

SEC Issues No-Action Relief for Refinancing Certain Legacy CLOs

On July 17, 2015, the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission issued a no-action letter to Crescent Capital Group LP ("Crescent Capital") in response to a letter from Cleary Gottlieb on behalf of Crescent Capital requesting relief from the risk retention requirements of Section 15G of the Securities and Exchange Act of 1934 (the "Risk Retention Rules") that would otherwise apply to a refinancing of notes issued in a legacy collateralized loan obligation ("CLO") transaction. Subject to the conditions listed below, for CLO transactions that priced before the final Risk Retention Rules were published on December 24, 2014, the no-action letter permits the refinancing of CLO notes without the collateral manager retaining an eligible risk retention interest under the Risk Retention Rules.

CLO transactions involve a special purpose issuer (a "CLO entity") acquiring a portfolio of commercial loans and issuing multiple classes of secured notes and subordinated interests. Depending on the interest rate environment, it is not uncommon for the interest rates on the secured notes to be reduced to market rates through a refinancing, following an initial "non-call" period of two years. Accordingly, this no-action relief may be of significance to the CLO market.

To qualify for the no-action relief, the refinancing of CLO notes ("Refinancing") must satisfy the following conditions:

- The Refinancing will be completed (*i.e.*, by the issuance of the relevant refinanced notes) within four years after the original closing date of the CLO transaction;
- The interest rate applicable to the refinanced notes will be lower than the interest rate of the original notes;
- Other than the reduction of the interest rate of the original notes, after giving effect to a Refinancing:
 - the CLO entity's capital structure will be unchanged;
 - the principal amount of the refinanced notes after a Refinancing and the original notes after a Refinancing will be the same;
 - the priority of right of payment of the refinanced notes and the original notes will be the same;
 - the voting and other consent rights of the refinanced notes and the original notes will be the same; and
 - the stated maturity of the refinanced notes and the original notes will be the same;
- The CLO entity's investment criteria will not change as a result of the Refinancing;

- No securitization of additional assets will be effected by a Refinancing (*i.e.*, proceeds from the issuance of the refinanced notes will be used only for the redemption of the original notes), it being understood that the collateral manager will continue to actively manage the collateral obligations on the CLO entity's behalf;
- No additional subordinated interests will be issued in connection with a Refinancing;
- Refinancing will not cause the identity of the holders of subordinated interests to change;
- Refinancing of different classes of secured notes may occur on different dates; however, each class of secured notes will be subject to only one Refinancing and the supplemental indenture executed in connection with Refinancing each class will prohibit any further Refinancing of the refinanced notes;
- The offering document for the refinanced notes will, among other things:
 - include a prominent statement (*e.g.*, on the cover of the offering document) that the sponsor is not retaining a risk retention interest contemplated by the Risk Retention Rules in connection with a Refinancing or the refinanced notes;
 - describe the interest rates of the refinanced notes and confirm that all other legal and economic terms of the refinanced notes will be the same as the original notes; and
 - include a statement in a section entitled "Credit Risk Retention" to the effect that reliance on the no-action letter does not preclude the availability of any applicable private rights of actions for any violation of the federal securities laws.

A copy of the no-action letter is available [here](#).

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If you have any questions, please feel free to contact [Michael Mazzuchi](#), [Paul St. Lawrence](#) or [Joyce McCarty](#) of our Washington office or any of your regular contacts at the firm listed on our website at www.clearygottlieb.com.

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