Guidelines produced by working group pave way for CMBS 2.0 by finding possible solutions to conflicts between different classes of bondholders

CREFC launches blueprint for revival of CMBS market

The Commercial Real Estate Finance Council Europe (CREFC) has launched guidelines to help structure CMBS deals and support the product's rehabilitation.

The guidelines, presented at a briefing on 24 July, promote "simple structures, transparency and increased confidence among investors", said Nassar Hussain, Brookland Partners' managing partner and head of the working group that drafted the guidelines for CREFC.

The guidelines span five main areas: improving information disclosure; excess interest paid to arranging banks; identifying and monitoring deals' investors; the role of servicers and controlling investors' rights in deals; and structural features.

They draw on lessons learned from previous European CMBS deals, particularly areas that have proved controversial when loans default.

Paul Hastings' finance partner Charles Roberts, one of a seven-strong panel presenting the guidelines, said it was crucial for offering circulars to make it clear how arranging banks extract revenue from deals.

Interest from CMBS loans exceeds the interest on CMBS notes and this "excess spread" is kept by banks, often by structuring class X notes and owning them. Roberts said interest cashflow and the excess interest on notes should first be used to pay expenses on the CMBS loan, rather than taking this away from bondholders.

Clive Bull, a Deutsche Bank director of European commercial real estate, said a proposal to end the practice of class X noteholders being paid ahead of investors when loans default meant "bond-holder anger has been removed. That should take the heat out of the class X issue."

Rob Marshall, head of ABS research at CMBS investor M&G Investment Management, said he expected the guidelines to be used as a template in future "in putting together a decent deal". He reported the creation of a "noteholder forum" to track down other bondholders.

Bank of America Merrill Lynch's Mark Nichol, analyst in the structured finance research team, reported a proposal to "shut off out-of-the-money tranches", preventing investors that hope to regain some of their lost money by holding out for an extension from blocking proceedings.

He also flagged up the attempt to get note trustees to act when required upon appropriate advice: "Where you need trustees to approve a decision, [the recommendations] make it harder for them to seek indemnities [against being sued]".

On replacement of special servicers by the controlling debt investor, Jim O'Leary of Capita Asset Services described veto rights that other noteholders could use if they believed the switch was not in the interest of the overall group.

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Hussain: the CMBS guidelines produced by CREFC working group will promote "simple structures, transparency and increased confidence among investors"

CREFC launches blueprint for CMBS 2.0 (cont. from p1)

O'Leary also said new servicers should have to prove they had not paid controlling parties to vote through a change of special servicer.

There have been only a few small CMBS issues since the market effectively closed in 2007 and the guidelines will be no "magic bullet", admitted Christian Janssen, co-head of lending at Renshaw Bay.

Hussain said the wider macro-economic issues creating price volatility and preventing banks from originating loans for CMBS need to "die down" first.

An estimated €75bn of European CMBS loans, most originated at the peak of the market, need refinancing or will suffer losses.

But Marshall said: "We have received a number of proposals for new CMBS deals over the past six months."

CREFC will seek feedback by 18 September on the guidelines, which are available at: www.crefc.org/eucmbs20