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We start with a comprehensive summary and analysis by Peter Humphreys and Ben Jaffe that compares recent regulatory developments in the U.S. and the European Union in three key areas—risk retention, due diligence and disclosure, and the role of credit rating agencies (conflicts of interest and disclosure)—and goes on to address U.S. reform where no EU counterpart currently exists in six additional areas: disclosure of repurchases, due diligence reports, credit rating agencies' requirements for descriptions of representations and warranties, proprietary trading, commodity pool issues, and conflicts of interest. Next Julian Tucker takes us through the background and motivations for doing structured finance transactions to illustrate the dangers of applying a label such as "securitization" too broadly for legal and regulatory purposes. In particular, he observes that recent legislation, including the Dodd–Frank Act and the EU Capital Requirements Directive, applies securitization-related corrective measures to various structured finance techniques that bear no resemblance to the practices and structures that led to the financial crisis. Rounding out our section on legal and regulatory developments, Brian Lancaster and John Jordan explain how regulatory capital requirements for securitization exposures held by U.S. banks are changing in response to the Dodd–Frank Act's requirement to remove any reference to credit ratings. They describe a new supervisory formula approach that relies upon a security's relative seniority within a securitization's capital structure as well as the ongoing performance of a securitization's underlying pools of assets.

Tom Deutsch, Evan Siegert, and Amy McDaniel Williams start our section on mortgage-backed securities with an article that outlines the American Securitization Forum's various originator, investor, and dealer member views on a "single agency security" in response to a recent Federal Housing Finance Agency strategic plan that proposes to build a new infrastructure for Fannie Mae and Freddie Mac. They believe the secondary mortgage market participants must play an integral role in the design and implementation of any such security. Then Laurie Goodman, Roger Ashworth, Brian Landy, and Lidan Yang explain how very tight mortgage lending standards and limited credit availability are impeding a housing recovery and point to four current and pending regulatory actions mandated by Dodd–Frank that are exacerbating already-tight credit availability: the Qualified Mortgage (QM) Rule, the Qualified Residential Mortgage (QRM) Rule, the High Cost Mortgage Rules (HOEPA), and "disparate impact."

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Vernon Budinger and Mark Wainger point to the relatively high yields and diversification benefits of Brazilian asset-backed securities, offset by the country's unique financial calculations, lack of transparency, and scarcity of quantitative pricing tools. They describe and recommend international best analytical and pricing practices and explain how those practices would improve the secondary markets for these securities. Next, Stefano Sola and Phil Donahue provide a comprehensive description of structured settlements as an asset class, including their background, how they benefit insurers and plaintiffs, how the transactions work, how they are securitized, how the securitized instruments have performed in the marketplace, and how they are uncorrelated to many other securitized asset classes.

Dave Colling and Kevin Samborn start our analysis and valuation section with a discussion of the European Central Bank transparency initiative, under which investors in European asset-backed securities will shortly have the means to receive, interrogate, and analyze standardized loan-level performance data for all of the principal securitized asset classes. Next Eknath Belbase compares and discusses the trade-offs among different approaches to the valuation and risk analysis of structured securities composed of heterogenous individual loans where the underlying collateral is subject to credit losses that are potentially passed on to one or more tranches, concentrating on non-agency residential mortgage-backed securities. Then, Krishnamoorthy Narasimhan and Krishnan Nair explain that over time the market changes its view of the credit quality in the reference portfolio for a synthetic collateralized debt obligation (CDO), or collateralized synthetic obligation (CSO), and that increases in systemic risks may lead to an increase in correlation between the assets and result in a decline in the value of the notes. They describe a methodology for increasing the value of the notes by restructuring the reference portfolio to take advantage of market credit risk mispricing.

In our final section on infrastructure finance, Jason West points out that traditional sources of debt are not always a good match for project finance. As resource projects become more complex and are conducted in regions subject to higher political and economic risks, their investment horizons are growing longer with the consequent retreat of project funding interest from Western banks whose lending limits do not extend beyond 7–10 years. But such projects appear well suited to the more patient and long-term horizons sought by Islamic funds, despite the stricter conditions under which funding may be provided. Shariáh investors tend to be more forgiving than Western banks and less likely to abandon a troubled project.

Henry A. Davis
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