

Article Title: ARCHIVE | Legal Criteria: Canada Asset Isolation And Special-Purpose Entity Criteria--Structured Finance Data: (EDITOR'S NOTE: — This article is no longer current. It was superseded by "Structured Finance: Asset Isolation And Special-Purpose Entity Methodology," published on March 29, 2017.) 1. This article describes S&P; Global Ratings' methodology and assumptions for assessing legal risks in Canadian structured finance transactions. This article follows the release of "Asset Isolation And Special-Purpose Entity Criteria--Structured Finance," published on May 7, 2013 (hereafter referred to as the AISPE criteria). This article is related to our criteria article "Principles Of Credit Ratings," which we published on Feb. 16, 2011. 2. [The information from this paragraph has been moved to the Appendix.] SCOPE OF THE CRITERIA 3. These criteria apply to all Canadian structured finance transactions that look to incorporate asset isolation and/or the insolvency remoteness of special-purpose entities used in securitization transactions. These criteria may be modified or supplemented to the extent that S&P; Global Ratings may publish asset-specific criteria that discuss asset isolation or insolvency remoteness of special-purpose entities. 4. For the purposes of this article, the terms "insolvency remote" and "insolvency remoteness" are used interchangeably with the terms "bankruptcy remote" and "bankruptcy remoteness," respectively. SUMMARY OF CRITERIA 5. These criteria provide the market with a description of how we consider legal risks that could affect our assessment of the creditworthiness of Canadian structured finance debt issues. In Canada, S&P; Global Ratings will apply the criteria set out in the AISPE criteria article, with some limited adjustments outlined herein to reflect their application in Canada. 6. In Canada, S&P; Global Ratings applies the same criteria as those set out in "Multiple-Use Special-Purpose Entity Criteria--Structured Finance," published on May 7, 2013. 7. In the past, S&P; Global Ratings published certain articles discussing methodologies and assumptions related to how we assess legal risks in the context of our structured finance ratings for specific jurisdictions or asset types. The criteria contained herein do not constitute a departure from our existing views. Rather, following the release of the AISPE criteria, this article provides an updated description of the framework for how S&P; Global Ratings assesses legal risks in Canadian structured finance transactions. The criteria, as set out in this article, are not intended to be read as being prescriptive but rather as providing general criteria that guide S&P; Global Ratings when we consider legal issues we view as relevant to the credit analysis of Canadian structured finance securities. 8. [This paragraph has been deleted.] 9. [The information from this paragraph has been moved to the Appendix.] METHODOLOGY 10. The AISPE criteria provide the market with a description of how we consider legal risks that may affect our assessment of the creditworthiness of structured finance debt issues. That article focuses on a discussion of: Asset isolation in securitization. The insolvency remoteness of special-purpose entities (SPEs). 11. The AISPE criteria article also discusses related legal issues that could affect insolvency remoteness: clawback risk, set-off risk, and tax risk. In addition, that article discusses challenge risk in securitizations and sources of comfort on legal issues. 12. In Canada, S&P; Global Ratings will apply the AISPE criteria, with some limited adjustments outlined herein to reflect their application in Canada. Insolvency Remoteness Of SPEs 13. S&P; Global Ratings criteria for insolvency remoteness are globally consistent, though their application may vary in detail between jurisdictions. The most widely used form of SPE in Canadian securitization transactions is a trust. In Canadian securitization transactions, a typical trust SPE is not a separate legal entity under Canadian law but is rather a relationship established by an independent trust company (the issuer trustee) pursuant to a declaration of trust document with respect to property to be held in trust by the issuer trustee. The cash flows from trust property are used to repay debt issued by a trust SPE. Although much less prevalent, another form of SPE in Canadian securitization transactions is a limited partnership SPE, which is established pursuant to a partnership agreement with both limited and general partners. Cash flows from limited partnership property are used to repay debt issued by a limited partnership SPE. 14. The following adjustments to the AISPE criteria are applied in the assessment of the insolvency remoteness of trust SPEs and limited partnership SPEs used in Canadian securitization transactions. Independent director 15. The AISPE criteria discuss the concern related to the commencement of voluntary insolvency proceedings by a board of directors of an SPE and the view that the presence of independent directors could reduce the likelihood of an SPE's board of directors seeking to commence voluntary insolvency proceedings. Canadian trust SPEs and limited partnership SPEs do not have boards of directors. 16. For Canadian trust SPEs, S&P; Global Ratings

instead considers whether the issuer trustee carries on business as an independent trust company and the extent to which the related declaration of trust restricts the ability of the issuer trustee to voluntarily terminate the SPE while there are any rated securities outstanding. 17. For Canadian limited partnership SPEs, S&P; Global Ratings instead considers the extent to which at least one general partner is constituted as an SPE and, if so, whether that general partner was established in a manner that is consistent with the AISPE criteria. Also, if there is more than one general partner, S&P; Global Ratings considers the extent to which the limited partnership agreement provides that the partnership will continue (and not dissolve) as long as one solvent general partner exists. 18. For Canadian limited partnership SPEs, S&P; Global Ratings also considers the extent to which the consent of the SPE general partner is required by the partnership agreement (i) to file, consent to the filing of, or join in any filing of, a bankruptcy or insolvency petition, or otherwise institute insolvency proceedings for the limited partnership SPE; (ii) to dissolve, liquidate, consolidate, merge or sell all or substantially all of the assets of the limited partnership; (iii) for the partnership SPE to engage in any other business activity; and (iv) to amend the limited partnership agreement. Separateness 19. The AISPE criteria discuss the concern that the courts may use principles of "piercing the corporate veil," "alter ego," "substantive consolidation," or equivalent concepts to bring the SPE and its assets into the insolvency proceeding of another entity (such as a parent). The AISPE criteria discuss how, in assessing this risk, we may look to a nonconsolidation opinion and/or separateness covenants for comfort as to the separateness of an SPE. 20. As noted above, a Canadian trust SPE is not a separate legal entity but is rather a trust relationship established by an issuer trustee. Although in some Canadian securitization transactions the transferor will be appointed by the issuer trustee to act as its administrative agent in respect of the SPE and, as a result, be delegated authority to carry out the non-fiduciary administrative activities of the SPE, such authority is typically made subject to the issuer trustee's ultimate control over the administrative agent and the SPE's property and activities. As a result, a typical Canadian trust SPE, by its nature, is generally not related to the transferor. 21. Accordingly for a typical Canadian SPE trust, in our view the primary concern on separateness relates not to consolidation with the transferor but rather to the potential early termination of the trust either (i) by the issuer trustee or (ii) by the trust's beneficiaries under the common law rule established in *Saunders v. Vautier*. As to (i), see the comment in Paragraph 16 above. 22. The common law rule from *Saunders v. Vautier* is that all the beneficiaries of a trust may, provided they have the requisite legal capacity, unanimously agree to terminate the trust notwithstanding the terms specified by the trust documents. We understand that the risk created by the *Saunders v. Vautier* rule may be reduced if an SPE's declaration of trust specifies that the beneficiary will be one of a number of potential beneficiaries falling within a specified category, as selected by the issuer trustee. 23. For Canadian trust SPEs, S&P; Global Ratings considers whether the declaration of trust addresses the *Saunders v. Vautier* risk by specifying the trust's beneficiaries as being one of a number of potential beneficiaries falling within a specified category as selected by the issuer trustee. An example would be one or more members of a charitable organization recognized under the Income Tax Act (Canada). 24. For Canadian trust SPEs, S&P; Global Ratings may also look to a nonconsolidation opinion and/or separateness covenants for comfort if Standard & Poor's views the transaction structure as raising particular issues regarding separateness. 25. For Canadian limited partnership SPEs, S&P; Global Ratings considers the extent to which non-consolidation opinions are provided that provide comfort that upon the insolvency of one of the partners of the limited partnership SPE, neither the limited partnership SPE nor its assets would be consolidated with the insolvent partner. Appendix: Change History 26. These criteria became effective on the original publication date of this article on August 21, 2013. At that time, this article fully superseded "Structured Finance Criteria For Canadian Special-Purpose Entities," published on Aug. 26, 2002. 27. We republished the article following our periodic review completed on July 21, 2016. As a result of our review, we deleted outdated sections that previously appeared in paragraphs [2, 8, and 9] related to the initial publication of the article, and which were no longer relevant. We also made minor editorial updates throughout the article. RELATED CRITERIA AND RESEARCH "Asset Isolation And Special-Purpose Entity Criteria--Structured Finance," May 7, 2013 "Multiple-Use Special-Purpose Entity Criteria--Structured Finance," May 7, 2013 "Guarantee Criteria--Structured Finance," May 7, 2013 "Principles Of Credit Ratings," Feb. 16, 2011 These criteria represent the specific application of fundamental principles that define credit risk and

ratings opinions. Their use is determined by issuer- or issue-specific attributes as well as S&P; Global Ratings assessment of the credit and, if applicable, structural risks for a given issuer or issue rating. Methodology and assumptions may change from time to time as a result of market and economic conditions, issuer- or issue-specific factors, or new empirical evidence that would affect our credit judgment.