

# CDO Newsletter

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## WHEN IS A RESTRUCTURING NOT A RESTRUCTURING?

On June 12, 2008, DBRS lowered the rating of Residential Capital, LLC (ResCap) exchanged debt to D following the filing by ResCap of SEC form 8-K announcing the completion of its private exchange offer and cash tender offer. Approximately \$8.6 billion in aggregate principal amount of ResCap notes were exchanged for new notes with terms less advantageous to noteholders. Notes that were not tendered for exchange remain outstanding (For details, please see [DBRS Lowers Residential Capital, LLC's Exchanged Debt to D, Ratings Remain Under Review – Negative](#)).

As referenced in the May 13, 2008, DBRS CDO Newsletter, ResCap debt obligations are referenced by 12 CDO transactions currently monitored by DBRS.<sup>1</sup> These transactions will typically be in the form of credit default swaps (CDS) in which an asset-backed commercial paper issuing conduit will provide credit protection on a number of debt obligations, including ResCap obligations.

Standardized International Swaps and Derivatives Association (ISDA) contracts and documentation (ISDA Forms) are utilized by market participants to enter CDS transactions. These standard documents include the concept of Credit Events. Upon the occurrence of a Credit Event, certain prescribed actions, such as the unwinding of the CDS transaction are to take place. Credit Events can include a “Restructuring” as defined by the transaction documentation.

The debt exchange as carried out by ResCap could be considered a restructuring as that phrase is understood in common usage. However, no Credit Event has been declared as a result of the ResCap debt exchange. To be considered a “Restructuring” under the 2003 Definitions to the ISDA Forms, a change in principal, interest, maturity or payment must be binding on all noteholders. While covenants of the outstanding untendered debt have been revised with the support of a sufficient number of noteholders, there have been no changes to the terms regarding principal, interest, maturity or payment of the untendered notes.

The importance of understanding the legal documentation for any transaction is well illustrated by the ResCap debt exchange. A restructuring of ResCap’s capital has taken place. However, per the transaction documents, no “Restructuring” has occurred.

DBRS will continue to monitor ResCap and will release further information as appropriate on [www.dbrs.com](http://www.dbrs.com).

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1. These transactions are funded by Asset-backed Commercial Paper or Floating Rate Notes issued by Affected Trusts under the Montréal Accord and therefore not currently rated by DBRS. However, as these transactions are proposed to be transferred from the Affected Trusts to Master Asset Vehicles (MAVs) under the Montréal Accord, DBRS continues to monitor their performance. For more information on the MAVs, see DBRS’s series of Presale Reports dated April 24, 2008. For more information on the Montréal Accord and developments in the Canadian ABCP markets since August 2007, please see [www.dbrs.com](http://www.dbrs.com).

*Note:*  
*All figures are in U.S. dollars unless otherwise noted.*