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Bank Securitization and Systemic Risk
Control:
Exploring Sound Legal Criteria concerning
Securitization on the Basis of the US and the
EU Practice
銀行資產證券化和系統風險控制：
於美歐實踐基礎上探討證券化的良好法律
標準

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ABSTRACT

The global financial crisis broke out in the U.S. in 2007 caused financial turmoil and economic recession worldwide. The vulnerability of the global financial system mirrored in this global financial crisis puts the issue of financial system stability under the spotlight. Researching on systemic risk control becomes a heated topic in the aftermath of the financial crisis. On the one hand, as one of the most innovative financial instruments, securitization got notorious during the financial crisis. It was even regarded as one of the major “culprits” leading to system breakdown. On the other hand, securitization is always deemed as the epitome of financial practice transformation in modern times, which reveals the value of its existence and development. The fast expansion of this particular industry and its contribution to financial innovation vis-à-vis its potential adverse effect show the necessity of exploring sound laws to avoid perils in the operation.

The study aims to underpin the potential interrelationship between securitization transactions and systemic risk and appropriate financial regulatory countermeasures. The study serves to build a comprehensive framework of common and effective legal criteria concerning the adjustment of securitization for the purpose of systemic risk control. The study adopts an interdisciplinary approach, *i.e.*, law and economics, whereby economic findings and criticisms provide “ought to be” guidance for legal regime improvement. Besides, the doctrinal approach is employed, whereby the most recent reforms to the U.S. and the EU laws as well as international documents act as sample models for revisiting legal requirements under systemic risk control. The study also applies a comparative approach to show the trend of legal convergence and to prove appropriateness and commonness of the legal regime this thesis constructs.

For systemic risk control, the legal adjustment of securitization needs to highlight the interrelation with the financial system. Institution-based and market-based approach ought to be combined for forming a sound framework, where the correlated institutions and markets that are involved in securitization shall be regulated. Essentially, macro-economic factors shall be emphasized and addressed together with the refinement of traditional micro-economic measures. Ultimately, externalities shall be controlled for the efficiency of the system and financial system shall be stabilized to prevent the future financial crisis. At the times of globalization, there is also high necessity to call for international financial cooperation and coordination.

LIST OF ABBREVIATION AND LEGISLATION

ABS	Asset-backed security
ABCP	Asset-backed commercial paper
AiFMD	Alternative Investment Fund Managers Directive
ANPR	Advance notice of proposed rulemaking
ARM	Adjustable-rate mortgage
ASF	American Securitization Forum
BCBS	Basel Committee on Banking Standards
BCD	Banking Consolidation Directive
BHC	Bank holding company
BIPRU	Prudential sourcebook for Banks, Building Societies and Investment Firms
BIS	Bank for International Settlement
CAD	Capital Adequacy Directive
CBO	Collateral debt obligation
CBRC	China Banking Regulatory Commission
CCAR	Comprehensive capital analysis and review
CCF	Credit conversion factor
CCP	Central counterparties
CDO	Collateralized debt obligation
CDS	Credit Debt Default Swap
CEA	Commodity Exchange Act
CEBS	Committee of European Banking Supervisors
CEIO	Credit-enhancement interest-only strip

CESR	Committee of European Securities Regulators
CET 1	Common equity tier 1
CGFS	Committee on the Global Financial System
CFIM	Coordination Framework for Implementation Monitoring
CFMA	Commodity Futures Modernization Act
CFTC	Commodity Futures Trading Commission
CLN	Credit-linked note
CLO	Collateral loan obligation
CMBS	Commercial mortgage-backed security
CMO	Collateralized mortgage obligation
CP	Commercial paper
CPSS	Committee on Payment and Settlement Systems
CR	Credit rating
CRA	Credit rating agency
CRD	Capital Requirements Directive
CRM	Credit risk mitigation
CRR	Capital Requirements Regulation
CSRC	China Securities Regulatory Commission
CVA	Credit valuation adjustment
DCO	Derivatives clearing organization
DFAST	Dodd-Frank Act stress test
DTCC	Depository Trust & Clearing Corporation
EBA	European Banking Authority
ECAI	Eligible external credit assessment institution
ECB	European Central Bank

EMIR	European Market Infrastructure Regulation
EU	European Union
ESMA	European Securities and Market Authority
ESRB	European Systemic Risk Board
Fannie Mae	Federal National Mortgage Association (FNMA)
FASB	Financial Accounting Standards Board
FCC	<i>Fonds commun cr áances</i>
FDIC	Federal Deposit Insurance Corporation
Freddie Mac	Federal Home Loan Mortgage Corporation (FHLMC)
FSA	Financial Services Authority
FSAP	Financial Sector Assessment Program
FSB	Financial Stability Board
FSOC	Financial Stability Oversight Council
FSF	Financial Stability Forum
FSMA	Financial Services and Markets Act
FVC	Financial vehicles corporation
G10	Group of Ten
GAAP	General applied accounting principle
GENPRU	General Prudential sourcebook
Ginnie Mae	Government National Mortgage Association (GNMA)
GLB Act	Gramm-Leach-Bliley Act
GSE	Government sponsored entity
G-SIB	Globally systemically important banks
IAA	Internal assessment approach
IADI	International Association of Deposit Insurance

IAIS	International Association of Insurance Supervision
IASB	International Accounting Standards Board
ICAAP	Internal capital adequacy assessment process
IF	Investment fund
IMF	International Monetary Fund
IMN	Implementation Monitoring Network
IOSCO	International Organization of Securities Commissions
IPO	Initial public offering
IRB	Internal rating-based
IRC	Incremental risk charge
ISDA	International Swaps and Derivatives Association
LLC	Limited liability company
LTV	Loan-to-value
MBS	Mortgage-backed security
MiFID	Financial Instrument Directive
MMF	Money market fund
NPR	notice of proposed rule-making
MSFA	Modified supervisory formula approach
NRSRO	Nationally recognized statistical rating organization
OCC	Office of the Comptroller of the Currency
OTC	Over the counter
OTS	Office of Thrift Supervision
QSPE	Qualifying special purpose entity
RBA	Rating-based approach
RBCG	Risk-Based Capital Guidelines

RMBS	Residential mortgage backed securities
ROSC	Observance of Standards and Codes
RRBA	Revised rating-based approach
RW	Risk weight
SA	Standardized approach
SB Swap	Security-based swap
SCAP	Supervisory capital assessment program
SCSI	Standing Committee on Standards Implementation
SDR	Swap data depository
SEC	Securities and Exchange Commission
SEF	Swap execution facility
SFA	Supervisory formula approach
SIFI	Systemically important financial institution
SIV	Structured investment vehicle
SLHC	Savings and loan holding company
SMB	State member banks
SPE	Special purpose entity
SPV	Special purpose vehicle
SREP	Supervisory review and evaluation process
SRO	Self-regulatory organization
SSB	Standard setting body
TC	Technical Committee
TFUMP	Task Force on Unregulated Financial Markets and Products
TIW	Trade Information Warehouse
UCITIS	Understandings for collective investment in transferable

	securities
VaR	Value-at-risk
VIE	Variable interest entity

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