

# U.S. Structured Finance Newsletter

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## FDIC'S INTERIM RULE CLARIFIES SAFE HARBOR FOR BANK SPONSORED ABS

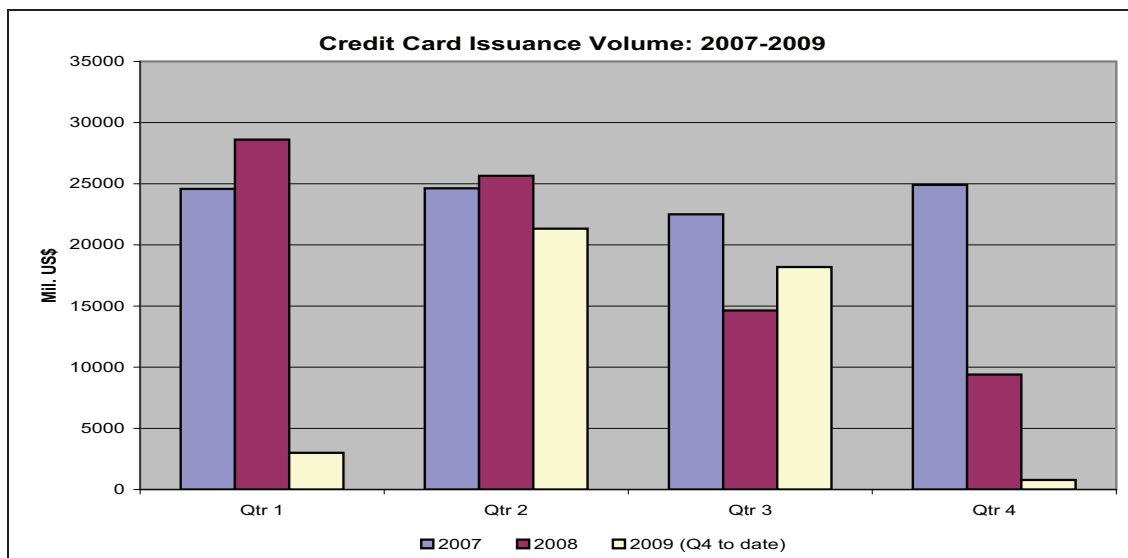
Since the June 2009 announcement regarding the changes in sales accounting rules, capital markets participants have been anxiously attempting to determine the impact of these changes on asset-backed securities issued by banks insured by the Federal Deposit Insurance Corporation ("FDIC"). Concerns had been raised that under Financial Accounting Standard 166 and 167 (FAS 166 and FAS 167), many transfers of financial assets from insured depository institutions to securitization vehicles would not be deemed sales under generally accepted accounting principles ("GAAP"), and thus subject to repudiation and stay risk in the event of a bank insolvency.

On November 12, 2009 (effective November 17, 2009), the FDIC adopted an interim rule (the "Interim Rule" or the "Rule") amending the regulations defining safe harbor protections for treatment by the FDIC as conservator or receiver of financial assets transferred by an FDIC insured depository institution in connection with a securitization or participation. The Interim Rule continues the safe harbor provision for participations or securitizations that would be affected by recent changes to GAAP for a limited time. The Rule also clarifies for industry participants that safe harbor protections will apply to assets transferred in previously qualifying securitization and participation transactions that close on or before March 31, 2010. The Rule "grandfathers" all participations and securitizations for which financial assets were transferred or, for revolving securitization trusts, for which securities were issued prior to March 31, 2010, so long as those participations or securitizations complied with the preexisting provisions under GAAP in effect prior to November 15, 2009. The transitional safe harbor will apply irrespective of whether or not the participation or securitization satisfies all of the conditions for sale accounting treatment under GAAP as effective for reporting periods after November 15, 2009.

The Interim Rule alleviates concerns related to repudiation risk by amending the FDIC's "securitization rule" to extend to transactions that would not qualify as sales under post-FAS 166 GAAP, as long as they qualified under pre-FAS 166 GAAP. The Rule, and related memo from the FDIC General Counsel and Director of the Division of Resolutions and Receiverships, also address the risk related to stay powers that the FDIC would possess as the receiver in an FDIC insured bank insolvency, by "grandfathering" pre-FAS166/167 GAAP compliant transactions. This new clarity should afford the support necessary for reliance by opining law firms providing the legal opinions on bank sponsored transactions closed on or before March 31, 2010 of a certainty consistent with highly rated asset-backed transactions, potentially possessing credit ratings higher than that of the sponsoring institution.

The FDIC is expected to issue additional guidance in December regarding the treatment of participations and securitizations issued after March 31, 2010. DBRS will review this proposal when it is announced to determine its impact on the securitization market and related credit ratings.

The impact the FAS 166 and 167 is still being determined, but could result in further reductions in issuance volume in asset classes like credit cards where bank sponsored transactions had traditionally dominated the sector:



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