Bloomberg BNA

Securities Regulation & Law Report™

FINANCIAL INSTITUTIONS

BNA Insights: So You Think You Want to Securitize—Big Picture Considerations for Consumer Finance Companies



By Tara Eliza Castillo, Mark W. Harris and David Hatef

Consumer finance companies (''FinCos'') play a critical role in the U.S. economy. FinCos provide an alternative source of funds to underbanked consumers who otherwise have limited access to credit from financial institutions and other traditional lenders. Based on the most recently published FDIC National Survey of Unbanked and Underbanked Households, in 2013 20% of the U.S. population was underbanked and 7.7% of U.S. households did not have a bank account.[1] In a post-financial crisis environment, the population of underbanked consumers is expected to continue to grow due in large part to increased banking regulations and more stringent credit underwriting standards.

FinCos rely upon secured and unsecured bank term loans and syndicated revolving credit facilities as a means to fund and sustain origination growth. However, such forms of debt financing are often tied to high interest rates, fees and restrictive financial covenants. Employing securitization as a funding source can diversify a FinCo's funding base and grant the FinCo direct access to the secondary capital markets, increase liquidity and lower the cost of funds. Establishing a securitization program is a significant undertaking and requires time, money and resources. In order to best maximize the benefits of a securitization program, a FinCo's executive management team must identify and address certain key operational and ongoing compliance considerations at the beginning of the process.

An asset-backed security (ABS) is a security backed by a self-liquidating financial asset. Securitization structures have been used by FinCos to securitize a wide variety of mainstream asset classes such as auto loans, credit card loans, consumer loans, mortgage loans, small business loans, student loans, trade receivables and other esoteric asset classes such as intellectual property royalties, life settlements, structured settlements, insurance premium finance receivables, solar energy loan receivables and timeshare loan receivables.

A FinCo that originates or purchases receivables may securitize them using a variety of structures. For purposes of this article, we will assume that the FinCo will use a plain vanilla ''two-step'' securitization structured as follows: the FinCo will originate and acquire receivables and transfer such receivables to a bankruptcy-remote special purpose entity (SPE) that has been

[1] *See* Fed. Deposit Ins. Corp., 2013 FDIC National Survey of Unbanked and Underbanked Households (last updated October 2014), available at https://www.fdic.gov/householdsurvey/; *see also* Martin J. Gruenberg, Chairman Fed. Deposit Ins. Corp., Statement to the Nat'l Interagency Cmty. Reinvestment Conference (February 8, 2016), available at https://www.fdic.gov/news/news/speeches/spfeb0916.html (citing the data from the 2013 FDIC survey).

 ISSN 0037-0665

formed solely for the purpose of purchasing the receivables to be securitized.[2] This entity is referred to as the depositor (the ''Depositor''). The Depositor will in turn transfer the receivables to a Delaware statutory trust (the ''Issuer'').[3] The Issuer then issues the asset-backed securities, which may be in the form of notes and/or pass-through certificates. The bankruptcy remote nature of the Depositor and Issuer ensure that the receivable and related proceeds are isolated from the FinCo's creditors. After the receivables are transferred to the Issuer, recourse to the FinCo is limited to the FinCo's obligation to repurchase and/or substitute a receivable if it is determined at a later date that such receivable did not meet certain representations and warranties relating to the eligibility of the subject receivables as of the date of such determination. Unless an event of default occurs, the ABS investor will receive scheduled interest and principal payments. Such payments will made from the obligor receivable payments collected by the servicer during the immediately preceding collection period, and to the extent there is a payment shortfall other amounts relating to certain credit enhancements.

Is a Securitization Permissible ?

A securitization program is designed to allow a FinCo to access the secondary market on a routine basis, economic and market conditions permitting. In connection with each securitization transaction, the FinCo will form a new trust issuer to issue the ABS. Each ABS issuance will be backed by a discrete pool of receivables that have not otherwise been pledged or encumbered except in connection with a warehouse financing facility. Before a FinCo moves toward the path of establishing a securitization program, careful attention needs to be paid to the terms of the FinCo's existing debt financing arrangements to determine whether a securitization is permissible.

Restricted Covenants and P ermitted Securitization Provisions

Corporate financing agreements typically include extensive negative covenants that operationally restrict how a FinCo may conduct its business. Such covenants may also implicitly restrict a FinCo from entering into a securitization by restricting the FinCo and its subsidiaries from creating, assuming or incurring additional debt, or creating any liens on the pledged assets. If a securitization is permissible, the financing agreement will explicitly carve out a securitization from the scope of the negative covenants relating to indebtedness and liens.

If a FinCo contemplates entering into a future securitization, it should consider negotiating certain permitted securitization provisions into its existing financing agreements. For example, a ''securitization take-out'' provision permits a FinCo, subject to certain conditions being met, to prepay all or a portion of the outstanding loan obligation and require the lender or administrative agent acting on behalf of the lender to release its security interest and lien on the related receivables. Such provision may include a cap on the amount of the outstanding loan obligation the FinCo may prepay. A financing agreement may also explicitly permit a FinCo to enter into a securitization, provided that each securitization or the securitization program in the aggregate does not exceed a certain dollar amount, and the lender has approval and consent rights with respect to the securitization structure and operative agreements. If such approval and consent rights are granted, the FinCo should include a condition that the applicable lender will not unreasonably delay, condition or withhold such approval or consent.

Lender Approval and/or Noteholder Consent

If the financing agreement does not explicitly permit a securitization or includes negative covenants that indirectly or directly prohibit the FinCo from entering into a securitization, the FinCo will need to work with the secured lender and/or noteholders to amend and restate the underlying financing agreements. Obtaining approval and/or consent, and amending and restating the underlying financing agreements, can take time. If a FinCo is seriously considering establishing a securitization program, it may want to consider initiating conversations with the key stakeholders prior to engaging a securitization structuring agent.

Readiness Considerations

In connection with evaluating the feasibility of a securitization, FinCo management must evaluate the current state of its origination, servicing (if such function is not outsourced to a third party) and compliance platforms in light of the following readiness considerations.

Licenses Relating to the Secondary Purchase of Receivables

In connection with its business, a FinCo and its originator subsidiaries, if any, are required to comply with the consumer regulatory scheme in each of the states in which it originates or takes a direct assignment of receivables. Certain state regulatory schemes, however, also regulate the secondary purchase of receivables by the FinCO or an SPE (including the Depositor and/or Issuer), and require such entities to also obtain a finance license.[4] Depending on the state, the licensing application process can take two to three months, and in most

[2] In connection with a securitization transaction, a FinCo may use a Delaware limited liability company or corporation to act as the SPE. The securitization must be structured to provide comfort to the investors that the SPE is bankruptcy remote, and that for as long as the issued securities remain outstanding, such SPE will not deviate from its transaction-specific role.

[3] Some securitization transactions may form a New York common law trust to act as the issuer. For purposes of this article, we have assumed that a Delaware statutory trust will act as the issuer. The issuer must be treated by the securitization parties as an SPE.

[4] *See e.g.* Tex. Fin. Code Ann. § 342.051(a) (West 2015); 7 Tex. Admin. Code § 1.101(b)(1) (providing that no person may ''(1) engage in the business of making, transacting, or negotiating loans subject to this chapter; or (2) contract for, charge, *or receive, directly or indirectly, in connection with a loan subject to this chapter*, a charge, including interest, compensation, consideration, or another expense, authorized under this chapter that in the aggregate exceeds the charges authorized under other law,'' without first obtaining a Regulated Loan License from the Office of the Consumer Credit Commissioner) (emphasis added). *But see* Ala. Code § 5-19-22(a)(3) (exempting from license requirements out-of-state entities in the business of making consumer loans or taking assignments of consumer

  SRLR ISSN 0037-0665

cases the state licensing authority will require the entity and related direct and indirect equity owners to provide personal and financial information.[5] Further, opting into a state's licensing scheme may subject the FinCo to additional recordkeeping, financial reporting, disclosure and other requirements.[6] Since the securitization agreements will require each party to the securitization sale structure to provide corporate capacity representations (including compliance with applicable law), any and all licensing requirements need to be satisfied prior to the closing of the securitization transaction.

Bankruptcy Remoteness

In connection with a securitization transaction, an investor will base its investment decision, in part, on the creditworthiness of the underlying receivables, not the creditworthiness of the FinCo. The investor will expect the FinCo to use one or more SPE entities to sell and transfer the receivables. The investor will also expect the ultimate transferee and owner of the receivables, in this case the Issuer, to be an SPE.[7] Establishing and maintaining certain bankruptcy remote protections is critical to the securitization process. If the FinCo were to become a debtor or debtor in possession under the Bankruptcy Reform Act of 1978 (the ''Bankruptcy Code''),[8] the bankruptcy court would need to determine whether (1) the transfer of the receivables from the FinCo to the Depositor constituted a true sale and not secured loan,[9] and (2) whether it should disregard the separate legal existence of the Depositor and order the substantive consolidation of the assets and liabilities of the Depositor with the assets and liabilities of the FinCo.

Critical to a bankruptcy court's true sale analysis is the court's determination that the receivables transferred were sold and not pledged by the FinCo to the Depositor, and that the purchase price for the receivables reflected the estimated fair market value for the receivables at the time of transfer and purchase. If a bankruptcy court determined that the receivables were not in fact ''sold,'' or if they were sold then at a discount, then the receivables could be considered to be property of the FinCo's bankruptcy estate under Section 541 of the Bankruptcy Code, and the Depositor's rights would be limited to the rights of a secured creditor. Further, the automatic stay provisions of Section 362 of the Bankruptcy Code would prevent the collection of the related receivables by the Depositor.

In connection with a bankruptcy court's substantive consolidation analysis, the bankruptcy court will take into account all of the facts and circumstances related to the FinCo's and Depositor's business operations and the underlying transactions. Key to this analysis will be a determination by the bankruptcy court that the FinCo and Depositor observed and complied with all of the obligations set forth under the Depositor's organizational documents and the securitization agreements, including covenants that relate to the Depositor's maintenance and operation of a business separate and distinct from the FinCo and its related affiliates.[10] In connection with structuring a securitization, all transactions between the FinCo and its affiliated entities must be properly documented and made on an arms-length basis. For example, if the FinCo or an affiliate is servicing the underlying receivables, then such arrangement must be evidenced by a servicing fee that is customary for the industry. The bankruptcy court will also need to determine that the creditworthiness and assets of the FinCo were not held out by the FinCo or the Depositor as being available for the payment of the Depositor's liabilities or obligations. A guarantee by the FinCo or another upstream entity of all of the Depositor's obligations may be treated as a form of credit support and may suggest to a bankruptcy court that the Depositor is not legally separate and distinct from the FinCo or party providing the guaranty.

Ultimately, the bankruptcy court's determination to disregard or respect the separate legal existence of the Depositor is based on a facts and circumstances analysis. In structuring a securitization transaction, the FinCo, with guidance from legal counsel, will need to structure a transaction that takes into account all of the case law precedents applicable to a true sale and substantive consolidation analysis that have been recognized and observed by bankruptcy courts.[11]

Loan Due Diligence and Data Quality

The investment bank engaged by the FinCo to structure and underwrite the securitization transaction will require detailed, granular loan level data information about the receivables being conveyed to the Issuer and

---

contracts that do not have an office or a resident employee in Alabama).

[5] *See* Tex. Fin. Code Ann. § 342.101(a) (West 2015) (requiring that a party applying to be a regulated lender in Texas must provide a statement of experience, a financial statement including balance sheet, a business operation plan and information regarding employment and criminal history).

[6] *See* Tex. Fin. Code Ann. § § 342.552, 342.553 (West 2015) (providing that a regulated lender is subject to examination and investigation of its records, transactions, accounts and papers); *see also* Tex. Fin. Code Ann. § 342.559 (West 2015) (requiring a regulated lender to file no later than May 1 of each year a report that contains information regarding its business and operations in the preceding calendar year for each office it has in Texas).

[7] For purposes of this article the bankruptcy discussion will focus on true sale and substantive nonconsolidation analysis as between the originator and depositor, although the same considerations apply to the relationship between the depositor and the issuer.

[8] *See* Bankruptcy Reform Act of 1978, 11 U.S.C. § § 101-1532 (2016).

[9] *See* 11 U.S.C. § 541(a)(1) (2016) (providing that the property of the estate of a debtor in bankruptcy includes ''all legal or equitable interests of the debtor in property as of the commencement of the case'').

[10] Such separateness covenants should include the following: (1) the depositor will not commingle its assets with those of the originator or any affiliates and ensure that its funds will be readily distinguishable from the funds of the originator or any affiliate, (2) the depositor will act solely in its own name and not in the name of the originator or any affiliate and will correct any known misunderstanding regarding its separate identity, (3) the depositor will not hold itself out as being liable for the debts of the originator or any affiliate and will separately manage its own liabilities, and (4) the depositor will operate in such a manner that it will not be substantively consolidated for purpose of applicable bankruptcy law with any other entity.

[11] In connection with a securitization transaction, a FinCo's counsel will be required to deliver true sale and nonconsolidation opinions.

the platform of receivables originated by the FinCo. During the initial stages of the engagement process, the structuring bank will request historical performance information about the receivables to determine such receivables' anticipated performance and prepayment schedule over the life of the deal in light of historical delinquencies and charge-offs. If the deal is rated, the structuring bank and rating agency will generally request historical information relating to the receivables going back three to five years. The quality of this information is critical to the securitization process, since such information will be disclosed in the private placement memorandum or prospectus supplement provided to the investors. Often the structuring bank will work with the FinCo to ''scrub'' data files to ensure the accuracy of the information. In connection with the securitization transaction, the FinCo will also be required to disclose information about the characteristics of the receivables being conveyed as of a certain date (generally within 30 days prior to closing referred to as the cut-off date), which may include average principal balance, weighted average annual percentage rate, range of FICO scores and geographic concentration. Addressing issues relating to data accuracy and historical information upfront can greatly streamline and facilitate the securitization process and avoid any unnecessary delays in the proposed timeline.

Decentralized vs. Centralized Banking System

Depending on the breadth of the FinCo's geographical footprint and organizational structure, the FinCo, together with one or more subsidiaries, will originate receivables. Prior to contemplating a securitization, each originator within the FinCo's organization structure may service the receivables on a decentralized platform basis. Further, collections received may be deposited into one or more accounts that include funds from other sources. Prior to executing a securitization, a FinCo will need to identify the steps necessary to migrate receivable collections and servicing to a centralized servicing platform basis by either making the decision to act as the servicer or to engage a third party or affiliate on an arm's-length basis. The FinCo will also need to redirect the stream of payments relating to the receivables sold to the Issuer into a collection account designated for the underlying securitization transaction. The FinCo can affirmatively shift from a decentralized to centralized platform basis by instructing or causing the obligor of each receivable to make future payments after a designated cut-off date directly into the collection account established for purposes of the securitization. Practically speaking, however, this change may present some operational challenges and may not be feasible for the FinCo to implement. As an alternative, the FinCo or servicer can sweep, or cause to be swept, any collections and proceeds relating to the receivables into the securitization collection account. Typically, the servicing agreement relating to a securitization will require the servicer to sweep all related amounts into the collection account within one or two business days. Further, the servicing agreement may specify that a failure to comply with such requirement will trigger a servicer termination event and/or default.

Servicer Compliance and Ongoing Reporting Obligations

In most cases, the FinCo or an affiliate will act as the servicer for purposes of the securitization transaction. In this capacity, the FinCo or an affiliate will be required to observe certain affirmative and negative covenants for the life of the securitization.[12] The servicer will also be responsible for providing the investors a monthly servicer report or certificate covering the collection period preceding the related payment date. In preparing and delivering such information, the servicer will be required to certify that the information presented is true, complete and correct in all material respects. The servicer report or certificate will include information relating to the securitized receivable pool's monthly performance, including information about interest collections, principal collections, total amounts available to make monthly distributions, amounts in the credit enhancement accounts and other pool data.[13] The information reflected in the servicer report or certificate will have been negotiated prior to the execution of the securitization. The servicer will also be required to annually provide a certificate of compliance certifying that based on its review, the servicer has fulfilled all of its obligations under the securitization agreements or disclose whether there has been a default in the fulfillment of any such obligation. If the securitization is public, the servicer will be required to comply with the Regulation AB requirements,[14] which require the servicer to deliver and file with the U.S. Securities and Exchange Commission (SEC) on or before 90 days after the end of such servicer's fiscal year a Form 10-K.[15]

Securities Exchange Act Rule 15Ga-1 requires both public and private securitizers to disclose on Form ABS-15G, and file with the SEC via the EDGAR system, any fulfilled or unfulfilled repurchase request for any ABS held by a nonaffiliate.[16] In connection with its initial se-

[12] For example, in connection with a securitization transaction, the servicer will be responsible for maintaining and implementing administrative and operating procedures and keeping and maintaining all documents and records relating to collection of the receivables and other information reasonably necessary or advisable for the collection of all receivables, including the servicer files.

[13] Pool data reported on a monthly basis may include weighted average coupon, net loss and delinquency account activity and loss and cumulative loss information.

[14] Regulation AB, 17 C.F.R. § § 229.1100-229.1123 (2015).

[15] Although compliance with Regulation AB and the Securities Exchange Act of 1934 reporting requirements, including annual reports on Form 10-K and periodic reports on Form 10-D, apply to publicly issued ABS, private securitizations of certain asset classes (e.g., residential mortgage-backed securities) may require issuers to comply with substantially similar disclosure and reporting requirements.

[16] Rule 15Ga-1, 17 C.F.R. § 240.15Ga-1 (2015). Rule 15Ga-1 applies only if the underlying securitization transaction agreements include a covenant to repurchase or replace an underlying receivable in connection with a breach of a representation or warranty related to the eligibility of the subject receivable. For purposes of Rule 15Ga-1, ''securitizer'' is defined to mean either: (1) an issuer of an asset-backed security; or (2) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer. *See* Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Final Rule, 76 Fed. Reg. 17, 4491 (January 26, 2011) (codified at 17 C.F.R. Parts 229, 232, 240 and 249), available at https://www.sec.gov/rules/final/2011/33-9175.pdf.

  SRLR ISSN 0037-0665

curitization transaction, a FinCo will be required to file a Form ABS 15Ga-1 within 45 days following the quarter such transaction closed. If a FinCo does not otherwise have any SEC reporting obligations, it will be required to apply for an SEC filer access code to comply with its Rule 15Ga-1 reporting obligations. After the initial filing, the FinCo will have an obligation to file a Form ABS-15G within 45 days after the end of each calendar quarter, provided that the FinCo may suspend its duty to file if it has no activity to report during such quarter. No quarterly report is required thereafter, unless a demand is made, but the FinCo will still have an obligation to file a Form ABS 15-G annually.[17] In addition, Rule 15Ga-2 requires the issuer or underwriter of a public or private securitization transaction to be rated by a nationally recognized statistical rating organization (NRSRO) to furnish on Form ABS-15G to the SEC, at least five business days before the first sale in the offering, the findings and conclusions of any third-party due diligence report.[18] This disclosure requirement and speed bump needs to be factored into the securitization transaction timeline upfront so that compliance does not delay the pricing of the transaction.

In connection with a securitization program, a FinCo will need to evaluate its current servicing platform and determine whether it needs to implement new systems and controls to ensure compliance with the requirements set forth in the securitization agreements and applicable securities laws.

Securitization Incentives and Regulatory Considerations

The U.S. ABS market has steadily improved in the years following the financial crisis, although it has experienced some periods of sluggishness due to regulatory uncertainty and other external global market conditions.[19] In 2015, over $655 billion ABS, RMBS and CMBS were issued and purchased globally, $408 billion of which was ABS, RMBS and CMBS issued in the public and private U.S. market.[20]

A FinCo may decide to issue ABS either in the public market, private market or both. Public ABS issuers inherently face higher regulatory upfront and annual costs for the life of the deal because they are subject to SEC disclosure and ongoing reporting requirements. In addition, Regulation AB II, which amends Regulation AB by substantively revising the offering process, disclosure and reporting requirements for public offerings of ABS, has further increased the cost of compliance and liability for even the most seasoned and institutional issuers.[21]

The private market may appear more attractive for a first-time issuer since that market is currently subject to fewer SEC disclosure and ongoing reporting requirements. In addition, the private market will provide a first-time issuer greater flexibility to execute a transaction on an expedited basis. However, this accommodation may be short-lived since the SEC is still contemplating whether to apply certain aspects of the Regulation AB II requirements to private securitization transactions.[22] Further, beginning December 24, 2016, the credit risk retention requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act will require sponsors,[23] (or a majority-owned affiliate of the sponsor) of ABS to retain not less than 5 percent of the credit risk of the assets that collateralize an ABS. A sponsor (or a majority-owned affiliate of the sponsor) may comply with the credit risk retention requirements by retaining an eligible vertical interest, an eligible horizontal interest or a combination of the two, as long as

---

[17] Securitizers that do not have any demand or repurchase activity to report may indicate by check mark that it has no activity to report for the annual period.

[18] Rule 15Ga-2, 17 C.F.R. § 240.15Ga-2 (2015); *see also* Rule 17g-10, 17 C.F.R. § 240.17g-10(d)(2) (defining ''issuer'' to mean a sponsor or depositor that participates in the issuance of an asset-backed security); *see also* § 240.15Ga-2(d) (defining ''third-party due diligence report'' to mean any report containing findings and conclusions of any due diligence services performed by a third party); *see also* Rule 17g-10, 17 C.F.R. § 240.17g-10(d)(1) (defining ''due diligence services'' to mean a review of the assets underlying an asset-backed security).

[19] In 2009, $50 billion in non-TALF ABS was issued in the public and private U.S. markets. Asset-Backed Alert, Worldwide Securitization Volume, 12/31/2009, available at https://www.abalert.com/rankings.pl?Q=105. The Term Asset-Backed Securities Loan Facility (TALF) was a program created by the Federal Reserve to lend up to $1 trillion on a nonrecourse basis to investors of AAA-rated ABS backed by newly issued consumer and small business loans. TALF was created and implemented to increase liquidity and reduce interest rates on consumer ABS in an effort to jumpstart lending in the fragile post-financial crisis economy. By way of comparison, in 2004, registered private-label RMBS totaled $746 billion, but dropped to $13 billion in 2008. Similarly, in 2004 there were 131 sponsors of registered ABS, but only 61 sponsors of the same by 2014. *See* Asset-Backed Securities Disclosure and Registration; Final Rule, 79 Fed. Reg. 185, 57191-92 (September 24, 2014) (codified at 17 C.F.R. Parts 229, 230, 232, 239, 240, 243 and 249), available at https://www.gpo.gov/fdsys/pkg/FR-2014-09-24/pdf/2014-21375.pdf [hereinafter *Reg AB II Release*].

[20] Asset-Backed Alert, Worldwide Securitization Volume 12/31/2015, available at https://www.abalert.com/rankings.pl?Q=105.

[21] *See Reg AB II Release*, *supra* note 19, at 57267-74, available at https://www.gpo.gov/fdsys/pkg/FR-2014-09-24/pdf/2014-21375.pdf. One new shelf eligibility requirement under Regulation AB II requires the CEO of the depositor to provide a certification at the time of each takedown that addresses, among other things, the prospectus disclosure and securitization structure. Regulation AB II also implements asset-level disclosure requirements for ABS collateralized by residential mortgages, commercial mortgages, auto loans and leases, re-securitizations of ABS backed by any of those asset types, and debt securities. For example, the final rules for auto loans will require issuers to provide 72 data points for ABS backed by such collateral. *See id.* at 57225. These asset-level disclosure requirements take effect on November 23, 2016.

[22] *See id.* at 57190-91 (noting that several of the proposed rules that were not part of the Regulation AB II proposal and still remain pending include requiring 144A issuers to provide the same level disclosure in private offerings as required in registered offerings).

[23] *See* Credit Risk Retention, Final Rule, 79 Fed. Reg. 247, 77602 (December 24, 2014) (codified at 12 C.F.R. Parts 43, 244, 246, 267, 373 and 1234), available at https://www.gpo.gov/fdsys/pkg/FR-2014-12-24/pdf/2014-29256.pdf (defining ''sponsor'' as a person who organizes and initiates a securitization transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity). Rule 15G of the Securities Exchange Act of 1934 imposes a risk retention requirement on any securitizer of asset-backed securities. ''Securitizer'' means either: (1) the depositor of the asset-backed securities (if the depositor is not the sponsor); or (2) the sponsor of the asset-backed securities. *Id.* at 77741.

such combined percentage equals no less than 5 percent.[24]

In connection with determining whether to put a securitization program in place, as a final consideration, a FinCo will need to take into account the SEC requirements that govern public and private securitization transactions and costs related to compliance for the life of the underlying transaction.

[24] *Id.* at 77742 (providing an exemption for securitizations consisting solely of commercial loans, commercial real estate loans and automobile loans that meet specific underwriting standards). The credit risk retention requirements for asset-backed securities collateralized by residential mortgages went into effect December 24, 2015. *See also* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 941, 124 Stat. 1376, 1890 (2010).

  SRLR ISSN 0037-0665