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Commercial Mortgage ALERT

THE WEEKLY UPDATE ON REAL ESTATE FINANCE AND SECURITIZATION

Cadwalader Continues to Dominate CMBS Legal Work

Cadwalader Wickersham served as legal advisor on three-quarters of the commercial MBS offerings in the first half, extending its long-time role as the go-to firm for U.S. issuers and underwriters.

As CMBS issuance grew slightly to $18.2 billion in the first half, Cadwalader was retained as issuer counsel on 21 of the 28 deals exceeding $100 million, according to **Commercial Mortgage Alert's** CMBS Database. The perennial market leader was also hired as underwriter counsel on 23 of the first-half transactions.

Cadwalader's 75% share of issuer-counsel assignments was down slightly from 80% a year earlier. **Sidley Austin** trailed far behind with three assignments, the same as in the first half of 2011. **Dechert** handled two deals, while **Paul Weiss** and **Skadden Arps** worked on one apiece. None of those three won mandates from issuers in the year-earlier period.

Issuer Counsels for US CMBS in the First Half

		1H-12 No. of Deals	Issuance ($Mil.)	1H-11 No. of Deals	Issuance ($Mil.)
1	Cadwalader Wickersham	21	$14,370.8	16	$12,586.5
2	Sidley Austin	3	2,956.5	3	2,872.7
3	Dechert	2	291.5	0	0.0
4	Paul Weiss	1	412.0	0	0.0
4	Skadden Arps	1	125.0	0	0.0
	Kaye Scholer	0	0.0	1	1,548.4
	TOTAL	**28**	**18,155.8**	**20**	**17,007.6**

Underwriter Counsels for US CMBS in the First Half

		1H-12 No. of Deals	Issuance ($Mil.)	1H-11 No. of Deals	Issuance ($Mil.)
1	Cadwalader Wickersham	23	$11,775.6	13	$10,079.6
2	Sidley Austin	2	2,727.2	3	3,628.9
2	Kaye Scholer	2	2,253.0	2	2,614.6
4	Cleary Gottlieb	1	1,400.0	1	325.0
	Dechert	0	0.0	1	359.5
	TOTAL	**28**	**18,155.8**	**20**	**17,007.6**

Cadwalader's share of the underwriter-counsel assignments rose to 82% for the half, from 65% a year earlier. Its closest challengers in that category — Sidley and **Kaye Scholer** — handled two deals apiece. At the same time a year ago, Sidley had three deals and Kaye Scholer had two.

The leading law firms are optimistic that the CMBS market will avoid a repeat of last year, when the European debt crisis and other factors led to a second-half swoon in issuance. While the outlook remains uncertain, "it feels like the market is more resilient than it was last year at this time," said Cadwalader partner **Patrick Quinn.**

As the market continues to expand, law firms expect to see more opportunities to generate fees by working on complex or novel transactions. "The CMBS desks at the banks are taking a look at the deal structures and doing more interesting things," said Sidley partner **Kevin Blauch.**

For instance, a recent multi-borrower issue led by **Bank of America** and **Morgan Stanley** included a class of single-A bonds

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that represented a cash-flow strip carved from three other publicly registered tranches. Another deal, led by **UBS** and **Barclays,** introduced an exchangeable note structure for some of the bonds that were issued privately under SEC Rule 144A.

What's more, some lawyers expect to see at least one or two commercial real estate CDOs floated by yearend, although previous predictions of a revival in that sector proved premature.

And there will almost certainly be more securitizations of nonperforming loans over the next six months, following two such offerings that recently hit the market — the first in 15 years. "A lot of research and development went into those deals. They take a lot of work, and each one is different," said **Michael Gambro,** another Cadwalader partner. The firm served as underwriter counsel on both of those distressed-debt offerings, while Dechert advised the issuers: **Rialto Capital** and the team of **Square Mile Capital** and **Blackstone.**

Quinn and Gambro run Cadwalader's capital-markets group, which has 61 attorneys including 36 dedicated to CMBS. Their practice is separate from a 35-member group, led by partner **William McInerney,** that represents lenders originating commercial mortgages for securitization.

Given Cadwalader's deep bench of CMBS lawyers and long-running relationships with issuers and underwriters, its rivals acknowledge it would be difficult for them to seriously challenge its dominance in the sector. But competitors could benefit if new-deal volume eventually expands so much that issuers and underwriters need to spread the work around to get it done quickly.

It's also possible that dealmakers and investors might eventually grow nervous about relying too heavily on one firm. "These deals are really complicated," one lawyer added. "It's better to have different firms as underwriter counsel and issuer counsel. I would feel this way even if I worked at Cadwalader." ❖