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A GUIDE TO ASSET-BACKED COMMERCIAL PAPER IN EUROPE

Robert Crowe

Head of Money Markets Origination

Citigroup Global Markets Inc.

robert.crowe@citi.com

Neil Hamilton

Partner, Mayer Brown

nhamilton@mayerbrown.com

Jerry Marlatt

Partner, Mayer Brown

jmarlatt@mayerbrown.com

Peter Pears

Partner, Mayer Brown

ppears@mayerbrown.com

WHAT ARE WE GOING TO DISCUSS TODAY?

- As easy as A,B,C (P) – The Basics
- Market Overview
- Types of ABCP Programmes
- EU and UK Regulatory Considerations
- It's not "E.U.", it's "U.S." – U.S. considerations
- Why issue ABCP?

AS EASY AS A,B,C (P) – THE BASICS

OVERVIEW

- The European Commercial Paper (ECP) programme is a **short-term, unsecured debt issuance programme** designed for large corporations and financial institutions to raise funds in the money market
- It is an important market for **short-term and working capital requirements** of large corporations and financial institutions
- ECP is a flexible funding tool, enabling issuers to tailor their issuance to meet specific funding needs and market conditions. It offers the ability to issue in **various currencies, maturities and sizes**
- The ECP market is **one of the largest short-term debt markets globally** and provides an important source of funding for many large corporations and financial institutions
- The European **Asset-Backed Commercial Paper (ABCP)** market is a subset of the ECP market and comes in a range of different structures. For example, it may be backed by a pool of financial assets such as trade receivables, credit card receivables, auto loans and securities portfolios

ABCP

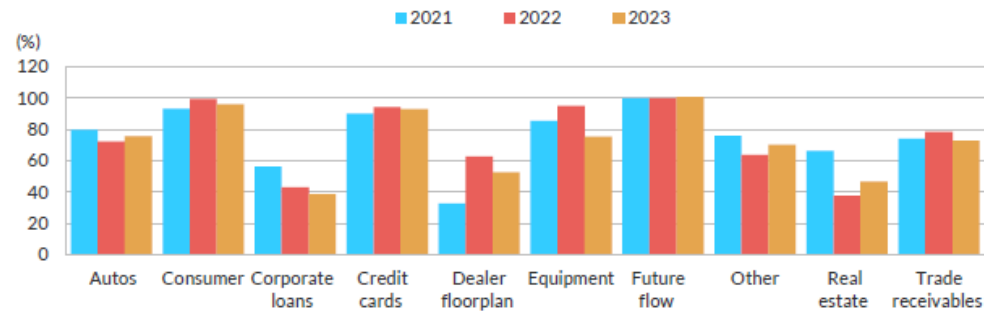
- The development of securitisation in the 1980s did not by-pass commercial paper
- Merrill Lynch/Citi developed first receivables conduits, which would buy receivables from corporates funded by commercial paper issuance by the conduit. This provided many corporates with capital markets access and cheaper funding than available through loans
- In a defensive response, banks started their own competing conduits
- The success of the conduit structure led to funding other asset types, including mortgages, portfolio securities, ABS and short-term loans

ABCP

- **2002-2007** saw huge growth in European bank-sponsored conduits (and some specialist non-bank sponsored conduits), mostly investing in US asset-backed securities and issuing ABCP in USD.
- These included structured investment vehicles (SIVs), which were set up to earn the yield spread between long-term higher yielding assets and short-term lower cost borrowing, relying heavily on ABCP.
- In **2007-2008** SIVs were caught up in the subprime crisis and most eventually became insolvent. Their demise led to a rapid fall in issuance of ABCP in general.
- Traditional multi-seller programs were able to continue issuing ABCP during the financial crisis and survived.
- Over the last decade, the European ABCP market has revived and evolved significantly and is subject to increased regulation, mainly under the European Securitisation Regulation (and the equivalent UK rules).
- The European ABCP market has moved substantially toward more traditional multi-seller structures.

ABCP

EMEA Multi-Seller Facility Utilization by Asset Class



Source: Fitch Ratings

- A structured commercial paper conduit is a bankruptcy remote limited-purpose finance company that issues commercial paper to finance the purchase of assets
- Asset types include receivables generated from trade, credit cards, securities portfolios, auto loan/leases, equipment leases, and others
- Programmes are typically established and administered by commercial banks to provide flexible and competitive low cost financing to their customers
- Unlike term securitisations, these programmes are ongoing entities and do not wind down after a few years
- Typically maturing CP is paid down with the proceeds of newly issued CP
- The proceeds of collections from matured receivables are reinvested in newly generated receivables (assuming revolving period).

ABCP KEY FEATURES

- Terminology is often mixed – ABCP, Collateralised Commercial Paper, Structured Commercial Paper
- Revolving on both asset purchase and funding sides
- Maturity match assets with funding
 - Unless fully supported or guaranteed
- Bankruptcy remoteness
- CCP structures – common method for banks to finance their inventory positions
- Ratings
- Partial or full credit support:
 - Transaction Level (Overcollateralization, reserve accounts etc.)
 - Liquidity Support
 - Guarantees

TYPES OF ABCP PROGRAMMES

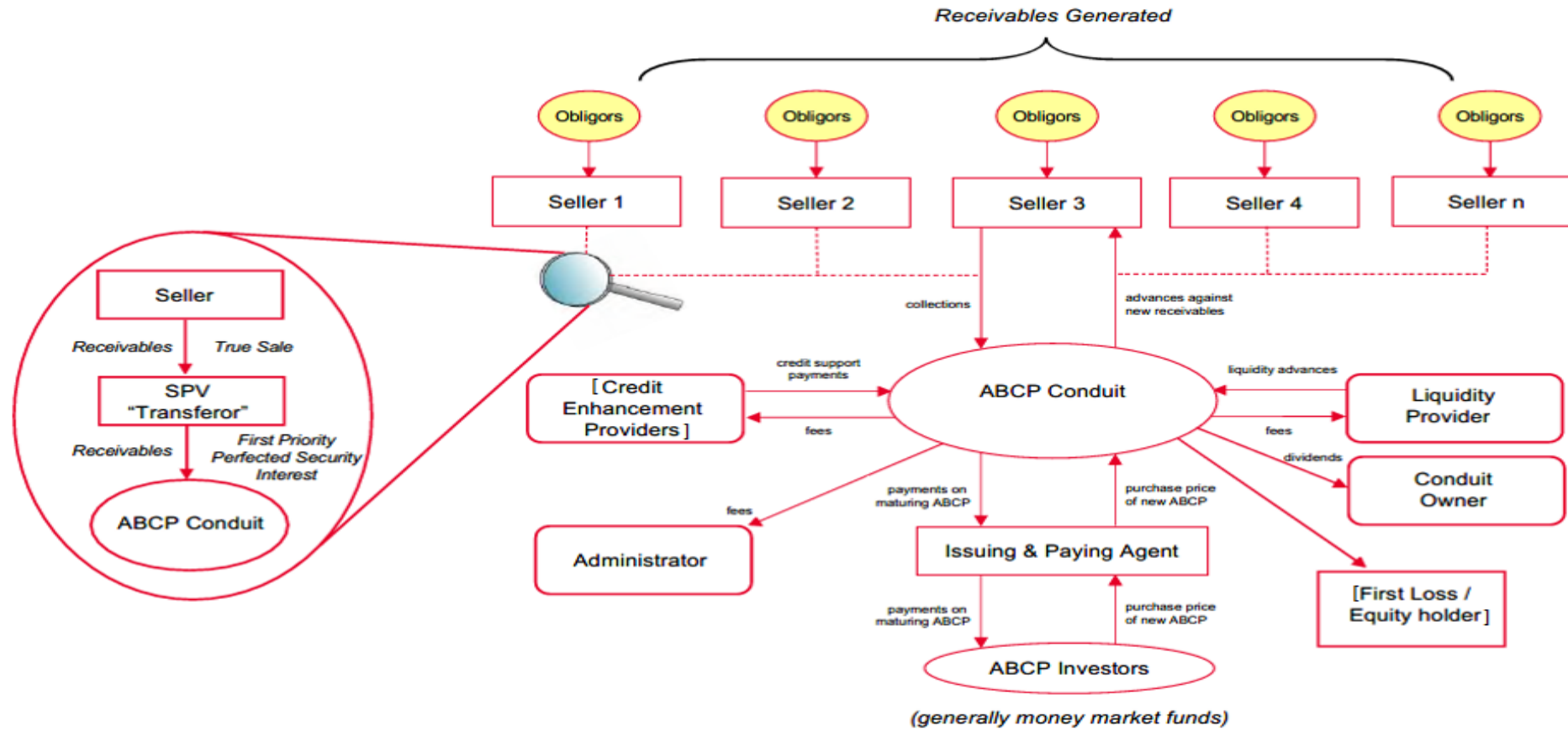
TYPES OF ABCP PROGRAMMES

- ABCP Programme Structures employed today include the following:
 - Bank sponsored Multi-Seller
 - Aggregator sponsored Multi-Seller
 - Bank sponsored CCP/Repo
 - Aggregator sponsored CCP/Repo

BANK SPONSORED MULTI-SELLER PROGRAMS

- A Multi-Seller ABCP Conduit is a limited purpose, bankruptcy-remote SPV that provides financing for receivables pools generated by multiple, unaffiliated originators/sellers
- Multi-seller programmes are most commonly established and “sponsored” by large commercial banks and typically provide financing to that bank’s corporate clients
- These banks typically serve as Programme Administrator or Administrative Agent for the Conduit, and commonly provide liquidity and credit support as well
- Multi-seller Conduits are typically structured to:
 - Make loans against or purchase interests in receivables pools
 - “Warehouse” assets prior to a term ABS take-out, and/or
 - Purchase securities
- ABCP issued from a large multi-seller vehicle is typically perceived as low risk for investors due to:
 - Originator diversification
 - Asset diversification and Deal-Specific Credit Enhancement
 - Program-Wide Credit Enhancement and 100% Liquidity Support
 - Bank Sponsorship

MULTI-SELLER ABCP CONDUIT



AGGREGATOR SPONSORED MULTI SELLER PROGRAMMES

- These programmes serve the same function as bank sponsored multi-seller programmes
- An aggregator entity (Guggenheim, Nearwater, Mountcliff, Northcross, Capitolis) receives small, but high volume, fees by providing CP access to funding for bank customer transactions fully backed by bank liquidity and credit support
- Can have some off-balance sheet benefits for banks depending on bank's regulatory regime (RW capital, LCR, NSFR)
- Banks can be at mercy of liquidity shortage to aggregator

BANK SPONSORED CCP/REPO PROGRAMMES

- A Bank sponsored CCP (or repo) programme can involve CP issued directly by the bank or through a limited purpose, bankruptcy-remote SPV
- Typically designed as an alternative funding source for bank securities and/or loans

AGGREGATOR SPONSORED CCP/REPO PROGRAMMES

- These programmes function similarly to aggregator sponsored Multi-Seller Programs but typically fund securities books of banks/broker dealers, as opposed to customer transactions

ABCP PROGRAMME - GENERAL CONSIDERATIONS

- Location of CP issuance
 - USCP
 - ECP
 - Other
 - Currencies
- Types of customer transactions
 - Typical private securitizations (trade, warehouses, etc.)
 - Subscription facilities
 - Repos
 - Other

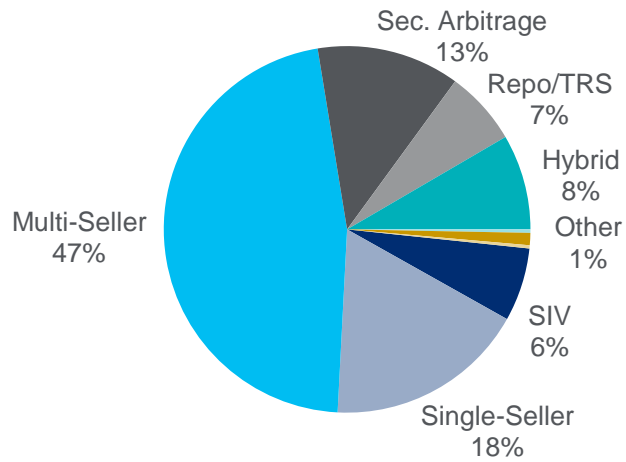
ABCP PROGRAMME - GENERAL CONSIDERATIONS (CONT'D)

- Full support vs. partial support
- CP tenor
 - All short term
 - Longer term
 - Extendible, puttable, callable
- On balance sheet vs. off balance sheet
- Wholly owned vs. third party owned
- Identity of dealers
- Identity of depositary, issuing and paying agent
- Identity of collateral trustee, if applicable
- Identity of rating agencies
- Location of conduit issuer and desirability of US co-issuer
- Cross border tax considerations

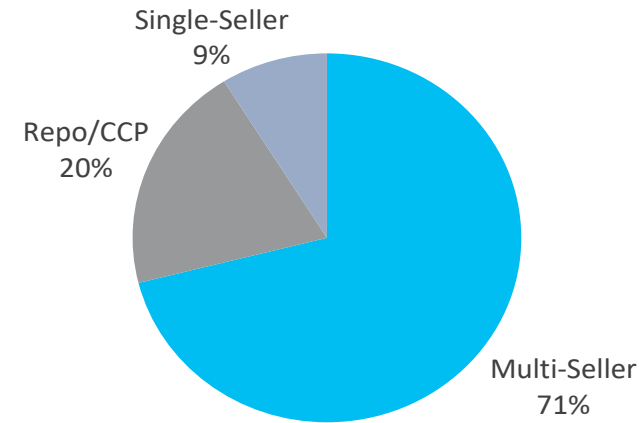
EUROPEAN ABCP - MARKET OVERVIEW

EVOLUTION OF THE ABCP MARKET

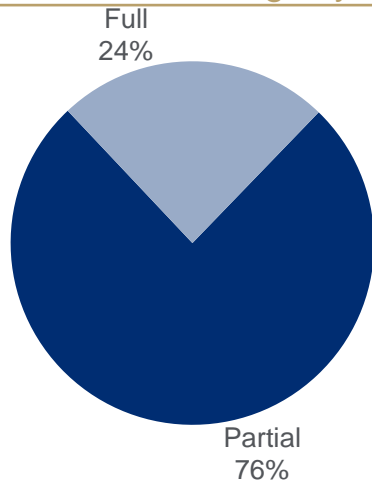
2007 Global ABCP Outstandings by Programme Type



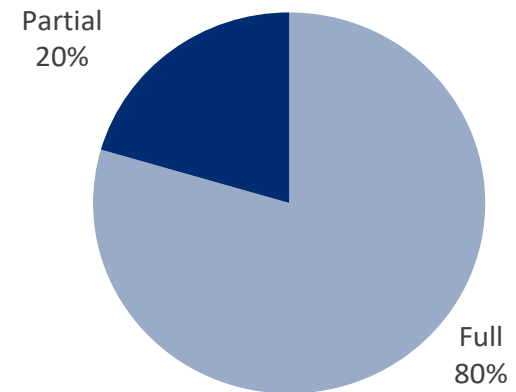
2024 Global ABCP Outstandings by Programme Type



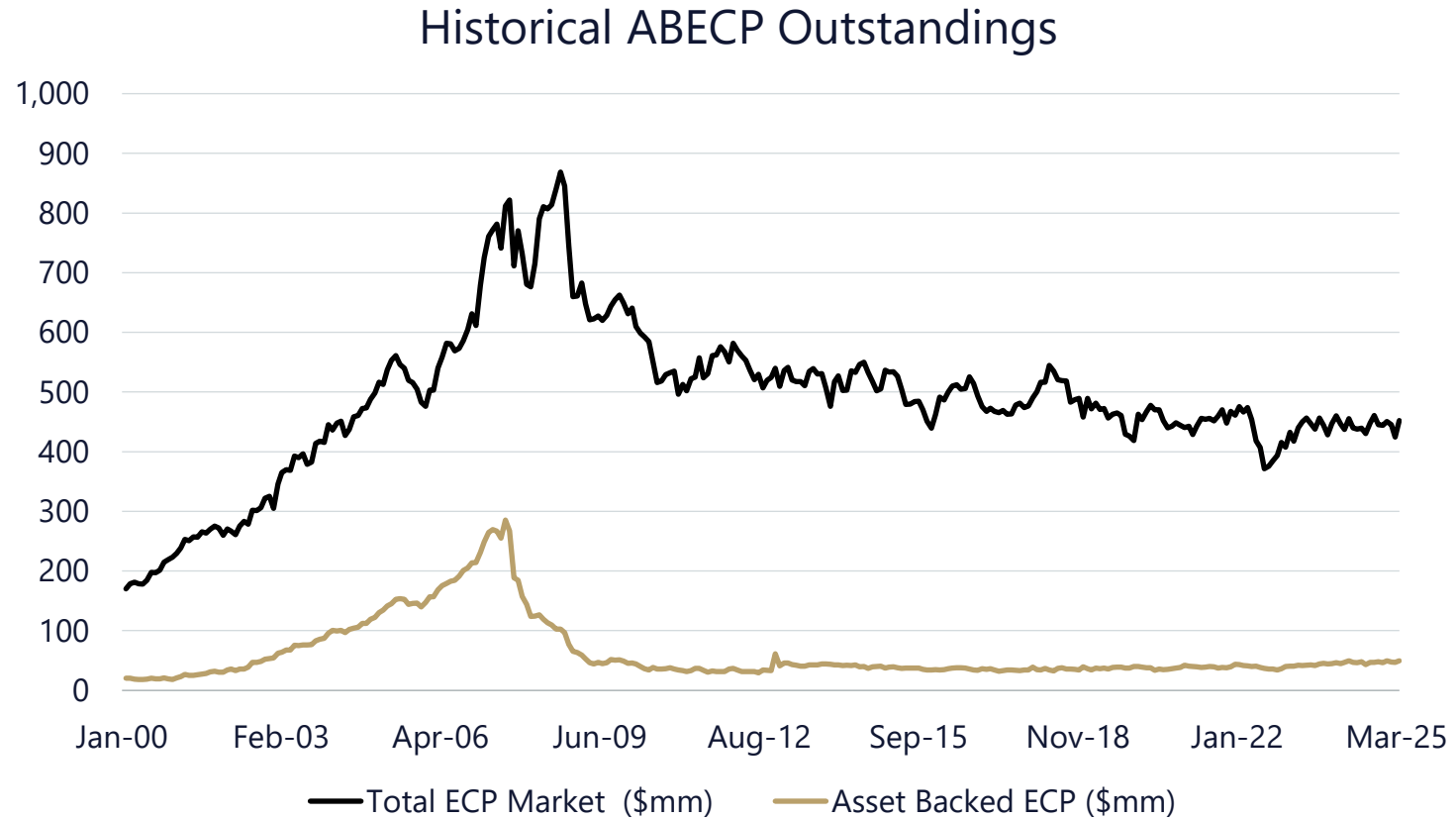
2007 Global ABCP Outstandings by Support Type



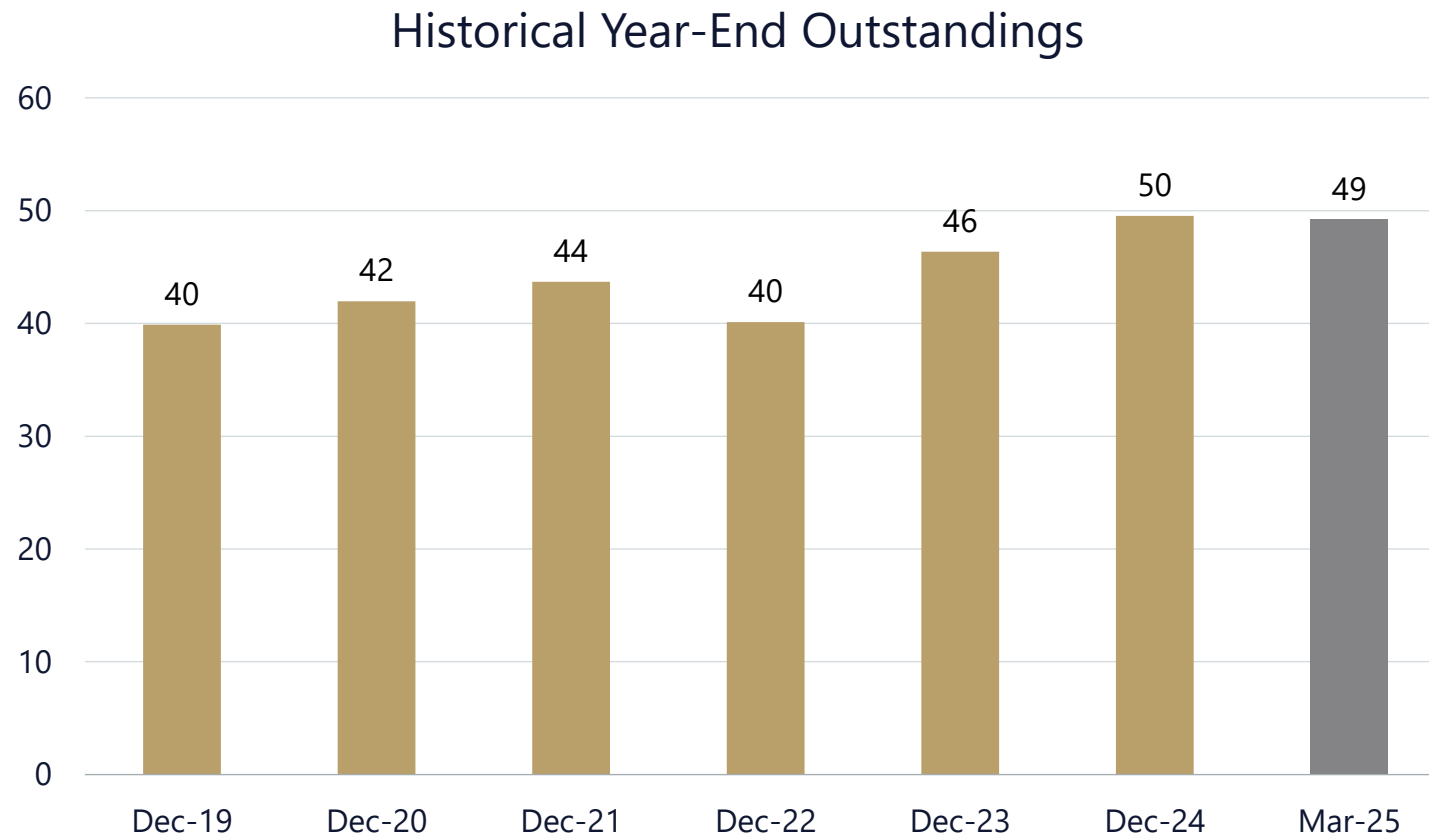
2024 Global ABCP Outstandings by Support Type



ABECP MARKET OUTSTANDINGS



ABECP HISTORICAL YEAR-END OUTSTANDINGS



EU/UK REGULATORY CONSIDERATIONS

EU/UK REGULATORY CONSIDERATIONS FOR COMMERCIAL PAPER

Main features of EU/UK regulation applicable to CP programme:

- **Prospectus regulation:** CP is exempt from the requirements of the EU and UK Prospectus Regulations (but it is classified as a 'financial instrument' for the purposes of EU MiFID II, UK MiFIR and the FCA Handbook). CP is exempt because it is treated as a money market instrument with a maturity less than 12 months and therefore not a "transferable security". The minimum denomination of CP is always higher than €100,000 which also means there is no obligation to publish a prospectus pursuant to EU and UK Prospectus Regulations.
- **PRIIPS/Selling restrictions:** Market consensus is that CP does not constitute a PRIIP and therefore it is not necessary to include the PRIIPS legend in the CP documentation. Investor base is not retail.
- **Product Governance:** Depending on whether the ECP issuer is a MiFID II firm or a FCA authorised firm (and therefore a "manufacturer") or the relevant dealer considers itself to be a "distributor" and not a "manufacturer", particular disclosure language will need to be inserted in the Information Memorandum and Dealer Agreement. Generally, underwriters do not consider themselves manufacturers.
- **FSMA Deposit Taking:** Where commercial paper is issued by issuers who are not authorised or exempt, the standard ICMA selling restrictions requires that the managers represent and agree that the commercial paper is only offered to investors whose ordinary activities involve them acquiring, holding, managing or disposing of investments. To fall within this exemption, it is also customary for commercial paper to have a minimum denomination of at least GBP100,000 (or equivalent in another currency).

EU / UK REGULATORY CONSIDERATIONS FOR ABCP

EU/UK Securitisation Regulation

- An ABCP transaction may often use the proceeds from the issuance of ABCP to obtain an interest in transactions that have tranching credit exposure and qualify as securitisations for EU/UK regulatory purposes.
- ABCP (and liquidity or asset purchase facilities) will therefore also typically be securitisation positions for the purpose of the EU/UK Securitisation Regulation.
- EU/UK Securitisation Regulation requires:
 - Initial and ongoing due diligence by EU/UK institutional investors in relation to a securitisation position
 - Risk retention of at least a 5% of net economic interest in the securitisation transaction
 - But fully supported ABCP programmes do not require risk retention at transaction level
 - Disclosure to investors, competent authorities and, on request, potential investors
 - Transaction summary
 - Monthly asset-level report and investor report (Annexes 11 & 13 of ESMA templates)
 - 'Significant event' disclosure

EU / UK REGULATORY CONSIDERATIONS FOR ABCP (CONT'D)

EU / UK Securitisation Regulation

- STS - ABCP transactions or programmes which qualify as STS (simple, transparent and standardised) may result in reduced regulatory capital requirements or other regulatory benefits for bank holders of an exposure to the transaction/programme
 - STS criteria for ABCP transactions include requirements relating to:
 - Simplicity, including true sale and underwriting standards, homogeneity
 - Standardisation, including risk retention
 - Transparency, including provision of information to potential investors
 - Sponsor and sponsor support for the ABCP programme
- criteria for ABCP programmes to be STS require:
 - All underlying transactions to be STS (except that a maximum of 5 % of the aggregate amount of the exposures may temporarily be non-compliant a period of no more than six months)
 - Programme to be fully supported by the sponsor
 - Remaining weighted average life of the underlying exposures to not be more than two years
 - ABCP may not include call options, extension clauses or other clauses that have an effect on final maturity, where such options or clauses may be exercised at the discretion of the seller, sponsor or the conduit
- No resecuritisation at ABCP Transaction level - securitised exposures transferred by the seller to the conduit may not be resecuritisations.

EU / UK REGULATORY CONSIDERATIONS FOR ABCP (CONT'D)

Joint Committee of the ESAs Report of 31 March 2025

- Proposes changes to STS requirements for ABCP
- Clarifies who is 'sponsor' in the context of ABCP transactions

Large exposure rules under Capital Requirements Regulation (Reg (EU) 575/2013)

- Groups of connected clients (GCC)

EU / UK REGULATORY CONSIDERATIONS FOR ABCP (CONT'D)

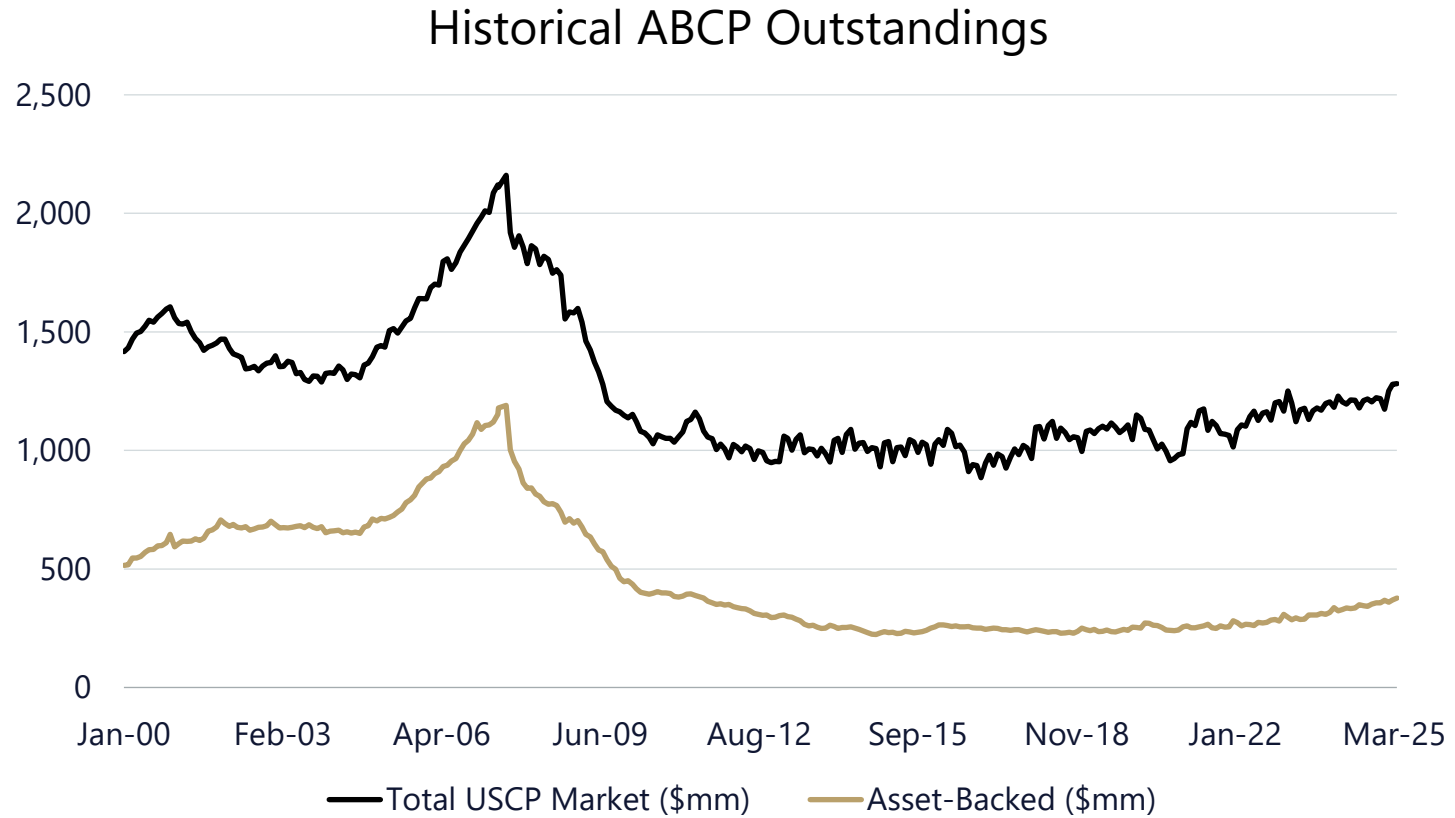
- Money Markets Fund Regulation
 - Money market funds may invest
 - Up to 20% of their assets in ABCP which is STS
 - Up to 15% of their assets in non- STS ABCP

EU MONEY MARKET FUNDS REGULATION – ELIGIBLE ABCP

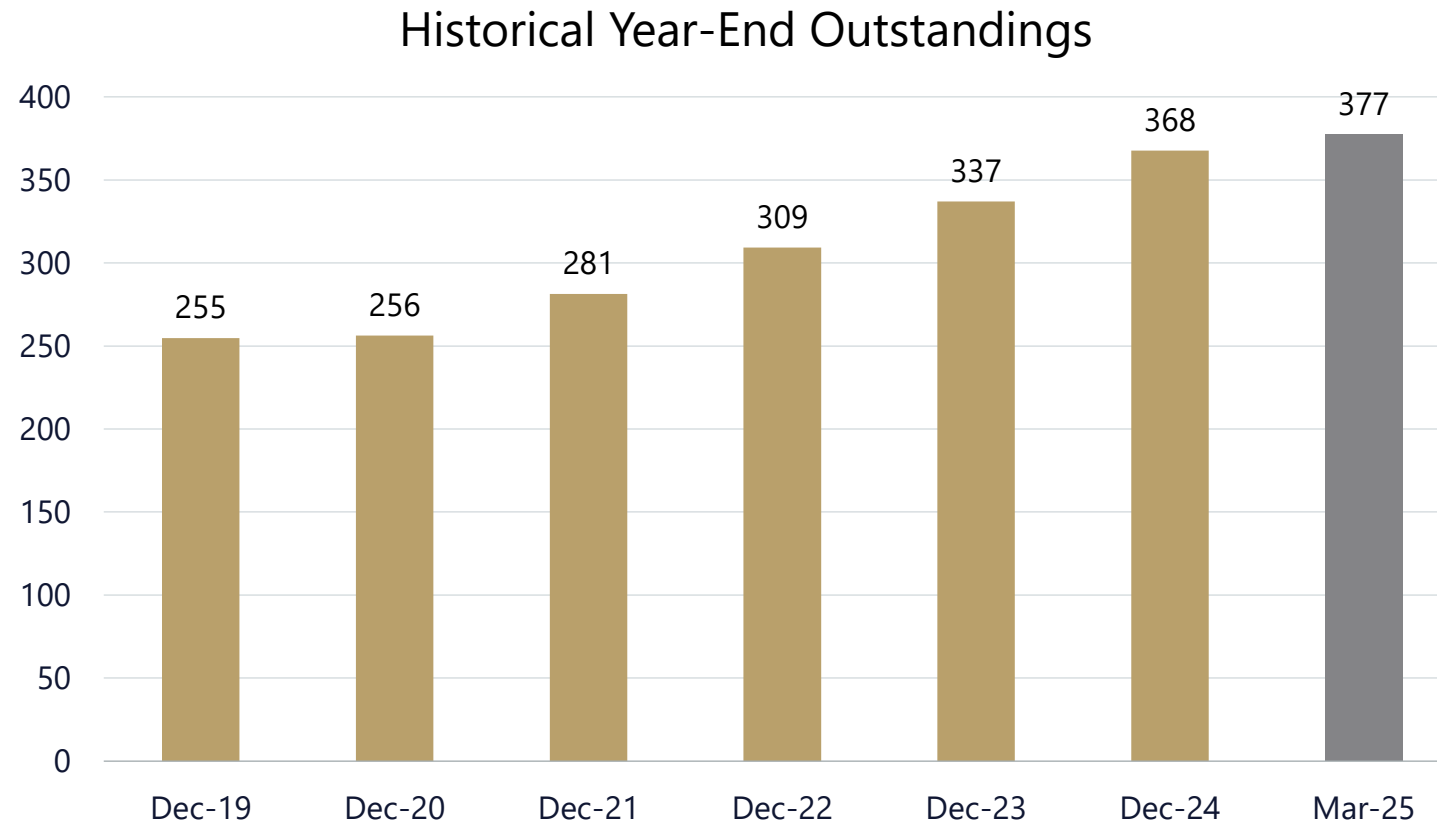
- ABCP is eligible if (liquid and good credit quality) and “issued by an ABCP programme which:
 - Is fully **supported** by a regulated credit institution that covers all liquidity, credit and material dilution risks as well as ongoing transaction costs and ongoing programme wide costs related to this commercial paper if necessary to guarantee towards the investor the full payment of any amount under the asset back commercial paper;
 - is **not a re-securitisation** and the exposures underlying the securitisation at the level of each ABCP transaction do not include any securitisation position;
 - does **not include synthetic securitisations** as defined by [Art. 242(11) CRR].”
- Maturity limits for eligible ABCP:
 - Short term MMF: residual maturity or legal maturity at issuance is 397 days or less;
 - Standard MMF : legal maturity at issuance or residual maturity is 2 years or less and time remaining until next interest rate reset date is 397 days or less
 - (No limit on maturity of underlying assets, though earlier proposed)
- Future change: a consultation has opened where the EU is taking information as to how well this regulation is functioning, no concrete proposals as of yet.

IT'S NOT "E.U.", IT'S "U.S." – U.S.
CONSIDERATIONS

US ABCP MARKET OUTSTANDINGS



US ABCP HISTORICAL YEAR-END OUTSTANDINGS



ABCP PROGRAMME – US LEGAL CONSIDERATIONS

- US Investment Company Act exemption
- US and other securities law exemptions
- Volcker Rule “covered fund” analysis
- US and EU risk retention compliance
- Rating agency regulation, including US rule 17g-5 website
- Tax domicile and related issues
- Money market fund investor issues and 2a-7
- US intermediate holding company (IHC) considerations

WHY ISSUE ABCP?

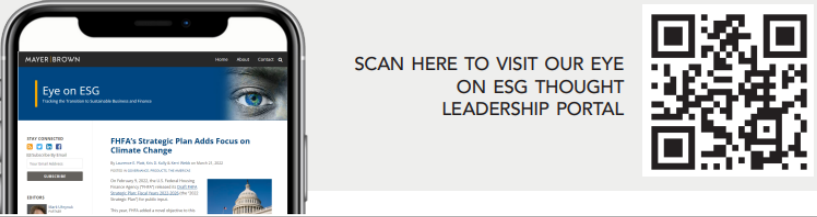
WHY ISSUE ABCP?

- As demonstrated, the European market in ABCP is not new and historic reasons to issue ABCP remain
- We have, however, seen increased interest in recent years
- Cost effective funding – particularly attractive in high-interest rate environment
- A variety of different structures – customisable (different tenors and exposure to diverse asset classes)
- Sustainable ABCP
- Scalability – once set up, Programmes can be ramped up or down based on cash flow needs or market conditions
- Significant established markets
- Investor considerations

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2024

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Please contact Carlin Kaplan (C.Kaplan@mayerbrown.com) and Anne L. (A.Lapanella@mayerbrown.com) or your Mayer Brown contact to set

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