ICLG

The International Comparative Legal Guide to:

Securitisation 2016

9th Edition

A practical cross-border insight into securitisation work

Published by Global Legal Group, with contributions from:

A&L Goodbody
Association for Financial Markets in Europe
Ali Budiardjo, Nugroho, Reksodiputro
Ashurst LLP
Baker & McKenzie – Santiago
Bell Gully
Brodies LLP
Caspi & Co.
Cervantes Sainz
Cuatrecasas, Gonçalves Pereira
Drew & Napier LLC
Elvinger Hoss Prussen
Estudio Beccar Varela
Freshfields Bruckhaus Deringer LLP
Frost & Fire Consulting
Gárdos Füredi Mosonyi Tomori Law Office
K&L Gates Studio Legale Associato
King & Spalding LLP
King & Wood Mallesons
Latham & Watkins LLP
LECAP
Levy & Salomão Advogados
Maples and Calder
McMillan LLP
Nishimura & Asahi
Pestalozzi Attorneys at Law Ltd
Roschier Advokatbyrå AB
Schulte Roth & Zabel LLP
Shearman & Sterling LLP
Sidley Austin LLP
Stibbe
Tsibanoulis & Partners
Verita Legal (K. Argyridou & Associates LLC)
Vieira de Almeida & Associados – Sociedade de Advogados, R.L.
Wadia Ghandy & Co.

glg
global legal group

global legal group

Contributing Editor

Mark Nicolaides, Latham & Watkins LLP

Sales Director
Florjan Osmani

Account Directors
Oliver Smith, Rory Smith

Sales Support Manager
Toni Hayward

Editor
Tom McDermott

Senior Editor
Rachel Williams

Chief Operating Officer
Dror Levy

Group Consulting Editor
Alan Falach

Group Publisher
Richard Firth

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
April 2016

ISBN 978-1-910083-91-8
ISSN 1745-7661

Strategic Partners

General Chapters:

Country Question and Answer Chapters:

Continued Overleaf

glg
global legal group

Country Question and Answer Chapters:

EDITORIAL

Welcome to the ninth edition of *The International Comparative Legal Guide to: Securitisation.*

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of securitisation.

It is divided into two main sections:

Five general chapters. These chapters are designed to provide readers with a comprehensive overview of key securitisation issues, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in securitisation laws and regulations in 34 jurisdictions.

All chapters are written by leading securitisation lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor, Mark Nicolaides of Latham & Watkins LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Chapter 2

CLOs and Risk Retention in the U.S. and EU: Complying with the Rules

Craig Stein

Schulte Roth & Zabel LLP

Paul N. Watterson, Jr.

In the 2015 edition of this publication, in a chapter entitled "CLOs and Risk Retention", we outlined the risk retention regulations and requirements applicable to Collateralised Loan Obligations ("CLOs") in the U.S. and in the EU.[1] Since that time, there have been additional regulatory actions, implementing or modifying the two regulatory regimes, and CLO managers have developed legal structures to enable them to comply with risk retention requirements.

U.S. Risk Retention Rule

In December 2014, U.S. regulators published the final risk retention requirements for securitisations (the "U.S. Rule").[2] The U.S. Rule requires the sponsor of the securitisation to retain an economic interest in the credit risk of the securitised assets in an amount equal to at least five per cent of the ABS interests issued in the transaction (the "Required Retention Interest"). The Required Retention Interest may be held in the form of an eligible vertical interest, an eligible horizontal residual interest or a combination of both.[3] The regulators determined that the manager of the CLO is the sponsor of the securitisation, a determination which is being challenged by the LSTA in a suit against the U.S. regulators.[4] The CLO manager may satisfy its obligations under the U.S. Rule by holding the Required Retention Interest either directly or through a "majority-owned affiliate", which is described below.

The CLO manager or its majority-owned affiliate is prohibited from hedging or transferring the Required Retention Interest until the latest of: (i) the date on which the unpaid principal balance of the CLO's portfolio is reduced to 33 per cent of the original unpaid principal balance; (ii) the date on which the unpaid principal obligations issued by the CLO are reduced to 33 per cent of the original unpaid principal obligations; and (iii) two years after the closing date of the CLO.[5] With limited exceptions, hedging by the manager or any of its affiliates during this period is prohibited if it violates a two-part test: (1) the payments on the hedging security or instrument are materially related to the credit risk of any of the securities comprising the Required Retention Interest or of any of the assets of the CLO; and (2) the hedge reduces the financial exposure of the manager or of its majority-owned affiliate to the credit risk of any of the notes comprising the Required Retention Interest or to any of the assets of the CLO.[6] The Required Retention Interest cannot be financed or pledged as collateral unless the financing is "full recourse" to the CLO manager or its majority-owned affiliate.[7]

The U.S. Rule applies to CLO securitisations which occur after the effective date in December 2016. However, if a CLO that issued securities prior to the effective date takes an action after the effective date that constitutes an "offer and sale of asset-backed securities", such as a refinancing, the CLO manager must comply with the U.S. Rule at the time of such action.

Regulatory Action in the U.S.

In July 2015, the U.S. Securities and Exchange Commission (the "SEC") published a "no-action" letter in response to a CLO manager, which had asked the SEC staff to confirm that it would not take enforcement action if the manager refinanced a CLO without retaining the Required Retention Interest.[8] The SEC staff responded that it would not recommend enforcement action if the CLO priced its securities prior to the publication of the U.S. Rule in December 2014 and the refinancing complied with the conditions outlined in the letter. These conditions included that the refinancing take place within four years of the CLO's original issuance, the CLO would achieve a lower rate of interest in the refinancing and the CLO's capital structure, priority of payments, maturity, subordinated noteholders and voting rights would not be changed in the refinancing. No additional assets would be securitised in the refinancing and the CLO would only refinance each tranche once, although it may refinance individual tranches on different dates.

This no-action letter offers no comfort to a CLO which priced its notes after December 24, 2014 if it refinances any of those notes after the effective date in December 2016. In informal discussions, SEC staff have expressed reluctance to grant further no-action relief in response to questions which CLO managers have raised about the U.S. Rule.

CLOs that issued notes in 2015 implemented a number of structural features to avoid or mitigate the application of risk retention requirements to a refinancing. Some of these CLOs had a shorter non-call period (than the typical two years) to allow a refinancing to occur prior to the effective date. Other CLOs issued unfunded, delayed-draw tranches that would act as a placeholder for future refinancings, to avoid issuance of a new security in a refinancing after the effective date.

Voluntary Compliance with the U.S. Rule

Although compliance with the U.S. Rule is not required until December 24, 2016 in many CLOs issued in 2015 and in early 2016, managers (or their majority-owned affiliates) are complying voluntarily with the U.S. Rule by acquiring a Risk Retention Interest, although they are not complying with all of the administrative and disclosure aspects of the rule. In several CLOs, the managers (or majority-owned affiliates) acquired an eligible vertical interest on the initial closing date. The managers were motivated, in part, to demonstrate to CLO investors that they would be able to comply with the U.S. Rule. The disadvantage to this approach is that, in order to comply with the U.S. Rule at the time of a refinancing that occurs after the effective date of the U.S. Rule, the manager will need to acquire five per cent of the face value of each newly issued refinancing class of securities. If, as we interpret the rule, the manager is only required to acquire five per cent of each class of securities issued in the refinancing (and not five per cent of each class of securities outstanding upon completion of the refinancing), the notes acquired on the original closing date of the CLO will be irrelevant to the determination of compliance with the U.S. Rule. There are requirements in the U.S. Rule for the manager to make disclosures to investors regarding how it will comply with the risk retention requirement, and these disclosure requirements probably can only be satisfied at the time of the refinancing. The required disclosures are much less burdensome for an eligible vertical interest than for an eligible horizontal residual interest.

In other CLOs, the manager (or its majority-owned affiliate) has acquired a horizontal residual interest at the closing of the CLO. To be an eligible horizontal residual interest, the horizontal residual interest acquired by the manager must equal five per cent of the "fair value" of all securities issued by the CLO, determined using a fair value methodology under U.S. GAAP. This fair value determination must be made at the time of the refinancing, because that is the offering of securities which triggers the risk retention requirement − as opposed to the original note issuance by the CLO which occurred prior to the effective date. Accordingly, there is a risk that a horizontal residual interest acquired by a manager or its majority-owned affiliate prior to December 24, 2016 will not have a sufficient "fair value" by the time that the refinancing occurs. In addition, the U.S. Rule requires extensive disclosures to be made to investors regarding the eligible horizontal residual interest (including a description of how the fair value determination was made) in connection with the offering of securities. These disclosures were not made in CLO offerings in 2015, and the U.S. Rule is likely to be interpreted to require these disclosures be made at the time of the refinancing.

Financing of Risk Retention Interests

Financing has become available for the acquisition of an eligible vertical interest on economically viable terms, and in the future may become available for eligible horizontal residual interests. Under the U.S. Rule, such financing must be "full recourse" to the CLO manager (or its majority-owned affiliate), and the financing terms must not run afoul of the prohibition on hedging.[9] In secured financings, the lender often has the right to foreclose on the securities securing such financing if an event of default occurs under the credit agreement. The question is: if a manager (or its majority-owned affiliate) uses financing to acquire a Risk Retention Interest, does the lender's right of foreclosure create a risk that, upon such liquidation, the CLO manager would no longer meet the requirement to hold the Required Retention Interest? Prior to the release of the U.S. Rule, commenters asked the regulators to declare that the manager would not be in violation of the rule in this scenario. Because a foreclosure sale of the securities is involuntary and this risk is disclosed in the CLO's offering memorandum, compelling arguments were made that the manager should not be in violation of the U.S. Rule. However, the U.S. Rule is silent on this point. Given the uncertainty, managers have been structuring financing arrangements to limit the likelihood of an event of default and foreclosure occurring. For example, financing terms may include the ability to defer interest on the loan if the CLO securities themselves experience a deferral of interest payments.

Management Fee Reductions for Qualifying Refinancings

In some CLOs, the manager has not acquired risk retention securities on the closing date, but instead has agreed that if it fails to acquire an eligible vertical interest at the time of a "qualifying" refinancing and therefore the refinancing is not consummated, its management fees will be reduced. A qualifying refinancing may require evidence that similar vintage CLOs were able to refinance contemporaneously. The advantage to this approach is that the manager (or its majority-owned affiliate) only makes the required investment at the time of the refinancing. Under our interpretation of how the U.S. Rule should be applied to refinancings of CLO notes originally issued prior to its effective date, the CLO manager (or its majority-owned affiliate) is only required to purchase five per cent of each class of refinanced notes, and is not required to purchase five per cent of the other classes of notes issued by the CLO.

Formation of Private Investment Funds to Hold Risk Retention Interests

Many managers are forming private investment funds to invest in the risk retention securities of CLOs for which they are the collateral manager. One approach is to form a fund (known as an "MOA Fund") which qualifies as a majority-owned affiliate of the manager and which invests in risk retention securities of CLOs managed by that manager. The U.S. Rule defines a majority-owned affiliate as "an entity (other than the issuing entity) that, directly or indirectly, majority controls, is majority controlled by or is under common majority control with" the CLO manager.[10] For this purpose, majority control means "ownership of more than 50 per cent of the equity of an entity, or ownership of any other controlling financial interest in the entity, as determined by GAAP".[11] Generally, in order for the fund to qualify as a majority-owned affiliate, it must have majority control of the CLO manager, or the CLO manager or its parent organisation must either own more than 50 per cent of the equity of the fund or have a "controlling financial interest" in the fund. Whether the manager (or its parent company) has a controlling financial interest is an accounting conclusion under GAAP. Although the accounting analysis is beyond the scope of this article, ownership of less than a majority of the equity can be sufficient, provided that the manager controls the major economic decisions of the fund and the manager (or its parent company) contributes 15-20 per cent of the fund's capital. As a result, an MOA Fund is permitted to raise 80 per cent or more of its capital from third party investors.

Third party investors in an MOA Fund must agree to have minimal control over the decisions of the fund. Because the manager (or an affiliate) will manage the MOA Fund as well as the CLO, it should not "double-dip" on fees, because investors in the MOA Fund should not bear management fees at both the fund level and the CLO level. An MOA Fund may make investments in CLOs that satisfy only the U.S. Rule or it may also make investments that satisfy the EU risk retention rules by acting as the "originator" for the CLO.

Managers are also forming private investment funds to invest in risk retention securities of CLOs managed by unaffiliated CLO managers. This is similar to a "fund of funds" in that the fund invests in MOA Funds formed by unaffiliated CLO managers, and may invest through a majority-owned affiliate formed by the fund's manager to invest in CLOs managed by the fund manager (or its affiliates). These funds may be authorised to invest in the new CLO management companies being formed to raise capital to meet risk retention requirements described below.

Formation of New Management Companies to Hold Risk Retention Interests

CLO managers are forming new management companies that will both manage CLOs and invest in the risk retention securities for those CLOs. Unlike an MOA Fund, there is no accounting requirement that the pre-existing manager make a minimum capital contribution or that it have "control" over major economic decisions. The new management company may be capitalised in a number of ways, including by equity alone or by a combination of debt and equity. The earnings of the new management company will be distributed to investors under a priority of payments which may distinguish between management fee income and securities income. In order to qualify as a "sponsor" which may hold the Risk Retention Interest under the U.S. Rule, the new management company must be the entity that "organises and initiates" the CLO and, therefore, must have sufficient economic substance and personnel to ensure that it has the requisite control over CLO portfolio management. The new management company should have its own officers and/or employees who will make the investment decisions with respect to the CLO portfolio. These employees of the new management company could be "dual" employees of the existing manager or seconded employees from the existing manager. The new management company should pay its own expenses, including its employees' salaries. It may have a support services agreement with the preexisting manager to provide administrative, back-office, research, loan settlement, facilities and middle office support services. The services agreement with the existing manager should not delegate the investment management decisions for the CLO to the pre-existing manager. The new management company should register as an investment adviser with the SEC. Because the new management company will receive fee income from operating an investment advisory business, structuring is required so that such income does not have adverse tax consequences for non-U.S. investors in the new management company.

EU Risk Retention Rule

Risk retention requirements have been applicable to CLOs marketed to investors in the EU since 2011. Under these regulations, credit institutions and investment firms and their consolidated group affiliates (including those based outside of the European Economic Area ("EEA")) regulated in member states of the EEA (each, an "Affected CRR Investor") are restricted from investing in CLO securities unless the conditions in Part Five of the CRR[12] and Regulatory Technical Standards published and adopted by the European Commission in June 2014 (the "RTS",[13] and together with the CRR, the "CRR Retention Requirement") are satisfied. These fundamentally require that: (i) the originator, sponsor or original lender has disclosed to the Affected CRR Investors that it will retain, on an on-going basis, a net economic interest of not less than five per cent in respect of certain specified credit risk tranches or asset exposures;[14] and (ii) the Affected CRR Investor has undertaken due diligence in respect of the securitisation and the underlying exposures and has established procedures for monitoring them on an ongoing basis.[15]

National regulators in EEA member states impose penalty risk weights on securitisation investments for which the CRR Retention Requirement has not been satisfied in any material respect by reason of the negligence or omission of the investing credit institution or investment firm.[16] If the CRR Retention Requirement is not satisfied in respect of a securitisation investment held by a non-EEA subsidiary of an EEA credit institution or investment firm, then an additional risk weight may be applied to such securitisation investment when taken into account on a consolidated basis at the level of the EEA credit institution or investment firm.

There are five permissible methods of risk retention, two of which are (i) a vertical slice (*i.e.* retention of no less than five per cent of the nominal value of each of the tranches sold or transferred to the investors); and (ii) retention of a first loss exposure of no less than five per cent of every securitised exposure in the securitisation.[17] Under Article 405 of the CRR the "originator", "sponsor" or "original lender" is required to retain the five per cent net economic interest.[18] A CLO manager may retain the risk of a CLO if it has been authorised as an investment firm subject to CRD IV. An "originator" is defined for purposes of Article 405 to include "an entity that purchases a third party's exposures for its own account and then securitises them".[19] An entity which acquires loans in the secondary market, holds those loans for a period of time and subsequently sells those loans to the CLO may qualify as the originator for a CLO under the CRR Retention Requirement.

Similar requirements apply to other regulated institutional investors in the EEA, such as insurance companies and fund managers under the relevant directives applicable to these types of regulated institutions.[20] In September 2015, the European Commission published a draft regulation for simple, transparent and standardised securitisations.[21] This draft regulation would revise and consolidate EU securitisation rules, including risk retention. Under this draft, the definition of an originator would change so that an entity that was established or operated for the sole purpose of securitising exposures could not qualify as an originator that may hold the risk retention interests. The new originator definition is intended to address concerns identified by the European Banking Authority that originators were formed as SPVs to hold loans for a single day before selling the loans to the securitisations for which the originator would hold the risk retention.[22]

Penalties for noncompliance with the CRR Retention Requirement have applied only to investors, but the draft regulation requires that originators, sponsors and original lenders established in the EU also comply with the risk retention rules. For originators, sponsors and original lenders incorporated outside of the EU, the risk retention obligation remains "indirect".

The draft regulation would continue to require investors to verify, as part of their due diligence, that one of the originator, sponsor or original lender will retain a five per cent interest in the securitisation. The permissible methods of retention would remain the same.

Development of Legal Structures to Comply with EU Rule

Because EU risk retention requirements have been in effect under various regulations since 2011, there is more experience with the development of different methods of compliance. In addition to risk retention by a CLO manager which qualifies as a sponsor, authorised as an investment firm subject to CRD IV,[23] the most common method of compliance has been to form one of the types of originators as described in our prior article.[24] The classic approach is to form an entity that acquires credit exposures (loans and sometimes bonds) and transfers such credit exposures to the CLO, such that at all times at least 50 per cent of the CLO's portfolio was acquired from the originator. Unlike the concept of an originator in the U.S. Rule, it is not necessary for the originator under the EU risk retention rule to have been the original lender on the credit exposure. This approach required the originator to establish some degree of independence from the CLO manager, at least in the form of independent directors who approved certain key decisions by the originator.

In 2015, in response to the draft regulation described above, the originator model evolved in several ways:

1) The minimum length of time that an originator holds a loan before selling it to the CLO has increased.
2) The originator typically must have assets and revenues that are not derived from the CLO for which it is acting as originator.
3) Some originators are managed by an entity that is not affiliated with the CLO manager, such as an independent board or independent manager.
4) Companies have been established (in some cases by a parent company listed on an exchange) to act as an originator in a series of CLOs (in some cases primarily managed by the same CLO manager), which established the originator, and, in other cases, managed by managers which are not affiliated with the manager that established the originator.
5) Some CLO managers, which do not qualify as a sponsor under the EU risk retention rules, have acted as an originator of CLOs which they manage.

The advantage of this approach is that the EU risk retention rules do not require the CLO manager to originate more than 50 per cent of the credit exposures held by the CLO. Instead, the CLO manager has typically originated a substantially lower percentage of the credit exposures held by the CLO as of the closing date, and had not been required to continue to originate credit exposures for the CLO after the closing date.

Conclusion

Currently, most managers do not expect to satisfy their obligations under the U.S. Rule through one of the alternative provisions that the regulators included in the rule to reduce or eliminate the burden of risk retention on CLO managers.[25] A subset of CLO managers have funds or portfolio companies that make "middle market" loans, and these managers may rely on the provision in the rule which authorises such an "originator" to hold a *pro rata* portion of the requisite risk retention interest for a CLO, to the extent that it both made the original loan and sold that loan to the CLO (so long as it originated at least 20 per cent of the portfolio). Thus far the "open market CLO" exemption from risk retention has not emerged as a viable option for managers, because it requires the lead arrangers of the loans held by the CLO to assume obligations that are not typically required of them in the loan market (including holding an unhedged slice of each loan). Similarly, the exemption in the U.S. Rule for CLOs that hold qualifying commercial loans ("QCLs") does not seem to have practical utility, because the loans acquired by CLOs rarely satisfy the underwriting guidelines that must be followed in order for a loan to qualify as a QCL.

One of the crucial challenges for a CLO manager is to develop risk retention structures that satisfy both the U.S. Rule and the EU risk retention rule. This challenge is made more difficult by the lack of "convergence" of the EU and U.S. approaches to risk retention. The hope often expressed by CLO managers, that the regulators in the U.S. and the EU would harmonise their respective risk retention rules so that the same legal structures and the same investments would satisfy both regimes, has not been realised. Regulatory authorities in both jurisdictions have rejected comments made by CLO managers and other market participants requesting harmonisation. Unfortunately, the CRR Retention Requirement, unlike the U.S. Rule, does not sanction risk retention by consolidated affiliates of the CLO manager (except those subject to regulatory consolidation), whereas the U.S. Rule has a more narrowly drawn definition of an originator than the CRR Retention Requirement does, basically limiting it to entities which originally disbursed the loan. Our prior article discussed the differences in the way that the five per cent exposure is calculated and in the permitted forms of risk retention.[26]

Nonetheless, managers are overcoming these obstacles by forming vehicles which satisfy both risk retention regimes. A CLO manager that qualifies as a "sponsor" under the EU regime may always hold the risk retention interests under either the U.S. or the EU regime. Similarly, a CLO manager that qualifies as an "originator" under the EU regime (because it transfers a portion of the loans to the CLO) will also qualify as a "sponsor" under the U.S. Rule. This is one of the advantages of forming a new CLO management company with outside capital to hold the risk retention interests. As the manager of the CLO, it is eligible to hold the requisite risk retention securities under the U.S. Rule, and also should qualify as an originator under the EU regime if it transfers a portion of the initial portfolio to the CLO. If an entity qualifies as an "originator" under the U.S. Rule (because it was the original lender on the credit exposures), it should also qualify as an originator under the EU regime if it transfers to the CLO more than 50 per cent of the credit exposures held by the CLO. A private investment fund that satisfies the U.S. Rule by qualifying as a majority-owned affiliate to hold the risk retention securities may also be able to qualify as an originator under the EU regime by transferring to the CLO more than 50 per cent of the credit exposures held by the CLO. However, an originator under the EU regime typically has established a degree of independence from the manager of the CLO, either by requiring the approval of its independent directors for certain key decisions or by retaining an investment adviser unaffiliated with the CLO manager. The extent to which this degree of independence is required to qualify as an originator under the CRR Retention Requirement may make it more difficult for accountants to reach the necessary conclusion under the GAAP that the fund is a majority-owned affiliate under the U.S. Rule if investors not affiliated with the manager own a majority interest in the fund.

In conclusion, while there is no question that risk retention has placed a burden on CLO managers and required many of them to adopt new legal structures and to find new sources of capital, it is also clear that many CLO managers are successfully adapting their business models to these new requirements.

Endnotes

1. Craig Stein and Paul N. Watterson, Jr., CLOs and Risk Retention, *The International Comparative Legal Guide to: Securitisation 2015* (8th ed.), Chapter 2.
2. Credit Risk Retention, 79 Fed. Reg. 77602 (December 24, 2014).
3. *Id.* at 77742.
4. *See* The Loan Syndications Assoc. v. SEC, et al., *appeal docketed*, No. 14-1240 (D.C. Cir. Nov. 10, 2014).
5. *Id.* at 77753.
6. *Id.*
7. *Id.*
8. Crescent Capital Group LP, SEC No-Action Letter, 2015 WL 4381574 (July 17, 2015).
9. Credit Risk Retention, *supra* note 2, at 77753.
10. *Id.* at 77741.
11. *Id.*
12. REGULATION (EU) NO 575/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of June 26, 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, 2013 O.J. L 176/1.

13. COMMISSION DELEGATED REGULATION (EU) No 625/2014 of March 13, 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk, 2013 O.J. L 174/16.
14. CRR, *supra* note 11 at Art. 405, 2013 O.J. L 176/238.
15. *Id*. at Art. 406, 2013 O.J. L 176/238. *See also* Art. 404, 2013 O.J. L 176/237.
16. CRR, *supra* note 11, at Art. 407, 2013 O.J. L 176/239.
17. CRR, *supra* note 11, at Art. 405, 2013 O.J. L 176/238.
18. *Id*.
19. *Id*. at Art. 4(1)(13), 2013 O.J. L 176/19.
20. DIRECTIVE 2009/138/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of November 25, 2009 on the taking-up and pursuit of Insurance and Reinsurance (Solvency II); and DIRECTIVE 2011/61/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.
21. Proposal for a Regulation of the European Parliament and of the Council laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (2015/0226 (COD)).
22. *See* Craig Stein and Paul N. Watterson, Jr., CLOs and Risk Retention, *The International Comparative Legal Guide to: Securitisation 2015* (8th ed.), Chapter 2.
23. Directive 2013/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of June 26, 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.
24. *See* Craig Stein and Paul N. Watterson, Jr., CLOs and Risk Retention, *The International Comparative Legal Guide to: Securitisation 2015* (8th ed.), Chapter 2.
25. *See* Craig Stein and Paul N. Watterson, Jr., CLOs and Risk Retention, *The International Comparative Legal Guide to: Securitisation 2015* (8th ed.), Chapter 2.
26. *See* Craig Stein and Paul N. Watterson, Jr., CLOs and Risk Retention, *The International Comparative Legal Guide to: Securitisation 2015* (8th ed.), Chapter 2.

Acknowledgment

The authors would like to acknowledge the assistance, in the preparation of this chapter, of Anna Maleva-Otto, a London-based partner in the Investment Management Regulatory & Compliance Group at Schulte Roth & Zabel LLP. She concentrates her practice on advising asset managers on a range of UK financial services regulatory matters, including the impact of EU directives and regulations. She has a particular focus on advising clients on the establishment of regulated businesses, financial crime (including market abuse, money laundering and bribery), financial promotion and offers of securities, regulatory reporting and disclosure obligations, regulatory capital, and conduct of business rules. She received her J.D. from Emory University School of Law and her M.A. from Saint Petersburg State University (Russia).

Ms. Maleva-Otto can be contacted at +44 20 7081 8037 or anna.maleva-otto@srz.com.

Craig Stein
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
USA

Tel: +1 212 756 2390
Fax: +1 212 593 5955
Email: craig.stein@srz.com
URL: www.srz.com

Craig Stein is a partner and co-head of the Structured Finance & Derivatives Group at Schulte Roth & Zabel LLP. His practice focuses on structured finance and asset-backed transactions and swaps and other derivative products, including credit- and fund-linked derivatives, prime brokerage and customer trading agreements. He represents issuers, underwriters, collateral managers and portfolio purchasers in public and private structured financings, including collateralised loan obligations (CLOs). Mr. Stein has been recognised by leading peer-review publications as a leader in the industry and he speaks and writes widely on advanced financial products. He earned his undergraduate degree, *cum laude*, from Colgate University and his J.D., *cum laude*, from the University of Pennsylvania Law School. He is a member the American Bar Association, the New York State Bar Association, LSTA, Structured Finance Industry Group and various ISDA committees.

Paul N. Watterson, Jr.
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
USA

Tel: +1 212 756 2563
Fax: +1 212 593 5955
Email: paul.watterson@srz.com
URL: www.srz.com

Paul N. Watterson, Jr. is a partner and co-head of the Structured Finance & Derivatives Group at Schulte Roth & Zabel LLP. He concentrates on structured product and derivative transactions, formation and representation of credit funds and capital markets regulation, and is counsel to many participants in the securitisation, credit and derivatives markets. He represents underwriters, issuers and managers in structured financings, including CLOs, and is involved in structured finance transactions that use credit derivatives, including regulatory capital transactions and repackagings. He advises funds and other alternative investment vehicles on their transactions in derivatives, loans, asset-backed securities and CLOs. Mr. Watterson has also been active in the creation of derivative products that reference hedge funds. He is a regular speaker at major industry events and is widely published and recognised by peer-reviewed publications. He earned his A.B., *cum laude*, from Princeton University, and his J.D., *magna cum laude*, from Harvard Law School.

Schulte Roth & Zabel

Schulte Roth & Zabel LLP (www.srz.com) is a market-leading, multidisciplinary law firm serving the financial services industry from offices in New York, Washington, D.C. and London. We structure and negotiate a variety of complex structured and securitised products across a wide range of traditional and emerging asset classes. We represent investment managers, issuers, placement agents, investors and purchasers and sellers of assets in a variety of investment products, including private investment funds and structured finance transactions. Our firm also structures derivatives products, including unleveraged and leveraged derivatives referencing bonds, loans, investment funds, commodities, equity securities, interest rates and currencies, and advises clients on forwards, repurchase agreements, securities lending agreements, prime brokerage agreements, master netting agreements and other trading agreements.

Other titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks

glg global legal group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk