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Commercial Paper: Legal & Regulatory Developments

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Agenda

- Introduction to Commercial Paper
- Federal Regulatory Scheme
- State Law Regulatory Scheme
- Commercial Paper Market Characteristics
- Regulatory Developments
- Asset-backed Commercial Paper
- Regulatory Capital Developments
- Repo Issues and Security Interest Issues
- Appendix

What is Commercial Paper?

- Commercial paper is a term that tends to be used to refer to corporate short-term debt securities. Maturities are typically less than 12 months.
  - Why is commercial paper important?
- Pre-Civil War roots of commercial paper
- Started with merchants selling trade receivables to money market investors
- Transitioned to banks as the primary investors and then to corporates selling short-term securities to fund receivables
- Commercial paper is used for working capital: inventory, wages, receivables, operating expenses, etc.
- In 1933, commercial paper was an oddity in the effort to regulate securities offerings; Treasury pushed for an exemption
- The result was Section 3(a)(3) of the Securities Act of 1933

Federal Regulatory Scheme

- Classically, commercial paper meant debt securities issued under Section 3(a)(3) of the Securities Act
  - Any note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;
- In 1961, the SEC stated in Rel. 33-4412:
  - The legislative history of the Securities Act makes clear that Section 3(a)(3) applies only to prime quality negotiable commercial paper of a type not ordinarily purchased by the general public, that is, paper issued to facilitate well-recognized types of current operational business requirements and of a type discountable by Federal Reserve banks.
  - [T]he staff of the Commission has interpreted Section 3(a)(3) to exclude as not satisfying the nine-month maturity standard, obligations payable on demand or having provisions for automatic "roll-over."

Section 3(a)(3) Requirements (cont'd)

- The SEC imposed six separate characteristics as necessary for qualifying for Section 3(a)(3):
    1. Negotiable
    2. Prime quality
    3. Eligible for discount at Federal Reserve banks
    4. Not ordinarily purchased by the general public
    5. Used to facilitate "current transactions"
    6. Maturity of nine months or less with no automatic roll-over

“Current Transactions”

- Through a long series of no-action letters, the staff defined current transaction for a variety of businesses
- Historically, it was necessary to trace the use of proceeds to identifiable current transactions
- Today, following a 1986 staff response, it is only necessary to demonstrate that current transactions on the balance sheet exceed the amount of commercial paper outstanding at any time
- Inventories and accounts receivable have long been accepted as current transactions. Also operating expenses, such as salaries, federal, state and local taxes, and various types of bank loans with maturities not exceeding five years, have been accepted
- However, acquisition financing is NOT considered a current transaction
- Nor are capital investments – e.g., buildings, equipment, etc.

Section 3(a)(3) as Public Offering

- Section 3(a)(3) provides an exemption from the requirement in Section 5 of the Securities Act to register any offer or sale of securities with the SEC
- 3(a)(3) commercial paper is not a privately placed security
  - This is important, for example, in connection with 1940 Act exemptions under Sections 3(c)(1) and 3(c)(7), which may not be used if the issuer is making a public offering. However, the short-term paper exemption is available in 3(c)(1)
- To meet the "not ordinarily purchased by the general public" standard, commercial paper is normally issued in minimum denominations of $100,000
- 3(a)(3) commercial paper is usually rated investment grade to satisfy the prime quality standard

Private Commercial Paper

- Nowadays, commercial paper may also be issued under Section 4(a)(2) as a private placement of securities
- Historically, the 3(a)(3) market was larger and deeper than the 4(a)(2) market because privately placed securities are restricted securities.
- Today, the two markets provide about the same liquidity
- The advantage of Section 4(a)(2) is that the section does not have any maturity limitations, so longer dated paper can be issued, and proceeds do not have to be used for current transactions
- Most privately placed commercial paper is issued in Rule 144A programs, although some programs also include distribution to institutional accredited investors
- Typical minimum denomination for 4(a)(2) commercial paper is $250,000

4(a)(2) Requirements

- Historically, private placements were conducted under old Section 4(2) with resales to a limited number of investors under the so-called Section 4($1^1/_2$) exemption. This sharply limited the size of the market
- Today, between Regulation D and Rule 144A, the private placement market is approaching the public securities market in size
- Until the recent enactment of the JOBS Act, the prohibition on general solicitations in Rule 502(c) applied to commercial paper issued under Section 4(a)(2)
  - Occasionally, issuers would trip over this limitation and have to stay out of the market for 30 to 60 days

JOBS Act Changes to 4(a)(2) Offers

- Title II of the Jumpstart Our Business Startups (JOBS) Act of 2012 directed the SEC to eliminate the ban on general solicitation and general advertising for certain offerings under Rule 506 of Regulation D and under Rule 144A
- Under the SEC rulemaking, new paragraph (c) was added to Rule 506 to permit general solicitations under certain circumstances
- Rule 144A was also amended to permit public solicitation as long as sales are only made to QIBs
- Thus, a Rule 144A program no longer risks being out of the market for 30 to 60 days as a result of an inadvertent publicity problem
- This rulemaking now permits general solicitation in an offering even though the issuer is relying on Section 3(c)(1) or 3(c)(7) of the 1940 Act, which prohibits a public offering

JOBS Act Changes to 4(a)(2) Offers *(cont'd)*

- However, in order to use general solicitation under Rule 506(c), the issuer and offering participants must not be "bad actors"
  - An offering is disqualified from relying on Rule 506(c) if a "covered person" has a relevant criminal conviction, regulatory or court order or other disqualifying event.
    - "**Covered persons**" include: (**1**) the issuer, including its predecessors and affiliated issuers; (**2**) directors, general partners, and managing members of the issuer; (**3**) executive officers of the issuer, and other officers of the issuers that participate in the offering; (**4**) 20% beneficial owners of the issuer, calculated on the basis of total voting power; (**5**) promoters connected to the issuer; (**6**) for pooled investment fund issuers, the fund's investment manager and its principals; **and** (**7**) persons compensated for soliciting investors, including their directors, general partners and managing members
- Certifications as to bad actor status are time consuming to obtain and this is not practical for commercial paper, which can be issued daily
- As a result, issuers and dealers do not use general solicitation and instead rely just on Section 4(a)(2) rather than Rule 506(c)

Use of Proceeds of 4(a)(2) Paper

- One of the advantages of 4(a)(2) commercial paper is that there is no requirement to use the proceeds for current transactions
- 4(a)(2) commercial paper programs are often used to finance acquisitions until term financing can be arranged
- Proceeds can be used for any legitimate purpose consistent with the board resolutions for the program

Disadvantages of 4(a)(2) Paper

- 4(a)(2) commercial paper is still a “restricted security”
- Some investors have limits on the amount that they can invest in restricted securities
- This might have some impact in the secondary market, but generally the secondary market is a dealer market, i.e., most sales in the secondary market are back to dealers who may hold or may resell the paper to other customers
- Generally, however, the 4(a)(2) commercial paper market is just a liquid as the 3(a)(3) market

State Regulatory Scheme

- Federal securities regulation does not preempt all state regulation of securities
- Section 18 of the Securities Act provides an exemption for “covered securities”
  - Sales to ‘qualified purchasers’ – SEC has not defined
  - Certain sales under Section 3, including Section 3(a)(3)
  - Sales under Section 4(a)(1) or (3) of securities of SEC reporting companies
  - Sales under Section rules or regulations issued under 4(a)(2)—e.g., Reg D
    - Note that Rule 144A was not adopted under Section 4(a)(2)
- However, most states provide an exemption for sales to ‘institutions’
  - There remain a handful of states that are a problem for 144A offerings
  - This can be problematic when an issuer has no listed debt or equity securities
  - Some issuers have moved to the 3(a)(3) market for this reason

Commercial Paper Market Characteristics

- Continuously offered
- Typically same day settlement
- Not purchased by the public
- Not SEC registered
- $100,000 or $250,000 minimum denominations
- 3(a)(3) offering is a public offering
- New issuance proceeds typically pay off maturing notes
- Average outstanding maturity is about 60-days
- No involvement of counsel in daily issuances
- Capacity – measured by total outstanding, not total issuance

Commercial Paper Market Characteristics *(cont.)*

- Single master note – IPA tracks issuance/outstanding on its records
  - Dealer informs IPA of issuance daily - no continuous issuer authentication
- A new CUSIP each day for each maturity for discount CP and for each maturity date/coupon/feature combination for floating rate CP
- No tax opinion (although in some ABCP programs)
- No 10b-5 letter
- No comfort letter from auditors
- Very slim disclosure for corporate commercial paper
- Commercial paper desk – how does it work?
- Dealer as initial investor – no marketing period

Issuance Outstandings

- Prior to the 2008 financial crisis, the combined CP and ABCP market exceeded $2 trillion outstanding. ABCP accounted for slightly more than half of this issuance.
- A number of CP and ABCP conduits perished in the crisis, with outstanding volumes shrinking to about $1 trillion.
- In the crisis, the Fed introduced emergency funding for the commercial paper market with the establishment of the Commercial Paper Funding Facility. The CPFF was resurrected again in the early days of the pandemic.
- The Fed also the Money Market Mutual Fund Liquidity Facility in the crisis, and re-established for the pandemic, which was more important than the CPFF
- Recently the market has grown to about $1.26 trillion as the ABCP market has recovered to about 24% of outstandings.
- Financial institutions account for about 54% of overall issuance.

Tenors

- Historically, almost 90% of all commercial paper was issued with maturities of 21 days or under
- With the match funding of asset maturities by ACBP conduits, longer maturities became more common
- Additionally, LCR considerations for banks have led to commercial paper with longer maturities
- The commercial paper market has also developed redeemable, extendible and puttable commercial paper, which has led to longer maturities. Banks in particular favor longer tenor, redeemable commercial paper for LCR reasons

CP Outstanding

Billions of dollars

Period	Total	Nonfinancial			Financial			Asset-backed	Other
		Total	Domestic	Foreign	Total	Domestic	Foreign		
Dec.	1,166.1	257.0	197.4	59.6	599.7	193.2	406.5	309.3	.1
Weekly (Wednesday) levels									
Dec. 14	1,260.9	278.8	210.2	68.6	690.7	257.3	433.4	291.1	.3
Dec. 21	1,251.2	280.3	213.7	66.6	673.2	248.5	424.7	297.5	.2
Dec. 28	1,235.2	272.9	209.9	63.0	656.9	240.7	416.2	305.3	.1
Jan. 4	1,232.4	268.2	205.9	62.3	660.0	241.6	418.4	304.1	.1
Jan. 11	1,260.8	278.5	207.5	71.0	681.3	250.3	431.0	300.8	.1

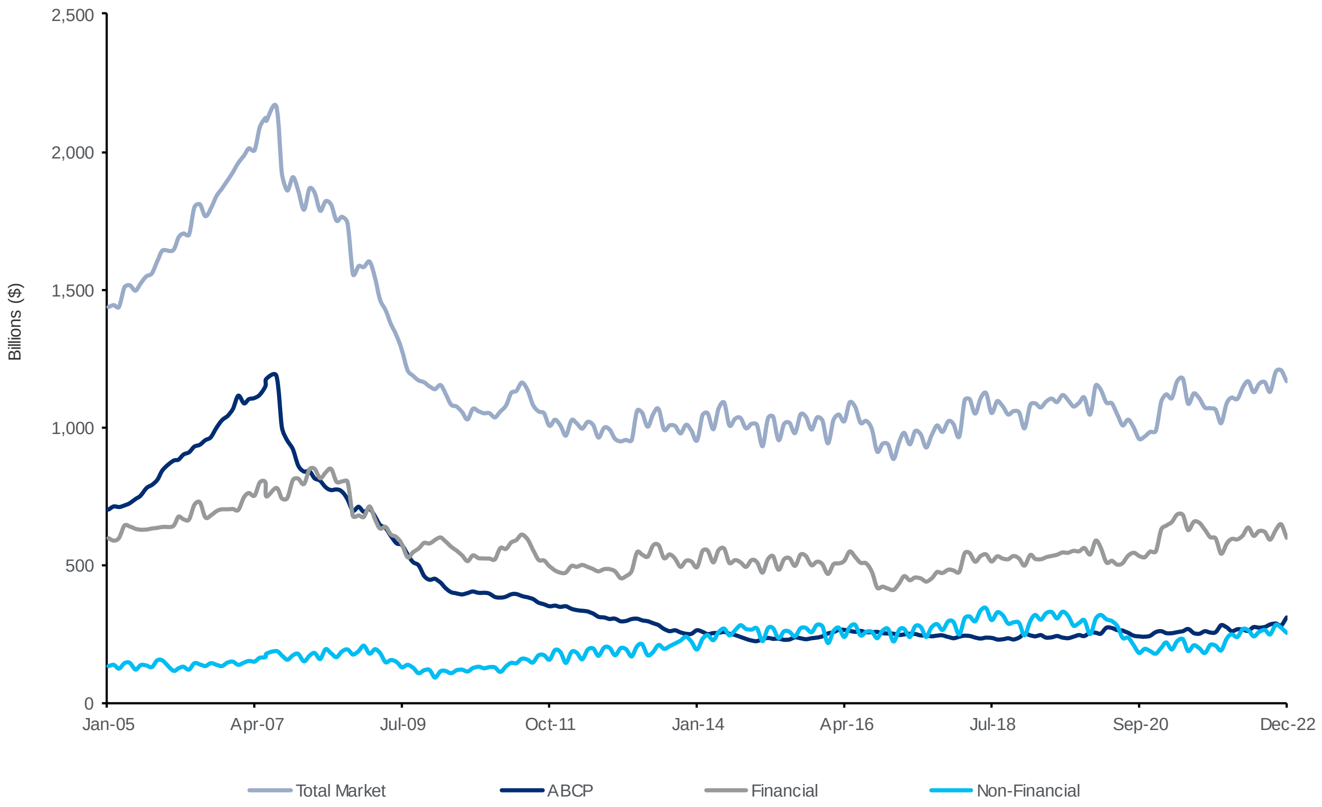
Source: Federal Reserve

CP Maturity Profile

Period	Amount 1							Number of issues						
	Total	Days to maturity						Total	Days to maturity					
		1 - 4 days	5 - 9 days	10 - 20 days	21 - 40 days	41 - 80 days	81+ days		1 - 4 days	5 - 9 days	10 - 20 days	21 - 40 days	41 - 80 days	81+ days
Annual average														
2021	98,211	67,992	11,502	3,043	4,514	2,787	8,373	3,671	2,262	413	176	263	146	411
2022	121,237	83,340	14,203	4,945	6,919	3,738	8,093	4,541	2,744	516	287	380	187	426
2023*	121,214	79,080	13,872	5,512	9,821	2,580	10,348	4,893	2,693	536	317	625	177	545

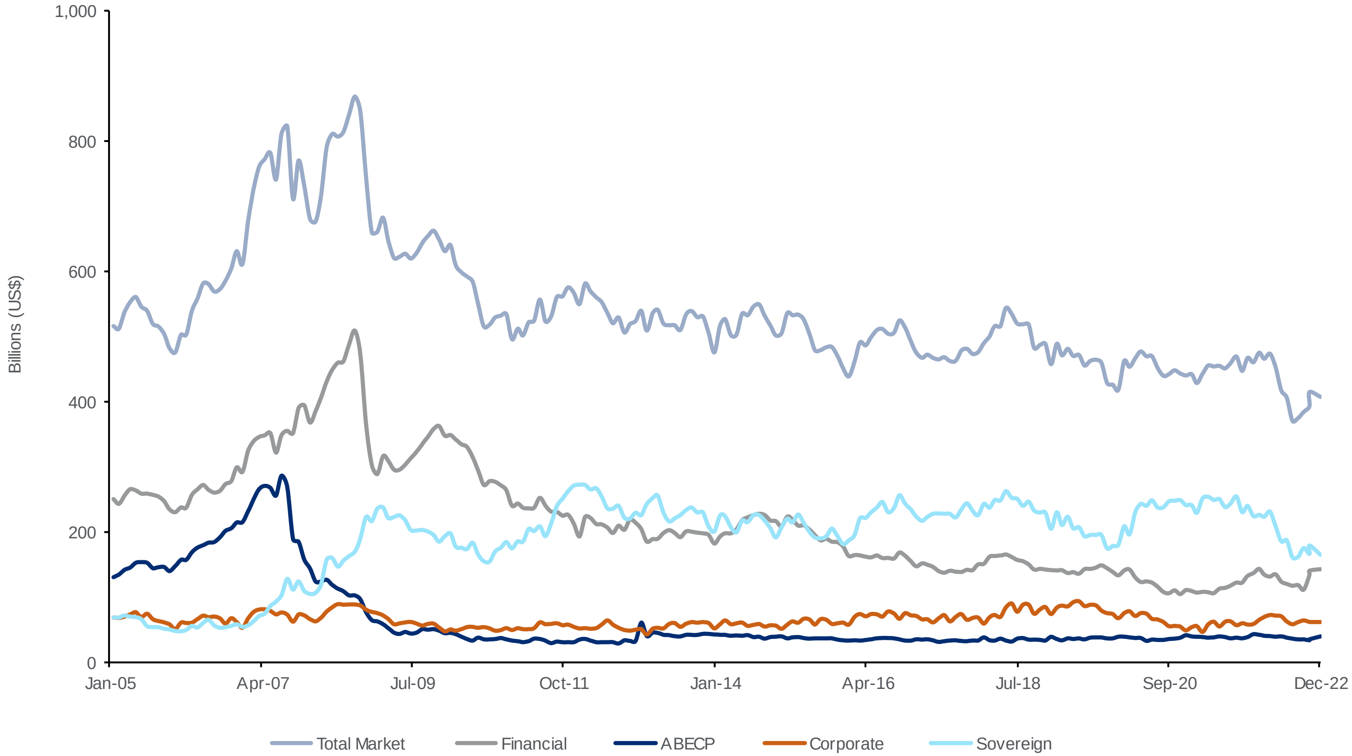
Source: Federal Reserve

USCP Outstandings



Source: Federal Reserve

ECP Outstandings



Source: Dealogic

Commercial Paper Investors

- Corporate treasuries
- Municipalities
- Short-term bond funds
- Banks
- Insurance companies
- Money market funds
  - Prior to the 2008 financial crisis, money market funds purchased about half of all commercial paper
  - In response to the pressures on MMFs in the crisis, the SEC adopted rule changes in 2014 (effective in October 2016) that sharply reduced MMF purchases [*see* Release No. 33-9616]
  - Further MMF restrictions are pending in proposed rules (see below) – note the comment period for the proposal has closed

Current Market Characteristics

- Current rate volatility – Fed inflation response
  - Periodic Fed increase in interest rates
  - Resulted in reduced tenors
- Discount, fixed rate, and floating rate commercial paper
- Puttable/callable/extendible commercial paper
- Foreign : domestic issuers
- Funding strategies

Importance of Ratings

- Investment grade rating is essential for market access
- The market for tier 2 paper is more difficult
- Liquidity backstop is an important consideration in ratings

Primacy of Liquidity

- Particularly for ABCP programs, but also for corporate issuers, available liquidity is a key rating factor
- Unlike term debt, there are no grace periods for commercial paper
- Accordingly, a commercial paper issuer must have access to same-day funds on very short notice; this is generally provided by bank lines of credit
- In the event an issuer is unable to issue commercial paper due to a market disruption, maturing commercial paper must still be paid timely through draws on liquidity

Regulatory Developments

- Money Market Fund proposed rules
  - 2016 reforms seen as not effective in the pandemic
    - Created first-mover incentives
  - Proposal would remove 2016 redemption gates and liquidity fees
    See Rel. No. IC-34441 (Dec. 15, 2021); note the comment period has closed
  - Institute swing pricing to account for market impact of asset sales
  - Increase minimum daily and weekly liquidity requirements
    - From 10% and 30% of <u>total assets</u> to 25% and 50% must be liquid assets
    - Increased need for short-term assets
  - Fed wants more conduit funding diversity
  - Short-duration ETFs and private funds as an alternative

Regulatory Developments *(cont.)*

- Regulatory capital – Liquidity Coverage Ratio (LCR)
  - Banks need to hold HQLA against obligations with <30-day maturities
    - Increased need for banks to issue longer-term liabilities
    - Call liabilities before <30day to maturity
- Regulatory capital – Accounting consolidation
  - Generally bank ABCP conduits are consolidated for accounting purposes
  - Additional capital for conduit assets
  - Inventive for guaranteed or fully supported bank conduits
  - Creates Rule 2a-7 concentration issues for MMF purchasers

Regulatory Developments *(cont.)*

- Volcker Rule
  - Today most conduits rely on Rule 3a-7 under the Investment Company Act
    - Reliance on Section 3(c)(1) or 3(c)(7) is problematic under the Volcker Rule
- Accounting consolidation
  - Harder to obtain off balance sheet structures
  - Reduced incentive to securitize
- Jobs Act changes to 4(a)(2) offers
  - Bad actor rule reduces Reg D issuance
  - Section 18 exemption is unavailable

Regulatory Developments *(cont.)*

- Rule 15c2-11
  - The 2019 proposing release suggested that the Rule applied to debt securities
  - The staff issued two no action letters in 2021 providing interim requirements for 2022 and detailing full compliance for 2023
  - Would have required issuers in 2023 to make financial information publicly available in order for dealers to provide bids in secondary market
  - Most dealers concluded the Rule requirements were manageable
    - Maturities of 270-days or less were viewed as outside the Rule because of Section 10 of the Exchange Act
  - However, the Rule could have caused complications for:
    - Pricing, portfolio valuation, compliance, auditing
  - December 2022 no action letter extended the interim treatment through 2025

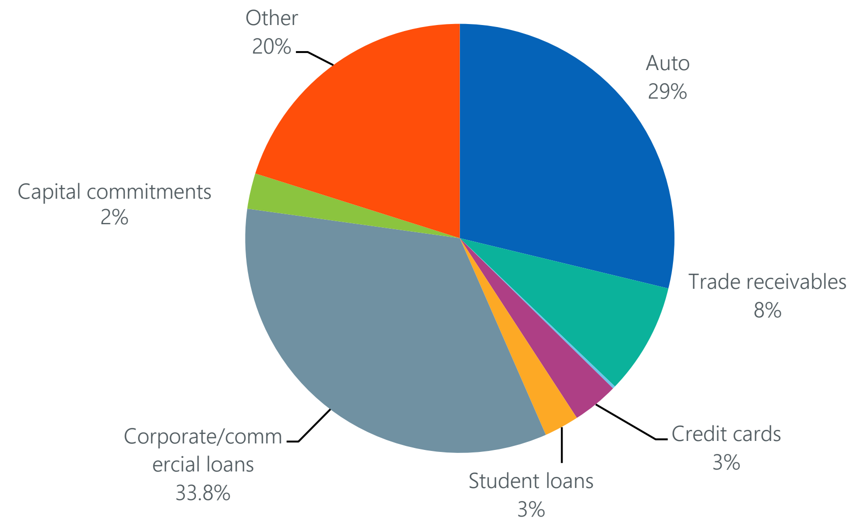
ABCP

- The development of securitization in the 1980s did not by-pass commercial paper
- Merrill Lynch/Citi developed first receivables conduits, which would buy receivables from corporates funded by commercial paper issuance by the conduit. This provided many corporates with capital markets access and cheaper funding than available through loans
- In a defensive response, banks started their own competing conduits
- The success of the conduit structure led to funding other asset types, including mortgages, portfolio securities, ABS and short-term loans

ABCP

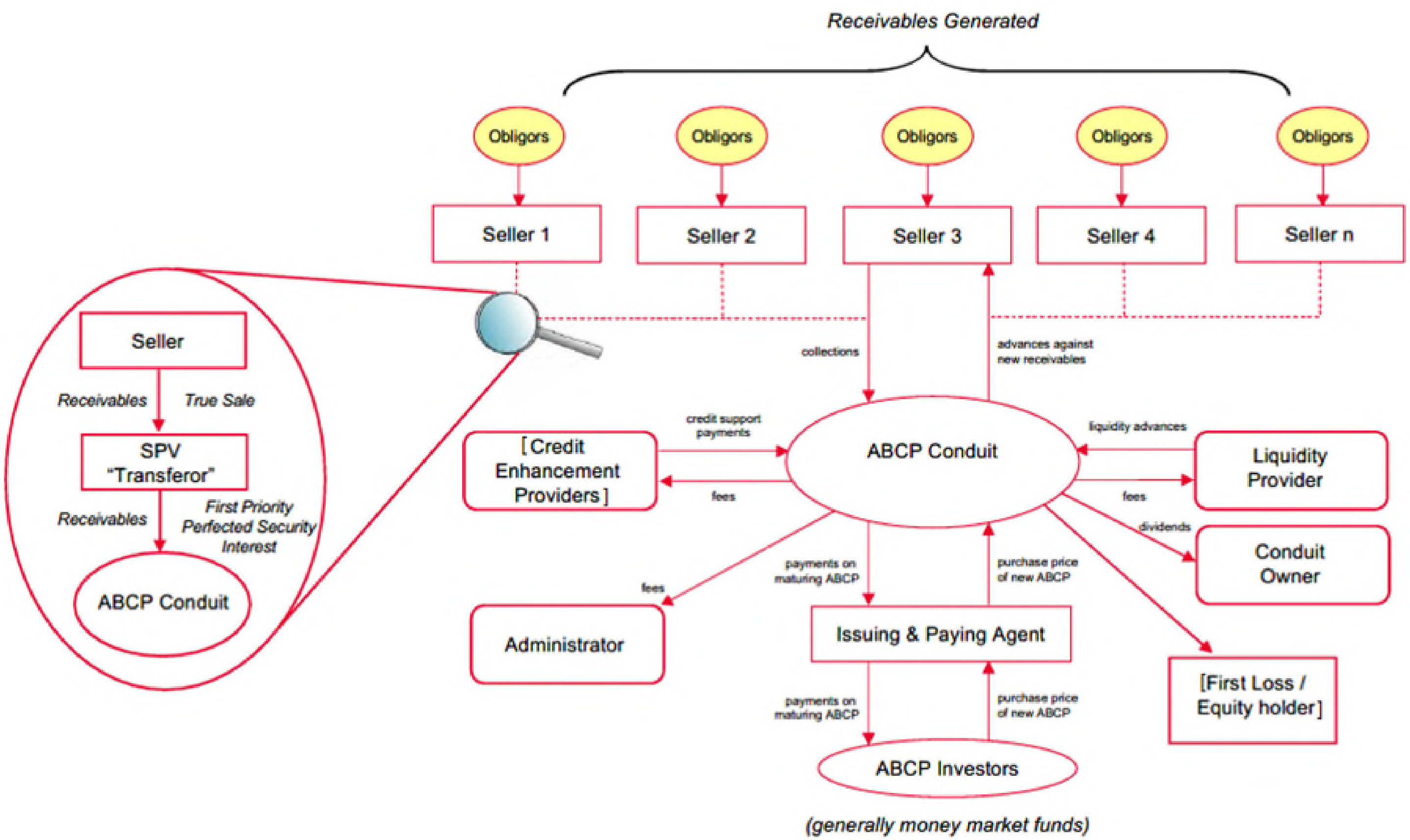
- A structured commercial paper conduit is a bankruptcy remote limited-purpose finance company that issues commercial paper to finance the purchase of assets;
- Asset types include receivables generated from trade, credit cards, auto loan/leases, equipment leases, and others;
- Programs are typically established and administered by commercial banks to provide flexible and competitive low cost financing to their customers;
- Unlike term securitizations, these programs are ongoing entities and do not wind down after a few years;
- Typically maturing CP is paid down with the proceeds of newly issued CP;
- The proceeds of collections from matured receivables are reinvested in newly generated receivables (assuming revolving period).

Fitch US Multi-Seller Asset Distribution



Source: Fitch Ratings

Types of ABCP Programs: Multi-Seller Schematic



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ABCP Key Features

- Revolving on both asset purchase and funding sides
- Maturity match assets with funding
  - Unless fully supported or guaranteed
- Bankruptcy remoteness
- CCP structures – common method for banks to finance their inventory positions
- Warehousing – commonly multi-seller structure
- Receivables financing still common
- Series CP issuers

Additional Legal Considerations

- ABS considerations come into play
  - Risk retention, Rule 17g-5 website, 40 Act exemption, Volcker Rule
  - LSTA case and some SEC C&DI statements can avoid
- Rule 2a-7 obligor concentrations
- Security interest in assets
- And if selling to European investors, EU and UK securitization regulations

Additional Resources

LinkedIn Group. Stay up to date on structured and market-linked products news by joining our LinkedIn group.

Suggestions? *REVERSEinquiries* is committed to meeting the needs of the structured and market-linked products community, so you ask and we answer. Send us questions that we will answer on our LinkedIn anonymously or topics for future issues.

To request to join the LinkedIn group or send us suggestions/comments, please scan the QR code, which will notify us via email at REVERSEinquiries@mayerbrown.com.

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APPENDIX

Types of ABCP Programs

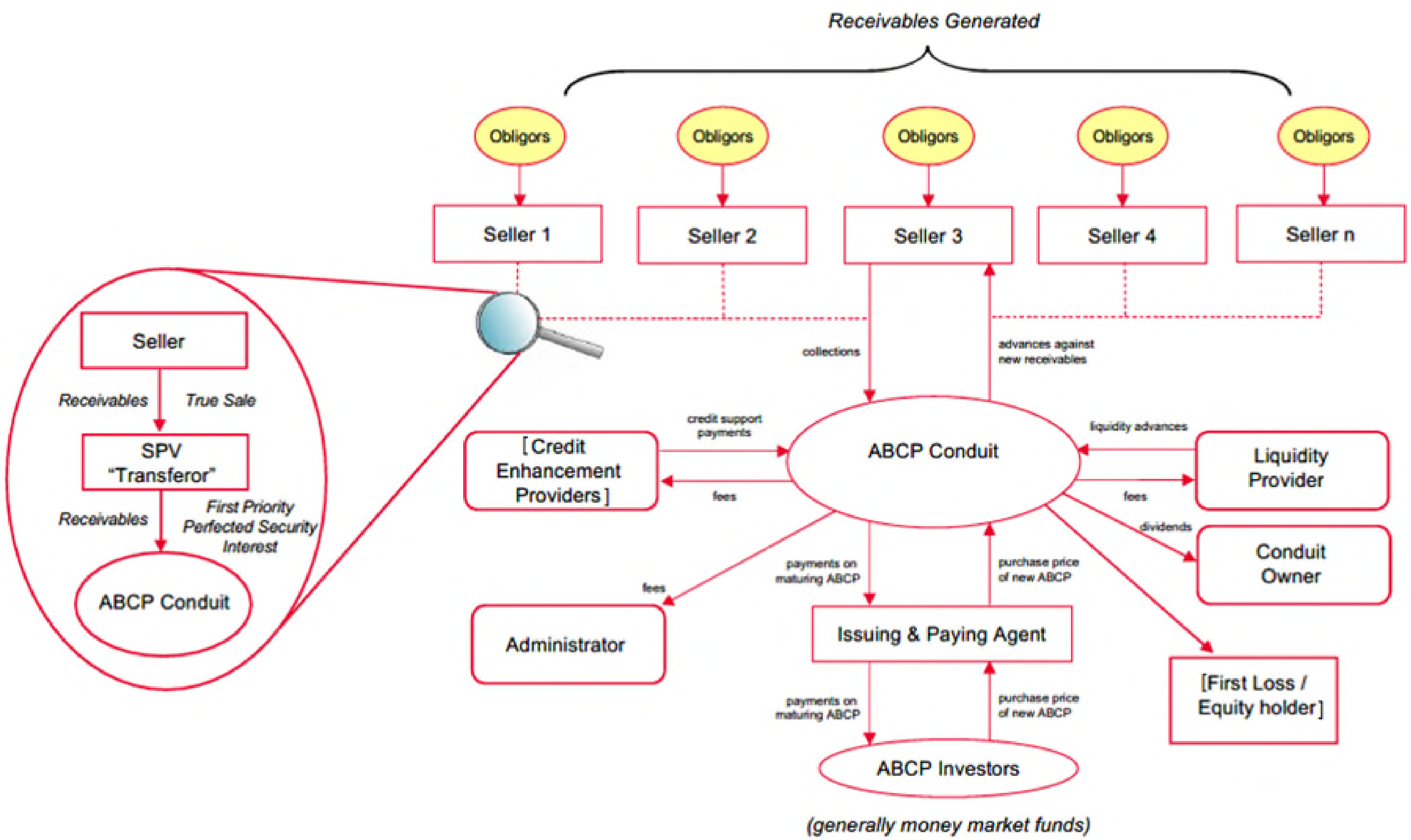
Types of ABCP Programs

- ABCP Program Structures employed today include the following:
  - Bank sponsored Multi-Seller
  - Aggregator sponsored Multi-Seller
  - Bank sponsored CCP/Repo
  - Aggregator sponsored CCP/Repo
  - Single Seller/Market Value Programs no longer exist as such
  - Securities Arbitrage (including SIVs) no longer exist as such

Types of ABCP Programs: Bank Sponsored Multi-Seller Programs

- A Multi-Seller ABCP Conduit is a limited purpose, bankruptcy-remote SPV that provides financing for receivables pools generated by multiple, unaffiliated originators/sellers
- Multi-seller programs are most commonly established and "sponsored" by large commercial banks and typically provide financing to that bank's corporate clients
- These banks typically serve as Program Administrator or Administrative Agent for the Conduit, and commonly provide liquidity and credit support as well
- Multi-seller Conduits are typically structured to:
  - Make loans against or purchase interests in receivables pools
  - "Warehouse" assets prior to a term ABS take-out, and/or
  - Purchase securities
- ABCP issued from a large multi-seller vehicle is typically perceived as low risk for investors due to
  - Originator diversification
  - Asset diversification and Deal-Specific Credit Enhancement
  - Program-Wide Credit Enhancement and 100% Liquidity Support
  - Bank Sponsorship

Types of ABCP Programs: Multi-Seller Schematic



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Types of ABCP Programs: Aggregator Sponsored Multi-Seller Programs

- These programs serve the same function as bank sponsored multi-seller programs
- An aggregator entity (Guggenheim, Nearwater, Mountcliff, Northcross, Capitolis) receives small, but high volume, fees by providing CP access to funding for bank customer transactions fully backed by bank liquidity and credit support
- Can have some off-balance sheet benefits for banks depending on bank's regulatory regime (RW capital, LCR, NSFR)
- Banks can be at mercy of liquidity shortage to aggregator

Types of ABCP Programs: Bank Sponsored CCP/Repo Programs

- A Bank sponsored CCP (or repo) program can involve CP issued directly by the bank or through a limited purpose, bankruptcy-remote SPV
- Typically designed as an alternative funding source for bank securities and/or loans
- In addition to other legal issues that impact these programs, Reg U and Reg T issues are implicated

Types of ABCP Programs: Aggregator Sponsored CCP/Repo Programs

- These programs function similarly to aggregator sponsored Multi-Seller Programs but typically fund securities books of banks/broker dealers, as opposed to customer transactions

Considerations for Setting up an ABCP Conduit

ABCP program - General considerations

A. Location of CP issuance

- USCP
- ECP
- other
- ➢ currencies

B. Types of customer transactions

- typical private securitizations (trade, warehouses, etc.)
- subscription facilities
- repos
- other
- ➢ currencies

ABCP program - General considerations (cont'd)

C. Full support vs. partial support

D. CP tenor

- all short term
- longer term
- extendible, puttable, callable

E. On balance sheet vs. off balance sheet

F. Wholly owned vs. third party owned

G. Identity of dealers

H. Identity of depositary, issuing and paying agent

I. Identity of collateral trustee, if applicable

J. Identity of rating agencies

K. Location of conduit issuer and desirability of US co-issuer

ABCP program – Legal considerations

A. US Investment Company Act exemption
B. US and other securities law exemptions
C. Volcker Rule "covered fund" analysis
D. US and EU risk retention compliance
E. Rating agency regulation, including US rule 17g-5 website
F. Tax domicile and related issues
G. Money market fund investor issues and 2a-7
H. US intermediate holding company (IHC) considerations

US Investment Company Act

- Prior to Volcker, most programs relied on 3(c)(1) or, more rarely, 3(c)(7)
- Bank programs now typically rely on 3a-7 or, more rarely, 3(c)(5) or, if ABCP Safe Harbor available for Volcker, 3(c)(1)
- Aggregator programs may still rely on 3(c)(1) / 3(c)(7)

US Securities Law Exemptions

- For Multi-Seller programs, generally 4(a)(2), although some may still rely on 3(a)(3)
- CCP/Repo programs may want both 4(a)(2) / 3(a)(3) in order to manage margin regulations
- Reg S can be difficult for US CP issuers

Volcker Rule Analysis

- Bank programs <u>must meet</u> an exemption at conduit <u>and</u> customer transaction level
- Conduit
  - 3a-7 exempt
  - 3(c)(5) exempt
  - Some conduits may satisfy ABCP safe harbor
- Underlying Deals
  - Also may satisfy 3a-7 or 3(c)(5)
  - SOTUS may be an option for non-US banks and non-US deals
  - LSE may be available
  - No ownership interest
- Aggregator Programs may use covered funds and rely on no ownership interest

US risk retention rules – options for ABCP conduits

- Standard risk retention options
  - Eligible vertical interest (EVI) – 5% of each class or single pro rata interest
  - Eligible horizontal interest residual interest (EHRI) – subordinated claim to principal and interest – 5% of fair value
  - Eligible horizontal reserve account (EHRA)
  - Any combination of above
  - Sponsor could buy 5% of conduit's ABCP, or provide 5% funded programme credit enhancement
  - EU bank sponsors comply through unfunded credit enhancement

- Specialised ABCP option for "eligible ABCP conduit"
  - Each ABCP interest acquired from an intermediate SPV, underwriter or initial purchaser at **initial issuance**
  - Each originator-seller retains via standard risk retention option or revolving pool securitisation option (Note: required even if transaction not otherwise required to comply)
  - 100% full support liquidity facility from regulated liquidity provider
  - Retention by sponsor via full support liquidity (unfunded) and by each originator-seller

- Safe harbour for "foreign" transactions
  - Securities Act registration not required
  - Not more than 10% of all issued ABS interests sold to US persons (defined more widely than in Reg S)
  - Neither sponsor nor issuer is US entity or branch
  - Not more than 25% of assets acquired from affiliate or branch in US

- Some aggregator conduits do not comply at all – no sponsor or no ABS

EU Money Market Funds Regulation – eligible ABCP

- ABCP is eligible if (liquid and good credit quality and) "issued by an ABCP programme which:
  1. is ***fully supported*** by a regulated credit institution that covers all liquidity, credit and material dilution risks as well as ongoing transaction costs and ongoing programme wide costs related to this commercial paper if necessary to guarantee towards the investor the full payment of any amount under the asset back commercial paper;
  2. is ***not a re-securitisation*** and the exposures underlying the securitisation at the level of each ABCP transaction do not include any securitisation position;
  3. does ***not include synthetic securitisations*** as defined by [Art. 242(11) CRR]."
- Maturity limits for eligible ABCP:
  - Short term MMF: residual maturity or legal maturity at issuance is 397 days or less;
  - Standard MMF : legal maturity at issuance or residual maturity is 2 years or less and time remaining until next interest rate reset date is 397 days or less
  - (No limit on maturity of underlying assets, though earlier proposed)
- Future change: a consultation has opened where the EU is taking information as to how well this regulation is functioning, no concrete proposals as of yet.

US Rule 2a-7 Issues

- Money market funds are important ABCP investors
- 2a-7 disclosure is a non-starter
- Multi-purpose strategies include:
  - ➔ Using RSPEs
  - ➔ Splitting among multiple conduits
  - ➔ Move to a "non-2a-7" conduit
  - ➔ Substitute bank as primary obligor
  - ➔ Particular issues during ramp up

IHC Considerations

- Are non-bank owned conduits affiliates of bank for IHC purposes?
  - ➔ recent changes presume yes if consolidated
  - ➔ but no need to move under IHC

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