Canadian Structured Finance Newsletter

Volume 1, Issue 11, December 2, 2009

Andrew Fitzpatrick
Assistant Vice President
+1 416 597 7377
afitzpatrick@dbrs.com

Jireh Wong
Senior Vice President
+1 416 597 7527
jwong@dbrs.com

Jamie Feehely
Senior Vice President
+1 416 597 7312
jfeehely@dbrs.com

Jerry Marriott
Managing Director
+1 416 597 7358
jmarriott@dbrs.com

Toronto
DBRS Tower
181 University Avenue
Suite 700
Toronto, ON M5H 3M7
+1 416 593 5577

New York
140 Broadway, 35th Floor
New York, NY 10005
+1 212 806 3277

Chicago
101 North Wacker Drive
Suite 100
Chicago, IL 60606
+1 312 332 3429

Nickey Edwards
Publisher
+1 416 597 7332
nedwards@dbrs.com

LIMITED PARTNERSHIP STRUCTURES: WHAT DBRS LOOKS FOR

In our newsletter dated September 11, 2009, DBRS considered changes to the *Bankruptcy and Insolvency Act* (BIA) that were to come into force on September 18, 2009. And, in our September 18, 2009, press release, we stated that in light of uncertainty owing to the statutory changes, transaction sponsors of certain affected transactions would be required to develop appropriate mechanisms or execute appropriate revisions to transaction documentation by December 31, 2009, in order to mitigate the impact of the amendments.

In light of the above, a number of transaction sponsors of affected transactions have proposed the creation of Limited Partnerships (LPs) as part of their securitization structures. LPs are not unknown in Canadian structured finance, although they are much less common than trusts. In *Legal Criteria for Canadian Structured Finance*, DBRS outlines the characteristics that it expects to see reflected when a trust serves as a special purpose vehicle (SPV) in a structured finance transaction. Now, as the use of LPs may become more widespread due to the changes in the BIA, DBRS feels that it is appropriate to provide guidance on the characteristics and features that a LP should possess in order to be acceptable in a DBRS-rated securitization transaction.

The requirement that any SPV be bankruptcy remote from the transaction asset seller or originator means that many of the requirements applicable to Trust SPVs are also applicable to LP SPVs. Like a Trust SPV, an LP SPV must be structured with sufficient capacity to fulfill its role in the transaction, while engaging in no other activities that could attract liability or additional risk of any kind. Therefore, market participants should generally look to the Trust SPV requirements described in the Special Purpose Vehicle section of *Legal Criteria for Canadian Structured Finance* for guidance when forming an LP. Some of these requirements include, but are not limited to:

Limited Powers: The LP's activities should be restricted to those necessary to carry out the transaction.

Debt Limitation: Other than notes or certificates that may be issued as part of the transaction, the LP should not incur any other obligations or guarantee those of another party.

No Amendments, Mergers or Reorganizations: The ability to amend the partnership agreement, or merge or reorganize the partnership, must be restricted and, if permitted, must be subject to the Rating Agency Condition.

Maintain Existence: There must be restrictions on the ability to dissolve the partnership while rated securities remain outstanding.

Separateness Covenants: The LP must provide a number of covenants with regard to its existence as an entity independent of any other person, including the asset seller or originator.

Minimal Unsecured Assets: The LP should acquire no assets other than those necessary to carry out the transaction. Any assets held by the LP will typically be pledged to secure any notes or certificates issued (or they may be sold on a true sale basis to another entity in the securitization structure).

Non-Petition Clause: The partners should agree not to petition the LP into bankruptcy, or join in any bankruptcy petition, until one year and one day after all rated securities have been paid in full.

A significant difference between a Trust SPV and an LP SPV is that in the case of an LP, DBRS will in all instances require a non-consolidation opinion stating that in the event of the bankruptcy of an asset seller or originator, the LP would not be consolidated into the bankruptcy estate of the insolvent seller or originator. DBRS must be an addressee on the opinion.

Regardless of the type of structure or structures employed in a securitization, the basics of structured finance remain the same. In short, the assets being relied upon to repay securities must not be vulnerable to the bankruptcy of any transaction party.

For more information, please contact, Jamie Feehely at jfeehely@dbrs.com or Andrew Fitzpatrick at afitzpatrick@dbrs.com.

ALL DBRS RATINGS ARE SUBJECT TO DISCLAIMERS AND CERTAIN LIMITATIONS. PLEASE READ THESE DISCLAIMERS AND LIMITATIONS AT www.dbrs.com/about/disclaimer. ADDITIONAL INFORMATION REGARDING DBRS RATINGS, INCLUDING DEFINITIONS, POLICIES AND METHODOLOGIES, ARE AVAILABLE ON www.dbrs.com. Please refer to www.dbrs.com for DBRS's Privacy Policy, Disclaimers, Proprietary Rights, Terms and Conditions of Use. To stop receiving these mailings, please send an email to csf-unsubscribe@news2.dbrs.info with 'unsubscribe' in the subject line.