Article Title: ARCHIVE | Legal Criteria: Legal Criteria For U.S. Structured Finance Transactions: Special-Purpose Entities Data: (EDITOR'S NOTE: —This criteria article has been superseded by "U.S. Structured Finance Asset Isolation And Special-Purpose Entity Criteria," May 15, 2019.) General Standard & Poor's Ratings Services' legal criteria for structured finance transactions are designed to provide comfort that the entity owning the assets required to make payments on the rated securities is bankruptcy remote (that is, is unlikely to be subject to voluntary or involuntary insolvency proceedings; see the articles titled: "Securitizations By Code Transferors," and "Securitizations By SPE Transferors And Non-Code Transferors"). In this regard, Standard & Poor's evaluates the incentives of this type of entity, known as a special-purpose entity (SPE), or its equityholders, to resort to voluntary insolvency proceedings and the incentives of creditors of the SPE to resort to involuntary insolvency proceedings. The bankruptcy-remote analysis also examines whether third-party creditors of the SPE's parent would have an incentive to reach the assets of the SPE to satisfy the parent's obligations. Characteristics Of Bankruptcy Remoteness Standard & Poor's has compiled the following "SPE criteria" that an entity should satisfy for Standard & Poor's to view it as a bankruptcy-remote SPE. An entity that satisfies these criteria is regarded by Standard & Poor's as being sufficiently protected against both voluntary and involuntary insolvency risks: Restrictions on objects and powers; Debt limitations; Independent director (for corporate SPEs, or the equivalent in the case of other forms of SPEs); No merger or reorganization, etc.; Separateness covenants; and Security interests in assets. Each of these characteristics is important to the overall concept of bankruptcy remoteness. Regardless of the specific organizational structure of the SPE, Standard & Poor's considers whether these elements are addressed in the relevant organizational and/or transaction documents (see Restrictions on Objects and Powers section). Their rationale, briefly explained below, is followed by a full description of the SPE criteria. Restriction On Objects and Powers The fundamental SPE characteristic is that the entity's objects and powers are restricted as closely as possible to the bare activities necessary to effect the transaction. The purpose of this restriction is to reduce the SPE's risk of insolvency due to claims created by activities unrelated to the securitized assets and the issuance of the rated securities. To the extent Standard & Poor's analysis relies on the bankruptcy remoteness of an entity, it will generally consider whether the transaction documents or the SPE's organic document of establishment (articles/certificate of incorporation for corporations, deed of partnership/partnership agreement for limited partnerships, articles of organization/limited liability agreement for LLCs, or deed of trust/trust agreement for trusts) contains objects and power clauses that constrain the SPE to those activities needed to ensure the sufficiency of cash flow to pay the rated securities. Standard & Poor's considers that the organic documents are the preferred locus for this constraint (as well as the other SPE restrictions discussed below) for two reasons. First, these documents are generally publicly available and provide some measure of public notice of the restriction, rather than merely notice to the parties to a particular transaction. Second, an organic restriction is less likely to become lost in the organizational files and more likely to remind the management of the SPE to act in accordance with its charter. In brief, to the extent that the SPE is permitted to engage in business activities unrelated to the rated transaction, the transaction parties should expect that the rating will reflect the effect of these activities on the entity's resources, cash flows, and ability to pay its obligations in a full and timely manner. Debt Limitations The purpose of the SPE additional debt limitation is to minimize the likelihood that the SPE will be filed into bankruptcy by its creditors. Standard & Poor's believes that, to the extent that additional debt obligations of the SPE are rated lower than its outstanding debt, the additional debtholders may have an incentive to file a bankruptcy petition against the SPE and seek repayment on such debt from other assets of the SPE, such as overcollateralization supporting the higher rated debt. Once a bankruptcy petition is filed against an SPE, the automatic stay makes the timely payment of principal of, and interest on, any of its outstanding debt obligations (regardless of the rating) highly unlikely. Therefore, Standard & Poor's rating on the initial debt issuance may be adversely affected if the SPE issues additional debt that is either not subordinated to the existing debt or is not rated the same as the existing debt. If there were no limitation on additional debt, Standard & Poor's believes that a default on lower rated debt could bring about a default on higher rated existing debt. Consequently, Standard & Poor's will consider whether an SPE is restricted from issuing additional debt unless that debt is either (i) fully subordinated to the outstanding debt or (ii) rated by Standard & Poor's the same as the outstanding debt (at the time of issuance and at all times thereafter) and, in either case, whether the additional debt, like all debt issued by the SPE, is nonrecourse to the SPE or any of its assets other than cash flow in excess of amounts necessary to pay holders of the rated debt and should not constitute a claim against the SPE in excess of the pledged cash flow for such debt. Standard & Poor's also generally considers whether there is nonpetition language in any agreement between the SPE and a creditor whereby the creditor agrees not to file the SPE into bankruptcy and not to join in any bankruptcy filing prior to the end of the period that is one year and one day after all of the rated debt is paid in full. In some cases, Standard & Poor's may also consider whether there is a specific intercreditor agreement. In sum, Standard & Poor's considers whether all forms of indebtedness of the SPE, for example, asset-backed term notes, warehouse lines of credit, conduit financings, hedges, indemnification, and other performance obligations, unless expressly subordinated, are, at issuance and at all times thereafter, rated the same by Standard & Poor's. In addition, in evaluating whether an entity satisfies these criteria, Standard & Poor's considers any fees, expenses, indemnities, and other payment obligations required to be made by the entity in question. In this regard, Standard & Poor's considers whether such payments are either capped at a specific figure, so that payment can be sized into the waterfall, or subordinated to the rated debt. Exception To SPE Limitation On Additional Debt (Multiple-Use Criteria) If an entity is established to serve as the issuer for multiple issuances of debt that are not rated the same or are not expressly subordinated, under certain circumstances, this entity may nonetheless be viewed as an SPE by Standard & Poor's. For example, an originator of commercial lease receivables may wish to use the same SPE to issue various series of term debt obligations, collateralized by different pools of leases, that are not rated the same at issuance (or even if rated the same at issuance, such ratings would not be linked as described above). Or an originator of retail auto loan receivables may wish to use the same SPE to issue an 'AAA' rated term series and enter into a conduit financing or a bank line of credit, each of which is collateralized by a discrete pool of loan contracts. When an entity is used to issue multiple series of debt collateralized by discrete pools of assets that carry independent ratings (or may be unrated) (a "multiple-use SPE"), Standard & Poor's may view the entity as an SPE when certain disincentives have been implemented to filing a bankruptcy petition against the SPE, as described below. Typically, issuers who rely on this exception to the SPE additional debt limitation and use a multiple-use SPE structure establish a new SPE for that purpose, due to the operational difficulties in revising existing SPE documentation. For multiple-use SPE structures, Standard & Poor's considers whether the operative documents for each series of debt provide: 1. That the series has recourse only to the assets pledged to that series, is nonrecourse to the other assets of the multiple-use SPE, and does not constitute a claim against the SPE if cash flow from the series' designated pledged assets is insufficient to repay the debt in full; 2. That the holders of the series will not file or join in a filing of any bankruptcy petition against the multiple-use SPE prior to the end of the period that is one year and one day after all of the debt is paid in full; also, whether the debtholders of the multiple-use SPE agree that they will not cooperate with or encourage others to file a bankruptcy petition against the SPE during the same period; 3. That, notwithstanding the agreements described in paragraph 1 above, to the extent that the holders of the series are deemed to have any interest in any assets of the multiple-use SPE dedicated to other debt obligations of the SPE, such debtholders agree that their interest in those assets is subordinate to claims or rights of such other debtholders to those other assets; also whether the holders of the series agree that such agreement constitutes a subordination agreement for purposes of Section 510(a) of the Bankruptcy Code. The multiple-use SPE criteria do not apply to the master issuer structure, in which multiple series of securities (the senior classes of which are not necessarily rated the same) are issued by the SPE and backed by a single revolving pool of assets. Standard & Poor's views the asset allocation provisions contained in a master issuer's pooling and servicing agreement, together with the supplement governing each series, as constituting an enforceable subordination agreement under Section 510 of the Bankruptcy Code); 4. That the series will have its own bank accounts or trust accounts, as applicable, dedicated solely to monies of that series. (However, depending on the servicer's credit rating, the servicer may, consistent with Standard & Poor's criteria, maintain a commingled account for collections allocable to multiple series. After the applicable commingling period, funds in the commingled account are typically transferred to the appropriate series accounts for each series.); and

5. That the series will bear its own trustee fees and servicer fees. The organizational documents for the multiple-use SPE typically reflect that the SPE may be used for multiple debt issuances; however, the traditional restrictions on objects and powers remain applicable. It is consistent with these criteria for the multiple-use SPE to retain one or more subordinated classes of its various series, whether or not such retained pieces are subsequently pledged as collateral for another transaction. Each issuance involving a transfer (for example, a sale or pledge) of assets to or from the SPE, including the issuance of pass-through certificates or other equity interests in the assets of the SPE, is subject to review by Standard & Poor's prior to closing. If no rating is sought on a particular issuance, Standard & Poor's review will generally be of a limited scope, so that it can evaluate the structure for consistency with its SPE criteria, including an evaluation of the extent to which tax liabilities arising from one series could affect another series. Depending on the circumstances of the particular transaction, Standard & Poor's may request certain legal opinions regarding the treatment of the transaction under the Bankruptcy Code. However, Standard & Poor's would not expect to request such an opinion if the transaction satisfies the foregoing criteria. The Independent Director An SPE acts through its board of directors, general partner, trustee, management committee, or managing member, as applicable. In the case of a corporation, for example, business is conducted at the direction and under the supervision of the board, although day-to-day management of the corporation is generally delegated by the board to the corporation's officers. The directors are elected by the shareholders, the corporation's owners. Among the major decisions to be made by the board of directors would be the decision to file the corporation into bankruptcy, and it is this element of corporate governance that prompts Standard & Poor's to look for an independent director for corporate SPEs or the equivalent in the case of other forms of SPEs. In many structured transactions, the SPE is sought to be established by a non-SPE operating entity parent. This parent may, at times, be either unrated or have an issuer credit rating below the issue credit rating of its subsidiary's debt. Moreover, the directors of the parent may well serve as the directors for the subsidiary. Standard & Poor's interlocking directorates present a potential conflict of interest. If the parent becomes insolvent, even though the subsidiary is nevertheless meeting its debts as they become due and is otherwise in a satisfactory financial state, there may be an incentive for the parent to cause the subsidiary to "voluntarily" file itself into bankruptcy, thus paving the way for a consolidation of its assets with those of the parent. However, if the subsidiary has at least one director who is independent from the parent, and this director's vote is required in any board action seeking bankruptcy protection for the subsidiary or the amendment of its organic documents, Standard & Poor's believes the subsidiary may be less likely to voluntarily file an insolvency petition. Accordingly, Standard & Poor's generally considers whether the organic documents of an entity seeking to be considered an SPE recite that an independent director is required to vote on bankruptcy matters and, in doing so, must take into account the interests of the holders of the rated debt. In addition, Standard & Poor's considers whether an independent director's consent is required to amend the SPE's organizational documents or for the SPE to merge, consolidate, or sell substantially all of its assets. In each case, Standard & Poor's looks at whether the independent director is required to take into account the interests of the rated debtholders when voting on such matters. In cases where an SPE is a limited partnership or an LLC, Standard & Poor's considers whether at least one general partner, member, or manager, as the case may be, is also constituted as an SPE. In certain transactions that are not true securitizations where the subsidiary is a so-called "limited-purpose operating entity" that holds operating assets rather than liquidating receivables, somewhat different criteria may apply. This is especially so if the parent or parents have higher ratings than the rating being sought on the transaction. No Merger Or Reorganization This characteristic provides comfort that, while the rated debt is outstanding, the bankruptcy-remote status of the SPE will not be undermined by any merger or consolidation with a non-SPE or by any reorganization, dissolution, liquidation, or asset sale. Should the issuer credit rating of the merged or consolidated entity be lower than that of the rated obligations, the rating on the SPE's obligations may be adversely affected. Separateness Covenants Separateness covenants are designed to provide comfort that the SPE will hold itself out to the world as an independent entity, on the theory that if the entity does not act as if it has an independent existence, a court may use principles of "piercing the corporate veil," "alter ego," or substantive consolidation to bring the SPE and its assets into the parent's bankruptcy proceeding. The involvement of an

overreaching parent can be a threat to the independent existence of the SPE. Piercing the corporate veil is the remedy exercised by a court when a controlling entity, such as the parent of an SPE, so disregards the separate identity of the SPE that their enterprises are seen as effectively commingled. This remedy can be sought by creditors with claims against an insolvent parent who believes funds can be properly traced into the subsidiary. The alter ego theory is used when the subsidiary is a mere shell and all of its activities are in fact conducted by the parent. Substantive consolidation is an equitable doctrine under the Bankruptcy Code that combines elements of both piercing the corporate veil and alter ego analyses. Successful motions for consolidation are based on an overly familiar relationship between the parent and the subsidiary, or the partner and the partnership. Accordingly, an important SPE characteristic is the existence of certain separateness covenants described in the following section (see SPE Criteria section). In addition, Standard & Poor's generally requests legal opinions to the effect that the SPE would not be consolidated with its parent in the event of the parent's bankruptcy. (For a discussion of Standard & Poor's criteria regarding nonconsolidation and nonconsolidation opinions, see "Legal Criteria For U.S. Structured Finance Transactions: Securitizations By Code Transferors," section on Multiple-Tier Transactions, Nonconsolidation, and "Securitizations By SPE Transferors And Non-Code Transferors," section on Non-FDIC-Insured Banks, Nonconsolidation, and Insurance Companies.) Security Interests In Assets The articles titled: "Legal Criteria For U.S. Structured Finance Transactions: Securitizations By Code Transferors," and "Securitizations By SPE Transferors And Non-Code Transferors," discuss in detail Standard & Poor's consideration of whether the issuing SPE grants a security interest in its assets to the holders of the rated securities. In connection with this criterion, Standard & Poor's generally also requests inclusion of the appropriate Article 9 Representations and Warranties in the relevant security agreement or, in specific circumstances, a security interest opinion that confirms that the holders of the rated securities have a first-priority perfected security interest in the assets (see "Legal Criteria For U.S. Structured Finance Transactions: Appendix III: Revised UCC Article 9 Criteria"). This SPE characteristic provides comfort that an issuer is an SPE by reducing the incentives of the parent, the creditors of the parent, and any other creditors of the SPE to file the issuer into bankruptcy to gain access to the SPE's cash flows and assets. By reducing the incentives of the parties, the likelihood of an involuntary filing may be reduced. SPE Criteria General SPE criteria Based on the principles discussed above, Standard & Poor's has developed the following criteria to support its conclusion that an entity is an SPE: 1. Restrictions on objects and powers. Standard & Poor's considers whether the organizational documents provide that the entity will not engage in any business or activity other than those necessary for, or incidental to, its role in the transaction, and whether such documents can be amended without prior written notice to Standard & Poor's while the rated debt is outstanding. 2. Debt limitations. Except in the case of multiple-use SPEs (see foregoing discussion), Standard & Poor's considers whether the entity is prohibited from incurring any additional debt (other than the rated debt) unless (a) the additional debt is rated by Standard & Poor's the same as the issue credit rating requested for the rated debt in a given transaction (at the time of issuance and at all times thereafter), or (b) the additional debt is fully subordinated to the rated debt and, in either case, (x) is nonrecourse to the entity or any of its assets other than cash flow in excess of amounts necessary to pay holders of the rated debt, and (y) does not constitute a claim against the entity to the extent that funds are insufficient to pay such additional debt. For purposes of these criteria, additional debt includes any monetary obligation or other obligation that may involve the payment of money, such as covenants by the SPE to remove liens, indemnify, etc. Standard & Poor's will consider whether agreements between the SPE and a creditor include nonpetition language whereby the creditor agrees not to file the SPE into bankruptcy and not to join in any bankruptcy filing prior to the end of the period that is one year and one day after all of the rated debt is paid in full. 3. Independent director. Standard & Poor's considers whether the entity has an independent director or its functional equivalent (see Entity-Specific Considerations section). "Independent director" means a duly appointed member of the board of directors of the relevant entity who should not have been, at the time of such appointment or at any time in the preceding five years, (a) a direct or indirect legal or beneficial owner in such entity or any of its affiliates (excluding de minimis ownership interests), (b) a creditor, supplier, employee, officer, director, family member, manager, or contractor of such entity or its affiliates, or (c) a person who controls (whether directly, indirectly, or otherwise) such entity or its affiliates or any creditor, supplier, employee, officer, director, manager, or contractor of such entity or its affiliates. 4. No merger or reorganization, etc. Standard & Poor's considers whether, so long as the rated debt is outstanding, the entity may engage in any dissolution, liquidation, consolidation, merger, or asset sale (other than as provided in the relevant transaction documents) without prior written notice to Standard & Poor's. 5. Separateness covenants. As a general matter, Standard & Poor's considers whether the entity agrees to abide by the following separateness covenants: To maintain books and records separate from any other person or entity; To maintain its accounts separate from those of any other person or entity; Not to commingle assets with those of any other entity; To conduct its own business in its own name; To maintain separate financial statements; To pay its own liabilities out of its own funds; To observe all corporate, partnership, or LLC formalities and other formalities required by the organic documents; To maintain an arm's-length relationship with its affiliates; To pay the salaries of its own employees and maintain a sufficient number of employees in light of its contemplated business operations; Not to guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of others; Not to acquire obligations or securities of its partners, members, or shareholders; To allocate fairly and reasonably any overhead for shared office space; To use separate stationery, invoices, and checks; Not to pledge its assets for the benefit of any other entity or make any loans or advances to any entity (except as provided in the transaction documents); To hold itself out as a separate entity; To correct any known misunderstanding regarding its separate identity; and To maintain adequate capital in light of its contemplated business operations. 6. Security interests in assets. Standard & Poor's considers whether all of the entity's assets are pledged to secure the entity's debt (that is, none of the entity's assets remain unencumbered). Entity-Specific Considerations SPE corporations Standard & Poor's considers whether: The corporation has at least one independent director. The consent of the independent director(s) is required to: (i) file, consent to the filing of, or join in any filing of a bankruptcy or insolvency petition or otherwise institute insolvency proceedings; (ii) dissolve, liquidate, consolidate, merge, or sell all or substantially all of the assets of the corporation; (iii) engage in any other business activity; and (iv) amend the articles of incorporation of the corporation. The independent director is required to consider the interests of the rated debtholders when making decisions for the corporation. SPE limited partnerships Standard & Poor's considers whether: At least one general partner of a limited partnership is an SPE (usually, such SPE general partner will be an LLC or a corporation). The consent of the SPE general partner is required to: (i) file, consent to the filing of, or join in any filing of a bankruptcy or insolvency petition or otherwise institute insolvency proceedings; (ii) dissolve, liquidate, consolidate, merge, or sell all or substantially all of the assets of the partnership; (iii) engage in any other business activity; and (iv) amend the limited partnership agreement. If there is more than one general partner, the limited partnership agreement provides that the partnership will continue (and not dissolve) as long as another solvent general partner exists. The SPE general partner is required to consider the interests of the rated debtholders when making decisions for the partnership. SPE general partners Standard & Poor's will consider whether an SPE general partner meets all criteria set forth for SPE corporations, LLCs, or limited partnerships, as the case may be. SPE LLCs An LLC is an entity that combines tax transparency along with limited liability for its members. (The owners of an LLC are called "members," analogous to "shareholders" of a corporation or "partners" in a partnership.) LLCs have either single- or multi-member ownership structures. Generally, structured transactions use one of two variations of the single-member LLC: in the first, an SPE single member holds a 100% membership interest in the LLC; in the second, a non-SPE single member holds a 100% membership interest in the LLC but delegates certain rights and duties to an independent third party. In addition to the general SPE criteria set forth above, Standard & Poor's will consider whether: The LLC has an "independent manager" that is (i) a member that is an SPE, (ii) an SPE that is not a member, or (iii) a natural person. The independent manager of an LLC is equivalent to the independent director of an SPE corporation. The consent of the independent manager is required to: (i) file, consent to the filing of, or join in any filing of a bankruptcy or insolvency petition or otherwise institute insolvency proceedings; (ii) dissolve, liquidate, consolidate, merge, or sell all or substantially all of the assets of the LLC; (iii) engage in any other business activity; and (iv) amend the articles of organization or limited liability agreement. If the independent manager is an SPE, then the affirmative vote of the independent director of such SPE would be necessary to authorize the filing. The independent manager is required to consider the interests of the rated debtholders when making decisions for the LLC. Upon dissolution of the LLC, or upon other events of default, holders of the LLC's rated obligations have the independent ability to retain the collateral and continue to pay scheduled debt service, or to liquidate the collateral in the event the proceeds would be insufficient to repay all amounts due. To the extent permitted by tax law, the LLC agreement or articles of organization provide that the LLC should not be dissolved and its affairs should not be wound up solely upon the withdrawal or termination of a member (other than the last remaining member). If the LLC is dissolved, to the extent permitted by law, the LLC agreement or articles of organization provide that the LLC assets not be liquidated (except as permitted under the transaction documents) without the consent of 100% of the holders of the rated obligations; the holders continue to exercise all of their rights under the existing security agreements or mortgages, and are able to retain the collateral until the debt has been paid in full or otherwise completely discharged. In addition, Standard & Poor's may request a nonconsolidation opinion that, upon the insolvency of a non-SPE member, neither the LLC nor its assets would be consolidated with such member and, with respect to an SPE member, that upon the insolvency of the parent of such SPE member, neither the SPE member nor its assets would be consolidated with the parent. If a multimember LLC has no SPE members, Standard & Poor's may request legal comfort that the LLC's members would not be viewed as general partners of the LLC for purposes of Section 303(b)(3)(A) of the U.S. Bankruptcy Code, and, therefore, in the event of insolvency of a member, the bankruptcy trustee of such member could not unilaterally file the LLC into bankruptcy as a voluntary proceeding. Recognizing the absence of any direct authority on the issue, Standard & Poor's will accept an opinion premised on (i) the absence of general liability of LLC members under the relevant LLC statute (in contrast to general partners), (ii) the presence of specific provisions in the relevant LLC statute contemplating a single-member structure (in contrast with a partnership), and (iii) the quasi-corporate nature of LLC governance. If the LLC has no SPE members, Standard & Poor's may request legal comfort that (i) the required affirmative vote of the independent manager for the LLC to file a voluntary bankruptcy petition is enforceable under applicable state law and (ii) in a bankruptcy proceeding of the LLC, a federal bankruptcy court would apply such state law in determining who has the authority to file a voluntary bankruptcy petition on behalf of the LLC. Standard & Poor's generally does not, however, request such legal comfort with respect to LLCs organized under Delaware state law, given this jurisdiction's well-established legal precedents for LLCs. In addition, for a single-member LLC whose member is not an SPE, Standard & Poor's may request an opinion to the effect that the bankruptcy of the non-SPE single member of the LLC will not, by itself, cause the LLC to be dissolved or its affairs to be wound up. LLC with "economic" non-SPE member and "non-economic" SPE member This type of LLC may more closely resemble the limited partnership model, except that the "economic" member is generally an unrated (or lower rated) operating entity with the "non-economic" member serving as the independent manager. A non-economic member may be either a legal entity or a natural person. As with a multimember LLC having no SPE members, the concern with the "economic/non-economic" structure is that the insolvency of the non-SPE economic member may precipitate the insolvency of the LLC on the theory that the LLC will be treated, for bankruptcy purposes, as a partnership. The criteria for LLCs set forth above apply to this type of LLC, except that Standard & Poor's may also request that: The non-economic member be functionally established as an SPE, the affirmative vote of which is necessary before the LLC files a voluntary bankruptcy petition or consents to or acquiesces in an involuntary petition of the LLC; A legal opinion to the effect that the death, bankruptcy, insolvency, or incapacity of the economic member would not, by itself, cause the LLC to be dissolved or its affairs to be wound up; and A nonconsolidation opinion to the effect that, upon any insolvency of the economic member, neither the LLC nor its assets would be consolidated into the bankruptcy estate of such economic member. SPE trusts The trust vehicle is often chosen by securitization parties to issue their transaction's rated asset-backed securities. In the U.S., trusts are generally created under a state's common law, its statutory law, or a combination of both. As a general matter, Standard & Poor's SPE criteria apply to trusts to the same extent as other types of issuers. However, the following are exceptions to the general applicability of Standard & Poor's SPE criteria to trusts: 1. Prohibitions on merger and consolidation. Unlike common law trusts, statutory trusts are generally permitted to merge and consolidate with other entities. Therefore, Standard & Poor's will consider whether the prohibitions on mergers and consolidations appear in organizational documents for statutory trusts (but not common law trusts), as well as whether the restrictions on dissolution and asset sale are included in the organizational documents of both common law and statutory trusts. 2. Separateness covenants. With respect to SPEs that are corporations, partnerships, or LLCs, separateness covenants aim to provide that the affairs of the SPE are kept independent of its parent and affiliates. With respect to trusts, "separateness" risk may exist in cases where one of the parties to the transaction retains (directly or through a wholly owned subsidiary) an ownership interest in the trust through its holding of an equity interest. Such retention could lead to a consolidation of the trust's assets with those of the certificateholder. In cases where trust equity interests are held by unrelated third parties, the risk of consolidation may be reduced. Standard & Poor's may request a nonconsolidation opinion confirming that, in the event of bankruptcy of the equity certificateholder, neither the SPE nor its assets would be substantively consolidated with such entity. However, Standard & Poor's will not look for separateness covenants and a nonconsolidation opinion for a trust SPE if: The trust equity is so dispersed that no single equityholder can maintain a controlling position (which is true of many trusts in rated securitizations); or The trust's controlling equityholder is an SPE. 3. Security interest in assets. Standard & Poor's will consider whether, if debt is being issued, a trust has created and perfected a security interest in the trust assets in favor of its debt obligation holders. While Standard & Poor's believes that the creation and perfection of the security interest can serve as a disincentive to a bankruptcy filing of the trust by potential creditors seeking access to trust assets, a security interest is not applicable in circumstances where the trust is issuing only equity or equity-like obligations, such as certificates representing undivided ownership interests in the trust assets. (See discussion of the master issuer structure, "Legal Criteria For U.S. Structured Finance Transactions: Select Issues Criteria," section on Criteria Related to Transactions Involving Master Issuers.) 4. Independent consent to file for bankruptcy. As a general matter, Standard & Poor's assumes that financial institutions acting as trustees in rated securitizations would not file the trust into bankruptcy absent the consent of 100% of the trust beneficiaries. In transactions where the trust equity is concentrated in a single holder, Standard & Poor's considers whether the trust documents contain provisions restricting the ability of the equityholder to file the trust into bankruptcy or terminate the trust. Revisions And Updates This article was originally published on Oct. 1, 2006. This criteria article superseded "Global Synthetic Securities Criteria: Swap-Independent Synthetic Securities," published June 1, 1999, "Rating Swap-Independent Synthetic Securities," published July 22, 1996, "Revised Legal Criteria for Multi- and Single-Member LLCs," published Sept. 1, 1999, "Multiple-Use SPE Criteria for U.S. Transactions; Exceptions to Limitations on SPEs' Ability to Issue Additional Debt," published March 10, 2000, "CDOs: Global Cash Flow And Synthetic CDO Criteria: Legal Considerations For CDO Transactions," published March 21, 2002, "Criteria for Trust Issuers in U.S. Structured Finance Transactions," published Nov. 20, 2003, and "Legal Considerations For Student Loan Transactions," published Oct. 1, 2004. It partially superseded "U.S. Residential Subprime Mortgage Criteria: Legal Criteria For Subprime Mortgage Transactions," published Sept. 1, 2004. Portions of this article supersede "Legal Considerations In Rating Lease-Backed Transactions," published Sept. 1, 2004. Changes introduced after original publication: Following our periodic review completed on March 25, 2015, we updated the contact information. Following our periodic review completed on March 24, 2016, we made minor amendments to clarify our analytical approach throughout and updated the "Related Criteria" section. Following our periodic review completed on March 6, 2017, we updated the contact details and a criteria reference. Following our periodic review completed on March 5, 2018, we renamed the "Revision History" section to "Revisions And Updates," updated criteria references, and made other minor edits. Related Criteria And Research Related Criteria Legal Criteria For U.S. Structured Finance Transactions: Appendix III: Revised UCC Article 9 Criteria, Oct. 1, 2006 Legal Criteria For U.S. Structured Finance Transactions: Appendix IV: ABCP Officer's Certificate, Oct. 1, 2006 Legal Criteria For U.S. Structured Finance Transactions: Criteria Related To Asset-Backed Securities, Oct. 1, 2006 Legal Criteria For U.S. Structured Finance Transactions: Criteria Related To Collateralized Debt Obligations, Oct. 1, 2006 Legal Criteria For U.S. Structured Finance Transactions: Criteria Related To Commercial Paper Conduits, Oct. 1, 2006 Legal Criteria For U.S. Structured Finance Transactions: Criteria Related To Hybrid Asset-Backed Securities, Oct. 1, 2006 Legal Criteria

For U.S. Structured Finance Transactions: Criteria Related To New Asset-Backed Securities, Oct. 1, 2006 Legal Criteria For U.S. Structured Finance Transactions: Criteria Related To Securities Backed By Residential Mortgage, Home Equity, And Manufactured Housing Loans, Oct. 1, 2006 Legal Criteria For U.S. Structured Finance Transactions: Securitizations By Code Transferors, Oct. 1, 2006 Legal Criteria For U.S. Structured Finance Transactions: Securitizations By SPE Transferors And Non-Code Transferors, Oct. 1, 2006 Legal Criteria For U.S. Structured Finance Transactions: Select Issues Criteria, Oct. 1, 2006 Legal Criteria For U.S. Structured Finance Transactions: Glossary, Oct. 1, 2006