

*the*  
Cover(ed) Story



# The Cover(ed) Story

## Covered bonds

Mayer Brown lawyers have played a leading role in the development of the covered bond market. From advising clients on the first covered bonds undertaken by a U.S. depository institution, to advising Canadian and other non-U.S. banks on their covered bond issuances, to undertaking the first U.S. public offering of covered bonds in the United States, Mayer Brown lawyers have been front and center. Our long experience with covered bonds and our knowledge of bank regulatory issues, the mortgage markets, financial institutions and financing techniques makes us a worthy partner to our issuer, dealer, initial purchaser, and underwriter clients.

Our covered bond story begins with a profound understanding of capital markets and financial institutions. We are one of the leading securities and capital markets law firms in the world, advising issuers, underwriters and agents in domestic and international, private and public financings. Our lawyers in each office know their local markets well and call upon Mayer Brown experts as needed to serve clients. Each year, we represent issuers and underwriters in hundreds of securities offerings, which (aside from providing our clients with needed funding) provide us with essential and current market context. We are well known for our work advising on investment grade debt issuances and continuous offering programs, including medium-term note programs; bank note 3(a)(2) and 144A offering programs; and structured products and other similar programs.

Our presence in the world's leading financial centers enables us to advise regularly on U.S. MTN programs, European MTN programs and other global platforms. We are accustomed to working with issuers, including domestic and foreign banks, government agencies, and other entities to establish their continuous offering programs. We also work actively with arrangers and dealers on continuous offering programs. Our securitization practice covers the full range of asset classes and methodologies, including ABCP conduits, insurance and reinsurance securitization, whole-business/corporate securitization, consumer credit securitization, mortgage-backed securitization, CDOs, and CLOs and other fund financing transactions. The firm's knowledge of the mortgage markets and its mortgage-backed securities practice is comprehensive and international in scope.

We regularly represent leading financial institutions and fund managers in complex structured finance matters, with particular emphasis in advising trans-Atlantic and global banks and investment banks on cross-border or local market transactions.

Our “pioneering” experience in financing methodologies is essential in enabling us to lead the market in covered bond offerings; however, it is our exceptionally broad and deep financial services practice, and our knowledge of the regulatory and business environment in which our financial institution clients function, that completes the picture.

Named 2017 Structured Finance and Securitization Team of the Year by the ***International Financial Law Review*** at the Americas Awards

**Recognized by *GlobalCapital* as the 2017 Best Overall Securitization Law Firm and the Best Law Firm for ABS at the 2017 U.S. Securitization Awards**

“Mayer Brown’s highly regarded structured finance team prides itself on its cross-border securitization capabilities....”

–*Legal 500 US*

## Financial services

“Mayer Brown’s team is well placed to assist international and domestic financial institutions across the spectrum of advisory and regulatory-informed transactional matters...”

- *Legal 500 US*

“A broad practice... covering the full range of banking regulatory compliance and enforcement matters.”

- *Chambers USA*

Mayer Brown has one of the largest and most well-regarded banking and finance practices in the world. With partners, counsels, and associates who have worked in all areas of the financial services industry, including as attorneys with the Federal Reserve System, the Office of the Comptroller of the Currency, the former Office of Thrift Supervision, the Consumer Financial Protection Bureau, the Securities and Exchange Commission, and other regulatory agencies in the United States, as well as regulators in the United Kingdom, we are able to provide highly informed and practical counsel to banks and other financial market participants. Through these relationships, we have cultivated an excellent reputation among regulators for our creativity, legal and practical acumen, thoughtfulness, responsiveness and integrity. We believe our financial services industry knowledge (which is broadly disseminated across several key practices within the firm) and our regulatory capabilities, combined with our transactional experience, differentiate us from a number of our key competitors. The firm’s breadth of experience is particularly important at this time given the scope of regulatory change and the complex interaction of so many of the facets of regulation, which affect a range of bank offered products and services, as well as regulatory capital and supervision, and financing activities.

# Regulatory change

Since the passage of the Dodd-Frank Act in the United States, the adoption of the Basel III framework, and the ensuing period of regulatory upheaval, the landscape for financial institutions has been altered dramatically. In this new environment, Mayer Brown serves as an essential partner and a trusted adviser to financial services companies, helping them address these challenges and reassess the structure and nature of their business operations. We have distinctive experience in the securitization and mortgage market, where we bring to bear regulatory experience, and capital markets and structuring advice. Regulations issued in the United States and in Europe impose a considerable number of additional restrictions and requirements on mortgage loan originators, mortgage servicers and securitizers. Similarly, banking rules impose certain risk-based capital and other charges on mortgage-related exposures, and subject financial institutions to capital, leverage and liquidity requirements. With our colleagues in Europe we are able to advise on regulatory developments affecting resolution schemes, securitization, ratings, capital, leverage and liquidity measures. Many of these changes have impacted, and will continue to impact, the mortgage origination businesses of our financial institution clients, as well as shape their funding strategies and influence their investment in securitized exposures and covered bonds issued by others. We also have advised our financial institutions clients regarding the application of loan level disclosure requirements, the impact of the Volcker Rule on interests held by financial institutions, and a myriad of related regulatory issues.

Our advice is always forward-looking, taking into account emerging regulatory, tax and accounting issues.



## Our work

We put all of our experience and market knowledge to work in order to achieve results for our clients. Having advised on covered bond offerings in Europe, where the covered bond market is established, Mayer Brown lawyers were well-equipped to advise the two U.S. depository institutions that, in the absence of covered bond legislation in the United States, sought to issue covered bonds by replicating synthetically, through contractual arrangements, the benefits provided by covered bond statutes in Europe. These two covered bond programs relied heavily on structured finance and securitization techniques and required a thorough understanding of secured financing principles and the U.S. FDIC's receivership framework.

When our foreign bank clients were contemplating structuring covered bond programs that would permit them to access the U.S. institutional investor market, we worked closely with them to adapt their European issuance programs to permit offerings on an exempt basis in the United States. We advised on the first offerings of covered bonds by Canadian banks into Europe and on many offerings into the United States. In addition, we have extensive experience with Turkish covered bonds, having advised on the establishment of the first international (non-Turkish Lira) covered bond program in Turkey and subsequent issuances.

As other foreign banks contemplate their funding needs and the regulatory benefits associated with covered bonds, we are working closely with them and with U.S. bank regulators to structure covered bond programs exempt from registration in reliance on Section 3(a)(2). To qualify for a Section 3(a)(2) offering, the covered bonds must be either issued or guaranteed by the U.S. branch or agency. Relying on the Section 3(a)(2) exemption has certain advantages compared to a Rule 144A

offering. An offering made in reliance on Section 3(a)(2) is not subject to the limitation of sales only to qualified institutional buyers that applies to a Rule 144A offering. Securities sold in reliance on Section 3(a)(2) are not restricted securities, while securities sold in a private placement and resold in reliance on the Rule 144A safe harbor are “restricted securities.” Many institutional investors are subject to limitations on the amount of restricted securities that they may purchase. Resales of Rule 144A securities may only be made to QIBs, whereas, 3(a)(2) securities may be sold to a broader universe of investors. Finally, restricted securities are not eligible to be included in bond indices and are therefore viewed as less liquid.

Considering these various exempt offering approaches got us thinking about the “gold standard”: a registered U.S. public offering of covered bonds. Working closely with our client, Royal Bank of Canada, we were able to obtain regulatory “no-action” letter guidance that facilitated an approach to registration of a covered bond program with the U.S. Securities and Exchange Commission.

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**“Impressive strength and depth and well supported by its broad regulatory offering, which has been active of late advising on legislative reform.”**

*– Chambers USA*

## **Input For Policy Makers and Regulators**

Our lawyers have been active participants in the legislative and rulemaking process for more than five decades. We regularly work with members of Congress and their staffs, and the staff of the federal financial regulatory agencies on a range of banking and financial services issues. In connection with our covered bonds work, our attorneys meet with members of the U.S. Congress, as well as with U.S. Federal Reserve and U.S. Treasury officials, in an effort to shape covered bond legislation in the United States. We also regularly meet with representatives of the European Central Bank and the German Association of Pfandbrief Banks (VdP) to discuss regulatory developments related to covered bonds. Our colleague, Jerry Marlatt, is a member of SIFMA's Covered Bond Council. Not only do we comment on financial and regulatory proposals on behalf of clients and industry groups but we also respond to inquiries directly from congressional and agency staff, seeking to understand financial regulatory issues. The knowledge and insight we glean from these interactions is highly valued by our clients who are eager to understand the regulatory landscape and to develop successful operating and financing plans. Our attorneys also speak and write regularly concerning the covered bonds market in the United States, the U.K. and the emerging market in Asia.

We are enthusiastic about bringing to bear our experience and thinking about new solutions to old problems. However, we also

appreciate that our innovations are only useful if they result in business-minded approaches for our clients. As needed, we are able to draw on the resources of attorneys throughout our offices in the United States, Europe and Asia who are experienced in corporate, capital markets, investment management, restructuring, derivatives, banking, secured transactions, real estate, ERISA and tax-related matters. Our Washington, D.C. office provides distinct experience in dealing with the Department of Labor, OCC, Federal Reserve, CFPB, and FDIC on regulatory matters critical to covered bonds issuances and up-to-the-minute counseling on legislative and regulatory developments.

Our experience establishing hundreds of continuous offering programs, and executing literally thousands of securities offerings, provides the type of insight and context that our clients value. This experience is enhanced through our European offices and global capital markets network, as we are able to execute covered bond transactions seamlessly that involve listing, structuring and execution over a range of jurisdictions. We also understand the importance of accessing the capital markets quickly. To that end, we are accustomed to helping clients update existing securities issuance programs, be it a Luxembourg, Irish or UKLA-listed program, to add a 144A component and accommodate issuances into the U.S. market. We also are thoughtful in approaching the diligence process so as to minimize senior management time. We approach every offering with the same rigor, and with a view toward making the path to funding as easy as possible for our clients.

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“A client characterizes the firm as ‘one of the premier shops I work with,’ adding: ‘Technically they are very good performers - many of the partners have been with the firm a long time, so they offer great experience, knowledge and continuity.’”

— *Chambers USA*

# Synthetic covered bonds

Covered bond holders have dual recourse with a claim against the issuer, and also a privileged or preferential claim (embodied in statute, in various European jurisdictions, for example) against the cover pool upon the issuer's insolvency. Before the financial crisis, Mayer Brown lawyers worked with two U.S. depository institutions to structure the first covered bonds issued in the United States. The challenge for U.S. issuers, bankers and their lawyers was clear. Unlike their European counterparts who can work within a specific statutory framework that governs the issuance of covered bonds, there is no such regulation or guidance in the United States. Specifically, there is no framework that prescribes the priority of the claims of covered bond holders over a cover pool in a bankruptcy or that sets forth how holders may exercise their claims. The FDIC has not provided definitive guidance regarding the regulatory treatment of covered bonds in a receivership scenario. In order for U.S. issuers to sell, and investors to buy, covered bonds, a structure had to be created using contractual obligations that synthetically replicated a popular European covered bond structure and ring fences assets. We worked with our clients to structure covered bond issuance programs in 2006 and 2007 and advised on the first U.S. dollar-denominated covered bond issuance in July 2007.

# Adapting and updating issuance programs

We have become expert in modifying our clients' existing continuous issuance programs to accommodate new issuance formats. Many foreign (non-U.S.) banks have been covered bond issuers for some time. Usually, a foreign bank will have established a program that permits issuances of covered bonds in jurisdictions outside of the United States. The program may have been cleared by a European listing authority. Often, the client will seek to maximize efficiencies associated with its existing European program by modifying that program to permit exempt offerings into the United States. We work with foreign banks to update their existing programs to accomplish this objective. Few changes are required for an existing European program to accommodate a U.S. offering. There is no requirement that the program agreement be governed by U.S. law, so the existing agreement remains largely unchanged. A few changes are necessary, and, at this point, we've got them down to a well-honed process. A co-issuing agent must be appointed in the U.S. under the existing agency agreement to provide for issuance of, and payment on, the bonds. As required by DTC, the global bonds must be issued in the name of DTC's nominee, Cede & Co., and physically held by the U.S. issuing agent. This may require amending the agency agreement. The program agreement must be amended to include representations, warranties and covenants typical for an offering to U.S. investors, selling restrictions, U.S.-style indemnification provisions for false or misleading statements or omissions contained in the offering document, typical market-out provisions, and a requirement that the issuer's accountants deliver a comfort letter and perform certain agreed upon procedures. Retrofitting an existing platform will almost always be the fastest and most efficient way to access the U.S. institutional market.

## **Making headlines: first U.S. registered covered bonds**

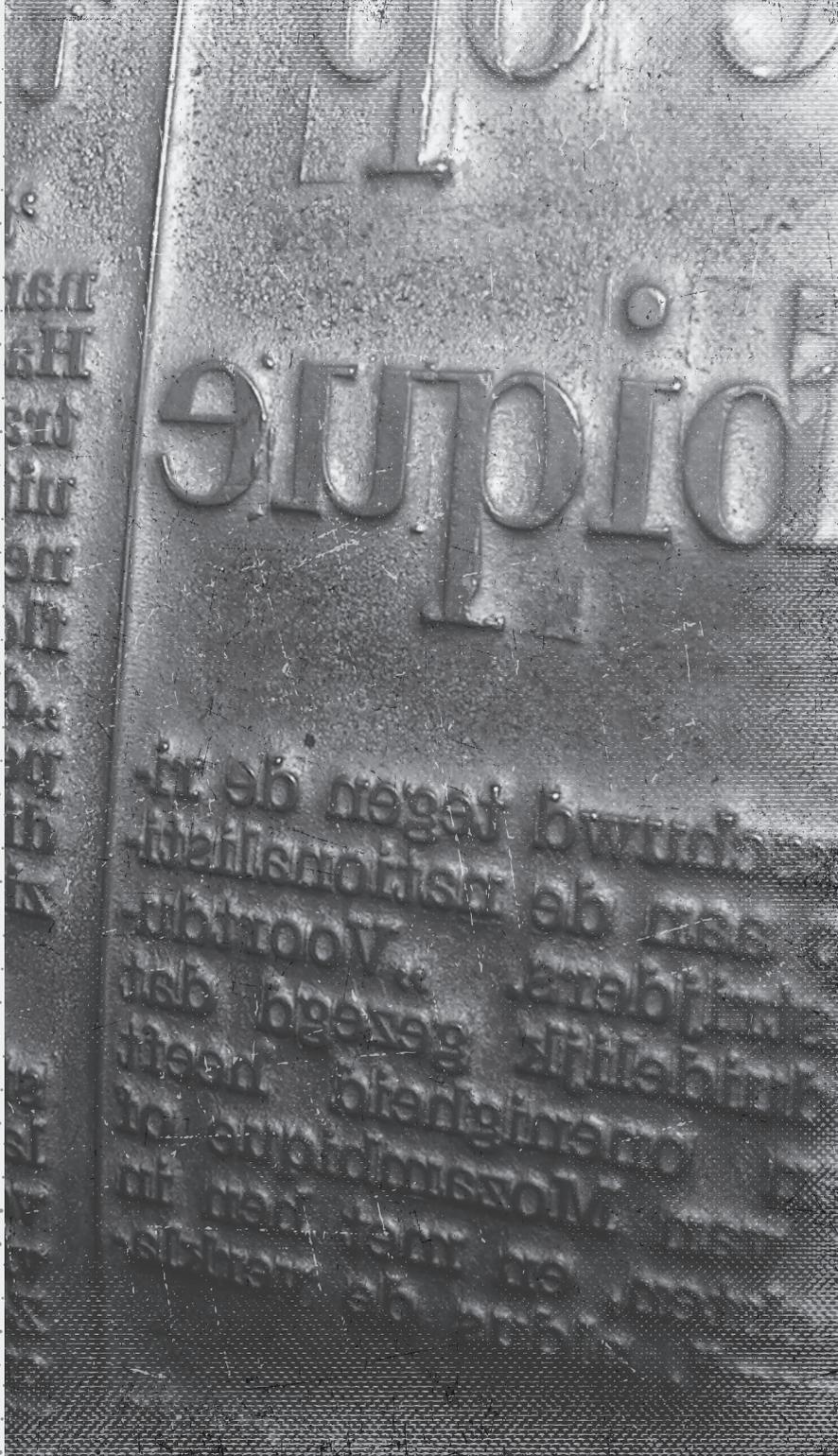
It's the kind of puzzle lawyers love—working their way through a system of rules and regulations to create opportunities for a client. That's what one of our Mayer Brown lawyers achieved for the Royal Bank of Canada (RBC). Mayer Brown lawyers helped RBC with its first issuance of Euro denominated covered bonds into the Europe back in 2007, its first issuance of U.S. dollar denominated covered bonds into the United States in 2008, and several successful covered bond issuances since. These all were completed on an exempt basis, relying on Rule 144A, and placed with institutional investors. At the time, relying on exempt offerings acted as a restraint on the pool of potential investors, and limited the size of the market. RBC covered bonds had garnered a lot of investor interest, and RBC had conducted several successful private offerings; however, RBC sought to offer its covered bonds to a broader range of investors in public offerings.

The U.S. Securities and Exchange Commission had never taken a position on covered bonds, and there was no precedent for registering covered bonds for a public offering. Working diligently with RBC, the Mayer Brown lawyer sought regulatory relief in the form of a no-action letter that permitted the use of a shelf registration statement for this purpose and outlined a disclosure approach. This paved the way for a registration statement to be filed with the SEC. In September 2012, RBC was able to reap the benefits of its hard work by completing a successful \$2.5 billion public offering of covered bonds. This landmark deal created a new market, and paved the way for others to follow.

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**The *American Lawyer* covered the inaugural issuance in their April 2013 Dealmaker of the Year piece: “He’s Got You Covered.”**

In reference to our lawyer’s work, the *Financial Times*’ North America Innovative Lawyers 2012 noted that “Examples of innovative lawyering include...work for Royal Bank of Canada in bringing about the first-ever public offering of covered bonds in the U.S.”



# Resources

Our lawyers are recognized leaders in their practices and regularly publish books, articles and alerts to help clients and friends of the firm stay ahead of legal and market developments and trends.

**Covered Bonds Handbook.** To provide lawyers and other market participants with comprehensive legal and procedural guidance regarding covered bonds as an alternative or supplement to securitization, our partner Anna T. Pinedo has co-edited the Covered Bonds Handbook, published by Practising Law Institute (PLI). The two-volume treatise provides an extensive discussion of the different covered bond structures in Europe, Australia, Canada and Asia; a review of trends in these non-U.S. markets; and includes case studies of the markets in Canada, Germany, the United Kingdom and the United States. The treatise includes valuable contributions from other distinguished authorities in the capital markets, including Mayer Brown partner Jerry Marlatt.

# Accolades

- **Chambers Global** – Leading firm for Capital Markets: Structured Finance, Securitisation and Derivatives (Global-wide); International Transactions: Capital Markets & Finance Specialists (US); Capital Markets: Derivatives (US); Capital Markets: Securitisation (US); Capital Markets: Structured Finance & Derivatives (UK); Capital Markets: Structured Finance (Europe-wide)
- **Chambers UK** – Leading London firm for Capital Markets: Debt; Capital Markets: Securitisation; Capital Markets: Structured Finance & Derivatives
- **Chambers USA** – Leading firm for Capital Markets: Derivatives; and Capital Markets: Securitisation
- **GlobalCapital** Americas Derivatives Awards — Americas Law Firm of the Year, 2018
- **GlobalCapital** Global Derivatives Awards— European Law Firm of the Year—Transactional, 2017, 2018
- **GlobalCapital** Securitization Awards – Best Overall Securitization Law Firm, 2017 and Best Law Firm for ABS, 2017
- **IFLR1000** – Leading firm for Capital Markets: Debt; Capital Markets: Equity; Capital Markets: Derivatives; Capital Markets: Structured Finance and Securitisation
- **IFLR Americas Awards** – Structured Finance and Securitisation Team of the Year, 2016, 2017
- **Legal 500 UK** – Recommended firm for Equity Capital Markets; Debt Capital Markets; Derivatives and Structured Products; and Securitisation
- **Legal 500 US** – Recommended firm for Capital Markets: Debt Offerings (Advice to Issuers; Advice to Underwriters); Capital Markets: Equity Offerings (Advice to Issuers; Advice to Underwriters); Capital Markets: Global Offerings (Advice to Issuers; Advice to Underwriters); Structured Finance; Tax: Financial Products
- **U.S. News and World Report/ Best Lawyers** Best Law Firms – National: Derivatives and Futures Law; National: Securities/Capital Markets Law; National: Securitization/Structured Finance Law

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For resources and additional information about our covered bonds practice, please visit our dedicated webpage at: [www.mayerbrown.com/experience/Covered-Bonds/](http://www.mayerbrown.com/experience/Covered-Bonds/)

Stay current with covered bonds developments, news and views, and more at [www.us-covered-bonds.com/](http://www.us-covered-bonds.com/)

## About Mayer Brown

Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world's leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world's three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our “one-firm” culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

Please visit [www.mayerbrown.com](http://www.mayerbrown.com) for comprehensive contact information for all Mayer Brown offices.

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