign the exposure amount to the structure itself as a distinct counterparty if it can demonstrate that the bank's exposure amount to each underlying asset of the structure is smaller than 0.25% of its eligible capital base.

If any exposure in a securitization is equal to or above 0.25% of a bank's capital base, a bank must look through the structure to identify the counterparty for that exposure. The counterparty corresponding to each of those underlying exposures must be identified and the underlying exposures added to any other direct or indirect exposure to the same counterparty. The bank's exposure amount to the underlying assets that are below 0.25% of the bank's eligible capital base may be assigned to the structure itself.

If a bank is unable to identify the underlying assets of a structure:

- If the total amount of its exposure does not exceed 0.25% of its eligible capital base, the bank must assign the total exposure amount of its investment to the structure.
- Otherwise, it must assign the total exposure amount (and all other such exposure amounts in other transactions) to a single "unknown client."

The large exposure framework also requires banks to identify third parties that may constitute additional risk factors inherent in a structure. Cited examples of such third parties include originators, fund managers, liquidity providers and credit protection providers. Banks are required to aggregate their investments in structures with a common risk factor to form a group of connected counterparties resulting in a single counterparty exposure. Banks must also make a case-by-case determination as to whether to add their investments in a set of structures associated with a third party that constitutes a common risk factor to other exposures (such as a loan) it has to that third party.

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	Yes
Non-Bank U.S. Programs Covered?	Yes, if a bank provides support facilities or invests in ABCP.

Status	Supervisory framework was issued April 15, 2014.
Effective Date	Uncertain. National regulators must adopt implementing regulations.

U.S. Federal Reserve Single Counterparty Credit Limits

On March 4, 2016, the Board of Governors of the Federal Reserve System issued a Notice of Proposed Rulemaking re-proposing a rule that would establish credit limits for single counterparties and groups of affiliated counterparties of U.S. bank holding companies ("U.S. BHCs"), foreign banking organizations ("FBOs"), and U.S. intermediate holding companies ("IHCs") of an FBO, in each case with $50 billion or more of consolidated assets. The re-proposed rule contains specific provisions for determining counterparty limits for securitization vehicles, investment funds and other special purpose vehicles (collectively, "SPVs").

Counterparty limits differ for three different tiers of banking organizations: Covered Companies that are not Large or Major Covered Companies, Large Covered Companies, and Major Covered Companies.

"Major Covered Companies" are (1) U.S. BHCs (other than IHCs) that are Globally Systemically Important BHCs ("GSIBs") using the Fed's "method 1" framework for determining the GSIB capital surcharge, (2) FBOs with consolidated assets of $500 billion or more, and (3) IHCs with consolidated assets of $500 billion or more.

"Large Covered Companies" are Covered Companies of any type that are not Major Covered Companies with $250 billion or more of consolidated assets or $10 billion or more of on-balance sheet foreign exposures.

For a Major Covered Company that is a U.S. BHC or IHC, the exposure limit is 15% of tier 1 capital for a Major Counterparty (as described below) and 25% of tier 1 capital for all other counterparties. For a Major Covered Company that is an FBO (with respect to combined U.S. operations), the exposure limit is 15% of worldwide tier 1 capital for a Major Counterparty and 25% of worldwide tier 1 capital for all other counterparties.

For a Large Covered Company that is a U.S. BHC or IHC, the exposure limit is 25% of tier 1 capital for all counterparties. For a Large Covered Company that is an FBO, the exposure limit for its combined U.S. operations is 25% of worldwide tier 1 capital for all counterparties.

For any Covered Company that is not a Large or Major Covered Company and is a U.S. BHC or IHC, the exposure limit for all counterparties is 25% of total regulatory capital plus allowance for loan and lease losses that is not included in tier 2 capital. For any Covered Company that is not a Large or Major Covered Company and is an FBO, the exposure limit for its combined U.S. operations is 25% of worldwide total regulatory capital for all counterparties.

"Major Counterparties" are defined in the re-proposed rule as Major Covered Companies, FBOs and IHCs (and their respective subsidiaries) that would have the characteristics of or be identified by the

Fed as GSIBs based upon the BCBS global criteria or the Fed's Regulation Q, and non-bank financial companies supervised by the Fed (that is, those non-bank financial companies designated as systemically important financial institutions by the Financial Stability Oversight Council).

A Covered Companies that is not a Major Covered Company or Large Covered Company would treat the SPV issuer in a securitization as its counterparty in a securitization transaction. The Fed may determine that such a smaller Covered Company must apply the "look-through approach" described below after notice and an opportunity for hearing.

Major Covered Companies and Large Covered Companies are required to determine their exposure to each issuer of assets that underlies the Covered Company's "investment" in an SPV issuer using a "look-through approach." If the Covered Company can determine that its exposure to each underlying issuer in a securitization transaction is less than 0.25% of the Covered Company's tier 1 capital, then the exposure in the relevant securitization transaction is treated as an exposure to the SPV. If not, then the Covered Company must recognize the credit exposure to each underlying issuer instead of the SPV.

If the Covered Company cannot determine its credit exposure to an underlying issuer, then the Covered Company must attribute that exposure (together with any other undetermined issuer exposures) to a single "unknown entity."

Again, consistent with the BCBS Large Exposure Framework, the re-proposed rule requires Major Covered Companies and Large Covered Companies to recognize exposures to third parties with contractual or other business relationships with SPVs where the failure or material financial distress of that third party would cause a loss in the value of the Covered Company's investment in or exposure to the SPV.

This third party exposure would be in addition to any exposure to the SPV or underlying asset issuer otherwise required by the re-proposed rule.

The voting equity of ABCP conduits is typically owned not by the ABCP conduit sponsor, but by an unaffiliated third-party that is in the business of owning such entities and that provides certain routine management services to the ABCP conduit but otherwise contributes no assets to and provides no meaningful financial or other support to the ABCP conduit. Many of these third party entities hold the voting equity in hundreds of otherwise unaffiliated SPVs. The proposed rule would treat such SPVs as affiliated counterparties. It is unclear whether overlapping liquidity and credit exposures to ABCP conduits must be counted twice in determining a credit exposure.

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	Yes
Non-Bank U.S. Programs Covered?	Yes, if a bank provides support facilities or invests in the ABCP.
Status	Comments were due on the proposed rule by June 3, 2016.
Effective Date	Uncertain.

Basel Step-in Risk

In March 2017, BCBS issued a second consultative paper on "step-in risk." "Step-in Risk" is defined as the risk that a bank decides to provide financial support to an unconsolidated entity that is facing stress in absence of, or in excess of, any contractual obligations to provide such support. "Step-in Risk' is viewed as a possible source of reputational risk and arises when the bank considers it is likely to suffer a negative impact from the weakness or failure of an entity.

Unconsolidated ABCP conduits sponsored by banks are listed as examples of entities that could give rise to step-in risk. Where a bank provides less than full contractual credit and liquidity support for those entities, it may be required to identify the ABCP conduits as presenting step-in risk. If step-in risk is identified, a number of possible approaches are provided for the bank to measure and manage the risk, including additional capital and liquidity requirements, stress testing and internal "large exposure-like" limits to the risk the bank takes with respect to the relevant entity.

U.S. Bank Programs Covered?	Yes, if adopted by U.S. banking regulators.
Foreign Bank Programs Covered?	Yes, if adopted by relevant national regulators.
Non-Bank U.S. Programs Covered?	Yes, if a bank provides support facilities.
Status	Second consultative paper was issued in March 2017. Comments were due by May 15, 2017.
Effective Date	Uncertain. National regulators must adopt implementing regulations.

Bank Liquidity Regulation

U.S. – Liquidity Coverage Ratio

In September 2014, the U.S. prudential banking regulators adopted liquidity coverage ratio ("LCR") regulations based on BCBS guidelines. Under the liquidity coverage ratio regulations, with respect to unfunded credit and liquidity commitments, banks are required to have liquid asset coverage for all potential outflows within 30 days of the calculation date equal to (i) 10% of unfunded credit commitments to wholesale customers and their consolidated subsidiaries that do not issue securities (including special purpose entities ("SPEs")), (ii) 30% of committed liquidity facilities to wholesale customers and their consolidated subsidiaries that do not issue securities, (iii) 40% of unfunded credit commitments to financial sector entities (financial institutions) and their consolidated subsidiaries that do not issue securities, and (iv) 100% of committed credit and liquidity facilities to all other SPEs.

For banks that consolidate their ABCP conduits, transactions between the banks and their conduits are disregarded, but each bank is deemed to have issued its conduit's ABCP and has an outflow equal to 100% of ABCP maturing within 30 days. In addition, to the extent its conduit has an unfunded credit or liquidity commitment, the bank is deemed to have the same unfunded credit or liquidity commitment and the same corresponding outflow with respect to that unfunded commitment.

For banks that do not consolidate their ABCP conduits, each sponsoring bank is also required to hold liquid asset coverage for outflows equal to the greater of (1) 100% of its conduit's ABCP that matures within 30 days and all commitments made by its conduit to purchase assets within 30 days and (2) the maximum contractual amount of funding that bank may be required to provide to its conduit within 30 days through a liquidity facility.

For all banks, there are conservative rules relating to when transactions occur or mature.

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	No
Non-Bank U.S. Programs Covered?	No, unless a U.S. bank provides credit or liquidity support.
Status	U.S. final rule was issued in September 2014.
Effective Date	80% compliance required by January 1, 2015. 90% compliance required by January 1, 2016. 100% compliance required by January 1, 2017.

Canada – Liquidity Coverage Ratio

Under final Liquidity Adequacy Requirements adopted by the Office of the Superintendent of Financial Institutions in November 2014, banks are required to have liquid asset coverage equal to 100% of all unfunded credit and liquidity commitments to SPEs that could be drawn within 30 days.

Banks are also required to assume a 100% outflow amount for all ABCP notes maturing within 30 days issued by an SPE through which the bank conducts its structured finance activities.

U.S. Bank Programs Covered?	No
Foreign Bank Programs Covered?	Yes, for Canadian banks.
Non-Bank U.S. Programs Covered?	No, unless a Canadian bank provides credit or a liquidity facility.
Status	Revised final Liquidity Adequacy Requirements were issued by the Office of the Superintendent of Financial Institutions in November 2014.
Effective Date	100% compliance required by January 1, 2015 (no phase-in).

Europe – Liquidity Coverage Ratio

Under liquidity coverage ratio regulations adopted by the European Commission in October 2014, banks are required to have 10% liquid asset coverage for undrawn liquidity facilities provided to SPEs to purchase assets from clients that are not "financial customers." All other credit and liquidity commitments are assigned a 100% outflow amount.

Facilities that can be drawn for both credit and liquidity purposes are treated as liquidity facilities to the extent they support outstanding debt securities. Only the portion supporting debt obligations maturing within 30 days is assigned an outflow amount. The portion of such a mixed-use facility that does not support outstanding debt obligations is "treated as a credit facility."

U.S. Bank Programs Covered?	No
Foreign Bank Programs Covered?	Yes, for European banks.
Non-Bank U.S. Programs Covered?	No, unless a European bank provides credit or liquidity facility.
Status	Liquidity coverage arrangements were adopted by the European Commission in October 2014.
Effective Date	60% compliance required by October 1, 2015. 70% compliance required by January 1, 2016. 80% compliance required by January 1, 2017. 100% compliance required by January 1, 2018.

Basel III Net Stable Funding Ratio

In October 2014, BCBS issued final international standards for a net stable funding ratio ("NSFR") requirement that will require banks to maintain stable funding profiles in relation to their on- and off-balance sheet activities (including unfunded credit and liquidity commitments in securitization transactions). Under the NSFR, irrevocable unfunded commitments are assigned a required stable funding factor of 5%.

Banks that consolidate ABCP conduits would be required to maintain stable funding against conduit assets. ABCP with a maturity of less than six months would not qualify as stable funding.

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	Yes
Non-Bank U.S. Programs Covered?	No, unless a credit or liquidity facility provided by a bank to the ABCP conduit or the ABCP conduit is consolidated with a financial institution.
Status	Final revised international framework was issued in October 2014.
Effective Date	NSFR will become the international minimum standard by January 1, 2018. CRD IV and Canadian Liquidity Adequacy Requirements include NSFR regulations. U.S. bank regulators have issued proposed NSFR regulations, as described below.

U.S. Net Stable Funding Ratio

In April 2016, the U.S. banking regulators issued a proposed rule to implement the Net Stable Funding Ratio ("NSFR") requirement.

The NSFR will require covered banking organizations to maintain stable funding profiles in relation to their on- and off-balance sheet activities (including unfunded credit and liquidity commitments in securitization transactions). The NSFR is designed to reduce funding risk over a longer term horizon by requiring banking organizations to fund their activities with sufficiently stable sources of funding in order to mitigate the risk of future funding stress. The NSFR would require a bank to maintain available stable funding (ASF) against its required stable funding (RSF).

The NSFR would apply to all U.S. bank and savings and loan holding companies with consolidated assets of $250 billion or more or $10 billion or more of on-balance sheet foreign exposures. The proposed rule also contains a modified version of the NSFR that would apply to U.S. bank and savings and loan holding companies with consolidated assets of $50 billion or more and less than $10 billion of on-balance sheet foreign exposures. The modified NSFR would require ASF that at least equals 70% of a banking organization's RSF amount.

The proposed NSFR and modified NSFR would be effective on January 1, 2018.

The assets of consolidated ABCP conduits would be assigned an RSF factor under the proposed NSFR. The ABCP issued by such ABCP conduits with maturities of less than six months, however, generally would not count as ASF. Without modification, the U.S. NSFR would therefore require a bank to maintain two sets of liabilities to fund such assets: shorter-term ABCP (consolidated on the bank's books but actually issued by an ABCP conduit) and the longer-term liabilities or other form of ASF borrowed by the bank not to fund the customer's assets but to meet NSFR requirements.

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	No
Non-Bank U.S. Programs Covered?	Yes, if U.S. bank provides support facilities or invests in ABCP.
Status	Proposed regulations issued in April 2016.
Effective Date	Uncertain.

Dodd-Frank FDIC Assessments

Section 331 of Dodd-Frank requires that for large banks, the assessments base for insured deposit institutions be equal to consolidated assets minus tangible equity rather than deposits. As a result of this change, the assets of an ABCP conduit that is a consolidated subsidiary of a large bank will be included in the bank's assessment base.

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	No
Non-Bank U.S. Programs Covered?	No, unless the ABCP conduit is consolidated with a U.S. bank under GAAP.
Status	The FDIC issued the final regulation on October 9, 2012. "Higher risk" securitizations increase bank assessment charges and would include securitizations where more than 50% of the assets are "higher risk" consumer loans or commercial and industrial loans.
Effective Date	April 1, 2013.

Derivatives Regulation

Dodd-Frank Derivatives Provisions

ABCP conduits and customer SPEs seeking to enter into interest rate swaps could be subject to clearing and collateral posting requirements under Section 723 of Dodd-Frank. Most swaps with ABCP conduits and customer SPEs often contain "idiosyncratic" provisions (i.e., limited recourse/non-petition language) that make such swaps unable to be accepted by clearing organizations for clearing. While the process and scope of swaps that clearing organizations clear is continuing to evolve, at this time derivative clearing organizations cannot accept swaps with idiosyncratic provisions. Therefore, swaps with such provisions are viewed as exempt from the clearing mandate.

Sections 731 and 764 of Dodd-Frank require the adoption of rules imposing margin requirements on cleared swaps and, as determined appropriate by the regulators, uncleared swaps. Under final rules set forth by the prudential regulators in October 2015, "financial end users," which would include many securitization vehicles and ABCP conduits, could be subject to initial margin (if the financial end user has a "material swaps exposure") and in all cases financial end users will be subject to daily variation margin requirements. Limited accommodations have been made for legacy swaps, but to the extent that amendments or novations occur with respect to those legacy swaps, the new margin requirements could still apply.

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	Yes
Non-Bank U.S. Programs Covered?	Yes

Status	Final regulations were adopted on swaps clearing by the CFTC for non-security-based swaps on July 19, 2011, and by the SEC for security-based swaps on June 28, 2012. Industry practice has developed such that caps, guaranteed balance swaps and swaps with "idiosyncratic" provisions have not, to date, been submitted to clearing organizations for clearing. Margin requirements exist for cleared swaps. In October 2015, the prudential regulators finalized margin and capital requirements applicable to "covered swap entities" subject to their jurisdiction, which would require the posting of initial and ongoing daily variation margin for uncleared swaps entered into with covered swap entities (generally, financial institutions). The final rule requires financial end users (which includes most securitization SPVs) with a material swaps exposure to collect and post initial and variation margin. Financial end users with no material swaps exposure have to collect and post variation margin.
Effective Date	Clearing requirements became effective on June 10, 2013. Margin requirements for non-cleared swaps had an effective date of April 1, 2016 with staggered compliance dates beginning September 1, 2016. The effective date for variation margin requirements was March 1, 2017, but in separate actions the CFTC and the prudential banking regulators extended compliance with variation margin requirements for some entities to not later than September 1, 2017.

Risk Retention Regulations

Dodd-Frank Risk Retention

Section 941 of Dodd-Frank requires sponsors of most securitizations to retain at least 5% of the credit risk of their transactions.

Under final rules adopted by the joint regulators in October 2014, ABCP conduit sponsors have alternative methods for complying with risk retention requirements, namely (i) standard risk retention options, which would require that the sponsor hold an eligible horizontal residual interest (which can include a qualifying reserve fund) of at least 5% of the "fair value" of the ABCP conduit's ABS interests (ABCP and funded liquidity), an eligible vertical interest of at least 5% of the face value of its conduit's ABS interests (ABCP and funded liquidity) or a combination of eligible horizontal residual interest and eligible vertical interest of at least 5% or (ii) the special eligible ABCP conduit option, which would be satisfied by a sponsor of a fully supported ABCP program if each of its underlying transactions satisfies a standard risk retention option or the special option for revolving pool securitizations. The special option for eligible ABCP conduits presents compliance issues for ABCP sponsors, including burdensome disclosure and transfer restrictions (i.e., transfer restricted to other conduits with same liquidity providers). The eligible vertical interest option is probably a more realistic risk retention option for ABCP conduit sponsors because it does not require "fair value" calculations, which would be difficult for ABCP conduit sponsors because of frequent changes in ABCP issued and underlying assets. Any eligible horizontal residual interest or eligible vertical interest must be fully funded by the conduit sponsor (or its majority-owned affiliate).

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	Yes
Non-Bank U.S. Programs Covered?	Yes
Status	Final rules were approved by the FDIC, OCC, FHFA, SEC and Federal Reserve in October 2014.
Effective Date	Final rules became effective on December 24, 2015, for residential mortgages and December 24, 2016, for all other asset classes (including ABCP).

EBA Risk Retention

Regulation (EU) No 575-2013 of the European Parliament and of the Council of the European Union, which replaced the CEBS Guidelines on Article 122a (originally effective on January 1, 2011), was published on June 26, 2013. That regulation prohibits investors that are credit institutions or investment firms from acquiring asset-backed securities ("ABS") unless the "sponsor" or "originator" maintains a 5% economic interest in the related securitization transaction. With respect to an ABCP program, the requirement must be satisfied by the sponsor with respect to the ABCP issued by the ABCP conduit (so that investors can acquire the ABCP) and with respect to each underlying transaction, the requirement must be satisfied by the sponsor (or the originator) with respect to the ABS issued in the underlying transaction (so that the ABCP conduit can acquire the ABS as an investor). The economic interest may be in the form of an unfunded credit or liquidity facility.

On December 22, 2014, the European Banking Authority ("EBA") issued a report in which it recommended, among other things, that the EU risk retention regulation be expanded to include both the current indirect risk retention requirement imposed on certain investors and the direct risk retention requirement imposed on the sponsor or the originator of ABS (which aligns with U.S. risk retention). In April 2015, the European Central Bank and the Bank of England endorsed this recommendation. At this time, there has not been a change to the EU risk retention regulation.

U.S. Bank Programs Covered?	Yes, if a European financial institution invests in ABCP.
Foreign Bank Programs Covered?	Yes, for European financial institutions or if a European financial institution invests in ABCP.
Non-Bank U.S. Programs Covered?	Yes, if a European financial institution provides credit or liquidity support or invests in ABCP.
Status	EBA regulation issued on June 26, 2013.
Effective Date	Effective for existing ABCP programs on January 1, 2011. Effective with respect to new underlying transactions entered into on and after January 1, 2011, and with respect to existing underlying transactions, only if assets added on and after January 1, 2015.

Securities Regulation

Dodd-Frank Conflicts of Interest

Section 621 of Dodd-Frank prohibits an underwriter, placement agent, initial purchaser or sponsor of an ABS (or any affiliate or subsidiary of any such entity) from engaging in a transaction within one year after the date of the first closing of the sale of the ABS that would involve or result in a material conflict of interest with respect to any investor in the ABS.

U.S. Bank Programs Covered?	No
Foreign Bank Programs Covered?	No
Non-Bank U.S. Programs Covered?	No
Status	Proposed regulations were issued by the SEC on September 19, 2011. Traditional ABCP conduit transactions do not appear to be covered.
Effective Date	Dodd-Frank required final regulations to be adopted by April 17, 2011, but they have not yet been adopted. Regulations are to be effective upon issuance.

Dodd-Frank Franken Amendment

Section 939F of Dodd-Frank (known as the Franken Amendment) would require the SEC to establish a system in which a public utility or self-regulatory organization assigns nationally recognized statistical rating organizations to determine credit ratings of structured finance products—unless the SEC determines that another system would effectively mitigate conflicts of interest.

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	Yes, if they issue ABCP in the U.S.
Non-Bank U.S. Programs Covered?	Yes
Status	Industry comment letters reject the Franken Amendment's assignment system and suggest enhancements to Amended Rule 17g-5 (which requires website disclosure of materials provided to rating agencies) as an alternative. On December 18, 2012, the SEC submitted a report on the findings of its study of the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and subscriber-pay models. The key recommendation in the report is that the SEC convene a roundtable to discuss the study and its findings. The roundtable occurred on May 14, 2013.
Effective Date	Uncertain.

Revisions to SEC Rule 3a-7

Pursuant to Section 939A of Dodd-Frank (which generally requires regulators to replace regulatory requirements linked to credit ratings with alternative standards of creditworthiness), the SEC has proposed amendments to Rule 3a-7 of the Investment Company Act.

Rule 3a-7 excludes issuers of ABS from the definition of "investment company" upon the satisfaction of certain conditions. One of those conditions is that, at the time of the initial sale, the securities (i) are rated in one of the four highest categories assigned to long-term debt (or an equivalent for short-term debt) by at least one nationally recognized statistical rating organization or (ii) are sold to "accredited investors" or "qualified institutional buyers" as such terms are defined in the Securities Act of 1933.

The SEC proposed the following alternatives to the current condition based on the credit rating of the securities:

- Prevent a sponsor from dumping assets into an ABS issuer and prevent self-dealing by insiders either (a) by prescribing the particular manner in which such activities may be conducted or (b) by taking a principles-based approach by requiring, for example, that the organizational documents of an issuing entity limit the scope of its operations in a way that is consistent with the activities intended to be outside the coverage of the Investment Company Act.

- Ensure the quality of the issuer and its operations either (a) by requiring that an independent evaluator give an opinion that it reasonably believes that the issuer is structured and would be operated in a manner such that expected cash flows from the assets would likely be sufficient to service expected payments on the issuer's fixed-income securities or (b) by requiring the issuers to give a similar certification in the offering documents after considering the view of an independent evaluator.

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	Yes, if they issue ABCP to U.S. investors or enter into customer transactions in the U.S.
Non-Bank U.S. Programs Covered?	Yes

Status	The SEC issued advance notice of proposed rulemaking in September 2011. The industry commented in December 2011 that the ability to use Rule 3a-7 should be preserved for ABCP conduits in light of potential Volcker Rule restrictions. Suggested changes included elimination of the trustee requirement and clarification of the applicability of the Rule to lease residuals.
Effective Date	Uncertain.

Reg AB II

The SEC adopted final rules amending Regulation AB that substantially revise the offering process, disclosure and reporting requirements for offerings of ABS. These final rules are known as "Reg AB II."

The final Reg AB II does not include the expanded information and delivery requirements for "structured finance products" offered under Rule 144A that had been included in the SEC's proposed Reg AB II. The SEC did, however, state that it would continue to consider the appropriateness of expanded information and delivery requirements for Rule 144A offerings, which would include most ABCP. As adopted, Reg AB II has no applicability to ABCP conduits.

U.S. Bank Programs Covered?	No
Foreign Bank Programs Covered?	No
Non-Bank U.S. Programs Covered?	No
Status	The SEC adopted final Reg AB II on August 27, 2014.
Effective Date	Reg AB II was effective November 24, 2014. Compliance is necessary within one year of the effective date for all requirements other than asset-level disclosure, and within two years for asset-level disclosure.

Amendments to SEC Rule 2a-7

In July 2014, the SEC adopted final amendments to Rule 2a-7 under the Investment Company Act that will affect money market funds' ("MMFs") investments in ABS, particularly ABCP.

The amendments to Rule 2a-7 provide that MMFs investing in ABCP are deemed to be relying on the conduit sponsors' financial strength and their ability or willingness to provide support to the ABCP (unless a MMF's board determines otherwise). As a result, a MMF would have to treat ABCP as 100% guaranteed by its sponsor (regardless of whether there is a contractual obligation to provide partial support only) and could not invest in ABS of the ABCP sponsor if, following the investment, the MMF would have invested more than 10% of its total assets in securities issued by or subject to demand features or guarantees (including deemed guarantees) from the ABCP sponsor.

The amendments to Rule 2a-7 also provide that (i) special purpose entities owned by affiliated equity owners be treated as a single issuer (other than ABCP conduits owned by unaffiliated nominal owners whose primary line of business is owning such equity interests and providing services to such conduits); and (ii) special purpose entities that have common equity ownership are treated as a single obligor for purposes of the "10% obligor" diversification requirement. Revised Rule 2a-7 leaves intact the exclusion from the "10% obligor" look-through for "restricted special purpose entities" ("RSPEs"), even if those entities have common equity ownership.

A further amendment to the issuer diversification requirement was adopted on September 17, 2015 eliminating the exclusion that allowed a MMF to ignore the issuer diversification requirement (and satisfy the guarantor diversification requirement only) for securities with a "guarantee issued by a non-controlled person" (such as the sponsor of an SPE). As a result, MMFs will be required to satisfy both the guarantor diversification requirement (including deemed guarantors) and the 5% issuer diversification requirement, including the look-through to "10% obligors."

U.S. Bank Programs Covered?	Yes
Foreign Bank Programs Covered?	Yes, if they sell to U.S. MMFs.
Non-Bank U.S. Programs Covered?	Yes

Status	Initial final amendments to Rule 2a-7 were adopted by the SEC on July 23, 2014. Amendment eliminating from the issuer diversification requirement the current exclusion for securities with "guarantees from non-controlled persons" (such as sponsors of ABCP conduits) was adopted by the SEC on September 17, 2015.
Effective Date	Initial amendments became effective April 14, 2016. The additional amendment to the issuer diversification requirement became effective October 14, 2016.

Credit Rating Agency Reforms and Rule 15Ga-2 and Rule 17g-10 (Section 932 of Dodd-Frank)

The final rules implementing Section 932 of Dodd-Frank and intended to improve the transparency of credit ratings and increase the accountability of rating agencies were adopted by the SEC in August 2014. These final rules require the issuer or underwriter of any ABS rated by a nationally recognized statistical rating organization ("NRSRO") to make the findings and conclusions of third-party due diligence reports publicly available five business days prior to the first sale of such ABS—regardless of whether the NRSRO uses the report in determining its credit rating or whether the NRSRO even receives the report.

The scope of "due diligence services" that define a diligence report is broad and includes a review of the "assets underlying an ABS for the purpose of making findings with respect to … any other factor or characteristic of the assets that would be material to the likelihood that the issuer of the ABS will pay interest and principal in accordance with the applicable terms and conditions."

Since the first sale of securities with respect to an existing ABCP program will have occurred prior to the effective date of the final rules, the rules would arguably not apply to legacy ABCP programs. However, the SEC rejected this position as the basis for exempting ABCP conduit sponsors from the obligation to set up a password-protected website under Rule 17g-5. Application of the due diligence rules to ABCP conduits from and after June 15, 2015, is uncertain.

U.S. Bank Programs Covered?	Uncertain, particularly with respect to existing programs.
Foreign Bank Programs Covered?	Uncertain, particularly with respect to existing programs that issue ABCP in the U.S. Does not apply to foreign banks that sponsor non-U.S. ABCP conduits and issue exclusively outside the U.S.
Non-Bank U.S. Programs Covered?	Uncertain, particularly with respect to existing programs.
Status	Final rules adopted by the SEC on August 27, 2014.
Effective Date	June 15, 2015.

Volcker Rule

Dodd-Frank Volcker Rule: Sponsorship of, or Holding Ownership Interests in, Covered Funds

Section 619 of Dodd-Frank, known as the "Volcker Rule," prohibits "banking entities" from "sponsoring," or holding "ownership interests" in, hedge funds or private equity funds ("covered funds"), defined generally to be those issuers exempt from the Investment Company Act exclusively in reliance on Section 3(c)(1) or 3(c)(7). The statute's broad sweep, which would have included most ABCP conduits, was limited by exclusions from the definition of "covered funds" in the final regulations under the Volcker Rule adopted by the joint regulators on December 10, 2013. While the final regulations still define "covered funds" as those relying on the private placement exemptions of the Investment Company Act, the final regulations exclude from that definition entities that are wholly owned direct or indirect subsidiaries of banking entities, qualifying ABCP conduits ("QABCP exclusion") and qualifying loan securitizations. The QABCP exclusion presents challenges for ABCP sponsors because, among other things, it requires full support and limits what may be financed.

ABCP program sponsors must also consider the Volcker Rule treatment of each asset or pool of assets financed under the program (because of the possibility of the bank holding an "ownership interest").

U.S. Bank Programs Covered?	Yes (includes affiliates).
Foreign Bank Programs Covered?	Yes, with respect to U.S. operations. No, with respect to non-U.S. programs as long as funds are not owned by U.S. persons and sponsoring foreign banking organizations have the greater part of their assets and revenues earned outside the U.S.
Non-Bank U.S. Programs Covered?	No, unless a bank or an affiliate provides credit or liquidity support or otherwise maintains some other relationship with the ABCP conduit that could constitute "sponsorship" or an "ownership interest."
Status	Final regulations were issued on December 10, 2013. Because of numerous ambiguities and errors in the final regulations, joint regulators have indicated that certain clarifications may be issued, but the timeframe is uncertain. In August of 2017, the OCC requested public comments on whether the Volcker Rule regulations should be revised to better accomplish the purpose of the statue.

Effective Date	April 1, 2014, but banks were not required to be in conformance until July 21, 2015, with respect to non-legacy programs and transactions or until July 21, 2016, with respect to legacy programs and transactions (those in place before December 31, 2013) (either by divestiture or change of programs). The Federal Reserve Board granted an additional one-year extension of the conformance period to July 21, 2017.

Dodd-Frank Volcker Rule: Section 23A and 23B Application

The Volcker Rule also prohibits banking entities that sponsor, own or advise covered funds from entering into "covered transactions" (including extensions of credit) with such funds. Funds that do not rely on Section 3(c)(1) or 3(c)(7) of the Investment Company Act or that satisfy an exclusion from the "covered fund" definition in the Volcker Rule regulations are not subject to this restriction.

U.S. Bank Programs Covered?	Yes (includes affiliates).
Foreign Bank Programs Covered?	Yes, with respect to U.S. operations. No, with respect to non-U.S. programs as long as funds are not owned by U.S. persons and sponsoring foreign banking organizations have the greater part of their assets and revenues earned outside the U.S.
Non-Bank U.S. Programs Covered?	No, unless a bank or an affiliate provides credit or liquidity support or enters into another type of "covered transaction" with the ABCP conduit and is also deemed to sponsor, own or advise the ABCP conduit.
Status	Final regulations were issued on December 10, 2013. Because of numerous ambiguities and errors in the final regulations, joint regulators have indicated that certain clarifications may be issued, but the timeframe is uncertain. In August of 2017, the OCC requested public comments on whether the Volcker Rule regulations should be revised to better accomplish the purpose of the statue.
Effective Date	April 1, 2014, but banks are not required to be in conformance until July 21, 2015, with respect to non-legacy programs and transactions or until July 21, 2016, with respect to legacy programs and transactions (those in place before December 31, 2013) (either by divestiture or change of programs). The Federal Reserve Board granted an additional one-year extension of the conformance period to July 21, 2017.

Dodd-Frank Foreign Banking Organization's Formation of Intermediate Holding Company

Section 165(b) of Dodd-Frank requires a foreign banking organization ("FBO")with $50 billion or more in US non-branch assets to establish an "intermediate holding company" to hold all ownership interests in its U.S. subsidiaries (with certain exceptions). The regulations for this statutory provision are known as Regulation YY. Intermediate holding companies will be supervised by the Federal Reserve Board under "enhanced prudential standards." Regulation YY defines a "subsidiary" as any company the foreign bank "controls", as defined in the Bank Holding Company Act of 1956, as amended. It is our understanding that the Federal Reserve has informally indicated that an asset-backed commercial paper conduit (i) in which an FBO has no ownership interest, (ii) which has all independent directors, managers, trustees or members and (iii) for which the FBO provides administrative and other services and support (such as credit and liquidity) will not be considered a "subsidiary" for Regulation YY purposes. This is consistent with the Federal Reserve's position in Regulation W (which considers whether a securitization entity sponsored by a bank and for which a bank provides investment advisory services is "controlled" by the bank) is that a securitization entity is "controlled" by a bank (with "control" defined substantially the same as in Regulation YY) if (i) the bank selects the entity's trustee or managers, (ii) the bank provides investment advice and administrative services to the entity on a contractual basis AND (iii) the bank and the entity share similar name.

U.S. Bank Programs Covered?	No
Foreign Bank Programs Covered?	Yes
Non-Bank U.S. Programs Covered?	No
Status	Final rule issued by the Federal Reserve on February 18, 2014.
Effective Date	Each FBO was required to submit to the Federal Reserve by January 1,2015 its plan for forming an intermediate holding company (or reducing its US assets) if it had no less than $50 billion US non-branch assets for the four calendar quarter period ended on June 30, 2014. Each FBO was required to establish an intermediate holding company by July 1, 2016 if its US non-branch assets for the four calendar quarter period ended on June 30, 2015 exceeded $50 billion and to transfer full ownership of its subsidiaries to that intermediate holding company or at a future date if its US non-branch assets exceed the specified limit.

For More Information

If you would like further information concerning any of the matters discussed in this article, please contact any of the following attorneys, or any other Chapman and Cutler attorney with whom you regularly work:

Aaron J. Efta, Partner
312.845.3796
ajefta@chapman.com

Craig Fishman, Partner
202.478.6452
fishman@chapman.com

Felicia B. Graham, Partner
202.478.6450
graham@chapman.com

R. William Hunter, Partner
312.845.2962
hunter@chapman.com

Peter J. Manbeck, Partner
212.655.2525
manbeck@chapman.com

Kenneth P. Marin, Partner
212.655.2510
kmarin@chapman.com

Timothy P. Mohan, Partner
312.845.2966
mohan@chapman.com

Chapman and Cutler LLP

chapman.com

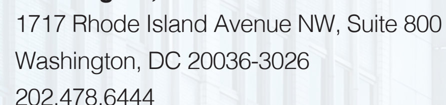
Charlotte
201 South College Street, Suite 1600
Charlotte, NC 28244-0009
980.495.7400

Chicago
320 South Canal Street, 27th Floor
Chicago, IL 60606
312.845.3000

New York
1270 Avenue of the Americas, 30th Floor
New York, NY 10020-1708
212.655.6000

Salt Lake City
215 South State Street, Suite 800
Salt Lake City, UT 84111-2339
801.533.0066

San Francisco
595 Market Street, 26th Floor
San Francisco, CA 94105-2839
415.541.0500

Washington, DC

1717 Rhode Island Avenue NW, Suite 800
Washington, DC 20036-3026
202.478.6444