Syllabus

For

The Law of Securitization
(LAW-LW.10375.001)

New York University School of Law

Spring Semester, 2018

Mondays at 4:10-6:00 pm
Room: VH 216

Professors Jason H.P. Kravitt and Sagi Tamir
of
Mayer Brown LLP
Basic Texts

- See Annex A to this syllabus for basic reading for each class.

Other Texts and Resources


- SFIG’s White Paper “A Comprehensive Guide to Securitization” (China Market Committee White Paper), First Edition, April 7, 2016 (the “White Paper”) (a copy is available under course resources in NYU Classes)
Overview:
The purpose of this class will be to:

- Consider the question: What is securitization?

- Briefly introduce the primary segments of the asset-backed securities (“ABS”), mortgage-backed securities (“MBS”) and Collateralized Loan Obligation (“CLO”) markets.

- Summarize the legal and other issues that arise in securitizations and that will be the focus of the course: securities registration and disclosure, insolvency and bankruptcy remoteness, secured transactions, consumer protection laws, banking regulation, risk-based capital, rating agency methodology and accounting.

Instructors: Kravitt and Tamir

Reading:

- Basic reading for this class is listed on Annex A to this syllabus.

- For additional background reading for this class, see White Paper, pp. 1-12.

Other Issues to Consider in Basic Reading:

1. What is securitization?
2. How are asset-backed securities different from traditional corporate stocks and bonds?
3. How are securitized financial assets “isolated” from their originator?
4. What are the ripple effects of that isolation?
CLASS 2

BANKRUPTCY REMOTENESS

Monday, January 29, 4:10-6:00 pm

VH 216

Overview:

- Discuss the fundamental principles of the Bankruptcy Code applicable to securitizations: reorganization of a debtor, the power of the automatic stay, what constitutes property of the estate, use of cash collateral, substantive consolidation.

- What entities are eligible to be a debtor under the Bankruptcy Code — banks, insurance companies, trusts?

- Analyze the effectiveness of avoiding the automatic stay through the use of “true sales” of receivables to “bankruptcy remote” special purpose subsidiaries.

- Analyze the case law principles on distinguishing a sale from a secured transaction and on the standards for permitting the substantive consolidation of entities.

Instructor: Kravitt

Reading:

- Basic reading for this class is listed on Annex A to this syllabus.

- For additional background reading for this class, see:
  - *Treatise*, Ch. 5, §5.01, §5.03 and §5.05[G][3].

Issues to consider in Basic Reading:

1. What is a true sale? What should a true sale be? What factors are most relevant? Control, risks, rewards, analogy to a loan? What distinguishes a true sale from a secured loan? What is the practical place to draw a line?

2. Why does it matter what is a true sale? Why should it matter? What is the nature of a bankruptcy that should make it matter?

3. What is substantive consolidation? When should it occur? Why is it important in securitization?
Overview:

- The purpose of this class will be to review the fundamental principles of:
  - FASB Statement No. 166
  - FASB Statement No. 167

Instructor: Kravitt

Reading:

- Basic reading for this class is listed on Annex A to this syllabus.
- For additional background reading, see White Paper, pp. 24-27.

Issues to Consider in Basic Reading:

1. For FASB 166, does transfer of control make sense for sale treatment? What other system could/should accountants use?
2. Does it make sense to use bankruptcy law as an accounting standard? Why or why not?
3. What obligations do lawyers and accountants have in meeting FASB 166’s standard?
4. What is the test for consolidation of normal business corporations? Why is it necessary to provide a different rule for consolidation of special purpose entities?
5. What is the test for consolidation of special purpose entity?
6. What is a variable interest?
CLASS 4
OVERVIEW OF THE KEY SECURITIES LAWS FOR ABS
Monday, February 12, 4:10-6:00 pm
VH 216

Overview:

• Overview of public and private offerings of asset-backed securities

• Overview of Regulation AB

• Overview of Regulation AB II

Instructor: Tamir

Reading:

• Basic reading for this class is listed on Annex A to this syllabus.

• For additional background reading, see White Paper, pp. 46-50 and 147-148.

Issues to Consider in Basic Reading:

1. Why do asset-backed securities need their own disclosure rules?

2. What types of information would investors want to receive before buying an asset-backed security?

3. To what extent should Regulation AB apply to private transactions?

4. What are the advantages and disadvantages of public offerings?
Overview:

- Discussion of selected consumer law topics
- Overview of other selected commercial law topics

Instructor: Tamir

Guest: Jeffrey Taft of Mayer Brown LLP

Reading:

- Basic reading for this class is listed on Annex A to this syllabus.
Overview:

- Overview the Risk Retention Rules (a/k/a “skin-in-the-game”)
- Overview of the Representations and Warranty Repurchase Disclosure Rules
- Overview of the Issuer Due Diligence Rules

Instructor: Tamir

Reading:

- Basic reading for this class is listed on Annex A to this syllabus.
- For additional background reading, see White Paper, pp. 148-150.
Overview:

- Overview of the Proposed Conflicts of Interest Rules
- Overview of the Volcker Rule

Instructor: Tamir

Reading:

- Basic reading for this class is listed on Annex A to this syllabus.
- For additional background reading, see White Paper, pp. 88-89.
Overview:

- Existing Banking Regulation
- Discussion of the “FDIC Safe Harbor Rule”

Instructor: Kravitt

Reading:

- Basic reading for this class is listed on Annex A to this syllabus.
- For additional background reading, see:
  - Treatise, Ch. 5, §5.06 [A].
  - Sample disclosure from Bank Prospectus (see “Class no.8” folder in NYU Classes).
Overview:

- The purpose of this class is to discuss the key concepts of risk based capital:
  - The concept of adequate capitalization
  - Financial accounting vs. regulatory accounting
  - Basel II, Basel II.5 and Basel III – General
  - Basel III – BCBS Consultative Paper, December 2013
  - Basel III – Final U.S. Rules, June 2013
  - NSFR – BCBS Final Rule, October 2014
  - LCR – Final U.S. Rules, September 2014
- Asset-Backed Commercial Paper Programs

Instructor:  Kravitt

Reading:

- Basic reading for this class is listed on Annex A to this syllabus.
- For additional background reading, see White Paper, pp. 150-168.

Issues to Consider in Basic Reading:

1. What is risk-based capital? What should it be?
2. Should risk-based capital be tied to ratings? What are viable alternatives?
3. Should securitization be treated differently than any other form of finance?
4. How should regulators balance the need for a detailed, complicated system for accuracy and the need for simplicity for effectiveness?
5. Should financial accounting be tied to regulatory accounting or vice versa? Should one trump the other?
6. Should capital be tied to whether a transaction is on or off balance sheet?
Overview:

- Consider the various techniques used to issue asset-backed securities that have a higher credit quality than the underlying pool of assets
- Discuss the role of the rating agencies and the meaning of a rating on an asset-backed security
- Discuss Rule 17g-5, the Franken Amendment and other recent rating agency reforms

Instructor: Tamir

Reading:

- Basic reading for this class is listed on Annex A to this syllabus.
- For additional background reading for this class, see:
  - Treatise, Ch. 8.

Issues to Consider in Basic Reading:

1. Why is credit enhancement necessary in securitization?
2. What are the various forms of credit enhancement? Are some forms better than others?
3. What is the nature of a rating of an asset-backed security?
4. What does a rating mean (and not mean)?
CLASS 11

HOW TO ANALYZE A SECURITIZATION TRANSACTION

Monday, April 9, 4:10-6:00 pm

VH 216

Overview:

• How should one go about analyzing a securitization transaction?

• What issues and methodology should a lawyer use?

Instructor: Kravitt

Reading:

• Exam Question numbers 1 and 2 from 2017 Final Exam (see “Class no.11” folder in NYU Classes)
CLASS 12
FOCUS ON AUTO SECURITIZATION
Monday, April 16, 4:10-6:00 pm
VH 216

Overview:

- Review of Auto Securitization Structure
- Review of Pre-Crisis and Post-Crisis Auto Securitization
- Subprime vs. Prime Auto Receivables
- Review of Cash Flows

Instructor: Tamir

Guest: Chris Houpt of Mayer Brown LLP

Reading:

- Basic reading for this class is listed on Annex A to this syllabus.
- For additional background reading, see White Paper, pp. 7-8, 74-76 and 89-90.

Issues to Consider:

1. How does securitization benefit the consumer?

2. How might securitization be used to promote auto sales?
CLASS 13
FOCUS ON COLLATERAL LOAN OBLIGATION TRANSACTIONS (“CLOs”)
Monday, April 23, 4:10-6:00 pm
VH 216

Overview:
- Review of Securitization Structure
- Review of Pre-Crisis and Post-Crisis CLO transactions
- Review of Cash Flow Waterfall

Instructor: Tamir

Reading:
- Basic reading for this class is listed on Annex A to this syllabus.
- For additional background reading, see White Paper, pp. 73 and 103-104

Issues to Consider:
1. How do CLOs benefit originators? How do they benefit bondholders?
2. How might CLOs be used to promote commercial and industrial loans?
3. What are the main differences between a balance sheet CLO and an open market CLO?
Overview:

- Review of Pre-Crisis and Post-Crisis Mortgage Securitization
- Fannie Mae and Freddie Mac Reform
- Dodd-Frank Act Mortgage Related Rules
- Regulation AB II
- RMBS Litigation Overview
- Eminent Domain

Instructor: Kravitt and Tamir

Reading:

- Basic reading for this class is listed on Annex A to this syllabus.
- For additional background reading, see White Paper, pp. 55-59, 70-72, 93-97 and 128-130
**IMPORTANT DATES:**

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<th>Date</th>
<th>Event</th>
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<tr>
<td>MONDAY, MARCH 19:</td>
<td>EACH PAPER TEAM MUST INFORM PROFESSORS KRAVITT AND TAMIR OF THE MEMBERS OF THE PAPER TEAM AND PAPER TOPIC</td>
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<td>FRIDAY, MAY 4:</td>
<td>EXAMS DISTRIBUTED (ON THES)</td>
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<td>MONDAY, MAY 7:</td>
<td>GROUP PAPERS DUE</td>
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<td>TUESDAY, MAY 15:</td>
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Annex A

Basic Texts

For

The Law of Securitization
(LAW-LW.10375.001)

New York University School of Law

Spring Semester, 2018

Professors
Jason H.P. Kravitt
Sagi Tamir

of

Mayer Brown LLP
<table>
<thead>
<tr>
<th>Class</th>
<th>Class Description</th>
<th>Basic Reading</th>
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| Class 1| Introduction to Securitization and Course Overview     | J. Kravitt, Securitization: *What Happened; Is It Worth Saving; Do We Have the Right Reforms; Where Is It Going?* (pages 1-27; 37-44) *  
<p>|        |                                                        | * a copy is posted on NYU Classes under “Class no.1” folder                  |
| Class 2| Bankruptcy Remoteness                                  | Cases                                                                         |
|        |                                                        | • <em>Major’s Furniture Mart, Inc. v. Castle Credit Corp., Inc.</em>, 602 F.2d 538 (3d Cir. 1979) |
|        |                                                        | • <em>In re Owens Corning</em>, 419 F.3d 195 (3d Cir. 2005)                          |
|        |                                                        | Articles                                                                      |
| Class 4| Overview of Key Securities Laws for ABS               | • Securities Act of 1933, Sections 4(1), 4(2), 4(3) and 5                    |
|        |                                                        | • Parts I (Overview) and II (Background and Development of ABS and Regulatory Treatment) of SEC’s Adopting Release of Regulation AB (located at: <a href="http://www.sec.gov/rules/final/33-8518.htm#II">http://www.sec.gov/rules/final/33-8518.htm#II</a>) |</p>
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<td>• Part I (Executive Summary, pp. 9-29) of the SEC’s Adopting Release of Regulation AB II (located at: <a href="http://www.sec.gov/rules/final/2014/33-9638.pdf">http://www.sec.gov/rules/final/2014/33-9638.pdf</a>)</td>
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<td>• Mayer Brown Legal Update: Review and Analysis of the US SEC’s Adopted Final Amendments to Regulation AB (September 9, 2014) (located at: <a href="http://www.mayerbrown.com/files/Publication/f6ef77d9-c928-4e6a-b426-04f734dbab5a/Presentation/PublicationAttachment/69ac6460-eb8f-43ee-91d8-0b82f55688e3/SECs_Adopted_Final_Amendments_to_Regulation_AB_090914.pdf">http://www.mayerbrown.com/files/Publication/f6ef77d9-c928-4e6a-b426-04f734dbab5a/Presentation/PublicationAttachment/69ac6460-eb8f-43ee-91d8-0b82f55688e3/SECs_Adopted_Final_Amendments_to_Regulation_AB_090914.pdf</a>)</td>
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<td>Class 5</td>
<td>Consumer Law and Regulatory Issues</td>
<td>Treatise, Ch. 6, Sections 6.04 and 6.05.</td>
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<td>Class 6</td>
<td>Dodd-Frank Regulatory Developments (Part I)</td>
<td>Risk Retention</td>
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<td>Representations and Warranties</td>
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<td><strong>Due Diligence</strong></td>
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<td>• Mayer Brown Legal Update: <em>SEC Adopts Final Rules Related to Issuer Due Diligence Review of Assets and Disclosure of Underwriting Exceptions in Public Offerings of Asset-Backed Securities</em> (February 2, 2011) (located at: <a href="http://www.mayerbrown.com/files/Publication/b448ab36-50ae-408c-a035-dd5d8734e970/Presentation/PublicationAttachment/45d0c464-5dd8-431b-813c-a0baa1bbf8f0/10381.PDF">http://www.mayerbrown.com/files/Publication/b448ab36-50ae-408c-a035-dd5d8734e970/Presentation/PublicationAttachment/45d0c464-5dd8-431b-813c-a0baa1bbf8f0/10381.PDF</a>)</td>
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<td>Class 7</td>
<td><strong>Dodd-Frank Regulatory Developments (Part II)</strong></td>
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<td>• Mayer Brown Legal Report: <em>Final Regulation Implementing the Volcker Rule</em> (December 18, 2013) (located at: <a href="http://www.mayerbrown.com/files/Publication/f95121f8-0c01-40f8-b14b-46379c2b118d/Presentation/PublicationAttachment/ddaf0395-d75d-4456-813c-a0baa1bbf8f0/10381.PDF">http://www.mayerbrown.com/files/Publication/f95121f8-0c01-40f8-b14b-46379c2b118d/Presentation/PublicationAttachment/ddaf0395-d75d-4456-813c-a0baa1bbf8f0/10381.PDF</a>)</td>
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<td>• Mayer Brown Legal Update: <em>The Volcker Rule – Application to Securitization Transactions</em> (December 19, 2013) (located at: <a href="http://www.mayerbrown.com/files/Publication/b2ff45c7-4252-4bb4-8bc0-899e2914b6a8/Presentation/PublicationAttachment/9b7da3f6-47a6-4da5-8dfb-05f7f0893a0f/UPDATE-VolckerRule-Application_131219.pdf">http://www.mayerbrown.com/files/Publication/b2ff45c7-4252-4bb4-8bc0-899e2914b6a8/Presentation/PublicationAttachment/9b7da3f6-47a6-4da5-8dfb-05f7f0893a0f/UPDATE-VolckerRule-Application_131219.pdf</a>)</td>
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<td><strong>Conflicts of Interest</strong></td>
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<td>• Mayer Brown Legal Update: <em>SEC Proposes Conflicts of Interest Rule for Asset-Backed Securities</em> (located at: <a href="http://www.mayerbrown.com/files/Publication/7a827b19-6a24-400b-bb27-c72516e5af5e/Presentation/PublicationAttachment/5b2">http://www.mayerbrown.com/files/Publication/7a827b19-6a24-400b-bb27-c72516e5af5e/Presentation/PublicationAttachment/5b2</a>)</td>
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| Class 8 | Bank Regulatory Considerations | • *Treatise*, Ch. 5, Section 5.06[A]
Mayer Brown Memo: *FDIC Adopts New Securitization Safe Harbors* (located at: [http://www.mayerbrown.com/files/Publication/3665a42a-e7d4-40cf-b7f2-885b73d018eb/Presentation/PublicationAttachment/03779a2a-8670-4b0a-8f4b-f8ec9dc4d2867/UPDATE_Securitization_Safe_Harbors_0910_V3.pdf](http://www.mayerbrown.com/files/Publication/3665a42a-e7d4-40cf-b7f2-885b73d018eb/Presentation/PublicationAttachment/03779a2a-8670-4b0a-8f4b-f8ec9dc4d2867/UPDATE_Securitization_Safe_Harbors_0910_V3.pdf)) |
| Class 9 | Overview of the Key Risk Based Capital Concepts | Basel III – Final U.S. Rules
• Mayer Brown Legal Update: *Revisions to Basel Securitisation Framework—Final Rules* (December 22, 2014) (located at: [http://www.mayerbrown.com/files/Publication/b3b4c676-fcfc-48ea-b7e5-20362b0097ac/Presentation/PublicationAttachment/b283e009-6dc1-496a-ac28-3e113d133165/UPDATE_Basel_Securitization_1214.pdf](http://www.mayerbrown.com/files/Publication/b3b4c676-fcfc-48ea-b7e5-20362b0097ac/Presentation/PublicationAttachment/b283e009-6dc1-496a-ac28-3e113d133165/UPDATE_Basel_Securitization_1214.pdf))
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<td>Basel III – BCBS 295 (Optional)</td>
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<td>Class 10</td>
<td>Credit Enhancement and the Ratings Process</td>
<td>Credit Risk and Credit Enhancement</td>
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<td>• Treatise, Ch. 8, Sections 8.01 and 8.02.</td>
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<td>Ratings Process</td>
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<td>• Treatise, Ch. 7.</td>
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<td>Rule 436(g)</td>
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<td>• Text of Rule 436 (located at: <a href="http://taft.law.uc.edu/CCL/33ActR1s/rule436.html">http://taft.law.uc.edu/CCL/33ActR1s/rule436.html</a>). Rule 436(g) has been repealed by Section 939G of the Dodd-Frank Act.</td>
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<td>Class 11</td>
<td>How to Analyze a Securitization</td>
<td>Question no. 1 from 2016 Final Exam (see “Class no.11” folder in NYU Classes)</td>
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<td>Class 12</td>
<td>Focus on Auto Securitizations</td>
<td>An excerpt of selected parts from an auto securitization prospectus will be posted on NYU Classes under “Class no.12” folder.</td>
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<td>Class 13</td>
<td>Focus on Collateral Loan Obligation Transactions</td>
<td>An excerpt of selected parts from a private placement memorandum for a Post-Crisis CLO will be posted on NYU Classes under “Class no.13” folder.</td>
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</table>
| Class 14 | Focus on Mortgage Securitization               | • *Treatise*, Ch. 16, Sections 16.01, 16.02[A]-[C] and 16.05.  
• Mayer Brown Legal Update: *Review and Analysis of the US SEC’s Adopted Final Amendments to Regulation AB* (September 9, 2014), pp. 7-8 (located at: http://www.mayerbrown.com/files/Publication/f6ef77d9-c928-4e6a-b426-04f734dbab5a/Presentation/PublicationAttachment/69ac6460-eb8f-43ee-91d8-   |
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