Contents

Foreword v
Preface vii

1. Synthetic Squares, or the Securitisation of Russian Dolls 1
   Jan Job de Vries Robbé

   1. INTRODUCTION 1
      1.1 Definition 1
      1.2 Market 2
      1.3 Goodbye CDO? 2
      1.4 Hello CDO Square! 4
      1.5 Limitations and Opportunities 5

   2. DOCUMENTATION 7
      2.1 General Structure 7
      2.2 Documentation 10
      2.3 Credit Default Swap 10
      2.4 Credit Events 11
      2.5 Credit-Linked Notes 14
      2.6 Management Agreement 17
      2.7 Collateral Arrangements 18
      2.8 Rating Agency's Perspective 18

   3. LEGAL AND REGULATORY ISSUES 20
      3.1 Regulatory Capital Relief 21

   4. GOING FORWARD 22
2. Modelling Credit Risk in Synthetic CDO Squared Transactions 23
Kai Gilkes

1. INTRODUCTION 23

2. STRUCTURE AND RISK CHARACTERISTICS OF CDO SQUARED TRANSACTIONS 24

3. THE DRILL-DOWN APPROACH 26
3.1 Modelling Standalone Assets 26
3.2 Bespoke CDO Structure 28
3.3 Bespoke CDO Default and Loss-Given-Default 30
3.4 Bespoke CDO Correlation 33
3.5 Creating the CDO Squared Net Loss Distribution 34

4. CDO SQUARED TRANCHE RISK MEASURES 37

5. RECENT MARKET DEVELOPMENTS 40
5.1 CDOs of 'Baskets' 40
5.2 CDOs of Equity Default Swaps 41
5.3 CDO Cubed 41
5.4 Fungible Subordination 41

6. SUMMARY 42

3. Synthetic Securitisation Platforms Established by KfW 43
Stefan Krauss

4. Commercial Mortgage Backed Securities in Italy: the Current Issues and the Synthetic Route 49
Giuseppe Schiavello

1. INTRODUCTION 49

2. ITALIAN LEGISLATION ON CASH FLOW SECURITISATION: AN OVERVIEW 50
2.1 Structures Available Prior to Law 130 51
  2.1.1 Civil Code Assignment of Receivables 51
  2.1.2 Law 52 Assignment of Receivables 52
  2.1.3 The Use of Mutual Funds 53
2.2 Law 130 54
2.3 The Italian Regulatory Concerns on CMBS: The Current Legislation 57
6. Equity Default Swaps and the Securitisation of Risk
Michael J. Logie and John-Peter Castagnino

1. INTRODUCTION

2. THE DEVELOPMENT OF EQUITY DEFAULT SWAPS
   2.1 The Basic Terms of Equity Default Swaps
   2.2 The Economics of Equity Default Swaps
   2.3 The Uses of Equity Default Swaps
   2.4 Documenting Equity Default Swaps

3. THE SECURITISATION OF EQUITY DEFAULT SWAPS
   3.1 The Synthetic Collateralised Debt Obligation
   3.2 The Inclusion of Equity Default Swaps in CSO Portfolios
      (ECOs and Hybrid CSOs)
   3.3 The Response of the Rating Agencies
      3.3.1 Moody's
      3.3.2 S&P
      3.3.3 Conclusion
   3.4 Specific Documentation Issues

4. THE EXPANDING MARKET FOR SECURITISATIONS OF
   EQUITY DEFAULT SWAPS
   4.1 Managed ECO Issues
   4.2 The Wider Consumer Base

5. CLOSING REMARKS AND CONCLUSION

7. Securitisation in Japan
Peter Kilner, Paul Avanzato, Lucy Oddy and Gina Hartnett

1. 'HISTORY' OF SECURITISATION IN JAPAN
2. DISCUSSION OF COMMON STRUCTURES
   2.1 Double Cayman Island Entity Structures
   2.2 Kabushiki Kaisha Structure
3. TMKS AND THE ASSET SECURITISATION LAW
4. JAPAN LAW TRUSTS
5. LEGAL AND REGULATORY FRAMEWORK – SPECIFIED
   CLAIMS LAW, PERFECTION LAW, SERVICER LAW, ETC.
   5.1 Perfection of Transfers
      5.1.1 Article 467 of the Civil Code
      5.1.2 Specified Claims Law
5.2 Structured Finance CDOs
   5.2.1 CRE (CMBS) CDOs 151
   5.2.2 ABS CDOs 151
5.3 Municipal Bonds CDOs 154
5.4 Trust Preferred CDOs (TruPS)
   5.4.1 Structure 154
5.5 Repacks and Combo CDO Notes
   5.5.1 Structure 160
   5.5.2 Amortisation Schedule of the Assets
      5.5.2.1 Bonds 161
      5.5.2.2 Loans 161
      5.5.2.3 ABS 161
   5.5.3 Combination CDO Notes – ‘Composite Obligations’ 161
6. STRUCTURAL FEATURES 162
7. CONCLUSION 165

9. Covered Bonds in Europe 167
   Sergio Nasarre-Aznar and Otmar Stöcker
1. WHAT ARE COVERED BONDS? 167
2. ECONOMIC MEANING OF COVERED BONDS IN EUROPE 169
3. LEGISLATION ON COVERED BONDS IN EUROPE 170
4. DIFFERENT STRUCTURES AND LEGISLATION OF COVERED BONDS IN EUROPE 175
   4.1 Structures 175
      4.1.1 French Model 175
      4.1.2 Specialised Bank with Own Staff but Partially Outsourcing Administration 177
      4.1.3 Centralised Funding Institutions 178
      4.1.4 Specialised Bank without/with Small Non-eligible Business 179
      4.1.5 Specialised Bank with Large Non-eligible Business 180
      4.1.6 Universal Bank with Qualified Covered Bond Licence 182
      4.1.7 All Credit Institutions can issue Covered Bonds without Previous Licence or with a Licence without Requirements 183
   4.2 Legislation of Covered Bonds in Europe 184
5. THREE CORNERSTONES OF COVERED BONDS: SECURITY, LIQUIDITY AND TRANSPARENCY 184
   5.1. Security and Bankruptcy Remoteness 190
5.1.1 Security in Covering During the Life of the Issue to Ensure that Covered Bonds are Covered Always 191
  5.1.1.1 What Does ‘Covered’ Mean? 191
  5.1.1.2 How to Identify the Cover 192
5.1.2 Bankruptcy Remoteness 194
  5.1.2.1 A New Trend: No Acceleration! 194
  5.1.2.2 How to Segregate the Cover from the Bankruptcy Estate 194
5.2. Liquidity 199
5.3. Transparency 199

6. OUTLOOK 200
6.1. Which Covered Bond Structure is the Most Efficient? 200
6.2. Covered Bonds versus or together with MBS 201

7. CASE STUDIES 202
7.1 Spanish AyT or a Way of Mixing Covered Bonds and ABS 202
7.2 English HBOS: Issuing Covered Bonds without Backing Legislation 204

10. Residential Pre-Sales Securitisation: A New Method of Project Finance 207
    Larry Mahaffy

1. SYNOPSIS 207

2. BACKGROUND 208
2.1 What is RPS? 208
2.2 When, Where and Why did RPS Develop? 210
   2.2.1 Walsh Bay 211
   2.2.2 Quadrant Off Broadway 211
   2.2.3 Bullecourt Place 212
   2.2.4 Peridot Investments 212
   2.2.5 Jasmine Investment Corporation 213
   2.2.6 Waterina Condominium 213

3. ADVANTAGES AND DISADVANTAGES OF RPS FOR DEVELOPERS AND FINANCIERS 214
3.1 Advantages for Developers 214
   3.1.1 Working Capital Conservation 214
   3.1.2 Another Flexible Source of Funds 214
   3.1.3 Off-Balance Sheet Finance 215
   3.1.4 Less Scrutiny than Other Forms of On-Market Capital Raising 216
11. Issues in Cross-Border CMBS 243
Sarah Smith

1. INTRODUCTION 243

2. REGULATION OF LENDING AND SERVICING; IMPACT OF REGULATION ON SECURITISATION OF LOANS 245

3. CONFIDENTIALITY AND DATA PROTECTION LAWS 252

4. ENFORCEMENT OF COMMERCIAL MORTGAGE LOANS; SPECIAL SERVICING 255

5. LANDLORD AND TENANT RIGHTS 261

6. WITHHOLDING TAXES 263

7. CONCLUSION 265

12. Commercial Mortgage Backed Securities in Europe 267
Sander Beekwilder

1. INTRODUCTION 267

2. WHAT IS CMBS? 267
2.1 Generic European CMBS Structure 268
  2.1.1 Notes 268
  2.1.2 Issuer/SPV 270
  2.1.3 Seller/Originator 271
  2.1.4 Sponsor/Borrower/Property Manager 272
  2.1.5 Loan Servicer 273
  2.1.6 (Cross Currency) Interest Rate Swap Counterparty 273
  2.1.7 Liquidity Facility Provider 274
  2.1.8 Note (Security) Trustee 275
2.2 European CMBS Analysis 276
  2.2.1 Property Pool 277
  2.2.2 Lease 277
  2.2.3 Tenants 278
  2.2.4 Structural Analysis 279
    2.2.4.1 Legal Issues: Transfer of Loan and Security 279
    2.2.4.2 Bankruptcy Remoteness, Borrower and Enforceability of Security 280
    2.2.4.3 Loan Terms and Conditions 281
2.3 Rationale for CMBS 282
  2.3.1 Property Owner/Property Lenders 282
  2.3.2 CMBS Rationale for Investors 284
3. RECENT DEVELOPMENTS IN EUROPEAN CMBS 284
3.1 CMBS Conduits and Information Disclosure 284
3.2 The European CMBS Market 287
3.3 European CMBS Credit Spreads 289

4. TWO EUROPEAN CMBS TRANSACTIONS 291
4.1 Self Storage Securitisation BV 291
   4.1.1 Sponsor/Borrower/Property Manager 291
   4.1.2 Properties/Leases/Tenants 292
   4.1.3 Structure 293
   4.1.4 Conclusion 295
4.2 Paris Residential Funding plc 295
   4.2.1 Sponsor/Borrower/Property Manager 295
   4.2.2 Properties/Leases/Tenants 296
   4.2.3 Structure 297
   4.2.4 Conclusion 297

5. SUMMARY AND EXPECTATIONS FOR THE EUROPEAN CMBS MARKET 299

13. Securitisation of Private Equity 301
   Olav Koenig

1. INTRODUCTION 301

2. AN OVERVIEW AND BACKGROUND TO PRIVATE EQUITY 302
2.1 History 302
2.2 What is Private Equity 302
2.3 Differences between Private Equity and Public Equity 303

3. SECURITISING PRIVATE EQUITY 304
3.1 'Plain' Vanilla Securitisation 305
3.2 Potential Benefits of Applying Securitisation Techniques 306
   3.2.1 Tax 306
   3.2.2 Regulatory 306
   3.2.3 Retention of Relationships to Fund Managers 306
3.3 Application of the Securitisation Techniques 307
   3.3.1 Private Equity Fund-of-Funds 307
   3.3.2 Portfolio Securitisation 308
   3.3.3 Exchange Funds 308
   3.3.4 Seller Financing in Secondary Transactions 308
   3.3.5 Private Equity Fundraising using Securitisation 309
3.4 Securitisation vs. Secondaries 309
4. CONCLUSION 310
5. CASE STUDY SECURITISATION: PINE STREET I LLC 310
5.1 Summary 310
5.2 Rationale 311
5.3 Execution 312
5.4 Conclusion 313

14. Public Sector Securitisation in Europe 317
Pedro Cassiano Santos, Paula Gomes Freire and André Figueiredo
1. INTRODUCTION 317
2. MOTIVATION 318
3. PUBLIC SECTOR SECURITISATION IN EUROPE 320
4. EUROSTAT RULES: THE ACCOUNTING TREATMENT OF PUBLIC SECTOR SECURITISATIONS 321
5. CASE STUDY: THE EXPLORER DEAL 323
5.1 The Structure of the Deal 323
5.2 Setting the Stage: Changes to the Securitisation Legal Framework 325
5.3 Specific Legal Issues
   5.3.1 Taxpayers' Rights and Guarantees 327
   5.3.2 Common Representative of the Noteholders 329
   5.3.3 Bankruptcy Remoteness of the STC 331
   STC – Legal Segregation Principle 332
   5.3.4 The Rating Approach 332
6. FINAL REMARKS: PUBLIC SECTOR SECURITISATION IN THE FUTURE 334

15. Securitisation of Auto Leases in the Netherlands 337
Mariette van't Westeinde
1. INTRODUCTION 337
2. RATING PROCESS 338
3. OUTLINE OF TRANSACTION STRUCTURE 339
4. DESCRIPTION OF THE LEASES 341
4.1 The Leases 341
4.2 The Lease Payments 344
4.3 Nature of Lease Agreements 344
4.4 Nature of Operational Lease Receivables 346

5. HIRE PURCHASE AND TRANSFER OF THE VEHICLES 347
5.1 Legal Requirements 347
5.2 Fiduciary Prohibition 348

6. TRANSFER OF THE LEASES 349
6.1 Automatic Transfer 349
6.2 Takeover of Contracts 350

7. COLLECTION OF LEASE PAYMENTS/ADMINISTRATION AND SERVICE AGREEMENT 351
7.1 General 351
7.2 Collection Arrangements and Application of Amounts 352
7.3 Sale of the Vehicle upon Termination or Expiration of the Lease during the Amortisation Period 353
7.4 Remuneration of the Administrator and Servicer 354

8. INSOLVENCY OF THE SELLER 354

9. CERTAIN RISK FACTORS 356
9.1 Location of the Vehicles 356
9.2 Retention of Title by Car Dealer 357
9.3 Cool Down Period 357
9.4 Right to Retain Property 358
9.5 Right to Suspend Performance 358
9.6 Lessee Set-off Risk 359

10. CONCLUSION 359

16. Shariah, Sukuk and Securitisation 361
Tamara Box and Mohammed Asaria

1. INTRODUCTION 361

2. SHARIAH 362

3. INTRODUCTION TO ISLAMIC FINANCING 362

4. ISLAMIC FINANCING STRUCTURES AND SUKUKS 364
4.1 Murabaha 364
4.2 Mudarabah and Musharaka 365
  4.2.1 Mudarabah 365
  4.2.2 Musharaka 366
4.3 Ijara 366
4.4. Sukuk 367
4.5 Sukuk Case Study – Qatar Global Sukuk 370
  4.5.1 Introduction 370
  4.5.2 Structure 370

5. SECURITISATION 372
5.1 Securitisation – An Overview 373
5.2 Shariah Securitisation 373
5.3 Structuring Shariah Securitisations 373
5.4 Securitisation Case Study – Hanco Vehicle Fleet Securitisation 375
  5.4.1 Introduction 375
  5.4.2 Structure 376
5.5 Securitisation Hurdles 378
  5.5.1 Derivative Contracts 378
  5.5.2 Absence of Regulation 378
  5.5.3 Unstable Tax Environment 378
5.6 Future Deal Flow 379
5.7 Rating Agencies 379

6. CONCLUSION 380

17. Whole Business Securitisations in Civil Law Jurisdictions: The French Example 381
Patrice Doat and Philippe Nugue
1. COPYFIRST AND EUROTUCK TRANSACTIONS 381
2. OVERVIEW OF THE FRENCH SECURITISATION FRAMEWORK 386

18. Accounting for Securitisations: A World of Change 391
Timothy J. Coyne
1. INTRODUCTION 391
2. SECURITISATION: A UK PERSPECTIVE 393
3. SECURITISATION: AN AUSTRALIAN PERSPECTIVE 393
4. IMPlications OF THE ADOPTION OF IAS IN AUSTRALIA 396
  4.1 Application of UIG 112 396
  4.2 Application of AASB 139 398
    4.2.1 General Rules – Sales with ‘Strings Attached’ 398
4.2.1.1 Should the Derecognising Principles be Applied to Part or All of a Financial Asset? 398
4.2.1.2 Have the Rights to the Cash Flows Expired? 398
4.2.1.3 Has the Entity Transferred Substantially all Risks and Rewards? 399
4.2.1.4 Has the Entity Retained Substantially All Risks and Rewards? 400
4.2.1.5 Has the Entity Retained Control of the Asset? 400
4.2.1.6 Continue to Recognise the Asset to the Extent of the Entity’s Continuing Involvement 400

4.2.2 Recognition of Gains and Losses on Transfer 401

4.2.3 Securitisations 401
  4.2.3.1 Consolidation of SPEs 403
  4.2.3.2 Has the Entity Transferred its Rights to Receive the Cash Flows from the Assets? 403
  4.2.3.3 Has the Entity Assumed an Obligation to Pay the Cash Flows from the Assets that Meet the Pass-through Criteria? 403
  4.2.3.4 Risks and Rewards 404
  4.2.3.5 Control 405
  4.2.3.6 Continuing Involvement 405

4.2.4 Transition 405

5. ACCOUNTING ANALYSIS OF CERTAIN FINANCING STRUCTURES USING SPES 405

5.1 Example 1: Collateralised Debt Obligations 406
  5.1.1 Overview of Structure 406
  5.1.2 Accounting Analysis – Applying the Flow Chart 407
  5.1.3 Consolidation of the SPE? 407
  5.1.4 Has the Entity Transferred its Rights to Receive Cash Flows from the Assets? 407
  5.1.5 Have the Pass-through Conditions been Met? 408
  5.1.6 Has the Entity Transferred Substantially All the Risks and Rewards? 408

5.2 Example 2: Residential Mortgage-Backed Securitisations 408
  5.2.1 Overview of Structure 408
  5.2.2 Accounting Analysis – Applying the Flow Chart 409
  5.2.3 Consolidation of the SPE? 409
  5.2.4 Has the Entity Transferred its Rights to Receive Cash Flows from the Assets? 409
  5.2.5 Have the Pass-through Conditions been Met? 409
  5.2.6 Has the Entity Transferred Substantially All the Risks and Rewards? 410
5.3 Example 3: Trade Receivables 410
   5.3.1 Overview of Structure 410
   5.3.2 Consolidation of the SPE? 411
   5.3.3 Has the Entity Transferred its Rights to Receive Cash Flows from the Assets? 412
   5.3.4 Have the Pass-through Criteria been Met? 412
   5.3.5 Has the Entity Transferred Substantially All the Risks and Rewards? 412
   5.3.6 Has the Entity Transferred Control of the Asset? 412
5.4 Example 4: Credit-linked Notes 412
   5.4.1 Overview of Structure 413
   5.4.2 Consolidation of the SPE? 413
   5.4.3 Has the Entity Transferred its Rights to Receive Cash Flows from the Assets? 413
   5.4.4 Have the Pass-through Criteria been Met? 413

6. SECURITISATION: A US PERSPECTIVE 414
   6.1 US Accounting Overview 415
   6.2 Sale Criteria 416
      6.2.1 Legal Isolation 416
      6.2.2 Right to Pledge or Exchange 417
      6.2.3 Effective Control Criteria 418
   6.3 Current Developments Impacting the Sale Criteria 419
   6.4 Consolidation 419
   6.5 Qualifying Special Purpose Entities (QSPEs) 419
      6.5.1 Demonstrably Distinct Nature of a QSPE 420
      6.5.2 Activities of a QSPE 420
      6.5.3 Assets a QSPE may hold 420
      6.5.4 Selling of Non-cash Financial Assets held by a QSPE 420
   6.6 Current Developments Impacting QSPEs 421
   6.7 Variable Interest Entity 421
   6.8 VIEs and Consolidation 422
   6.9 Determining Consolidation of VIE based on Variability 423
   6.10 Initial Accounting / Gain-on-Sale Calculation 423
      Decision Tree to Determine if Sale or Secured Borrowing 424
   6.11 Subsequent Accounting 427
   6.12 Impact of Proposed Changes 428

7. CONCLUSION 428
2. SECURITISATION FRAMEWORK IN BASEL II
   2.1 Scope 464
   2.2 Risk Transfer Requirements 466
   2.3 Determining the Capital Charges for Investments and Retained Exposures 468
   2.4 Exposures with a Recognised External Credit Assessment 470
      2.4.1 Recognition of External Ratings 472
      2.4.2 Industry Criticism 474
   2.5 Implicit Support 474
   2.6 Pillar 2 477
   2.7 Pillar 3 478

3. SYNTHETIC SECURITISATION IN BASEL II 480
   3.1 Effective Risk Transfer Requirements 480
   3.2 Operational Requirement for Credit Derivatives 481
   3.3 Solvency Treatment of Collateral and Guarantees 483
   3.4 Maturity Mismatches 485
   3.5 Supervisory Formula Approach 489
      3.5.1 Capital Neutrality 492

4. POSSIBLE EFFECTS ON THE SECURITISATION MARKET 492
   4.1 Implementation of the Basel II Framework 492
   4.2 Possible Changes in the Market 493

Contributors 497