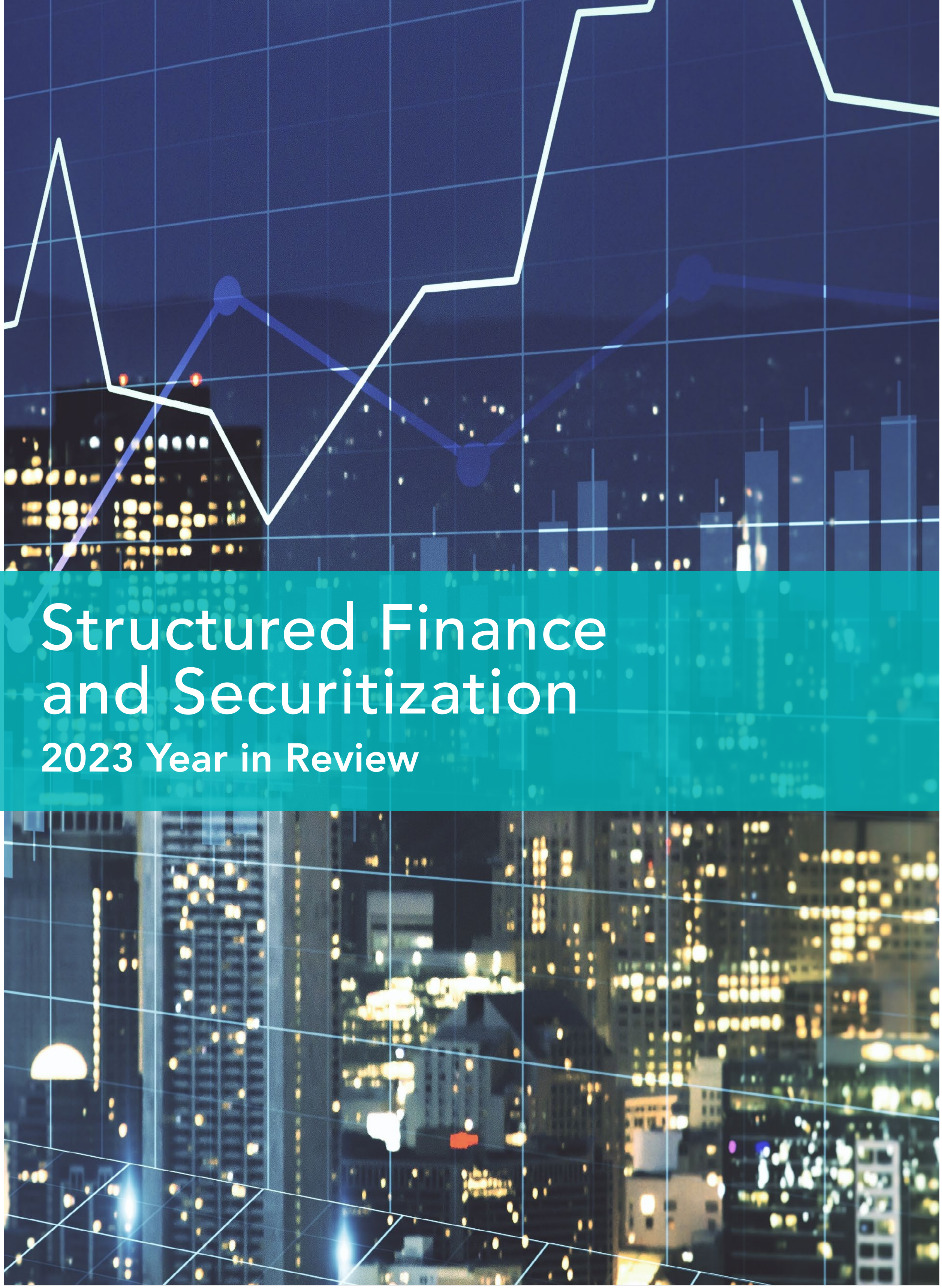

Structured Finance and Securitization

2023 Year in Review

HUNTON
ANDREWS KURTH

INTRODUCTION

2023 was interesting. While interest rates and other headwinds slowed "regular way" securitization, debt capital markets and lending activity, and loan production in the mortgage and consumer finance areas, it was a year for revival of HELOC and second lien securitizations, M&A activity, joint ventures, fund formation, and other innovative approaches to capitalize on what was hot in 2023. With the resilience of the US economy, the steady reduction of inflation and the avoidance (we hope) of a recession, and with some measure of interest rate relief in the offing, we have high hopes that 2024 will pave the way for a normalized environment for the next wave of regular way capital markets activity and therefore will see a strong increase across the board in structured finance, securitization, and transactional work around the finance industry.

We are grateful to our clients for their trust and confidence in us and look forward to working together again in what will no doubt be an interesting 2024. Below is a summary of our team's activities in 2023 and some of our projections for 2024.

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Residential Mortgage-Backed Securities ("RMBS")

In 2023, the private label securities RMBS market was negatively impacted by overall market volatility, particularly as a result of fluctuating interest rates and high inflation. America's housing market in fact experienced one of its worst overall years in recent history and RMBS issuance in 2023 was down approximately 50 percent from the prior year. The continued concerns about the stability of the real estate markets and overall economic conditions in the United States, when coupled with the overall decrease in mortgage origination volume, made 2023 a challenging year for securitization, and will likely make 2024 a bit challenging as well. We have seen, however, signs of life, as non-QM issuance has remained relatively strong, even if issuance has been rather spotty, and issuers are more bullish that stabilizing (and potentially decreasing) interest rates will bring more deals in 2024. Transaction structures designed to broaden the universe of investors have gained traction. For example, there is more attention to compliance with EU risk retention rules in order to attract more European money into the game. We have also seen more deals in which sponsors are working together to co-sponsor transactions, which allows them, when collateral is scarce, to combine resources, share deal costs and jointly market transactions.

Nevertheless, mortgage rates are expected to stay relatively high in 2024 (even if they creep down from recent highs), which will negatively impact demand and discourage sales, especially with many homeowners locked in with low interest rates, making it economically unfeasible to move. Furthermore, as lenders have tightened their underwriting criteria, borrowers who want to move may struggle to find a mortgage that suits their needs. The current market conditions however have led to the opening up of other securitization channels. For instance, homeowners looking to take advantage of the equity they built in their home during COVID-19 are turning to HELOCs and other products to tap that equity. As a result, the securitization markets are seeing new programs being introduced that are securitizing HELOCs and other new products, such as home shared appreciation contracts. Furthermore, we anticipate that there will be more single-family rental ("SFR") securitizations next year as we continue to see a rising rental demand (coupled with poor supply of homes).

On the bright side, most securitizations are still experiencing steady credit performance, with early- and late- stage delinquencies trending relatively low. Also the Federal Reserve has indicated that it will likely cut interest rates in 2024. As a result of all of these factors it is hard to anticipate what 2024 will bring, but we, along with our issuer clients, are cautiously optimistic that we will see a rebound in certain sectors.

Reverse Mortgage Securitization

Largely due to dramatic interest rate increases, FHA-insured home equity conversion mortgage ("HECM") and proprietary reverse mortgage originations declined markedly in 2023. The securitization market for reverse products also declined in 2023, due to those dramatic interest rate increases, lower origination volume and, for HECMs, changes in FHA policies brought about in response to originator economic challenges. In response to these market forces, issuances often had higher retention of subordinate bonds in order to close their deals, though often retained bonds were subsequently sold post-closing.

Hunton Andrews Kurth regularly represents initial purchasers and issuers of insured and private reverse mortgage securitizations. Despite the reduction in volume in 2023 of reverse mortgage originations and securitizations of insured and private reverse mortgages, the securitization prospects for reverse products for 2024 is full of opportunity, particularly for players looking to increase market share.

Credit Risk Transfer

2023 marked a return to the capital markets for most mortgage insurance-linked note ("MILN") issuers, though the issuance volume did not match the pre-2022 MILN activity. The Security and Exchange Commission's recently announced final conflict of interest rule ("COI Rule") resolved concerns raised by the earlier re-proposal of that rule that MILN transactions could be conflicted transactions

prohibited by that rule. Beginning in the spring, three mortgage insurer ("MI") issuers conducted tender offers to reduce their exposure on certain outstanding deals, which freed up capacity in the investor space. Over the summer and fall, five MIs returned to the capital markets with new issues, the first MILNs since the fall of 2022. Despite the return to the market by these MIs, and certain other positive factors including the private reinsurance market reducing capacity as an alternative to using MILNs for capital relief measures, other factors, such as reactions to the revisions to S&P's financial strength ratings criteria for insurers, make it difficult to predict whether 2024 will reflect a resurgence of offerings. However, such deals did demonstrate a continued commitment to the asset class by the MIs.

Freddie Mac's STACR Program had a drop in issuance volume and size compared to 2022, a development that was not unexpected given the current market, with five STACR deals issued in 2023 with an aggregate size of around $2.8 billion. Freddie Mac's STACR program pivoted to address the high cost of issuance, including issuers retaining more subordinated risk in certain deals and most recently introducing a fast-paying senior bond that amortizes at an accelerated rate after three years, to more closely align with the capital relief the MI issuer needs as the deal ages. With respect to Fannie Mae, its CAS program had eight issuances, totaling an aggregate size of almost twice that of Freddie. Both GSEs continued to conduct tender offers for previously issued debt and trust securities, with Freddie Mac offering its first tenders of REMIC securities. The final COI Rule removed the exemption for the GSEs from the definition of "sponsor" during their conservatorship, and instead clarified that the GSE CRT issuances could be completed pursuant to the risk-mitigating hedging exemption by removing language that would have excluded the initial distribution of an asset-backed security from fitting within the exception. These revisions removed some ambiguity about whether the COI Rule, as initially reproposed, would limit the GSE CRT transactions. Fannie has announced it currently expects to issue a total CAS volume of around $4 billion across five to seven transactions, a decrease due to the lower production in 2022. Freddie Mac's proposed issuance calendar reflects an expectation of one or two issuances each calendar quarter, with an estimated three to four tender offers for the year (all dependent on market conditions).

Hunton Andrews Kurth represents issuers and initial purchasers of credit risk transfer issuances and has been at the forefront of assisting in structuring transactions to address novel tax, regulatory and capital treatment concerns.

Warehouse Financing

The year 2023 was challenging for the mortgage loan warehouse lending industry. Mortgage interest rate increases spelled the end of the refinancing boom. These increases were paired with a decline in the origination of purchase money mortgage loans in the second half of 2023. Demand for traditional warehouse facilities, particularly those providing financing for agency-eligible mortgage loans, largely fell. Many mortgage originators terminated warehouse facilities or lowered their maximum facility sizes to reduce unused fees. Gestation facilities were less popular for the same reasons. The interest rate environment also eliminated the incentives for purchasing, financing and securitizing early buyout loans ("EBOs"). The collapse of several market participants caused significant market disruption and offered many insights into both benefits and shortcomings of certain warehouse facilities. Despite the overall downward trend, we saw new mortgage loan aggregators entering into warehouse facilities to finance their expected production. We also saw non-US banks entering the industry and providing warehouse financing. The implementation of the Basel III Endgame this year will likely strengthen this growth as more financings are pushed to non-US banks. We believe that these trends will continue in 2024.

FORECAST FOR 2024 CONTINUED

Demand for warehouse financing of non-traditional assets continued despite downward trends elsewhere in the industry. Moreover, some products that serve as alternatives to traditional mortgage loans proved very popular. For instance, we saw an increase in facilities financing home equity appreciation contracts. We amended a number of existing warehouse facilities to permit the financing of second lien mortgage loans—not only HELOCs, but also closed-end second lien loans. Despite the interest rate environment, we expect that warehouse lending will continue to be an attractive financing option for an ever-expanding list of mortgage and non-mortgage products, including nonperforming and re-performing mortgage loans, REO properties, non-QM mortgage loans, fix-and-flip loans, investor rental loans and crop loans. Because of our deep understanding of the industry, in 2023 we provided sellers and buyers the service and advice they needed in this ever-changing landscape, and our client base continues to expand. We look forward to helping our clients find opportunities in the coming year and beyond.

Single-Family Rental

The single-family rental ("SFR") activity continued at reduced volumes following last year's slow down. We have remained active in advising clients in the sales, acquisitions, financings and refinancings of SFR property portfolios of various sizes. We have advised several REIT clients on equity raises, as well as other REITS as they have expanded into this asset class. We completed several securitizations for our sponsor clients, who have been particularly focused on the build-to-rent sector and partnerships with home builders/developers.

Mortgage Servicing Rights Financing and Investments

Interest rates, and in particular mortgage rates, continued to rise in 2023. Because mortgage servicing rights valuations tend to rise as prevailing mortgage interest rates rise and to hold value as interest rates stabilize at "higher-for-longer" levels, investor appetite for MSRs as hedges against mortgage and MBS portfolios remains strong. While new investors looking to fund MSR acquisitions may have missed opportunities to do so at the 2020 and 2021 prices which now look significantly depressed after interest rates rose dramatically in 2022, "higher-for-longer" interest rates and the resulting reduced prepayment speeds compared to pre-2022 levels now provide some additional comfort to investors looking to enter into or expand within the space with a different risk appetite. MSR financing and investment experienced an uptick during 2023. If 2024 sees falling interest rates, we may expect to see prepayment rates on the most recent, higher-rate mortgage loans to increase, but if rates generally stay "higher-for-longer", MSRs could retain higher values than they had during the years of refi booms. We expect the MSR market to remain active for 2024.

Bilateral MSR trades continued as a popular means to source liquidity and cash for smaller to mid-sized servicers throughout 2023, and larger servicers were eager to upsize their portfolios. Bilateral and "club" loans were a popular source of liquidity in 2023 for servicers seeking leverage on their MSR portfolios, including purchase financing. Also, several investors who sought exposure to MSR assets without setting up a servicing portfolio company of their own acquired interests in excess servicing spreads from servicers looking for long-term leverage on their MSRs without mark-to-market risk inherent in MSR secured loans. Servicers have continued to borrow under pre-existing master trust structures by issuing new variable funding notes and privately placed term loans. Regional and smaller bank lenders have continued to provide privately placed term loans to finance MSR portfolio acquisitions.

The use of excess servicing strips and similar structured investments in servicing economics further accelerated in 2023. Such structures allow servicers to access capital investments from a broader spectrum of investors than traditional asset-based or high-yield debt, without taking on mark-to-market risk. Investor interest in excess servicing strips has continued the expansion we saw in 2022 as private equity funds and REITs seek ways to participate in an asset that many feel can produce an attractive yield, and that can be advantageous for tax and other purposes and as a hedge against portfolios of whole mortgage loans and MBS. If, as many expect, rates stabilize at their

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new levels or even fall slightly, prepayments will remain at significantly lower rates than were seen in the decade plus following the global financial crisis, thereby extending the life of mortgage servicing rights and maintaining or increasing their values at levels above MSR values that were generally obtained during the post-global financial crisis years, to the extent not undercut by other factors (for example, should delinquencies increase due to inflation or other economic factors that affect homeowners). It is more difficult to predict prepayment activity with respect to any mortgage loans originated in the latter half of 2022 and during 2023 at higher interest rates. As rates stabilize, the newer production may be more vulnerable to prepayment than the production from previous years through 2023. Prepayment rates may also tick up from their historic lows as home sales eventually begin to revive, driven by pent up housing demand. Servicers and investors have found price points that have worked for both sides, and we expect excess servicing spread investment activity to continue in 2024. Servicers participating in these types of transactions continue to consider the impact of their structures in connection with the GSE requirements relating to tangible net worth and liquidity that took effect earlier this year. While the Ginnie Mae Risk Based Capital requirements have been further delayed with a current mandatory implementation date of December 31, 2024, due to the uncertainty around what will ultimately be required in connection with the rule or whether additional modifications to the requirements will be made, servicers

are presently taking the existing version of the requirement into consideration when structuring spread investment transactions, particularly when additional leverage is utilized to finance any portion of the acquisition activity.

We have represented and advised numerous fund investors and REITs on excess spread investments through private equity and lending structures, and several servicers in connection with joint ventures to facilitate investments in servicing cash flows. We have represented lenders and borrowers on numerous loans secured by agency servicing rights and agency and private-label pools of excess servicing spreads associated with MSR portfolios. We have also represented lenders, underwriters and issuers in several securitizations secured by Ginnie Mae, Fannie Mae, Freddie Mac and private-label MSR portfolios.

Highlights:

- We represented underwriters and issuers in connection with structuring, amending and financing structured financing facilities backed by excess servicing spreads and MSR collateral, including both revolving bank-funded notes, term loans and term securities, including representing investment banks in the securitization financing of Agency, GNMA and private-label servicing collateral.
- We closed multi-lender and bilateral secured term loans with and without delayed draw capacity, in some instances coupled with financing for private equity and REIT debt investors to produce a desirable return, each with different features tailored to the respective lender groups.
- We advised on transfers of servicing cash flows through joint venture structures to enable private equity investment in servicing cash flows while leaving the servicing performance and the related compensation with the operating servicing company without mark-to-market exposure. We have represented both servicers and investors in these structures.
- We advised on the financing of investment interests in excess servicing spread investment vehicles.

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Our multidisciplinary team is dedicated to remaining at the forefront of these market developments and we expect to facilitate more innovative solutions for our bank, investor and servicer clients in the coming year. Hunton Andrews Kurth has given multiple presentations over the course of 2023 to both active and potential investors in mortgage servicing rights. Please reach out to our team if we could be helpful in providing any general or more bespoke educational opportunities for your group.

MSR Sales and Servicing

Substantially increasing interest rates in 2022 to 2023 resulted in the lowest loan origination volumes in over two decades. This obviously has and will continue to substantially impact the volume of MSR sales in the near term. The Federal Reserve put at least a temporary hold on further increases at the end of 2023, and have "penciled in" up to three modest reductions (quarter point increments) for 2024. On the bright side, with significant refinancing activity not on the table, the value and pricing of servicing rights increased substantially during the course of the year and some originators and MSR investors have been cashing in their chips in bulk transactions. In some cases for originators, this was driven by a need to raise capital at a time when loan origination volume is depressed. We are seeing a continued uptick on flow MSR purchase and sale arrangements, with investors looking to enhance buying opportunities and originators look to obtain best execution pricing by opening up channels with multiple MSR investors. In some cases, where sellers have a servicing platform, they will retain the subservicing as a source of ongoing income and to facilitate recapture arrangements. Many of these flow transactions are tied to Fannie Mae and Freddie Mac bifurcated co-issue or Ginnie Mae PIIT arrangements.

Residential Whole Loan Transactions

Not surprisingly, whole loan purchase and sale activity for residential mortgage loans was muted in 2023 as origination volume was substantially down from the low interest rate boom era. The end of the year saw the Federal Reserve put at least some temporary brakes on further rate increases and hinted at possible modest reductions in interest rates during 2024, which should help increase mortgage activity. Mortgage rates did start to come down a bit at the end of 2023. We did see increased whole loan activity for HELOCs and closed end second lien loans as originators expanded their products lines to facilitate more loan volume. We also saw decent volume in other product types, such as business purpose loans, scratch and dent transactions and reperforming loans. Overall, it is feeling like the whole loan market may have bottomed out in 2023 and that there could be an upward volume trend for 2024.

Servicer Advance Financing

Servicers continued to utilize servicer advance financing in 2023 at levels consistent with 2022. Non-bank servicers, both big and small, remain focused on shoring up liquidity sources to make sure they have funds available, if needed, to make necessary advances in private label securitizations, Ginnie Mae MBS and GSE transactions. Several new servicer advance facilities (mainly related to GSE transactions) were established in 2023, and existing facilities underwent routine maintenance including pricing adjustments, final LIBOR transition amendments with the end of LIBOR in June 2023, and a mix of capacity upsizes and downsizes in connection with annual renewals. The inflationary market increased merger and acquisition activity among non-bank servicers in 2023. Many acquiring servicers sought to finance the servicing advance receivables of the target servicer leading to an increase in receivables transfers (including additions and removals) and amendments of the change of control provisions in existing servicer advance facilities. With interest rates remaining "higher-for-longer" in the last half of 2023, increased prices for goods and services, and other effects of inflation, the potential for increased borrower delinquencies sustained steady servicer demand for servicer advance financing (unrelated to Ginnie Mae MSR financing) in the second half of 2023 and may lead to an uptick in the coming year. While those pressures have eased slightly (with interest rates beginning to decline), monthly mortgage obligations as a share of household income for new mortgages remain historically high. If delinquencies spike, servicers will need to utilize the dry powder in their established (or recently created) advance financing

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facilities to cover their contractual obligations to advance and may be considering avenues to diversify their funding sources to ensure adequate liquidity. The Basel III Endgame rulemaking introduced in July 2023 will likely have an impact on non-bank servicer activity in 2024 as large US banks with assets over $100 billion seek to dispose of certain assets, such as mortgage servicing rights, that may require them to hold burdensome amounts of regulatory capital, with advance financing facilities being an ideal means of acquisition financing for acquiring entities. Servicer advance facilities provide a reliable and efficient liquidity source for servicers especially during periods of uncertainty. The availability of servicer advance financing remains critical as the mortgage industry continues to weather the economic impacts of persistent elevated interest rates and inflationary pressures and will be key to the resulting economic recovery.

Many market participants believe that the need for servicer advance financing in 2024 will continue to be particularly acute for Ginnie Mae servicing. Ginnie Mae's Guide and servicing contracts do not provide for reimbursement of a terminated servicer for its unreimbursed advances, either out of future pool cash flows or from a successor servicer. As a result, Ginnie Mae servicer advance financing is usually provided as part of an overall MSR financing, because the lender's recovery in the case of termination will come from liquidation of the MSR. As a result, the availability of financing to cover Ginnie Mae servicer advances has historically been limited, and an adjustment to provide for post-termination recovery of unreimbursed advances to creditors of a terminated servicer aside from a transfer of issuer responsibility to a new servicer will be necessary for servicer advance financing to be widely and efficiently available with respect to Ginnie Mae pools.

Regulatory/CFPB Developments and Projections

We expect consistent regulatory investigations by all the federal agencies in 2024 and increased regulatory activity from state regulators.

During 2023, regulatory activity continued to focus on mortgage lending/servicing and fair lending issues through the United States Department of Justice ("DOJ") Combatting Redlining Initiative. The DOJ advised that moving forward, priority areas for regulatory action will focus on algorithmic bias and discrimination in underwriting and appraisal discrimination. Lenders should confirm that their appraisal-related and fair lending policies and procedures are up-to-date including sufficient oversight to identify and quickly respond to any potential concerns.

In 2024, the Federal Trade Commission ("FTC") and the Consumer Financial Protection Bureau ("CFPB") will continue unfair, deceptive, acts or practices ("UDAP") enforcement efforts targeting "junk fees" and have recently proposed rules to regulate so-called "junk fees" and required fee disclosures.

Finally, changes in liquidity and capital requirements at the Federal Housing Finance Agency ("FHFA") and GSE levels may continue to cause some uncertainty in the market.

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Consistent with the federal regulators' collaborative enforcement efforts, state level enforcement—typically through Attorneys General offices—show an increased focus on licensure considerations for both consumer and commercial lending, pre-loan disclosures for both consumer and commercial transactions, and "junk fees."

We expect 2024 to be another eventful year. In 2024, we expect regulators to continue to focus on consumer protection with a particular focus on fair lending, with an emphasis on use of algorithmic or machine learning decision making, and prohibitions on perceived "junk" fees.

Home Equity Investment Contracts

Interest in Home Equity Investment (or Home Price Appreciation) contracts remained strong in 2023. Unlike traditional mortgage loans, these products are structured as an investment in the individual home. As a result, the homeowner agrees to forego a portion of either the home value or the increase in home value, but has no current payment obligations. We saw increased activity in both term securitization and warehouse lending arrangements during 2023 and expect that to continue during 2024. Notably the first rated securitizations in this asset class occurred during the fourth quarter of 2023.

Fintech

Of particular note in the fintech space this year was activity resulting from the Federal Reserve's interest rate increase policy. Legacy portfolios of fixed rate assets originated prior to the increases lost value and access to similarly priced financing. Also, platforms without the market power to sufficiently increase pricing on their new originations were unable to generate expected levels of income and return on capital. As a result, we saw increased client activity by funds purchasing dislocated portfolios and by platforms, bank partners and lenders amending or working out stressed financing arrangements. In addition, Hunton Andrews Kurth's 2023 activities in the fintech area included, among other things, representing online lenders and loan sellers in securitizations and whole loan sales, advising online platforms on federal and state regulatory compliance and related matters (including investigations), transactions under flow purchase programs for online platforms and their investors, advising lenders to online lending platforms, advising funds and community banks originating or investing in US fintech assets, advising offshore fund and non-fund investors in US federal income tax aspects of investing in US marketplace loans and other fintech assets, and representing banks providing origination services and warehouse programs to online lending platforms.

Mortgage Industry M&A and New Mortgage Market Entry

M&A activity in the mortgage industry in 2023 tracked macro-trends of slowing M&A activity with some patterns that emerged in the second half of 2022 continuing throughout the past year. As interest rates continued to rise and originations declined, prospective buyers hoped to account for the market shift by focusing on counter-cyclical parts of the market, particularly non-traditional origination assets, such as reverse mortgages and mortgage servicing rights ("MSRs"). Servicing and subservicing assets and platforms remained attractive as well. Strategic financial buyers flocked to servicing platforms, technology investments and MSR pools. They often found matches with sellers looking to refocus their business strategy or sellers in need of liquidity.

Licensing continued to be a key driver of acquisitions, leading to an increased focus on structuring and timing considerations in transactions involving servicing platforms with an increased premium placed on entities holding licenses in jurisdictions where regulatory lead-times for approvals have lengthened in the past 12 to 18 months, such as New York. These regulatory factors resulted in a continued prevalence of "shell" transactions where sellers who owned a licensed entity could extract a premium for buyers for the equity of the entity itself due to holding licenses that could potentially take years to acquire for a new entity.

In addition to regulatory drivers, a continued decrease in origination volume led some industry players to

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"reset" and divest non-core assets, such as the servicing businesses of traditional originators. While certain of these divestitures were simply due to a shifting focus of sellers, the regional banking crisis that roiled the US and international financial sectors in the first half of 2023 also led to a number of divestitures and speculation on the fate of mortgage-related assets of struggling banks.

Pacific West Bank ("PacWest") divested nearly $2 billion of mortgages to J.P. Morgan affiliated entities in connection with Banc of California's takeover of PacWest. Another notable second-half servicing deal was Rithm Capital's acquisition of the US mortgage servicing business of an Australian stock transfer company.

With the Federal Reserve signaling that interest rates are expected to fall in 2024, the hope is that origination volumes will increase in 2024, but decreasing interest rates could reduce MSR values, especially for MSRs tied to mortgage loans originated in the post 2021 higher interest rate environment. While optimism exists with respect to origination volumes, we expect many of the M&A trends seen in 2023 to continue into the first half of 2024. A key factor for deals will be the volatility of interest rates in the coming year. Further signals of sustained interest rate decline could add to an increase in the number of buyers looking to acquire originators. Given the uncertainty around the duration of high interest rates we expect to see a continued trend of industry-wide consolidation along with a continued emphasis on servicing assets and licensed entities. In addition to confidential work on a number of the matters described above, below is a list of certain mortgage-industry transactions that Hunton Andrews Kurth advised on in 2023:

- Hunton Andrews Kurth represented Finance of America in connection with sales of certain non-core businesses; including the sale of (i) its title insurance and settlement services business to an affiliate of Essent Group, (ii) its business related to origination and servicing of business purpose loans to Roc Capital and (iii) its financial and operational performance services business.
- Hunton Andrews Kurth also represented Freedom Mortgage in connection with its sale of RoundPoint Mortgage Servicing to Two Harbors Investment Corp.

Business Purpose Loans

The past year saw the continuation of various challenges to the housing and mortgage loan markets. A persistent increase in interest rates, decreased investor demand and more conservative credit terms dramatically decreased housing related activity across the spectrum including in the fix-and-flip/business purpose loan segment. Secondary market trading, financings and securitization transactions all experienced a general decline, but one that was appreciably less dramatic than in the traditional residential mortgage market. In 2023 we saw a generally less vigorous level of activity as shrinking profits, decreased returns on investment and continued high labor and material costs weighed on investors and market participants. The investor, construction, and rental/DSCR loan segments experienced a relatively moderate amount of activity, but this was generally subdued in comparison to prior years. Economic uncertainty still clouds the outlook for the foreseeable future, but there is hope that the worst has passed and that conditions will improve in 2024.

Inflationary pressures and concerns seem to be on the wane and some modest interest rate cuts by the Federal Reserve appear to be on the table. The US economy seems to have weathered the challenges of the last year relatively well and enters the new year on generally sound footing. The commercial real estate market still faces a number of concerns with existing debt and asset performance issues, but much of this has been concentrated in the office and retail space. Large swaths of the country still face a housing availability and affordability shortfall, which presents opportunities for those investors and originators involved in the residential/multi-family space that were able to effectively manage their operations during a turbulent period. Strategic acquisitions of stable and experienced originators and lenders are expected to continue as market participants look to expand their product offerings and diversify their balance sheets with respect to housing assets. In addition, a continued reduction in the availability

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of credit from traditional banks and warehouse lenders that were dominant in the general commercial real estate space has provided opportunities for non-bank lenders to expand their lending activities, which is a trend that we expect to continue for the coming year. Finally, DBRS Morningstar published a new ratings methodology for fix-and-flip mortgage loan securitization transactions earlier this year, which many in the industry hope will broaden the investor base for such assets and the related securities.

European Securitization Market Update

Final data for European securitisation issuance in 2023 is not yet available. Markets continued to be affected by macro-global factors such as the continuing war in Ukraine, high and unsettled commodity prices and recent events in the Middle East all contributing to an unsettled global market. Markets are also looking forward to major elections next year in the US, UK and other European states. Continued high interest rates also depressed certain European securitisation markets. The securitisation markets in Europe are smaller than in the US, perhaps only 10 percent of the size of the US market (compared to 85 percent in 2008). All that said, the first half of 2023 showed a significant increase in issuance as compared to the same period in 2022, which provided some optimism for future growth.

Sectors showing increased growth and recovery in 2023 were European auto ABS and UK RMBS. Geographically UK and France are expected to be the largest markets in 2023, when full-year figures are available. Synthetic balance sheet transactions for European banks have continued to grow although the vast majority of these transactions are executed synthetically, which is a much more cost-effective means of execution, with reduced transactional and rating agency costs. High levels of interest rates adversely affected the private equity markets with a consequential detrimental impact on the CLO market. As with other markets, environmental, social and governance (“ESG”) factors have continued to gain importance in securitisation issuance in Europe, with total issuance with a second party ESG opinion expected to be approaching €2 billion for 2023.

Restructuring and Distress

Declining origination volumes and rising interest rates since 2022, and through 2023, caused significant financial distress among mortgage originators. The average 30-year fixed mortgage rate settled as high as 8.45 percent in October 2023, almost triple the approximate 3 percent low in 2021. As a result, new home sales and mortgage refinancings in the United States declined dramatically in 2022 and 2023 from elevated levels that persisted from mid-2020 through the end of 2021.

Hunton Andrews Kurth continued to work with a number of forward and reverse residential mortgage originators in 2023 as they deal with low origination volumes, liquidity challenges, and adverse macroeconomic trends. Mortgage lenders sought to stave off bankruptcy by renegotiating warehouse and repurchase facilities, raising cash through sales of equity or sales ancillary revenue streams (such as mortgage servicing rights), and reducing general and administrative costs. Liquidity remains king and critical to self-preservation until mortgage rates decline. It is likely that these out-of-court transactions will continue into 2024, as interest rates remain high and home sales remain low relative to 2020 and 2021 levels. Many mortgage lenders were forced to close their doors in 2023 after failed out-of-court restructurings and existing warehouse lenders terminated repurchase facilities.

Mortgage originators are often unable to restructure in Chapter 11 without agreements from existing or replacement warehouse lenders that enable the originator to fund mortgage commitments after the filing of a Chapter 11 case. Because the purchase and sale of mortgage loans under warehouse facilities are structured as true sales and fall within the automatic stay safe harbors available for qualifying repurchase agreements under the Bankruptcy Code, they are subject to immediate termination on a bankruptcy filing notwithstanding the automatic stay. On any such termination, the warehouse lender can immediately liquidate all mortgage loans then held by such warehouse lender to satisfy outstanding claims under the terminated warehouse facility, leaving the

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mortgage originator with no asset to repurchase from its former warehouse lender and no ongoing source of liquidity to fund committed mortgages.

In the commercial space, public announcements of mezzanine loan foreclosures on real estate holding companies increased more than twofold from 2022. Unlike traditional commercial mortgage loans, mezzanine loans typically are secured by the equity in a real estate holding company. Mezzanine lenders may foreclose on that equity by conducting a sale under the Uniform Commercial Code ("UCC"), often with conditions imposed by the mortgage lender at origination. Hunton Andrews Kurth has been at the forefront of this new wave of mezzanine loan foreclosures, including by representing lenders in litigation stemming from challenges to the UCC foreclosure process.

LIBOR ended in 2023!

US dollar LIBOR ended in 2023. We assisted more than 45 clients in transitioning hundreds of contracts to alternative indices. At the end of November, the Alternative Reference Rates Committee ("ARRC") released a closing report ARRC Closing Report: Final Reflections on the Transition from LIBOR and announced the conclusion of the group itself.

ARRC encouraged firms to scrutinize reference rates before using them, to ensure that appropriate fallback language is included in contracts containing any reference rates, and to maintain a balance between the use of SOFR and Term SOFR. As the ARRC noted, market participants should seek to avoid the mistakes that were made with LIBOR and consider their exposures to reference rate benchmarks in the same way that they consider other material sources of risk. We stand ready to assist our clients in these ongoing strategies.

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Derivatives Update

As discussed above in the LIBOR transition update, LIBOR ended on June 30, 2023. As a result, the demand for SOFR based interest rate swaps has continued to increase. With this backdrop, the CFTC approved a "made available to trade" ("MAT") determination on July 7, 2023, which covers certain overnight index swaps ("OIS") referencing the USD SOFR and GBP Sterling Overnight Index Average ("SONIA")—a screenshot of the table summarizing the covered swaps is below. It's been almost ten years since the CFTC issued the first MAT determinations in 2014. As a result of this MAT determination, market participants will be required to execute covered OIS on a CFTC registered "swap execution facility" or a "designated contract market", unless they qualify for an exemption.

Specification	Overnight Index Swaps (OIS)			Overnight Index Swaps (OIS)	
Currency	U.S. Dollar (USD)	U.S. Dollar (USD)	U.S. Dollar (USD)	Sterling (GBP)	Sterling (GBP)
Floating Rate Indices	Secured Overnight Financing Rate (SOFR)	Secured Overnight Financing Rate (SOFR)	Secured Overnight Financing Rate (SOFR)	Sterling Overnight Index Average (SONIA)	Sterling Overnight Index Average (SONIA)
Trade Start Type	Spot Starting (T+2)	IMM Start Date (next two IMM dates)	IMM Start Date (next two IMM dates)	Spot Starting (T+0)	IMM Start Date (next two IMM dates)
Optionality	No	No	No	No	No
Fixed Leg					
Payment Frequency	Annual	Annual	Annual	Annual	Annual
Day Count Convention	ACT/360	ACT/360	ACT/360	ACT/ 365.FIXED	ACT/ 365.FIXED
Business Calendars	New York/USNY	New York/USNY	New York/USNY	London/GBLO	London/GBLO
Payment Lag	2 Days	2 Days	2 Days	0 Day	0 Day
Floating Leg					
Payment/ Reset Frequency	Annual	Annual	Annual	Annual	Annual
Day Count Convention	ACT/360	ACT/360	ACT/360	ACT/ 365.FIXED	ACT/ 365.FIXED
Business Calendars	New York/USNY	New York/USNY	New York/USNY	London/GBLO	London/GBLO
Payment Lag	2 Days	2 Days	2 Days	0 Days	0 Days
Fixing Calendars	US Government Securities/ USGS	US Government Securities/ USGS	US Government Securities/ USGS	London/GBLO	London/GBLO
Fixing Offset	0 day	0 Days	0 Days	0 Days	0 Days
Dual Currencies	No	No	No	No	No
Notional	Fixed Notional	Fixed Notional	Fixed Notional	Fixed Notional	Fixed Notional
Fixed Rate	Par	Par	Standard Coupon	Par	Par
Tenors	2, 3, 4, 5, 6, 7, 10, 12, 15, 20, 30 Years	2, 3, 4, 5, 6, 7, 10, 12, 15, 20, 30 Years (Standard and IMM end/roll date convention)	1, 2, 3, 4, 5, 7, 10, 15, 20, 30 Years (Standard end/roll date conventions)	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 15, 20, 25, 30 Years	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 15, 20, 25, 30 Years (Standard and IMM end/roll date convention)

THOUGHT LEADERSHIP

In 2023, our lawyers spoke on panels, were quoted in industry publications and authored client alerts covering a range of topics in the structured finance and securitization industry:

- **Rudene Mercer Haynes** was invited to participate in J.P. Morgan's Black Leadership Forum Fireside Chat on December 7, 2023 to discuss her career trajectory, her community involvement and the firm's commitment to diversity.
- **Tom Hiner** and **Rudene Mercer Haynes** were speakers for the Allyship Roundtable at the Structured Finance Association's DEI Symposium in November 2023.
- **Brit Mohler Dufilho** was a panelist on the *Financing & Securitization: The Latest Terms, Structures & Deals* panel at IMN's Annual Mortgage Servicing Rights Forum, November 2023.
- **Brent Lewis** was a panelist for PLI's *New Developments in Securitization* panel, November 2023.
- **Amy McDaniel Williams**, **Rudene Mercer Haynes**, **Nuri Aujla**, **Tyler Grant** and **Josh Venne** were presenters for the webinar *What the HECM is a Reverse Mortgage? Understanding Government-Guaranteed Reverse Mortgages, including Ginnie Mae HMBS Securitizations*, October 2023.
- **Jennifer Daglio** was a speaker at the Mortgage Bankers Association ("MBA") Warehouse Council meeting at the MBA's Annual Convention & Expo, October 2023.
- **Carleton Goss**, **Jennifer Daglio**, **Eric Fidel** and **Betsy Montague** presented a webinar *Basel III Endgame Rulemaking*, October 2023.
- **Carleton Goss** and **Betsy Montague** presented a webinar *Overview of the Bank Regulatory Capital Rules*, September 2023.
- **Rudene Mercer Haynes** was a panelist for the *Advancing Diversity, Equity and Inclusion to Build a Stronger Legal Profession* panel at the Virginia Judges and Lawyers Assistance Program Fall Retreat, September 2023.
- **Rudene Mercer Haynes** was a presenter for *How to Be a Change Agent: Using Your Influence for Good*, as part of The National Black Lawyers Top 100 webinar series, September 2023.
- **Cecelia Philipps Horner** and **Amy McDaniel Williams** were panelists on the *Tax Opinions are Different: Guidance for Transactional Lawyers* panel at the Working Group on Legal Opinions Foundation's 2023 Spring Legal Opinion Seminar, May 2023.
- **Amy McDaniel Williams** and **Tina Locatelli** were presenters for the Strafford webinar *Final Phaseout of LIBOR: Amending Legacy Instruments, Fallback Language, Applying SOFR and Spread Adjustments*, March 2023.
- **Rudene Mercer Haynes** was a panelist on the *ESG & Sustainable Investing* panel at the Structured Finance Association's SFVegas Conference, February 2023.
- **Shannon Daily**, **Jason Harbour**, **Tom Hiner**, **Peter Partee**, **Mike Zinder** and **Amy McDaniel Williams** were presenters for an in-person seminar, *Sailing all Ships into the Safe Harbor: How Securities Repo Finance Techniques Can Be Used to Finance Whole Businesses* in New York in January 2023.
- In 2023, we continued our internal "Wisdom Wednesdays," an informal training session that offers insights on a variety of topics relevant to mortgage warehouse finance. Hunton Andrews Kurth lawyers participated in weekly presentations to share their perspectives on topics such as Home Equity Lines of Credit and Home Equity Investment Contracts; REMICs, Debt-for-tax, Notes and Certifications; How Ancillaries Fit into the Puzzle; An Insider's View on Mortgage Excess Spread Investments; Verifying Investment Companies; Legal Structuring of Cash Flow in Securitization; Mortgage Servicing Rights; Inflationary and Liquidity Pressures on Commercial Real

THOUGHT LEADERSHIP CONTINUED

Estate; eNotes; Tax Opinions Policies and Procedures; Hart-Scott Radino and Other M&A Topics; Contractual Standards of Conduct; Custodial Agreements; Reverse Mortgage Finance and Securitization; Warehouse Finance 101; and Regulation W and Affiliate Transactions. Speakers in 2023 included firm attorneys **Nuri Aujla**, **Emily Benedict**, **Andrew Blanchard**, **Erick Carlson**, **Mark Connolly**, **Madeline Culbreth**, **Jennifer Daglio**, **Shannon Daily**, **John Dedyo**, **Ed Douma**, **Brit Mohler Dufilho**, **Kate Eberhardt**, **Enyonam Enninful**, **Claudia Fendian**, **Eric Fidel**, **Mike Goldman**, **Carleton Goss**, **Tyler Grant**, **Bob Hahn**, **Rudene Mercer Haynes**, **Vice Hilldrup**, **Tom Hiner**, **Cecelia Philipps Horner**, **George Howell**, **Jonathan Kim**, **Michael Kruse**, **Brent Lewis**, **Patrick Macher**, **Austin Maloney**, **Janet McCrae**, **Eric Mogel**, **Bryon Mulligan**, **Whitney Nixdorf**, **Alexandra Noetzel**, **Brian Otero**, **James Saeli**, **Jim Seevers**, **Nikki Skolnekovich**, **Bennett Sooy**, **Allison Stelter**, **Quince Thompson**, **Ruby Wang**, **Peter Weinstock**, **Amy McDaniel Williams**, **Jennifer Wuebker**, **Pete Yoon** and **Tom Yoon**.

Client Alerts and Publications

Don't Forget! New Robust Financial Guidelines for Fannie Mae and Freddie Mac Sellers/Servicers and Ginnie Mae Issuers Set to Commence September 30, 2023, September 2023

LIBOR's Last Leg: Legislation and Synthetic LIBOR Ease the Transition to SOFR, June 2023

Commercial Mortgage REITs: Tax Considerations When Dealing with Distressed Mortgage Loans, May 2023

It's Official: Synthetic USD LIBOR Will Remain Until September 30, 2024, April 2023

Robust Financial Guidelines on Tap for Fannie Mae and Freddie Mac Sellers/Servicers and Ginnie Mae Issuers, March/April 2023

Oil & Gas Asset-Backed Securitizations, March 2023

Summary of Key Differences Among PDP Securitizations, RBLs, VPPs, and High Yield Debt, March 2023

HUD Issues Final Rule for Transitioning From LIBOR for Adjustable-Rate Mortgages, March 2023

Harnessing the Power of Crowdsourced DEI Innovation to Affect Change, January 2023

RANKINGS AND AWARDS

Over the past year, our structured finance team and individual lawyers have received a number of awards or recognitions and are consistently ranked among the top legal advisors in industry rankings and league tables.

- In *Asset-Backed Alert*'s 2023 year-end league tables, the firm maintained its second-place ranking among the most active issuer's counsel, with 62 deals and a total issuance value of $20 billion. The firm also made a strong showing on the underwriter side, ranking third among the most active underwriters' counsel, with 74 deals and a total issuance value of $26 billion. The rankings represent the top-performing legal advisors based on the volume of asset-backed securities ("ABS") and mortgage-backed securities ("MBS") offerings completed during 2023.
- The firm received a Band One ranking by *Chambers USA* for Capital Markets: Securitization, with 11 lawyers receiving individual rankings.
- The firm also received a Tier One ranking by *The Legal 500* for Structured Finance, with 10 lawyers receiving individual rankings.
- The firm was recognized as a "Leading Law Firm in US Securitization Industry" by *Asset-Backed Alert*.
- **Amy McDaniel Williams** was named to *Virginia Business* magazine's Women in Leadership issue, an annual publication featuring profiles of some of the Commonwealth's most impressive and accomplished female leaders across a variety of sectors.
- **Brit Mohler Dufilho** was selected for inclusion in *Crain's New York Business's* Notable Women in Law feature, which recognizes the top women lawyers in the New York metro area.
- **Rudene Mercer Haynes** was selected as a 2023 Outstanding Women Honoree by YWCA Richmond.
- **Amy McDaniel Williams** continued to serve her two-year term on the Board of Directors of the Structured Finance Association ("SFA"). The SFA Board consists of 44 individuals representing the key constituencies of the securitization industry who play a critical role in determining the strategic direction of the organization's advocacy and educational efforts.
- **Amy McDaniel Williams** served as Vice Chair on the Securitization Finance Committee for the ABA Business Law section.
- **Cecelia Philipps Horner** continued to serve as co-chair of SFA's Tax Policy Committee. The committee is responsible for identifying, examining and leading discussions on a broad range of issues related to tax and the structured finance market.
- **Eric Fidel** served as a co-chair of the Young Leaders Task Force of the Securitization and Structured Finance Committee of the ABA.

DIVERSITY AND INCLUSION

We believe that the recruitment, retention and promotion of a diverse and inclusive workforce optimizes our ability to deliver excellent client service, including alignment with our clients' interests of staffing their legal teams with diverse talent. We are committed to being intentional in terms of implementing and promoting professional development opportunities and programming designed to appropriately recognize our women and minority lawyers and to provide career-enhancing pathways that will motivate them to grow and prosper at the firm.

The following are some highlights of our team's recent activities and initiatives to support the firm's commitment to diversity and inclusion:

- Four of the last five most recent advancements to partner have been women or minority lawyers.
- Four out of the six most recent attorneys named counsel were women.
- Nearly 60 percent of our core structured finance team self-identify as being diverse.
- More than 40 percent of our structured finance team are female.
- More than 50 percent of our partners are female, diverse or both.
- **Rudene Mercer Haynes** currently serves as a firm-wide hiring partner. In this role, Rudene is committed to expanding the pipeline of diverse candidates and advocating for diversity and inclusion issues. Each summer, Rudene spearheads our summer associate program that provides opportunities for summer associates to work across offices and teams, assist with pro bono projects and participate in diversity and inclusion focused initiatives.
- **Janet Sadler McCrae** serves as co-chair of the New York office Diversity Initiative and co-head of attorney hiring for the New York office. Through these roles, Janet is committed to expanding the pipeline of diverse prospective candidates for the NYC office.
- **Brit Mohler Dufilho** serves on the Women's Subcommittee of the firm's Diversity & Inclusion Committee.
- Our team is proud to sponsor the SFA's Women in Securitization ("WiS") initiative, which is focused on the development, advancement and retention of women in our industry. In September 2023, Hunton Andrews Kurth hosted a WiS workshop in our New York office with Kathy Caprino, career and leadership coach. The interactive workshop explored seven brave pathways to career fulfillment, the six dominant action styles and why you need to know yours, what power is and why we need it.
- Our firm sponsored SFA's 2nd annual DEI Symposium in November 2023.
- We are proud to support 50/50 Women on Boards, a global education and advocacy campaign driving the movement toward gender balance and diversity on corporate boards.
- In 2023, we sponsored The LGBTQ Center's annual Women's Gala in New York on November 3.

NEW TEAM COUNSEL

Eric Mogel
Counsel, New York
emogel@HuntonAK.com | + 1 212 309 1312

Eric Mogel was promoted to counsel in February 2023. Eric represents issuers, underwriters, lenders and mortgage servicers in structured finance transactions, with an emphasis on mortgage securitization and resecuritization transactions. He also has experience in regulation of investment funds and general corporate transactions.

KEY CONTACTS

Thomas Y. Hiner
Partner, New York
thiner@HuntonAK.com
+ 1 212 309 1302

Cecelia Philipps Horner
Partner, Richmond
chorner@HuntonAK.com
+ 1 804 788 7394

Brent A. Lewis
Partner, New York
blewis@HuntonAK.com
+ 1 212 309 1006

Michael Nedzbala
Partner, Richmond
mnedzbala@HuntonAK.com
+ 1 804 788 8794

ABOUT US

Hunton Andrews Kurth LLP is one of the nation's leading structured finance and securitization law firms. For more than 35 years, we have represented clients in connection with mortgage-backed and asset-backed securities offerings and other structured financing matters. Our practice is at the forefront of the development of securitization and structured finance techniques, and is closely aligned with our tax, restructuring, bankruptcy, regulatory, M&A, private equity, capital markets and energy practices. In a time that calls for creativity and opportunistic multi-disciplinary transactions, we are well positioned to invent and implement new structures with our clients.

Hunton Andrews Kurth is a global law firm of more than 900 lawyers handling transactional, litigation and regulatory matters for clients in a myriad of industries including energy, financial services, real estate, retail and consumer products and technology. Areas of practice focus include capital markets, mergers and acquisitions, intellectual property, P3, public finance and infrastructure, and privacy and cybersecurity. With offices across the United States and in Europe, the Middle East and Asia, we're aligned with our clients' businesses and committed to delivering exceptional service.

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