MAPLES GROUP

The CLO*ser*

AN INDUSTRY NEWSLETTER FOR THE GLOBAL CLO MARKET

FEBRUARY 2019

[1] Data in this publication is derived from a variety of sources, including the Maples Group, Structured Credit Investor, LCD, Leveraged Loan, Creditflux, Moody's, S&P, Fitch, Irish Stock Exchange and Central Bank of Ireland.

US CLO Market Review

2018 was a record breaking year for US CLO primary issuance recording over $128 billion of new issuance, $4.7 billion more than 2014. Add in refis and resets, the total US CLO issuance in 2018 hit $250 billion. Below is a snapshot of some of the highlights of 2018[2]:

- New issuance totalled $128 billion from 241 deals and 111 different managers compared to $118 billion from 212 deals and 95 different managers in 2017.
- Refi and reset activity accounted for another $122 billion in issuance from 316 CLOs.
- AAA pricing started the year at around 100-110 and ended the year around 120-130 with spreads widening significantly by the end of 2018.
- LSTA action succeeded in the US Court of Appeals for the DC Circuit on 9 February 2018 starting the end of the era for US risk retention and open market CLOs.
- Five new broadly syndicated loan managers (CarVal Investors, Kayne Anderson, Partners Group, Post Advisory Group and PPM America) and five new middle market managers (Bain Capital Specialty Finance, Deerpath, GSO Capital Partners, Guggenheim and Vista Credit Opportunities Management) launched CLOs in 2018. The Maples Group CLO team in the Cayman Islands and Delaware assisted with 60% of these new US CLO platforms.
- Amherst Pierpont priced its first new issue deal for Z Capital having already refinanced a deal for them in December 2017.

Total US CLO issuance in 2018 hit

$250 billion

[2] Sourced from LCD, Wells Fargo reports, Creditflux and SCI.

2019 Outlook

2019 started fairly slowly with pipeline refis and resets pushing out from payment dates in December and January to March and April and new issue pricing taking until the week of 21 January to kick off.

The first new issue deals to price in 2019 were PGIM's Dryden Senior Loan Fund 75 arranged by Jefferies with less than one year reinvestment period and ArrowMark Partners' Apres Static CLO 1 arranged by J.P. Morgan, both on 23 January. These were followed a day later with GoldenTree's GLM US CLO 4 arranged by Morgan Stanley and CBAM's CLO 2019-9 arranged by Barclays. Dryden 75 is due to close on 27 February 2019 and is the second short CLO issued by PGIM in the past couple of months utilising the print and sprint strategy, and GoldenTree's GLM US CLO 4 features a five year reinvestment period with AAAs at 130bps.

Indeed, print and sprint deals appear to be back in vogue with several print and sprint CLOs pricing in the past couple of months and more in the pipeline. Managers are seeking to take advantage of opportunities in the underlying credit market to get deals away quickly.

The first middle market refi of 2019 also priced on 25 January 2019. Fortress Credit Opportunities VII $700 million middle market CLO arranged by Natixis with AAA pricing at 160bps over LIBOR compared to Deerpath Capitals December 2018 MM CLO where AAA pricing was at 170bps.

Headwinds in the form of Japanese risk retention ("JRR") are currently being reflected in OC risk factors but there is a hope and expectation that the Japanese regulators will follow the US and exempt open market CLOs.

There is an expectation that middle market issuance will continue to increase in 2019. With five new managers in 2018 and one already slated to debut in 2019 (Owl Rock Capital Partners), this sector of the CLO market looks buoyant. Middle market issuance has steadily increased in recent years, accounting for 11.4% of the overall market in 2016, 12% in 2017 and 12.6% in 2018. If JRR comes into effect without an open market CLO exemption, then middle market CLOs, which already meet risk retention requirements, could benefit, especially as Japanese investors have started to permit and increase allocation to these deals.

With several new managers in the pipeline, the return of

- Bank of America Merrill Lynch: $105 billion ($100 billion in refis and resets)
- Deutsche Bank: $110 billion ($80 billion in resets, $40 billion in refis)
- J.P. Morgan: $130–140 billion ($100 billion in refis and resets)
- Morgan Stanley: $90 billion base case ($30–60 billion in resets)
- Nomura: $110 billion ($130 billion in refis and resets)
- Wells Fargo: $110 billion ($100 billion in refis and resets)

managers such as AIG to the market at the end of 2018 and PPM America earlier in 2018, and new warehouses being set up in early 2019, we expect that, in spite of some contraction on 2018 levels, 2019 will remain a solid year and in line with the bank arranger predictions for new issuance of $100–110 billion and $100 billion for refis and resets.

Looking forward to 2020, there is definite uncertainty given some of the global macroeconomic conditions currently affecting the markets which, coupled with increased underlying collateral volatility, some argue may lead to an economic slowdown. Whether or not there will be a full blown recession or merely a tightening of belts remains to be seen.

The Maples Group CLO team looks forward to working with our friends and colleagues in the CLO market to make 2019 another successful year for the industry.

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European CLO Market Review

From the outset, 2018 looked as though it would challenge 2017 for the record of post crisis primary issuance levels. It did not disappoint, delivering a total primary issuance of €27.59 billion from 67 transactions compared with €20.06 billion from 51 deals in the previous year. 2018 also surpassed 2017 in terms of active CLO managers, with 42 managers bringing primary issuance transactions to the market (including four debut managers) compared with 39 in 2017.

However, notwithstanding the unprecedented levels of primary issuance, 2018 fell short of 2017 in relation to overall issuance amounts. This was as a result of the widening of spreads for Euro CLO transactions which impacted the level of refinancing and resetting of existing CLO transactions. In 2017 resets / refinancings contributed to a total overall issuance level of €45.73 billion, but as a result of the slowdown in reset / refinancing activity 2018 fell short of this level coming in at a total overall issuance level of €43.68 billion.

Securitisation Regulation[3] — Transparency and Disclosures

Throughout the prolonged negotiation of the Securitisation Regulation (which came into force across the European Union on 1 January 2019), much of the focus was on the proposals for reforming the risk retention mechanics applicable to European CLO transactions — these included: an increase in risk retention amounts from 5% to 20% and a requirement that only regulated entities could invest in European CLO transactions. However, ultimately the final form Securitisation Regulation did not bring about the wholesale changes to risk retention that had been alluded to in previous drafts.

Nevertheless, the Securitisation Regulation has presented challenges to the European CLO market, in particular around the transparency and disclosure obligations contained therein[4]. The Securitisation Regulation requires the originator, sponsor and SSPE (i.e. the issuer of the securities) of a securitisation to make available certain information to investors in the securitisation, competent authorities and, upon request, potential investors. These disclosure requirements include an obligation to make quarterly reports in respect of underlying exposures as well as provide quarterly investor reports.

The Securitisation Regulation directs ESMA to prepare draft regulatory standards specifying the form and content of such reporting. In August 2018, ESMA submitted its Final Report to the European Commission which included draft reporting templates. However in December 2018, following considerable feedback from market participants, the European Commission elected not

[3] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12th December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.
[4] Article 7 of the Securitisation Regulation.

to endorse the draft templates prepared by ESMA on the basis that they imposed an excessive burden on the reporting entity and raised the potential of disrupting the European securitisation market. Consequently ESMA is now engaged in a review of the reporting templates ahead of a resubmission to the European Commission which is expected to occur by the end of January 2019.

Pending the finalisation of the reporting templates, the Securitisation Regulation provides that the reporting templates contained in CRA3 will apply. However, from a CLO perspective further difficulties arise given a reporting template for CLO transactions has not been issued under CRA3! As a result of this uncertainty, a number of CLO managers / issuers are taking the approach of complying with the Securitisation Regulation reporting obligations by making their collateral manager / investor quarterly reports available through secure websites until such time as the ESMA reporting templates are finalised.

Saving the world, one "green" CLO at a time!

Following on from the Paris Agreement and the UN 2030 Agenda for Sustainable Development, the increasing focus on "green" finance has continued with the G20 Sustainable Finance Study Group (the "SFSG") which issued a paper in November 2018, "Towards a Sustainable Infrastructure Securitisation Market: The Role of Collateralised Loan Obligations", which had been commissioned by the Bank of England and the People's Bank of China (in their roles as co-chairs of the SFSG).

The white paper aims to examine how CLOs and other securitised and structured financial products could play a critical role in financing global sustainable infrastructure investments. The white paper notes that in the next 15 years global demand for sustainable infrastructure financing is estimated to be US$90 billion. The white paper concludes that:

"Sustainable CLOs could emerge as the most important financial tool to combat climate change by mobilising and leveraging the previously untapped bond market and connecting it with sustainable assets, which cannot otherwise be financed by the banks and public sector with the pace and scale required to avoid irreversible climate change".

To date, one European CLO manager has priced two transactions which include environmental, social and governance elements in the eligibility criteria for the underlying investment collateral, but it remains to be seen whether this will be the beginning of the growth of the green CLO.

Outlook for H1 2019

As previously noted, after a considerable period of tightening spreads on Euro CLOs, the reversal of that trend in mid-2018 had a considerable impact on the levels of refinancing activity and ultimately also on primary issuance in the closing weeks of 2018. The continued widening of spreads could reduce the commercial attractiveness to collateral managers and negatively impact issuance levels. Beyond the commercial forces, market participants continue to wrestle with the challenges of compliance with the new obligations under the Securitisation Regulation, in particular the transparency and disclosure obligations thereunder. While the market will be very likely to settle on an agreed approach to compliance, the "bedding in" period for these obligations could potentially impact issuance levels in early 2019.

Finally, once again we note the yet continued uncertainty around Brexit and in particular the impact of a "no deal" Brexit on the UK and European Union and the possible knock on effect on the European CLO market. It remains to be seen how that will progress!

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Irish Listings Update

During the second half of 2018, 197 CLOs (US and European), comprising new issuances, refinancings and resets, were listed on the Irish Stock Exchange trading as Euronext Dublin. Of these listings, 124 were by Cayman Islands issuers, accounting for 63% of CLO listings. Of the 70 issuers that had European domiciles, 51 were Irish and 19 were Dutch. There were two Delaware issuers and one Jersey issuer. The Maples Group's Dublin office listed 42% of all Euronext Dublin-listed CLOs and 56% of all Cayman Islands issuers listing on Euronext Dublin.

For the year in full, a total of 415 CLOs (US and European) were listed on Euronext Dublin. Of these, there were 286 Cayman Islands issuers (69%), 92 Irish issuers (22%), 29 Dutch issuers (7%), six Delaware issuers and two Jersey issuers. The Maples Group's Dublin office listed 46% of all Euronext Dublin-listed CLOs and 57% of all Cayman Islands issuers listing on Euronext Dublin.

Over the year, 86% of CLOs opted to list on the Global Exchange Market ("GEM") rather than on the Main Securities Market ("MSM"). In the case of Cayman Islands issuers, this increased to 99.5% opting to list on the GEM. 46% of the European CLOs sought listings on the MSM.

The Maples Group's Dublin office listed

46%

of all Euronext Dublin-listed CLOs

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Moody's: The Market View

CQT Metrics Constraining Reinvestments

As erosion of collateral quality metrics constrains reinvestments, managers turn to diversity score

Summary

In Moody's opinion, collateral quality test (CQT) metrics have deteriorated in line with general loan market trends in recent years, thus reducing collateralized loan obligations' (CLOs) ability to reinvest principal proceeds. As a result, some CLO managers have turned to higher diversity score (DS) covenants to provide more latitude for CQT compliance.

- Worsening WARF, WARR and WAS are constraints on reinvestments
- CLO managers use diversity scores to alleviate some trading constraints

Worsening WARF, WARR and WAS are constraints on reinvestments

Over the last three years, the simultaneous rise of weighted average rating factor (WARF) and decline of weighted average spread (WAS) have constrained CLOs' ability to trade off the two collateral quality metrics to maintain compliance with CQTs and therefore, trading ability. Meanwhile, CLOs' weighted average recovery rate (WARR) has also declined, which further constricts trading.

WARF and WAS are both deteriorating

Given recent spread tightening in the leveraged loan market, CLOs are not being compensated with higher spreads that typically come when they move to a higher-WARF portfolio. As Exhibits 1 and 2 show, across all vintages since 2015, WARF has increased by about 100 while WAS has declined by over 100 basis points. If this trend continues and CLOs fail their CQTs, Moody's believes that it will eventually limit CLOs' reinvestment opportunities. In contrast, in a typical collateral quality matrix, holding DS and WARR constant, the lower the WAS, the lower the permitted WARF, and the higher the WAS, the higher the permitted WARF. Additionally, the reinvestments are subject to maintaining or improving the CQTs.

Exhibit 1
CLO WARF continues to increase
Median WARF of CLOs rated by Moody's, across CLO 2.0 vintages

Source: Moody's Investors Service

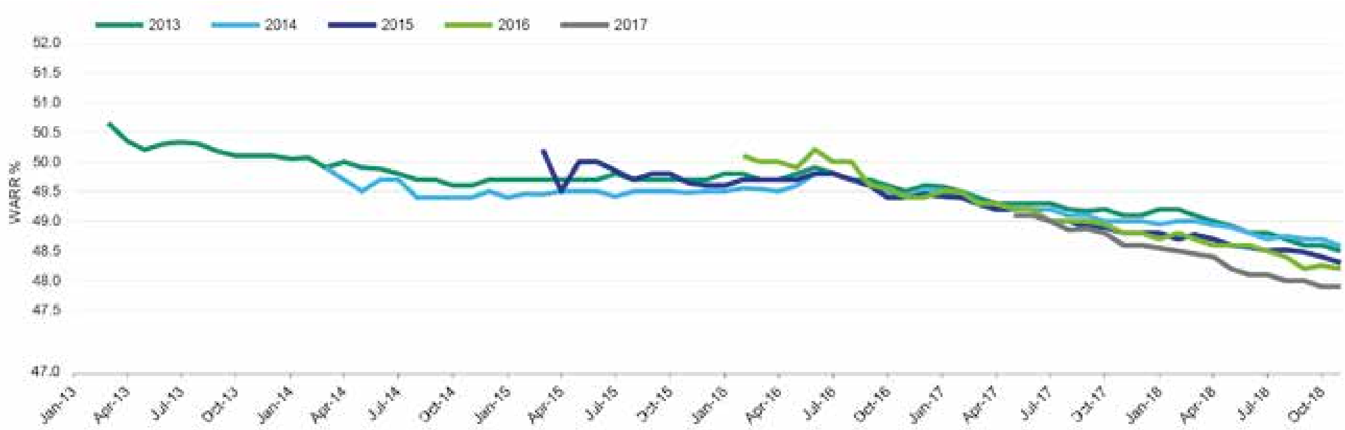
Exhibit 2
CLO WAS continues to decline
Median WAS of CLOs rated by Moody's, across CLO 2.0 vintages

Source: Moody's Investors Service

WARR is also declining

Meanwhile, WARR has also been deteriorating, further reducing CLOs' ability to trade off WARF with respect to CQTs, and thus tightening the WARF covenant against existing portfolios' and limiting trading flexibility. As Exhibit 3 shows, the median WARRs across vintages have declined approximately 1%–1.5% in the last two years while covenants remain at 43%. If a CLO's portfolio WARR continues to decline and has less excess WARR to increase the WARF covenant, the WARF test is likely to tighten and limit reinvestment opportunities. Typically, CLO managers allocate any of a portfolio's WARR in excess of the WARR covenant to either increase the WARF covenant or decrease the WAS covenant; the higher the actual portfolio WARR, the higher the permitted WARF or the lower the permitted WAS, which can facilitate reaching compliance with the WARF or WAS tests.

Exhibit 3
CLO WARR continues to decline
Median WARR of CLOs rated by Moody's, across CLO 2.0 vintages

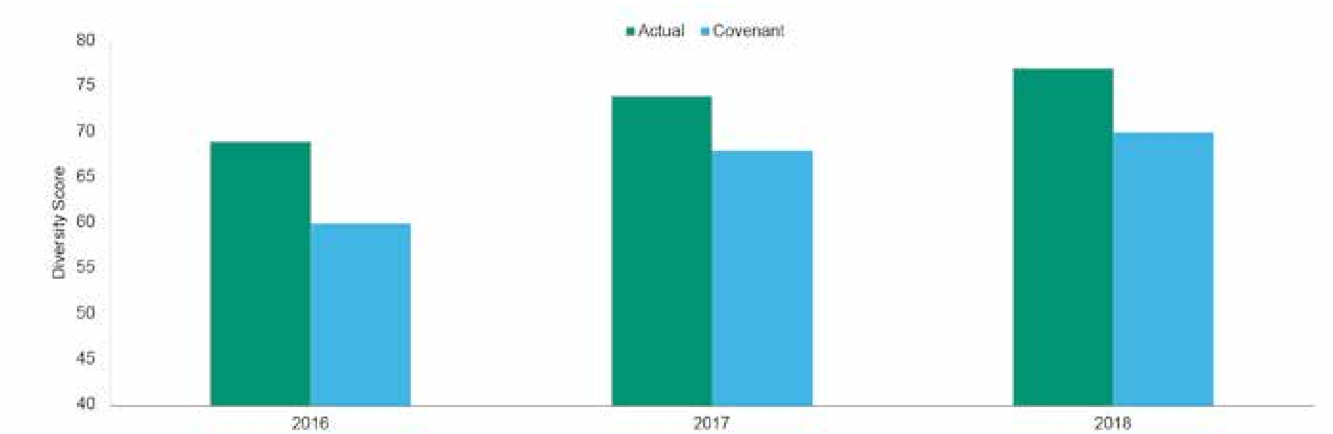


Source: Moody's Investors Service

CLO managers use diversity scores to alleviate some trading constraints

CLO managers have turned to increasing DS covenants, the fourth dimension in the portfolio collateral quality matrix, in order to alleviate some of the constraints discussed above. Since 2016, the median DS covenant among CLOs rated by Moody's has increased to 70 from 60, as Exhibit 4 shows. Moreover, CLOs have generally preserved a margin over the covenant. CLO managers have allocated the excess DS cushion to trade off for either higher WARF or lower WAS if needed, which has enabled reaching CQT compliance and in turn, has tempered limitations on reinvestments.

Exhibit 4
CLO diversity scores and covenants have increased between 2016 and 2018*
Median diversity scores of CLOs rated by Moody's (reported actual and covenant)



*Excludes amortizing CLOs.
Source: Moody's Investors Service

Collateral quality tests and matrices

Most CLOs are managed transactions in which the manager can buy and sell assets subject to CQTs in the CLO indenture. CLOs use CQTs to measure and preserve key portfolio characteristics, such as average default probability, assumed recovery, average life, diversity score, spread and coupon. Moody's generally bases its modeling of CLOs on assumptions we derive from the covenants. CQTs work in a matrix, which are designed to allow the manager to trade off one credit metric at the expense of another to remain in overall compliance.

Covenant cushions in initial structures are decreasing

In recent years, CLO target portfolios' key collateral quality metrics have been structured with less headroom over the corresponding covenants. Falling asset spreads have contributed to the narrowing of the margins between covenants and actual CQT metric levels. CLO portfolios that managers construct close to the CQT covenants can trip the CQTs more easily, and if the tests are failing, CQTs must be maintained or improved, which ultimately, will limit reinvestment opportunities.

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US Bankruptcy Court Upholds Industry View of CDOs / CLOs

The US Bankruptcy Court (the "Court") has handed down an important decision which reflects the industry view that the contractual deal terms of a CDO / CLO should not ordinarily be circumvented through chapter 11 proceedings.

In Taberna Preferred Funding IV, Ltd. ("Taberna"), the Court dismissed an involuntary chapter 11 filing by a senior noteholder. One reason for the dismissal was to protect the contractual bargain agreed to by all of the noteholders. It was held that a bankruptcy filing was not an appropriate way for the senior noteholder to try to rewrite the deal terms, disregarding the contractual bargain they had freely signed up to.

While Taberna concerned matters of NY and US law, the approach taken by the Court reflects the position taken by properly advised Cayman Islands directors of CDO / CLO issuers; that their duties require them to enforce the terms of the deal. Directors of Cayman Islands issuers, as a matter of Cayman Islands law, owe their duties to the company and this requires them to take into account the interests of economic stakeholders. However, those duties do not exist in a vacuum: the indenture sets out the deal between the stakeholders and contains the reasonable expectations of the stakeholders as to how the deal will operate. While it is always fact sensitive, generally the terms of the indenture will be of central importance in shaping directors' duties under Cayman Islands law.

Background

Three holders of senior classes of notes (the "Applicants") made an involuntary chapter 11 filing against Taberna, a CDO issuer. While the senior class A notes were paying, the junior class B notes had been in default for nearly 10 years. The Applicants had purchased 100% of the A1 notes and 34% of the A2 notes in the secondary market. The Applicants' aim was to liquidate the collateral by amending the terms of the deal through chapter 11 proceedings. The Applicants had the support of a holder of 50% of the A2 notes. The revised deal would have allowed the majority holders of the A2 notes to liquidate the collateral at the expense of the junior noteholders. The proposed chapter 11 proceedings would therefore have re-written the deal which provided that there would be no liquidation of the collateral without the consent of junior classes.

Non-recourse Means Non-recourse

The notes were non-recourse, as would be expected in a CDO. It was held that this meant the Applicants had no claim against Taberna, but rather only a claim against Taberna's assets (the collateral). As the Bankruptcy Code provides that an involuntary petition can only be filed if the creditor holds a claim against the debtor (i.e. Taberna) the Applicants had no standing to file a voluntary petition.

The Deal is the Deal – Sophisticated Investors cannot use Chapter 11 to Rewrite the Deal

Importantly, it was held that even if the Applicants did have claims against Taberna, the Court would have exercised its discretion and refused to commence chapter 11 proceedings.

Like most investors in this space, the Applicants were sophisticated business entities who analysed and bargained for the liquidation scheme contained in the indenture. The Court found it could not hold that such sophisticated parties were prejudiced by such contractual terms that they freely sought out and entered into. The indenture contained a pre-packaged scheme as to how losses would be distributed among noteholders – chapter 11 proceedings were therefore unnecessary. As Vyskocil J put it: "This is unnecessary (and indeed inappropriate) since Taberna is a static pool investment vehicle, intended to exist only for a limited time. In contemplation of the possibility that Taberna would lack the funds necessary to pay timely interest or principal, all noteholders (including the Petitioning Creditors) expressly agreed to terms for how the Indenture Trustee will manage the remaining portfolio and how losses will be distributed among the noteholders."

In endorsing the industry view as to how CDO / CLO deals work, Vyskocil J summed up her decision with the following: "If the Court allowed this case to continue, allowing a party to force a CDO into bankruptcy at the expense of all noteholders other than the Petitioning Creditors, the Court would encourage other parties to disregard bargained for contractual remedies in an Indenture and pursue bankruptcy as a way to redefine the terms of the contracts they freely entered."

Thus the US Bankruptcy Court provides some welcome comfort to CDO / CLO investors that, even in the face of an involuntary chapter 11 filing, they should expect the terms of the deal entered into to be upheld. This finding also dovetails helpfully with the Cayman Islands directors' duties position, pursuant to which directors of CDO / CLOs should generally be guided by the terms of the indenture, and should look to give effect to the parties' commercial deal.

"Importantly, it was held that even if the Applicants did have claims against Taberna, the Court would have exercised its discretion and refused to commence chapter 11 proceedings."

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Directors' Cut – Lessons from the Credit Crisis

With the dawn of the credit crisis now a decade behind us, Guy Major, Global Head of Fiduciary, sat down with some of the senior directors in the Maples Group's fiduciary services team to discuss their experiences and the lessons learned from a director's perspective during that time, which reshaped the CLO business and ultimately reinforced the structures in play today.

Setting the stage

Guy Major ("GM")

As we approach the SFIG conference in Las Vegas this year and look forward to connecting again with our structured finance clients and industry partners there, it's interesting to look back 10 years to the collapse of Lehman Brothers, which precipitated the financial crisis and subsequent events that tested securitisation structures in ways that previously couldn't have been anticipated. In fact, the 2009 conference in Vegas was the last to be held there for several years, as the industry retrenched to work through these issues and ride out the credit crisis.

Many new professionals have since joined the securitisation industry and haven't had the experience of working on deals in such extreme conditions. The Maples Group's fiduciary services team is distinguished not only by our size and stability, but also by just how many of our directors actually went through the credit crisis with us and worked with others on solutions to resolve some seismic issues. For those of us still in the business today, it presents a useful opportunity to reflect on, and share with our industry's newer joiners, our experiences as directors of special purpose vehicles at that time, and most importantly the lessons we learned.

Firstly, let me introduce some of the senior team that we canvassed, in the fiduciary services team at the Maples Group at the time of the crisis and who are all Senior Vice Presidents in our fiduciary services team in Cayman:

Andrew Dean worked on a broad range of CDO and securitisation deals at that time and was subsequently involved in several defaulted contentious transactions.

Chris Watler, who has been working with us since 2002, has experienced the full spectrum of the credit cycle in the structured finance industry. Chris worked on NIM structures, CDOs and other securitisation structures and has subsequently been involved in several high profile work outs.


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Carrie Bunton is another of our long serving directors, joining in 2001. Working on a broad range of transactions and matters, she was in the trenches during the heat of the credit crisis and was closely involved in market challenging litigation.

Peter Lundin joined our group in 2007, shortly before the financial markets meltdown and has dealt with many complex issues since, also spending some time working in our European offices.

GM: Starting with a general question, what do we think the biggest issue was during the credit crisis from the perspective of the directors of the issuer?

Andrew Dean ("AD")

While the market dislocation that followed the crisis clearly presented a multitude of stress related scenarios, such as problems with unenforceable swap documentation, I think issues related to expenses and reserves were paramount from our perspective. At a basic level, if the deal can't cover its administration expenses or pay service providers, you are effectively handcuffed as a director. As you run into complex issues around events of defaults you need to take advice, and quickly. The speed at which economic positions changed created something of a domino effect, because noteholders were suddenly facing multi-million dollar losses, often with calls to then remove the manager, leading you into a dispute scenario, where you start getting into voting rights. There was a need to tread extremely carefully when deals were under stress.

From a director's perspective, being able to take advice from competent counsel in that scenario was critical, and vehicles that had expense caps that were too low or no waterfalls at all presented enormous challenges for us.

> "…if the deal can't cover its administration expenses or pay service providers, you are effectively handcuffed as a director."

In response, we worked with the industry to propose a number of improvements to structures, such as ensuring that any cap on expenses is sufficient for a period of at least three years and as an absolute amount rather than a percentage of the principal balance of the notes. Additionally, or as an alternative to a higher expenses cap, proposals that the indenture should provide an expense reserve account to facilitate payment of fees on dates other than note payment dates, helped to resolve these issues.

One word of caution though: Post credit crisis we observed that $300,000 was, in our experience at least, generally the right amount for expenses in a CLO type structure, and over time we have noticed these caps coming down. While we do understand the commercial pressures in structuring new deals, we believe that, in the event of a dispute, some of the 2.0 deals with lower caps may struggle with some of the same issues we encountered previously.

GM: What was the most difficult issue for directors to resolve?

Chris Watler ("CW")

I don't recall many straight forward problems that were easy to resolve so that's quite a difficult question. Our philosophy in any challenging scenario was always, and still is, to follow the documents and, where they were ambiguous, take legal advice and be impartial.

For me though, the most enduring problems revolved around liquidations and terminations. I think people would be surprised to know that just from our own book we have over 200 "zombie deals" (over a quarter of the total deals in 2008) that are still around from that time and are stuck in limbo.

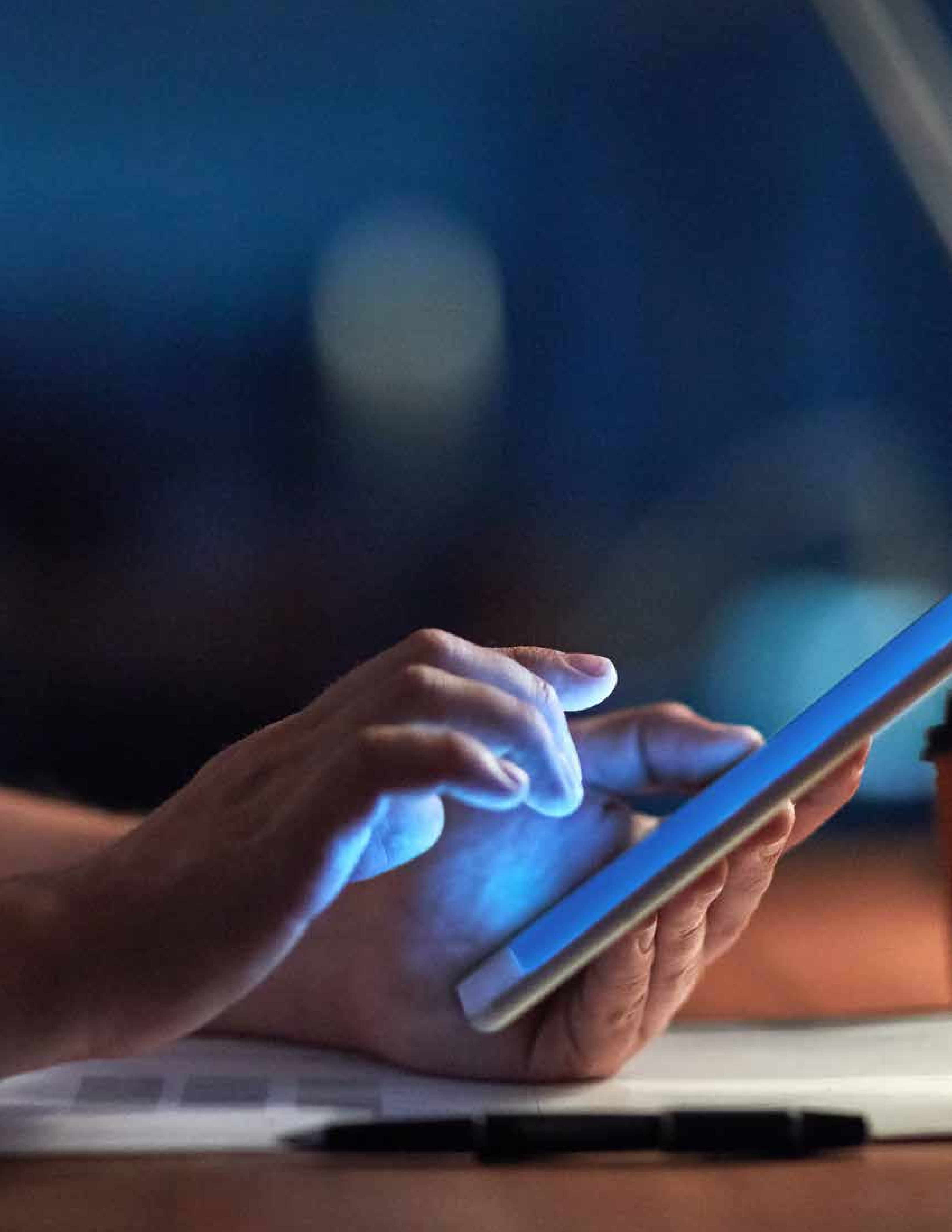
There have been many underlying factors at play here, ranging from apathetic noteholders suffering economic loss to deals with no clean up call options to deals stuck with illiquid assets and no means to get rid of them. Whilst we were able to address some of the issues with illiquid assets through our FLP illiquid assets solution, other more systemic issues have still not been resolved.

There were also a number of static deals that ran into problems where someone had to make the hard decisions. In these scenarios as a director you need to have integrity and do your best to resolve the problems, albeit that you don't have the power in the documentation to do so. Fund legal maturity for these zombie deals can't come quickly enough.

AD: Ambiguous, inconsistent or uncomprehensive documentation from the pre-credit crisis era, often templated and not taking into account special circumstances, caused a slew of issues for transactions. As Chris just mentioned with zombie deals, documents were structured with no real end result possible. The point here is that you need an exit plan and now when we are reviewing documents, it's something we review closely. If noteholders know they have zero chance of getting any economic value, we find that if you have to reach out to them, they are difficult to find and are understandably apathetic in helping issuers resolve structural problems.

Other areas that caused us problems included negative consent mechanisms, which were often unclear, and affiliate / principal trades where documents did not set out mechanics clearly.

GM: It's interesting to look again at the challenges we faced from a fiduciary standpoint, but turning to investment managers, Carrie, what do you think the most difficult issue was for them?



Carrie Bunton ("CB")

Collateral managers of these types of deals all faced similar challenges from the dislocation in the credit market, but I think for smaller managers in particular, the biggest problem was their inability to remove themselves from problem deals or ultimately sell their businesses when they were non-performing. Deal documentation made it difficult for them to be replaced and you felt some of them effectively became trapped. In some cases there were creative solutions around delegation and sub-delegation at the manager or transaction level. Things would definitely have been improved on some deals if documentation had more clearly addressed this issue.

CW: Tell-tale signs for managers undergoing stress included significant levels of staff turnover, downsizing and fees being squeezed. That's where we started to see the writing on the wall and it's a real pressure for a manager who has not got the staff to then deal with the complex issues that were coming up. When the manager cannot consolidate quickly or cannot get hold of noteholders to facilitate a sale of their business, or where the documentation was unclear, it was a big problem for them, especially when their own financial interests were at stake in deals.

GM: The credit crisis was such a difficult environment for managers of all sizes and relationships easily became strained when tough decisions had to be taken. Peter, what was the most contentious issue you faced as a director?

Peter Lundin ("PL")

Again, there were many. However, flipping the discussion around from managers who wanted to get off deals, the forced removal of managers raised a number of important issues for fiduciaries. I recall a few highly contentious situations where we were receiving conflicting instructions from different stakeholders, but with no one advising us, it placed the issuers and us as directors in a very difficult position. In some cases a super majority is required for removal of the manager but I can, for example, recall an instance where 66 and two thirds percent was needed and we got 66 and one third. There was little margin for error.

Abandonment of notes, which in turn affected performance ratios with significant implications for the deal, was another perennially contentious issue, often resulting in stand offs between investors, managers, issuers and trustees. At the time this was somewhat of a novel concept, but I think the good news is that it should be fully addressed in 2.0 deals. The industry has moved towards a workable solution where provisions specifically addressing the abandonment of notes have been commercially agreed. Significantly, the provisions now usually address the procedure required, including the requirement for the Trustee to cancel the abandoned notes and to reduce the amount of notes outstanding for the purpose of the Trustee reports, or otherwise make it clear that the notes cannot be abandoned. That certainty of position in the documents is always welcomed.

GM: Thanks Peter - some important improvements to documents there. To finish up I'd like to look at the biggest issue from the credit crisis that could still be improved today.

I think it's been a fascinating exercise to go back and revisit some of the issues that arose with structured finance transactions as the credit markets ground to a halt, particularly with some background of how the industry made amendments to bring us CLO 2.0 structures. From my own perspective, the biggest issue that could still do with some evolution is communication with note holders via the clearing systems. As we saw in the discussion above, noteholders are often the key to resolving many issues. In most CLOs the majority of notes are issued in global form. Consequently, not knowing who they are and being unable to communicate directly with them, especially in relation to unexpected issues, it makes it much harder to get a solution than with respect to an investment fund, for example, where you can more easily convene a shareholders meeting.

Whilst clearing systems have made improvements since then and communications platforms such as Bloomberg and Deal Vector have helped, there are still issues over truly effective communication to all holders. We read with interest SFIG's initiative to advance bondholder communication which is an encouraging development and we welcome their focus on this issue.

On a more personal level, I am extremely proud that our entire team of Senior Vice Presidents and many more of our 30 directors here in the Cayman Islands were in the fiduciary business before, during and after the credit crisis and we hope that our clients take great comfort from our tested experience.

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Bumper Crowd at the Maples Investment Funds Forum CLO 2020 Vision Panel

There was standing room only for the CLO panel at this year's Maples Investment Funds Forum in the Cayman Islands on 8 February. Industry speakers joined moderator Scott Macdonald to discuss launching a platform, equity investor concerns, what's next for CLO structures and their resilience as we look towards 2020. The mood was buoyant as the panel concluded that, while the market would continue to make slight refinements, the CLO 2.0 model was robust enough for the foreseeable future. In particular, the panel noted that the reinvestment feature provides reasonable flexibility to deal with changing market conditions.

The forum is held annually in Grand Cayman and attracts over 200 senior in-house lawyers, professionals at investment managers and partners from leading US law firms. For further information on how to participate in the forum, our CLO roundtables and other industry discussions please contact:

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Three Scenarios Where Third Party US Partnership Representative Solutions Make Sense

Recent changes to US tax legislation regarding the audit process for partnerships have important implications for CLO managers, as well as more generally in the asset management business. With entities filing as a US partnership for tax purposes now required by the Internal Revenue Service ("IRS") to appoint a US-based "Partnership Representative"[5] that will liaise with the IRS in the event of an audit and handle other relevant matters, we are seeing heightened interest from investment managers for our third party solution.

[5] https://maples.com/Knowledge-Centre/Industry-Updates/2018/12/New-US-Partnership-Representative-Requirements--Designation-Required-in-2018-Returns

The Bipartisan Budget Act of 2015 replaced the IRS requirement for partnerships to designate a "Tax Matters Partner" with a Partnership Representative and an associated "Designated Individual" to be named in the 2018 tax return and filed this year. While we expect a large number of US-based institutions will be able to assume this role for their structures, we have found that the appointment of an experienced professional service provider for Partnership Representative services can prove highly optimal in three key scenarios.

Managers Without a Material US Presence

The new rules set out that the Partnership Representative need not be a partner, and may be an entity. If the Partnership Representative is an entity, however, then the Partnership must appoint a single individual to act on its behalf (the "Designated Individual"). Both the Partnership Representative (if an entity) and the Designated Individual must have a substantial presence in the US, including a US taxpayer ID number, a US street address and phone number. They must also actually be contactable and available to meet with the IRS, when required, at a reasonable time and place.

Without a substantial presence in the US and sufficient staff available to fulfil the above criteria, non-US managers may require the services of an established third party to act on their behalf.

Structural or Regulatory Considerations

Some investment structures we see have multiple managers or other characteristics that mean managers based in the US may not wish to control the governance and administration of the structure. In these more unusual circumstances a third party provider, such as the Maples Group, may be more convenient.

Ease of Allocating Resource

Given the clarification from the IRS that the Designated Individual should be contactable and available to meet with the IRS on reasonable notice, we are seeing some US managers now engage a third party to provide this resource. CFOs, tax directors and other senior managers often have extremely busy schedules and, given the expanded scope of the new regime, do not have time or are unwilling to deal with such matters on short notice.

The Maples Group — Your US Partnership Representative Solution

With the requirement for parties acting as a Partnership Representative to be disclosed in tax returns for tax years beginning on or after 1 January 2018, now is an appropriate time to consider the need for a third party solution and the service provider best placed to fulfil this role.

Through its fund and fiduciary services businesses, the Maples Group has a deep and longstanding track record acting as Tax Matters Partner in Delaware and the Cayman Islands for a broad range of structured finance vehicles and investment funds. With a substantial presence and significant resources in the US, we are able to provide highly experienced professionals to act as designated persons for clients who do not have the infrastructure, capacity or desire to perform this function in-house.

In exercising these duties, our professionals work closely with the general partner and managing member of the partnership, as well as the administrator and US tax authorities to effectively discharge all obligations in this regard and provide guidance on all relevant regulatory and compliance matters.

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Your Global CLO Team – A CLOser Look

I am a partner in the Finance group in the Cayman Islands office, advising on CLO and other structured finance transactions, in addition to fund financing transactions and general banking and finance matters.

The Cayman Islands became my home in June 2011. Although I was born and raised in Nottingham in the UK, from an early age I would often sketch pictures of swaying palm trees and small tropical islands. Of course, I had absolutely no idea of what the future had in store for me during those childhood years, but clearly these musings were distinct signs of an interest in more tropical climes! Notwithstanding that, upon leaving home at the age of 18, I moved to the far from tropical (albeit very humid and wet) paradise that is Cardiff, Wales. It is here where I studied for my first degree, in chemistry. Struggling with the cool and damp weather, I leapt at an opportunity to escape to the University of Florence, between my second and third year, to undertake an Erasmus Scholarship in inorganic chemistry. Since this was my first trip abroad, there was lots of advanced planning involved. This included learning Italian and, regrettably, getting my mum to give me a smart haircut on the day before I left. I say "regrettably" as my mum decided to use me as a guinea pig to try out her swanky new clippers, but managed to overlook the need to attach the combs…! The result, one day prior to travel, was not a pretty sight…but a swift trip to a professional barber and I was then looking fit for travel. It turned out, however, that the lack of hair was in fact a blessing in disguise due to the intense heat of that summer in Florence…

Fast-forwarding to an industrial research placement year at Kodak and then graduation from Cardiff University, it was onwards and upwards to the University of Oxford for a doctorate in physical chemistry. University College became my home and it was there, back in 1999, that I first met the person who ultimately became my soul mate and, eventually, my husband. Needless to say, Oxford was an incredibly rewarding and enriching experience, quite surreal at times, with solitary periods of intensely hard work punctuated with special moments and supported by a network of incredible friends. It is as a result of this period in my life that some of my current colleagues at the Maples Group introduce me as "the rocket scientist". Although I did conduct the majority of my research at nuclear reactors and synchrotron facilities in the UK and France, thankfully no "rockets" were produced by my work! In many respects, however, this may have been luck more than anything, given the long hours and sleepless nights spent in the instrumentation control room.

With oodles of interesting data rapidly acquired, I upped-sticks and followed my partner to Germany – Cologne to be precise – from where I began writing-up my thesis while he took-up a visiting lectureship in law and, somewhat crazily, I embarked on a part time post-graduate degree in law, much to the protest of my doctoral supervisor, my friends and family! I ignored them all…and ploughed on… eventually submitting my doctoral thesis (with the catchy title of "Neutron reflection from systematically modified non-ionic surfactants adsorbed at hydrophilic interfaces")

James Reeve
Partner, Legal Services
Cayman Islands

and graduating from Oxford during my training contract as a solicitor with Slaughter and May, in London.

It was in Germany where my partner and I decided to commit to a life together and entered our civil partnership, which eventually got (somewhat spontaneously) ‘upgraded’ to marriage on a vacation to his homeland of Argentina. We bought our first home, a little cottage in the ‘Garden of England’, then, in an effort to mitigate the pain of a long commute to and from London, a flat in the City. Despite those arrangements, the pain and suffering imposed by the English weather and the short dark days of autumn and winter were too much to bear. The solution: the tropical paradise I had daydreamt about as a kid!

And so here I am. The Cayman Islands have been home now for over seven and a half years. My commute has been reduced to a five minute drive by the Caribbean Sea, and the cool and damp days have been replaced by blazing hot sunshine and occasional tropical rainstorms. A far cry from my hometown of Nottingham, but never have I lost sight of from where I came, what it took to get here and who has helped me along the way. Although settling in Cayman has itself presented its own set of unique challenges, I feel privileged to have this opportunity and to be working with such great colleagues and friends.

I work in the Maples Group's Dublin office on the structured finance team and I have served as director to various structured finance transactions since joining in 2016.

I have gained over 16 years of structured finance experience, having worked on an array of securitisation structures including covered bonds, RMBS, CMBS, CLOs and conduits in various jurisdictions and in various capacities as corporate services provider, security trustee, portfolio administrator and cash manager, as well as being a fund accountant in a previous life.

Over my career I have had a couple of stints working abroad, including a brief stretch in Frankfurt which encouraged me to take a position in Luxembourg with the added benefit of improving my German – or so I thought. I subsequently returned to Dublin with less German and potentially worse English, which might have more to do with my expat peers than anything else.

After a few years back in Dublin I got itchy feet again and took up a position in London with the intention of staying no more than three to four years. This turned into 10 years and I returned to Dublin with a wife, a son, and even worse English!

There was a period of adjustment on returning to Dublin. As a lifelong Liverpool fan, I particularly miss how easy it was to get along to games. I was fortunate enough to attend the Champions League final in Istanbul, however, after arriving at the stadium we realised that our tickets were in the AC Milan end. Somehow we managed to work our way into the Liverpool end, which was great, but of course all the goals and penalties were scored at the AC Milan end!

“This turned into 10 years and I returned to Dublin with a wife, a son, and even worse English!”

Michael Drew

Vice President, Fiduciary Services
Dublin

A Global Team

Our CLO team comprises 26 specialist CLO lawyers and 48 specialist CLO fiduciary professionals across our global network.

Since the inception of the CLO market over 20 years ago, we have provided our clients with the benefit of our unparalleled depth of knowledge, experience and insight into what we see across the whole structured finance market, from the latest warehousing structures, to the latest regulatory developments and how they impact CLOs, to ongoing post-closing CLO issues.

For further information, please speak with your usual Maples Group contact, or the following primary CLO contacts:

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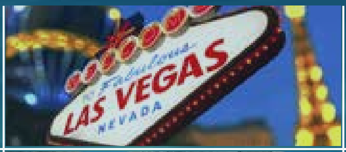
MAPLES GROUP

Forthcoming Events

Members of the Maples Group CLO team will be attending the following industry events during H1 2019:

24-27 February

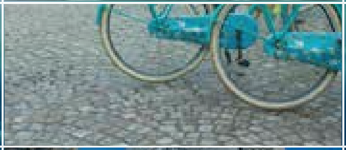


SFIG Vegas 2019
Aria Resort
Las Vegas, NV

14 March

The 1st Annual Investors' Conference on CRE CLOs
Marriott New York Downtown
New York, NY

21 March



IIR Securitisation Event
Barbizon Palace
Amsterdam, Netherlands

20-21 May

The 8th Annual Investors' Conference on CLOs & Leveraged Loans
Sheraton New York
New York, NY

11-13 June

Global ABS 2019
Centre Convencions Internacional Barcelona
Barcelona, Spain