Article Title: ARCHIVE | Legal Criteria: Amended Structured Finance Legal Criteria For English And Welsh SPEs Data: (EDITOR'S NOTE: —This criteria article is no longer current. It has been superseded by the article titled "European Legal Criteria For Structured Finance Transactions," published on Aug. 28, 2008. , These criteria supersede the article titled "Structured Finance Criteria Introduced for English and Welsh Special-Purpose Entities," published on April 25, 2001.) In light of legislative changes to U.K. insolvency law, we will request for future transactions that a bankruptcy-remote SPE incorporated in England and Wales has and maintains an independent director. This article sets forth the rationale for amending our English and Welsh SPE criteria. Section 1 provides an overview of changes to these criteria, section 2 describes the general characteristics, and section 3 sets forth our specific criteria for determining that an entity incorporated in England or Wales is a bankruptcy-remote SPE. Section 4 describes entity-specific SPE criteria. SECTION 1: OVERVIEW Our general legal criteria for structured finance transactions focus on how assets can be isolated under local law so that an insolvency or corporate reorganization of the owner does not affect the payment of principal and interest on the rated notes. To achieve this objective, the assets are usually transferred to a bankruptcy-remote SPE — an entity unlikely to become subject to voluntary or involuntary insolvency proceedings. In determining whether an SPE is bankruptcy-remote, we would examine the incentives of the directors or the shareholders of the SPE to institute any voluntary insolvency proceedings, and the incentives of the creditors of the SPE to institute involuntary proceedings. In addition, in cases where the SPE's shares are not owned on trust for charitable purposes, the analysis also focuses on whether third-party creditors of the SPE's parent could have recourse and/or claim to the SPE's assets to satisfy any of the parent company's obligations. We have already published longstanding criteria relating to SPE bankruptcy remoteness. In 2001, we published specific criteria for SPEs incorporated in England and Wales ("English SPE criteria"). In most respects, our general legal criteria continued to apply to English and Welsh SPEs, (the most recent publication being the "European Legal Criteria For Structured Finance Transactions", published on March 23, 2005 (see section 5)). In our English SPE criteria, certain differences were highlighted from the general legal criteria. For example, to avoid the risk of the doctrine of ultra vires being asserted against the SPE, the criteria accepted that the restrictions on the English SPE's activities be memorialized in the transaction documents, rather than in the SPE's organizational documents. Another exception to the general criteria dispensed with the need to appoint an independent director to the board of the SPE. If the English or Welsh SPE provided fixed and floating charges over its assets for the benefit of the noteholders so that they or their representative were empowered to appoint an administrative receiver, we did not expect to see an independent director appointed to the SPE's board. Since the publication of the English SPE criteria, legislative changes to English insolvency law have eroded significantly the rights of a holder of a floating charge to block the administration of a company by appointing an administrative receiver. In addition, a new out-of-court procedure into administration has significantly facilitated the ease with which an English SPE may be filed into insolvency. Accordingly, we can no longer rely on certain statutory protections under English law to dispense with the need for an independent director. Additionally, we view as favorable the presence of an independent director who is likely to play a key role in the sound corporate governance of the SPE. Therefore, we would now expect, for future transactions, an SPE incorporated in England or Wales to have and maintain an independent director, or its functional equivalent, in compliance with our general SPE criteria. SECTION 2: CHARACTERISTICS OF INSOLVENCY REMOTENESS For companies incorporated in England and Wales, we have compiled the following general criteria that an entity should satisfy in order to be deemed "insolvency remote". Key characteristics We regard an entity that satisfies the following criteria as being protected sufficiently from voluntary and involuntary insolvency risks: Contractual restrictions on activities; Debt limitations; Independent director; No future reorganization or changes of ownership; Separateness covenants; and Security interests over assets. Each of these elements is important to the overall concept of insolvency remoteness. Regardless of the specific organizational structure of the SPE, these elements should generally be addressed in the transaction documents. Contractual Restriction On Activities The fundamental SPE characteristic is that the entity's objects and powers are restricted as much as possible to the "bare" activities necessary to effect the transaction. This reduces the SPE's risk of insolvency that would exist if the SPE undertook activities unrelated to the securitized assets and the

issuance of the rated notes. To the extent that our analysis relies on the insolvency remoteness of an entity, we request that the SPE include in the transaction documents, or in its constituting document of establishment, objects and power clauses that constrain the SPE only to those activities needed to carry out the transaction. Depending on the specific organizational structure of an entity, a constituting document of establishment could for example be an article/certificate of incorporation, deed of partnership/partnership agreement, an article of organization, or deed of trust. The doctrine of ultra vires describes acts of a company that are outside the scope of the powers granted by its constitutive documents, or the laws authorizing its formation. Since acts attempted by an English company that are beyond the scope of its authority may be void or "voidable", the insertion of restrictions on objects and powers in the constitutive documents of an English SPE may create a risk that certain parts of the rated transaction could be struck down. We consider that, in the context of English entities, the traditional advantages of inserting these restrictions into the SPE's constitutive documents are outweighed by the risks of the application of ultra vires. Accordingly, we consider that the insertion of these restrictions in the appropriate transaction documents, rather than in the SPE's constitutive documents, is the preferred course. These restrictions should be inserted in one or more documents to which the noteholders (or their representative) is a party. This minimizes the likelihood that the limitations might be amended without the noteholder's (or their representative's) consent, and avoids reliance on often-complex third-party contractual rights doctrines. In summary, the SPE should not engage in unrelated business activities, unless the transaction parties are willing to allow the rating on the notes to reflect the effect of these activities on the entity's resources, cash flows, and the ability to pay interest and principal on the rated notes. Debt Limitations Additional debt The purpose of the SPE additional debt limitation is to minimize the likelihood that the SPE will be filed or petitioned into administration or liquidation by its creditors. The concern is that if additional debt obligations of the SPE are rated lower than its outstanding debt, the additional debtholders could have an incentive to file an insolvency petition against the SPE, and seek repayment on this additional debt from other assets of the SPE, such as overcollateralization supporting the higher rated debt. When an English company becomes subject to U.K. insolvency proceedings, administration is one of six potential insolvency procedures that may apply to the insolvent company. Once an administration order has been granted, no steps may be taken to enforce any security over a company's assets. This moratorium makes the timely payment of principal and interest on any of the outstanding debt of a company in administration highly unlikely. Therefore, our rating on the initial debt issue could be adversely affected if the SPE incurs additional debt that is either not subordinated to, or rated the same as, the existing debt. In other words, a default on lower-rated debt could bring about a default on higher-rated existing debt. Consequently, except in the case of certain multi-use SPE vehicles (see "Section 8: Segregation Criteria" of the European Legal Criteria), the SPE should be restricted from issuing additional debt unless that debt is either (i) fully subordinated to the outstanding debt, or (ii) rated by us at the same level as the outstanding debt (at the time of issuance and at all times thereafter). Nonpetition We also generally request non-petition language in any agreement between the SPE and its creditors, including all the transaction parties and noteholders, whereby the creditors agree not to petition the SPE into insolvency proceedings and not to join in any proceedings before the end of a specified period after all the rated notes are paid in full. Limitation of recourse Any agreement between the SPE and its creditors should also include limitation of recourse language, whereby the creditors agree that their recourse to the SPE is limited to the assets backing the rated notes. Legal counsel in England have in the past commented that the inclusion of limited recourse provisions in the terms and conditions of the rated notes may in some circumstances cause adverse tax consequences for an English or Welsh SPE. When transaction participants raise this issue, we assume that the originator or arranger of the transaction will implement suitable alternatives to the noteholders' agreeing to limit their recourse, in order to mitigate the risk of a voluntary or involuntary insolvency filing of the SPE. 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 the board generally delegates to the corporation's officers the day-to-day management of the corporation. The directors are elected by the shareholders, the corporation's owners. One of the major decisions of a company requiring a resolution of the board of

directors is the decision to initiate insolvency proceedings. To minimize the risk of a hasty or unfounded insolvency filing by the board of an SPE, our general SPE criteria requests the appointment of an "independent director" to the SPE's board, or the equivalent in the case of other forms of SPE. Under the U.K. Insolvency Act (1986) (the 1986 Act), a company in administration (i.e., one to which an administrator had been appointed) has the benefit of a moratorium in the payment of its debts. However, before the U.K. Enterprise Act (2003) (the 2003 Act) came into force, a creditor of a English company that had a floating charge, which together with any fixed charges, covered all or substantially all of the company's assets, had the power to block the appointment of an administrator, by appointing an administrative receiver to the company's assets and effectively obtaining control of all those assets. Therefore, we considered that if the noteholders had the benefit of appropriately structured fixed and floating charges, then there would be a minimal incentive for the SPE's directors to initiate insolvency proceedings, in order to benefit from the moratorium provisions of the 1986 Act. The initiation of these proceedings would not enable the SPE to suspend its payments under the rated notes, nor would it block or delay the noteholders' access to the assets from which it was anticipated the notes would be repaid. Accordingly, we accepted that if the SPE granted fixed and floating charges over all its assets for the benefit of the noteholders (so that the noteholders were empowered to seek the appointment of an administrative receiver), then the appointment of an independent director to the board of the SPE would be unnecessary. We also expected the shares of a non-orphaned SPE to be charged by the owning company for the benefit of the noteholders. This provides a further disincentive to any operating owner seeking to interfere with the SPE by filing for its insolvency. The implementation of the 2003 Act reformed corporate insolvency law in the U.K. in a number of ways. In particular, it prohibited holders of fixed and floating security (over all or substantially all of the assets of a company), from appointing an administrative receiver. The 2003 Act contains a number of exceptions to this prohibition, including the "capital markets exemption" for transactions of at least £50 million, which forms part of a "capital market arrangement". Although many structured finance transactions we are requested to rate may fall within this exemption (so as to enable holders of a "qualifying" floating charge to continue to appoint an administrative receiver), the mere granting of fixed and floating charges over all, or substantially all, of the assets of the company would not (without further analysis on the applicability of an exemption) act as a sufficient disincentive to a voluntary filing by the directors of the SPE. In addition, the 2003 Act introduced a new out-of-court procedure into administration that may further heighten the risk that an English SPE could voluntarily be filed into insolvency. It permits a company and its directors to appoint an administrator without applying to the court. It is no longer necessary for the court to determine that the administrative order would achieve one of its specified purposes and that the company is, or is likely to become, unable to pay its debts. Now, directors of an SPE may simply consider that the company is likely to become unable to pay its debts and swear a statutory declaration to this effect. Although the trustee, as the holder of fixed and floating charges over all of the SPE's assets, may still be able to block an administration, it must do so within five business days and on the condition that the floating charge falls within one of the exemptions to the general prohibition on appointing an administrative receiver. As the ability to appoint an administrative receiver is significantly constrained following the implementation of the 2003 Act, rather than rely on the trustee to block an elective administration within a very tight timetable, the more prudent approach is to minimize the likelihood of a voluntary filing by appointing an independent director at the outset. Accordingly, we view the risk that the directors might misguidedly propose administration as being reduced, if there is at least one independent director on the SPE's board. This is true especially in the context of structured finance transactions where the SPE is established by a non-SPE operating parent. This parent may, at times, be either unrated or have an issuer credit rating below the issue credit rating on its subsidiary's debt. Moreover, the directors of the parent may serve on the board of directors of the subsidiary. Overlapping directorates present potential conflicts of interest. If the parent becomes insolvent, there may be an incentive for the parent to cause the subsidiary to "voluntarily" commence insolvency proceedings, even though the subsidiary is nevertheless meeting its debts as they become due, and is otherwise in a satisfactory financial state. From the parent's perspective, the SPE's insolvency proceedings may pave the way for a consolidation of the SPE's assets with those of the parent and may be viewed as a way of forcing the holders of the SPE's debt to the negotiating table with a view to compelling them to

compromise their claims. If the subsidiary has at least one director who is independent of the parent, the subsidiary may be less likely to initiate insolvency proceedings. Even in transactions where the issuer is an orphaned entity whose shares are not held by an operating company, we would expect to see an independent director on the board. We view as favorable the presence of an independent director, who is likely to play a key role in the SPE's sound corporate governance. We would expect the independent director (within the boundaries of his or her legal duties), to review the operation of the SPE, and to provide information to the noteholders' representative (or trustee), if the governance of the SPE becomes a concern. In addition to requesting that all English and Welsh SPEs have and maintain an independent director, we would also view as favorable a provision in the SPE's constituting documents requiring the vote of the independent director in order to pass all resolutions of the board of directors. No Reorganization Or Changes To Ownership This criterion seeks to address the concern that, while the rated notes are outstanding, the insolvency remote status of the SPE is not undermined by any merger or consolidation with a non-SPE by any reorganization, dissolution, liquidation, administration, moratoria, or asset sale, or by the purchase by another company of the SPE's shares. Generally, this is met by including relevant covenants and restrictions in the appropriate transaction documents. Generally, we also request that the SPE does not amend its memorandum and articles, so long as the rated notes are outstanding. Separateness Covenants Separateness covenants are designed to provide comfort that the SPE will hold itself out to the world as an independent entity. If the entity does not act as if it had an independent existence, a court may apply the principles of "piercing the corporate veil", "alter ego", or "substantive consolidation" (consolidation), in order to bring the SPE and its assets into the parent's insolvency proceedings. The involvement of an overreaching parent is a threat to the SPE's independent existence. Consolidation is the remedy exercised by a court when a controlling entity, such as the parent of an SPE, disregards the separate identity of the SPE, so that its enterprises are seen, effectively, as being commingled. This remedy can be sought by creditors with claims against an insolvent parent, in the belief that funds can be traced properly into the SPE subsidiary. Comfort that the SPE would not be consolidated with its parent in the event of the parent's insolvency is an important element of our insolvency-remoteness analysis, and therefore the entity should observe certain separateness covenants, set forth in section 3. We may request non-consolidation opinions, confirming that in an insolvency of the SPE's parent, neither the SPE nor its assets and liabilities would be included in the insolvency estate of its parent. Usually, these opinions are not sought where the SPE's parent is itself an SPE, or where the shares of the SPE are held on trust for charitable purposes. Generally, we would also expect that the shares of a non-orphaned SPE are charged for the noteholders' benefit, as a further disincentive to an operating parent seeking to interfere with the SPE by filing for its insolvency. Security Interests Over Assets As a general matter, we request that an SPE grant a security interest over its assets to the noteholders. Although the 2003 Act has eroded the rights of a floating charge holder under English law, we view as favorable (in the context of English SPEs) a floating charge over all the SPEs assets, not effectively charged under fixed security. In connection with this criterion, we generally also request a security interest opinion, confirming that noteholders have a "perfected" security interest in the assets that will survive the SPE's insolvency. The granting of security by the SPE provides comfort that the SPE is insolvency remote. This criterion assists us in reaching the analytic conclusion that an issuer is an insolvency remote 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 insolvency and gain access to the SPE's cash flows and assets. Reducing the incentive of the parties may reduce the risk of an involuntary insolvency filing. Compliance with the object and debt limitations discussed above is as a general matter, one that we do not view as an alternative to the granting of security. SECTION 3: SPECIFIC CRITERIA REQUIREMENTS FOR ENGLISH AND WELSH SPEs Based on the principles discussed previously in this article, we have developed the following criteria to help us assess whether an English or Welsh incorporated company subject to the U.K. insolvency regime is "insolvency remote". Restrictions On Activities The entity should not engage in any business or activity other those necessary for, or incidental to, its role in the transaction. Debt Limitations Except in case of certain multi-use vehicles, the entity should not incur any debt unless the additional debt (i) is assigned the same rating by Standard & Poor's as the issue credit rating requested for the rated debt in a given transaction or (ii) is fully subordinated to the rated

debt; and, in either case, (a) 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 (b) does not constitute a claim against the entity if funds are insufficient to pay this additional debt. In addition to securities, "additional debt" includes any monetary obligation or other obligation that may involve the payment of money, such as guarantees, indemnities, and covenants by the SPE to release security. Nonpetition Any agreement between the SPE and its creditors should include non-petition provisions, in which the creditors agree not to initiate or join in any insolvency proceedings in respect of the SPE before the end of a specified period after all of the rated notes are paid in full. Limitation Of Recourse Any agreement between the SPE and its creditors should also include limitation of recourse language, pursuant to which the creditors agree that their recourse to the SPE is limited to the assets backing the rated notes. To the extent that the terms and conditions of the rated notes do not include limitation of recourse provisions, we will look to the originator or the arranger of the transaction to propose acceptable alternatives to the noteholders agreeing to limit their recourse to the assets backing the rated notes. Independent Director The SPE should have and maintain an independent director or its functional equivalent. "Independent director" means a duly appointed member of the board of directors of the SPE who should not have been at the time of such appointment, or at any time in the preceding five years, (i) a direct or indirect legal or beneficial owner in the SPE, or any of its affiliates (excluding de minimus ownership interests), (ii) a creditor, supplier, employee, officer, director, family member, manager, or contractor of the SPE or its affiliates, or (iii) a person who controls (whether directly, indirectly, or otherwise) the SPE or its affiliates or any creditor, supplier, employee, officer, director, manager, or contractor of the SPE or affiliates. No Merger Or Reorganization The SPE should not engage in any dissolution, liquidation, administration, moratoria, consolidation, merger, or asset sale (other than as provided in the relevant transaction documents) so long as the rated notes are outstanding without prior written notice to Standard & Poor's. Separateness Covenants The SPE should agree 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 (other than cash collections from the securitized assets, which may be placed in an account in the name of the servicer); 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 other formalities required by the constituting documents; To maintain an arm's length relationship with its affiliates (if any); 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 or shareholders; To use separate stationery, invoices, and cheques; 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. Security Interests In Assets Generally, all of the SPE's assets should be pledged or charged to secure its rated notes. SECTION 4: ENTITY–SPECIFIC SPE CRITERIA We recognize that, depending on the specific organizational structure of an SPE (for example, corporation, trust, limited partnership, limited liability partnership), there may be different or additional considerations that are relevant in reaching a conclusion that an entity is bankruptcy-remote. For example, in cases where the SPE is a limited partnership, we would generally expect to receive comfort that the insolvency of one of the partners would not result in the partnership becoming insolvent. We would also generally request that at least one general partner be constituted as an SPE, with this general partner itself satisfying our insolvency remoteness criteria. If the SPE is a trust, we would request that the related declaration of trust restricts the ability of the issuer trustee to voluntarily terminate the SPE while there are any rated notes outstanding. Market participants should have regard to the principles discussed above when examining whether or not a specific entity supports the conclusion of bankruptcy remoteness. In addition, when considering the use of novel organizational structures for SPEs, market participants are urged to contact Standard & Poor's as early in the transaction process as possible to allow for a timely consideration of any issues. SECTION 5: RELATED CRITERIA "Structured Finance Criteria Introduced for English and Welsh Special-Purpose Entities" (published on April 25, 2001). "European Legal Criteria For Structured Finance Transactions"

(published on March 23, 2005). All criteria are available on RatingsDirect, Standard & Poor's Web-based credit analysis system, at www.ratingsdirect.com. The criteria can also be found on Standard & Poor's Web site at www.standardandpoors.com.