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Amid the ongoing debate over the future of U.S. housing finance, including the roles of the public and the private sector, Manoj Singh assumes the government-sponsored enterprises (GSEs) with possible modifications will continue to play a central role. He reviews the recent risk transfer transactions as a step toward the GSEs' sharing credit risk with private investors and explores further private-sector risk sharing through participation in operational roles, such as post-securitization credit risk management.

Laurie Goodman and Jun Zhu address the permanent modifications to the mortgages of more than 1.1 million homeowners through the government's Home Affordable Modification Program (HAMP), which began in 2009. Concerns have been raised that interest-rate resets to those modified mortgages could cause many borrowers to default, jeopardizing the overall success of the program. The authors show in their analysis that fears of massive re-defaults are overblown.

Summarizing a panel discussion at the June 2014 Global ABS conference in Barcelona, Kevin Hawken, Christophe Cadiou, Katie McCaw, and Olivier Trecco address the Basel proposal relating to the international standards for capital treatment of securitizations by banks acting as originators or sponsors of or investors in securitization and the EIOPA proposals relating to capital requirements under the Solvency II Directive for European insurance and reinsurance companies as investors. These two proposals have significant differences in their overall approaches, calculation methods, and implementation timeframes. Among securitization-related issues for banks are uncertainty over whether "high quality securitization" will be incorporated into the Basel framework, possible leveling of the playing field between the United States and Europe with regard to risk weights and due diligence requirements, and the Basel proposal's limiting the choices for U.S. banks among the internal ratings-based, external ratings-based, and internal assessment approaches. Final implementation of the new Basel capital requirements will not be until almost a decade after the financial crisis began.

Elliot Ganz gives us a detailed description of a four-year lobbying effort by the Loan Syndications & Trading Association (LSTA) to save the collateralized loan obligation (CLO) market from rulemaking pursuant to the Dodd–Frank Act that could have put it to an end. The regulatory agencies were persuaded that loans should not be subject to the proprietary trading restrictions of the Volcker Rule and that loan securitizations should be carved from the definition of a covered fund. But despite the LSTA's efforts, the regulatory agencies insist that CLOs holding any securities are covered funds, and the best the industry could do was to win an extension period allowing banks holding CLO notes until July 21, 2017 to either restructure the notes to conform to the Volcker Rule or sell the non-conforming securities.

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Kimberly Diamond introduces us to commercial real estate (CRE) CLOs, a hybrid asset class that offers the most attractive structural and underlying collateral features of its parents, commercial mortgage-backed securities (CMBS) and CLOs. CRE CLOs allow for short-term refinancing to avert an expected CMBS maturity wave in the 2015–2017 period; contain structural features absent in a standard CMBS securitization, including a reinvestment period, a ramp-up period, various collateral-quality tests, and active collateral management; benefit from more-stringent lending guidelines and more senior loans with shorter durations than found in pre-financial-crisis CRE mortgage loans; and are structured to fall into the Volcker Rule's carve-out for securitization of loans.

Noting the tension between manager and investor concerns in negotiating the terms of European CLOs and the surprising number of ways that documentation can vary from one deal to another, Martin Sharkey draws our attention to such structural details as risk retention methods, payment conventions, non-payment-of-interest covenants, repricing options, trading restrictions, investment limitations, manager incentive fees, key-person clauses, and the roles of secondary managers. He advises not only to verify that a CLO does what it says on the tin, but also to fully understand what it does say on that tin.

Jonathan Plowe, Dan McMahon, Jeff Phillips, and Greg Rosen look beyond bank lending, tax equity, and securitization to explore a variety of alternative capital market solutions for financing renewable energy projects. Although the industry is gaining experience with variants of REITs, yieldcos, green bonds, and peer-to-peer lending, green bonds have gained significant traction, with issuance of more than $20 billion in 2013.

Ronald Borod, Michael Hall, Dan Yonkin, and Yuri Horwitz describe tax equity—generally provided by public financial institutions and operating companies—as the elephant in the room in connection with solar power financing. They provide a detailed explanation of the three principal structures—the partnership flip structure, the inverted lease or pass-through structure, and the sale-leaseback structure—that are engineered to enable a tax equity investor to secure the majority of a project's tax benefits while ensuring that the sponsor equity investors retain a long-term equity interest in the project. The authors explain how the choice among the three structures has both tax and accounting consequences. The article concludes with a description of a tax equity structure that is specially designed to address—and reduce—the friction that normally exists between tax equity and securitization, using a structural variation on the inverted lease model.

John Ryan observes that two of the most difficult economic issues facing the United States are the relatively poor quality of American infrastructure and the funding inadequacy of many public pension plans. He believes that, under the right circumstances, both of those issues can be addressed through bilateral transactions in which local public pension funds invest directly in local infrastructure projects. The potential benefits of such an approach include a small number of transaction parties, transaction-execution efficiency, a high level of trust, a reduction in political controversy, and flexibility in public–private partnership (PPP) capitalization structure and terms. Intrinsic constraints might include pension funds' alternative investment size limits and fiduciary requirements related to prudent investments. A possible path to mitigate those constraints could include loan participations to reduce a pension fund's net position in a project; seeking investors with similar long-term, buy-and-hold objectives; and forming clubs of like-minded lenders who agree to organize themselves in a relatively standardized manner. Federal infrastructure programs may also be helpful in the future.

Finally, Allen Schulman addresses the vertical and horizontal risk retention requirements required by the Dodd–Frank Act, relatively well known to our readers, and then goes on to explain some less-well-known accounting implications of the rules, which have yet to be finalized as this publication goes to print. The way the securitizer satisfies its "skin-in-the-game" requirement, whether or not it decides to hedge, often involves derivatives, many of which must be bifurcated under one of two alternative methods in current accounting rules. He explains how accounting practice may vary in the calculation of the required 5% stake in the issued interests.

Henry A. Davis
Editor