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**New SEC Rating Agency Reform
Requirements and Impact on Structured
Products Participants**

**CRE Finance Council
After Work Seminar**

Tab Table of Contents

- 01** | Presentation: New SEC Rating Agency Reform Requirements and Impact on Structured Products Participants
- 02** | Panelist Biographies
- 03** | Capital Markets Department

C A D W A L A D E R

Tab 01

New SEC Rating Agency Reform Requirements and Impact on Structured Products Participants

Michael S. Gambro
Lisa J. Pauquette
Frank Polverino

CRE Finance Council
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Overview

- ◆ SEC adopted Rule 17g-5 to address perceived conflicts of interest with issuer-paid ratings provided by nationally recognized statistical rating organizations (“NRSROs”)
- ◆ Requires persons seeking a rating of structured products and asset-backed securities to establish and maintain a password-protected website (accessible only by non-hired NRSROs) that contains all information provided to a hired NRSRO in connection with the initial rating and the monitoring of a rating

Overview (cont'd)

◆ Objective

- Increase number of ratings for structured finance products
- Promote issuance of unsolicited ratings by NRSROs not hired by issuers, sponsors or underwriters (“Arrangers”)
- Reduce ability of Arrangers to obtain better than warranted ratings by exerting influence over hired NRSROs (e.g., in order for NRSRO to obtain or retain the business of such Arrangers)

Overview (cont'd)

◆ Rule 17g-5 regulates NRSROs and not Arrangers

- Noncompliance by NRSRO could jeopardize the “NRSRO” designation granted by SEC
- Requires certifications by Arrangers to NRSROs
 - Noncompliance by Arrangers with undertakings could result in NRSRO declining to issue initial rating or withdrawing rating previously issued, but not an action by SEC against Arranger
 - NRSROs not required to enforce compliance by Arrangers with undertakings

Products That Rule 17g-5 Applies To

- ◆ NRSRO issuing or maintaining a rating for a security issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction that was paid for by an Arranger of such security
 - SEC intent is to cover the “full range of structured finance products”
 - Static and actively managed pools of loans or receivables
 - Includes CMBS, CDOs, CMOs, CLOs, synthetics of any these
 - Non-SEC registered 144A/private placements covered

Products That Rule 17g-5 Applies To (cont'd)

- ◆ Applicability unclear in certain cases
 - Purely non-U.S. Offerings
 - Confidential ratings for internal use by issuer only and not disseminated to investors
 - Covered bonds
- ◆ Compliance Date
 - SEC Release simply states June 2, 2010
 - Unclear if engagements with NRSROs entered into prior to June 2, 2010 for ratings to be issued after that date are covered
 - NRSROs looking to engagement date, for now

Products That Rule 17g-5 Applies To (cont'd)

- ◆ Ultimate determination of applicability to a particular security is made by hired NRSRO
 - Will NRSRO engagement letter require Arranger to undertake compliance with new rule for the specific transaction?

Requirements Imposed On Hired NRSROS

- ◆ Obtain from an Arranger of transaction a certification that it will undertake to comply (or cause compliance) with website maintenance and posting requirements (discussed below)
 - NRSROs will build the certification requirement into their engagement letters
 - NRSRO can reasonably rely upon the certification that Arranger will comply
 - If NRSRO has knowledge regarding Arranger's noncompliance with its undertakings, then NRSRO may decline to issue rating or withdraw previously issued rating since it could no longer reasonably rely upon the certification

Requirements Imposed On Hired NRSROs (cont'd)

- ◆ NRSRO to maintain its own website
 - Accessible only by other NRSROs
 - List of each security for which it is *currently* in the process of determining an initial credit rating
 - Identify website address for each such security that can be accessed by non-hired NRSROs – this is the website address provided to the hired NRSRO in the certification delivered by Arranger

Undertakings To Be Certified By Arrangers

- ◆ An Arranger must maintain ratings-related information at an identified password-protected website
 - NRSRO will reference Arranger's website on NRSRO's website that identifies related transaction as being currently reviewed for initial rating
 - Arranger website to present ratings-related information (as discussed below) in a manner indicating what information included on website should be currently relied upon
 - *E.g.*, each time a new loan tape or new draft transaction document is posted, it should be tagged to indicate that it is most current version to be relied upon
 - Arranger may engage third party to maintain websites
 - Arranger still responsible for delivering certification to NRSROs

Undertakings To Be Certified By Arrangers (cont'd)

- ◆ Arranger must provide access to website during applicable calendar year to any non-hired NRSRO that provides Arranger with a copy of certification that such non-hired NRSRO provided to SEC for such calendar year
 - In order to get passwords to access websites, non-hired NRSROs must submit an annual certification with the SEC certifying that
 - It is accessing websites solely for purposes of determining or monitoring a rating
 - It will keep information confidential and treat it as material non-public information
 - If it accesses websites for 10 or more issued securities in calendar year covered by certification, non-hired NRSRO will determine and maintain ratings for at least 10% of such issued securities

Undertakings To Be Certified By Arrangers (cont'd)

- ◆ Arranger must post on website *all information* an Arranger (or third party contracted by Arranger – e.g., counsel, accountants, servicers, trustees) provides to hired NRSRO for purpose of determining initial rating or undertaking rating surveillance, *at the same time such information is provided to hired NRSRO*
 - Includes information about
 - Characteristics and performance of assets underlying or referenced by the security
 - E.g., loan tapes and other diligence materials sent by Arrangers to hired NRSROs

Undertakings To Be Certified By Arrangers (cont'd)

- Legal structure of the security, in case of determining initial rating
 - *E.g.*, drafts of transaction documents distributed to hired NRSROs
- Updated or new information provided
 - Not necessary to post same information previously posted to website
- Transaction documents will likely build in provisions requiring servicers and trustees to cause any information provided to hired NRSROs during course of deal to be posted on website contemporaneously with delivery to hired NRSRO

Undertakings To Be Certified By Arrangers (cont'd)

- Oral Communications – reference in rule to “all information” provided seems to cover oral communications between hired NRSROs and Arrangers and third parties contracted by Arrangers (e.g., counsel, accountants, servicers, trustee, etc.)
 - Practically impossible to comply with requirement that information be posted on website “at the same time such information is provided to” hired NRSRO
 - Post summaries of oral communications instead?
 - Explanation of previously provided information vs. new information
 - Oral communications not relevant for determining or maintaining ratings should not be covered

Undertakings To Be Certified By Arrangers (cont'd)

- SEC indicated that new rule would likely cause the information exchange between Arrangers and NRSROs to become formalized
 - o Written submission of information that may, in the past, have been provided orally
 - o SEC states this would be a positive result
 - Written communications generally more accurate than oral communications
 - There will be better record for SEC to analyze after fact to determine if hired NRSRO adhered to its procedures and methodology for determining a particular rating

Undertakings To Be Certified By Arrangers (cont'd)

- NRSRO site visits to third parties, such as originators, servicers
 - Unclear if ordinary course reviews by NRSROs not in connection with any specific rating would be covered
 - o Will information from review be ultimately used by NRSRO for determining or monitoring rating?
 - o Is there difference if third party is affiliated with Arranger?
 - If covered by rule, how would Arranger track such information provided during visit and when would obligation to post such information arise?

Undertakings To Be Certified By Arrangers (cont'd)

- Information provided to NRSROs prior to entering into engagement letter
 - Rule is unclear how to handle
- How long must information be maintained on Arranger website?
 - Rule does not address specifically
 - Possible approach – until rated securities no longer outstanding or if Arranger withdraws request for initial ratings

Undertakings To Be Certified By Arrangers (cont'd)

- ◆ Confidentiality agreements between Arrangers and NRSROs
 - SEC indicates it will not require that separate confidentiality agreements be entered into
 - SEC indicates it is acceptable for Arranger to interpose a confidentiality agreement on website in a window (click-through screen) that appears after NRSRO successfully enters its password and which requires it to click an “Agree” button before being directed to information being used to determine or monitor rating
 - Process must not operate to preclude, discourage or significantly impede non-hired NRSROs’ access to the information, or their ability to issue a credit rating based on the information

C A D W A L A D E R

Tab 02

Panelist Biographies



Michael S. Gambro, Partner, Cadwalader, Wickersham & Taft LLP

Tel: +1.212.504.6825

michael.gambro@cwt.com

Michael Gambro is Co-Chairman of Cadwalader's Capital Markets Department. He is a corporate and securities lawyer who advises corporations, financial institutions and funds in acquisitions, financings and securitizations of financial assets, including commercial and residential mortgage loans, trade receivables, royalty payments, automobile loans, franchise receivables and insurance policy-backed loans.

Mr. Gambro has represented some of the largest companies in the world in many noteworthy transactions, including acting as lead counsel in the largest single-borrower commercial mortgage-backed securities (CMBS) transaction ever, and other groundbreaking or one-of-a-kind structured finance transactions recognized as deals of the year by *Institutional Investor* and *Investment Dealer's Digest*.

Most recently, Mr. Gambro was lead attorney on two major deals that have helped revive the CMBS market: the Developers Diversified Realty CMBS deal, the first CMBS deal eligible for financing under the Federal Reserve Bank of New York's Term Asset-Backed Securities Loan Facility, and the Inland Western Retail Real Estate Trust securitization.

Mr. Gambro received his J.D. from Columbia University School of Law, where he was a Harlan Fiske Stone Scholar, and his B.S. from Tufts University, where he graduated *summa cum laude* and was elected to Phi Beta Kappa.

Mr. Gambro is listed in *The Best Lawyers in America*, *Chambers USA: America's Leading Lawyers*, *Who's Who in America*, *Who's Who in the East*, *IFLR 1000*, and *Who's Who in American Law*, and is on the Board of Governors of the Commercial Mortgage Securities Association. He has lectured and written articles on numerous business law topics.

Mr. Gambro is licensed to practice in New York, California, and New Jersey.



Lisa Pauquette, Partner, Cadwalader, Wickersham & Taft LLP

Tel: +1.212.504.6298

lisa.pauquette@cwt.com

Lisa Pauquette's practice involves the representation of banks, investment banks and other financial institutions in securitization and a variety of mortgage banking and financing transactions.

Her client representations have included the purchase and sale of residential first- and second-mortgage loans (including FHA, VA, conventional, and manufactured housing) and commercial and multifamily mortgage loans, as well as structuring and negotiating warehouse lines and repurchase agreements for mortgage assets and residual securities.

Ms. Pauquette has also represented major Wall Street investment banks and financial institutions in their roles as underwriters, placement agents, issuers, servicers, mortgage loan sellers, and trustees of public and private securitization transactions involving commercial and residential mortgage loans. The commercial mortgage securitizations have included large loan/single asset, conduit, and floating rate transactions, and both public and private issuances of pass-through certificates, notes, and REMIC interests.

Ms. Pauquette graduated from Middlebury College with a B.A., and she received her J.D. from Boston University School of Law.

She is admitted to practice law in the State of New York.



Frank Polverino, Partner, Cadwalader, Wickersham & Taft LLP

Tel: +1.212.504.6820

frank.polverino@cwt.com

Frank Polverino is a corporate and securities lawyer who focuses primarily on representing financial institutions in the securitization, purchase, sale, and financing of financial assets.

Mr. Polverino has diverse experience in securitization matters, having represented issuers, underwriters, and loan sellers in significant public and private securitization transactions involving commercial and residential mortgage loans utilizing various structures, including pass-through, debt, and offshore. The commercial mortgage securitizations have included large loan/single asset, conduit, floating rate, and seasoned pool transactions.

Mr. Polverino also represents clients in the purchase and sale of mortgage loans, mezzanine debt, and subordinate debt. He has represented lenders in structuring and negotiating warehouse lines involving residential mortgage loans and commercial and multifamily mortgage loans. In addition, he represents clients in infrastructure finance matters.

Mr. Polverino received his B.S. from New York University and his J.D., *cum laude*, from Brooklyn Law School. He is admitted to practice in States of New York and New Jersey.

C A D W A L A D E R

Tab 03

Capital Markets Department

Cadwalader's Capital Markets team is an acknowledged legal industry leader in the creation and structuring of derivatives, securitized products, structured commercial real estate products, commercial and residential mortgage backed securities, collateralized debt obligations ("CDOs"), and synthetic securities. These multi-disciplinary products involve corporate, securities, tax, ERISA, bankruptcy, real estate and contract law, all areas in which our attorneys are recognized as preeminent by our clients as well as independent commentators and leading trade organizations, including the American Bar Association, Asset Securitization Forum ("ASF"), Commercial Mortgage Securities Association ("CMSA"), International Swaps and Derivatives Association ("ISDA"), Mortgage Bankers Association ("MBA"), Securities Industry and Financial Markets Association ("SIFMA"), and Structured Products Association ("SPA").

Any law firm working with distressed structured and real estate products must have unparalleled expertise in the intricacies of each type of investment as well as a unique understanding of the economic, legal, and practical challenges that the current economic environment poses for those in the government and private sectors. Cadwalader is in a unique position to address the issues raised by these troubled investments. Our collective experience in this field has given us tremendous insight into the rights, obligations, issues, and concerns of the parties involved in these transactions and, as commercial lawyers, we have a long history of bringing parties together to resolve difficult issues and achieve successful results.

Among our representative clients in these areas are: AIG, Amalgamated Bank, Bank of America, N.A., Barclays Bank PLC, Calyon, Citigroup, Cohen & Co., Credit Lyonnais, Credit Suisse, Deutsche Bank Securities, E*Trade, Fortis, Freddie Mac, Goldman Sachs & Co., Gramercy Capital Corp., HSBC Securities (USA) Inc., Invesco, JP Morgan Chase & Co., Merrill Lynch, Morgan Stanley & Co. Incorporated, Natixis Real Estate Capital Inc., New York Life, Rabobank, Societe Generale, Swiss Re, TIAA-CREF, UBS Securities, U.S. Trust Company of New York, Wachovia Bank, and Wells Fargo Bank, N.A.

As a result of our extensive experience in virtually all aspects of derivative and financial products, our attorneys have been active in representing clients in workouts of troubled structured vehicles, helping to evaluate and resolve exposures to troubled clients, and setting up funds and other vehicles to acquire troubled assets. Working in concert with our financial restructuring attorneys, our Capital Markets attorneys represent clients exposed to bankruptcies of finance companies and FDIC receiverships of banks. They have also been actively involved in advising clients as to recent legal developments, such as the federal Emergency Economic Stabilization Act of 2008 ("EESA"), and recent loan

modification programs adopted by financial institutions to forestall home foreclosures. Our Capital Markets attorneys recently represented SIFMA in connection with SIFMA's response to the U.S. Treasury Department's request for comments on a proposed guarantee program mandated by EESA.

In addition, in recognition of our wide ranging expertise in these areas, several Cadwalader partners serve as members of the board and/or committees of a number of industry trade groups, such as ASF and CMSA, and the firm also serves as counsel to ASF's important Project on Residential Securitization Transparency and Reporting, also known as Project RESTART, an effort to restore investor confidence in mortgage- and asset-backed securities.

Securitization

Cadwalader is a recognized leader in all forms of securitization.

Asset-Backed Securitization: In the area of asset-backed securitization, Cadwalader lawyers created the structures that are now market standard in credit card and auto loan securitizations, and, since 1985, has worked with ever-expanding classes of assets, including those as varied as: student, airplane, home equity and commercial loans; equipment and automobile leases; manufactured housing; franchise, government, advertising, pharmacy, health care and trade receivables; dealer notes and floor plan financing; tax liens; taxi medallions; music royalties; CDOs, collateralized loan obligations ("CLOs"), and annuity contracts.

Commercial Mortgage Loan Securitization: Cadwalader also has unparalleled experience in all kinds of commercial real estate structured products garnered from thousands of transactions involving virtually every type of capital markets financing of commercial real estate: all types of securitizations, including traditional, pooled, large and small loan, and single loan securitizations; multi-tier mezzanine loan transactions, B-notes and subordinate participation structures; commercial paper financings; off-balance sheet financings; and synthetic structures. The most compelling evidence of the scope and depth of our CMBS practice are the statistics compiled by the Commercial Mortgage Alert, an industry trade publication that tracks law firm participation in offerings of CMBS. The story is clear and unambiguous: Cadwalader has advised on more CMBS issuance than any other law firm by a wide margin; for each year between 2002 and 2008 we were issuer's counsel for more than three times as many transactions as our closest competitor.

We routinely assist servicers and issuers in connection with workouts of commercial mortgage loans in order to help alleviate or respond to stress on related properties, help the parties navigate the often complex documentation requirements and limitations, and negotiate workouts on defaulted assets. Many of our workout assignments have involved securitized mortgage loans, requiring us to consider the interests of certificate holders, junior participation holders/B Note holders, mezzanine lenders, servicers and trustees. Similarly, our extensive experience in the origination of mezzanine loan financings, in many cases with numerous levels of mezzanine sub debt and complicated intercreditor

arrangements among the mortgage lender and various mezzanine lenders, makes Cadwalader uniquely qualified to analyze and evaluate the rights and remedies, and related risks, facing mezzanine lenders with troubled loans.

Residential Mortgage Loan Securitization: Since 1983, when we helped the Federal Home Loan Mortgage Corporation create the first collateralized mortgage obligation, we have participated in over \$1 trillion of residential mortgage securitization transactions. Our participation in these transactions has been multi dimensional, representing issuers, underwriters, institutional investors, trustees, servicers and credit support providers. Our experience extends to a broad spectrum of residential mortgage products, including prime mortgage loans, alternative A and subprime loans, adjustable rate mortgages loans of all types, “scratch and dent” loans, re performing and non performing loans, relocation loans, balloon loans, manufactured housing loans, co op loans, buy down loans, employer subsidized loans, Title I home improvement loans, home equity loans, high LTV loans, and reverse mortgage loans.

In addition, our expertise in residential mortgage securitization qualifies us to advise on strategies and limitations related to workouts and modifications of securitized residential mortgage loans. We understand the legal, regulatory, and practical reasons for relevant restrictions on servicing in RMBS deals, and can help clients consider options for modifying such restrictions to bring much needed relief to families facing the loss of their homes. We also are well versed in the policies and initiatives embodied in the Hope for Homeowners Act.

CDOs

Cadwalader has actively practiced in the CDO area for over a decade. We have extensive experience with both “cashflow” and “market value” type transactions, using funded, unfunded and hybrid structures and synthetic CDO structures, having assisted our clients in bringing more than 500 CDO transactions to market. Such transactions have involved a broad range of asset types, including, among others, high yield bonds, leveraged loans, investment grade bonds, middle-market debt obligations, distressed debt, emerging market obligations, asset-backed securities, mortgage related assets, hedge fund interests, credit linked notes, synthetic securities, credit default swaps, and interests in other CDOs.

Cadwalader also has represented underwriters, issuers, portfolio managers and other large financial institutions in connection with the workout of distressed and defaulted asset backed securities, CDOs, commercial real estate (“CRE”) CDOs, CLOs and leveraged loan warehouse transactions, both cash and synthetic. In connection with such workouts, we have conducted extensive negotiations with all affected parties, including trustees, rating agencies, investors, warehouse lenders and credit enhancement providers. We also have represented clients in the establishment of funds or other vehicles to acquire such assets. Because of our prominent position in the commercial mortgage backed securities market, Cadwalader has taken a leading role in connection with distressed CRE CDOs, with a particular emphasis on troubled real estate asset workouts.

In addition, Cadwalader has extensive experience in representing traders of distressed debt, including negotiation of trading done pursuant to the Loan Syndications and Trading Association, Inc.'s documentation, credit opportunity funds, and other structured funds. Cadwalader has advised on all aspects of workouts including analysis of default and enforcement provisions, amendments to deal documents and liquidations of collateral by both public and private sales under Article 9 of the Uniform Commercial Code ("UCC").

Derivative and Structured Credit Products

Cadwalader's early roots in the derivatives markets, representing issuers, dealers and end-users, provides our practitioners with an extraordinary understanding of the fundamental building blocks that form the basis of complex derivatives transactions. Our clients include U.S. and international commercial and investment banks, financial products companies, investment advisers, money managers, hedge funds, electronic trading platforms, financial guaranty insurers, government sponsored enterprises, commercial credit companies, issuers, investors, end-users and trustees.

We are working with derivative and structured credit product market participants on (i) document reviews in order to assess and determine exposure to distressed counterparties; (ii) the implementation of amendments and application of best practices to current documentation in order to reduce exposure to counterparties; (iii) counterparty risk management strategies, including, but not limited to, the development, structuring, negotiation and documentation of master netting and set-off agreements, swap participations, contingent interest rate swaps, contingent loan only credit default swaps and contingent credit default swaps that include derivative termination obligations as deliverable obligations; (iv) the development and implementation of structures that permit CDOs, CLOs and similar vehicles to workout the securities issued by them and to permit the modification or termination of credit default swaps, all in a tax-efficient manner; (v) derivatives issues, including, but not limited to, the auction process and methodology in the credit default swap market; (vi) termination rights and strategies in respect of trading contracts with insolvent counterparties, and the related termination documentation; and (vii) the development, structuring, negotiation and documentation of various synthetic funding structures in both single asset and static or managed portfolio form.

Structured Investment Vehicles and Commercial Paper

We represent issuers, sponsors, underwriters, swap counterparties, other enhancement and liquidity providers, managers, and investors in connection with commercial paper conduits and structured investment vehicles, including interest rate swaps, total return swaps, credit default swaps (including index trades on a tranching and untranching basis), commodity swaps, currency swaps, maturity shortening swaps, deal contingent swaps and balance guarantee swaps.

With SIVs facing ongoing operating challenges, including higher funding costs, constrained liquidity, and depressed valuations, Cadwalader attorneys are helping with restructuring efforts to mitigate a variety of market risks, protect creditors, and provide for

an orderly unwinding of the commercial paper programs in which many SIVs have invested.

During the current liquidity crisis, we have restructured numerous commercial paper conduits in order to allow them to function and operate in this extremely difficult environment, and we have negotiated and worked closely with rating agencies, enhancement providers, and other service providers involved in these restructurings. Our strong relationships with such parties allows us to effectively and efficiently assist clients to successfully restructure commercial paper conduits.

Whole Loan Purchases and Sales

A major component of Cadwalader's leading capital markets practice is our active involvement in whole loan purchase and sale transactions covering mortgage loans and servicing of all types and the financing of financial assets of all types, including mortgage loans. Given the recent market volatility, our Capital Markets attorneys have been active in the work out or close out of warehouse finance facilities and repurchase finance facilities. In working with our UCC specialists as well as bankruptcy lawyers with significant experience in these types of facilities, we are able to utilize the experience that we have gained in prior liquidity crises to counsel our clients.

Funds and Other Opportunities

Our Capital Markets attorneys represent opportunistic clients in connection with the establishment of funds or other vehicles to acquire leveraged loans, CLOs, CDOs, whole loans, and real estate, residential and commercial, performing and nonperforming, as well as in the purchase of those assets. We counsel clients in negotiating servicing arrangements and in the purchase of servicing and origination platforms. We are well versed in the regulatory, tax, bankruptcy, licensing and other legal issues that arise in these activities. We have also structured residential, multi-family and commercial mortgage loan conduits; revolving credit/commercial paper facilities secured by commercial real estate and other assets; purchases and retrades of residential and commercial loans from the FDIC; servicing and/or pooling of mortgage loans for sale to various government or quasi-government agencies or as part of private or public pass-through transactions; and warehouse and gestation repos and financings and transactions with FMNA, Freddie Mac, GNMA and HUD. Cadwalader has a well-earned reputation for innovation in this area, having participated in the first FNMA multi-family swap.

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