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ICMSA Bulletin – with respect to publication of consensus interpretation of the status of corporate trustees to structured finance transactions governed by English law under the "Trustee" definition in the Volcker Rule

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In response to members' concerns about whether certain powers of a corporate trustee in a typical English law structured finance transaction comply with the Volcker Rule, at the request of the ICMSA, a number of international law firms released a statement setting out their consensus as to the interpretation of those provisions.

The Volcker Rule (which is enacted as Section 13 of the U.S. Bank Holding Company Act of 1956, as amended, and the related regulations) restricts some banks and their affiliates from, among other things, acting as "sponsor" of "covered funds." The definition of the term "sponsor" includes acting as a trustee to a covered fund and some non-U.S. securitisation and structured finance transactions could be "covered funds" under the Volcker Rule.

The regulations implementing the Volcker Rule limit the application of the sponsor definition with respect to trustees, stating that a "trustee that does not exercise investment discretion with respect to a covered fund" is not a "trustee" for the purposes of the sponsor definition, but that an entity that "possesses authority and discretion to manage and control the investment decisions of a covered fund for which [a trustee that does not exercise investment discretion] serves as trustee, shall be considered a trustee of such covered fund."

Since the terms of appointment of a corporate trustee under many English law structured finance transactions include a general power of investment on the trustee and a requirement to obtain the trustee's consent to the appointment or replacement of key agents of the issuer, including any investment manager, members sought guidance as to whether those provisions were consistent with the Volcker Rule requirements.

The consensus statement is available here [Consensus Statement](#). As noted in the statement, the interpretations it contains do not constitute legal advice on any particular transaction or set of facts. The views expressed in this memorandum are the views of the signatory law firms and not the clients they represent from time to time and are not intended to address any specific matter on which any of the firms are advising or in which any of the firms may be appearing on behalf of their clients. No person should act or rely on any interpretation contained in this memorandum without first seeking the advice of legal counsel.