

Summary of a CREFC After-Work Seminar: The Return of the Public Deal or the Regulator Strikes Back?

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What's with all these public CMBS offerings? And what about all that rule-making? The registered market has otherwise been frozen since the pre-crisis days, and the cloud of heavy-handed regulation looming over our heads is anything but an invitation to dust off your public shelf. Moreover, given that some of those regulations may be (or have been) applied in the 144A context, shouldn't one be concerned about the private market before we even think about re-entering the public space? And all of that is without even considering the general mid-year market slump. To address these critical questions and the state of the galaxy as we know it, CREFC held an after-work seminar recently, hosted by Dechert, entitled "Review and Outlook for Public CMBS Offerings."

The seminar consisted of a panel of industry specialists representing issuer, investor and legal perspectives: Paul Vanderslice, Managing Director, Citigroup; our own Rick Jones, Partner, Dechert LLP; Tom Doherty, Executive Director, JP Morgan; Ken Cohen, Managing Director, UBS Investment Bank; Brian Furlong, Managing Director, New York Life; and Bruce Martin, Research Analyst, Fidelity.

The group considered investor motivations related to the public/private distinction, including whether the appetite of some investors in registered securities is driven by limitations on the amount of private paper that they can soak up or driven by a particular desire to diligence the additional information that is available in a private context. In addition, the panel emphasized the industry's (thus far unsuccessful) effort to demonstrate to regulators that the CMBS space, in comparison to other asset classes, has traditionally provided voluminous (and adequate) disclosure with respect to underlying assets and deal structure, whether in a public or private context. So maybe the line in the CMBS sand is not so bright when it comes to a) disclosure - because public and private books are not that different; and b) investor satisfaction - because some investors just want and can handle more information, while others have limited capabilities to buy private deals.

With respect to CMBS 2.0, the panel noted some trends across the board for public and private deals: among other things, the inclusion of (1) mortgage loan seller representations and warranties and related exceptions, (2) enhanced (e.g., Reg AB-compliant) asset-specific and party-specific information, (3) investor Q&A forums and (4) the role of the operating trust advisor (which we at CrunchedCredit.com have previously discussed).

Unsurprisingly, the group could not avoid discussions of risk retention and premium recapture - hot topics that CrunchedCredit.com has also addressed before. Additionally, the presentation provided timely regulatory updates, including life with (1) Rule 17g-5 (i.e., no talking to, and instead posting of materials for, the rating agencies), (2) Rule 17g-7 (i.e., comparing a deal's reps to rating agency benchmarks), (3) Rule 15Ga-1 (i.e., reporting and disclosing repurchase demands) and (4) Rule 193 (i.e., requiring issuers to know their assets).

More generally, the panel expressed a common industry sentiment regarding the many regulatory efforts currently on the table: just make the rules and we will figure it out from there.

If you missed this after-work episode and the related installment of updates, the instant replay is available here on CREFC's website. And one thing you can count on is that there is plenty more to come!