

RANKINGS

Cadwalader Still Dominates Small Field of CMBS Legal Advisors

Cadwalader Wickersham topped the list of legal advisors to U.S. issuers and underwriters of commercial MBS again last year, while Sidley Austin retained second place in both rankings and pulled farther ahead of its other rivals.

In a year marked by the introduction of new risk-retention rules, the annual deal count jumped by 18% to 157. Cadwalader landed the more-coveted role as issuer counsel on 104 of those offerings, up from 89 the previous year, according to **Commercial Mortgage Alert's** CMBS database. Its share of those mandates was virtually flat at 66%, while Sidley boosted its percentage to 22% (from 14%) by counseling issuers on 34 deals, up from 19 in 2016.

Orrick Herrington finished third again with 11 transactions (down from 14) and Dechert repeated in fourth place with five deals, matching its 2016 tally. Three other firms had one issuer-counsel assignment apiece.

Cadwalader also remained the top advisor to CMBS underwriters, filling that role on 83 deals in 2017, up from 61. That increased its share of that business to 53%, from 46%. Runner-up Sidley saw its share rise to 35% (from 30%) as it handled 55 new-deal assignments (up from 40).

There was some movement in the lower ranks of the underwriter-counsel league table. Dechert moved up two notches to third place by winning nine mandates (up from eight). Orrick remained in fourth place with six deals (down from 10), while Mayer Brown slid two notches to tie Dentons for fifth place, with two deals apiece.

The rankings, which count offerings of at least \$100 million, include Freddie Mac issues with at least that amount of unguaranteed bonds. That benefits Cadwalader, since the mortgage agency relies exclusively on that firm to serve as both issuer and underwriter counsel on its "K" series of rated securitizations backed by multi-family loans.

Even if Freddie's 35 deals weren't counted last year, Cadwalader would still have dominated the issuer-counsel ranking



by working on 69 transactions. But Sidley would have led by seven deals in the underwriter-counsel ranking.

Dechert partner Laura Swihart pointed out that her firm served as loan-seller counsel on all of last year's Freddie deals and prepared the offering documents on 28 of them.

Swihart noted that the quickened pace of private-label issuance last year may have worked to the advantage of the

Continued on Next Page

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Continued From Previous Page ...

long-time No. 1 and 2 firms. “It was such a busy year, that familiarity might have become even more important,” she said. “Issuers went with the usual suspects because they needed to crank out deals.” For its part, Dechert tends to focus on handling fewer, more-complex transactions that are often outside the mainstream, Swihart said.

The law firms spent a lot of time and brainpower last year helping issuers and underwriters comply with federal risk-retention requirements that took effect for CMBS in late 2016. That included extensive efforts to craft agreements governing the assumption of the risk-retention responsibility by issuers or by third-party B-piece purchasers. While many key industry standards were established last year, further refinement will be necessary in some areas and certain issues haven’t been dealt with yet.

“Last year, we were trying to do the deals the way we’ve always done them, consistent with the most-conservative interpretations of the risk-retention rule,” said Sidley partner Jonathan Nunes. Going forward, issuers may seek to expand their

approaches in ways that “comply with the intent of the rule, rather than the strict letter of the rule, in particular as regulators provide interpretive guidance,” he said.

What’s more, “every third-party purchaser has issues they want to pursue with the banks,” said Cadwalader partner **Michael Gambro**. For example, the federal guidelines allow for financing the retained risk via full-recourse debt. When and if any B-piece buyers decide to pursue that option, they would need approval from the issuers responsible for each deal’s compliance with the rules. The issuers then would likely seek advice from counsel, Gambro said.

“The rules allow for financing without defining what full recourse is, and there’s really no guidance from regulators,” he said. “We would not be surprised to see some standards introduced in this area.” He and partner **Stuart Goldstein** run Cadwalader’s global capital-markets practice, including 75 CMBS attorneys.

Meanwhile, the active single-borrower sector and new partnerships between the big banks on conduit programs will likely continue to keep the law firms busy this year, said Janet Barbieri, who co-heads Orrick’s CMBS group with fellow partner William “Butch” Cullen.

Outside the CMBS market, attorneys at Cadwalader, Sidley and Dechert pointed to expanding issuance of commercial real estate CLOs as an anticipated source of new business this year.

“There’s no doubt that the CRE CLO market is heating up, so we’re devoting a substantial amount of time and resources to support our clients,” Goldstein said, noting that experienced underwriters and lawyers can provide important guidance to borrowers and lenders who are relatively new to securitization.

Sidley partner Kevin Blauch cited the rise of CRE CLOs as a big driver of his plans to add several more attorneys to the firm’s 21-member CMBS practice this year. He oversees that team as co-head of the global finance group. Sidley, like Orrick and Dechert, also is seeking to hire more attorneys because CMBS issuers are widely expected to remain active this year. ❖

Top Issuer Counsels for US CMBS

		2017 No. of Deals	Issuance (\$Mil.)	2016 No. of Deals	Issuance (\$Mil.)
1	Cadwalader Wickersham	104	\$56,050.0	89	\$47,687.6
2	Sidley Austin	34	25,143.8	19	12,124.4
3	Orrick Herrington	11	9,346.9	14	11,321.5
4	Dechert	5	1,314.1	5	1,326.1
5	Pillsbury Winthrop	1	1,412.0	1	470.0
5	Weil Gotshal	1	248.1	0	0.0
5	Mayer Brown	1	208.5	0	0.0
	OTHERS	0	0.0	5	1,546.8
	TOTAL	157	93,723.3	133	74,476.3

Top Underwriter Counsels for US CMBS

		2017 No. of Deals	Issuance (\$Mil.)	2016 No. of Deals	Issuance (\$Mil.)
1	Cadwalader Wickersham	83	\$35,334.1	61	\$23,415.8
2	Sidley Austin	55	45,440.6	40	31,295.4
3	Dechert	9	4,639.0	8	3,472.9
4	Orrick Herrington	6	4,537.1	10	7,029.4
5	Mayer Brown	2	2,112.4	12	8,437.9
5	Dentons	2	1,660.1	2	825.0
	TOTAL	157	93,723.3	133	74,476.3