

**OUTSIDE COUNSEL WEBSITE BULLETIN**

**Date:**  August 15, 2016

**Title:** High Volatility Commercial Real Estate Exposure (“HVCRE”) Matters

**Audience:** Outside Counsel Representing SunTrust Bank on Commercial Loan Transactions Originated by Lines of Business other than SunTrust Bank’s Commercial Real Estate Line of Business (“CRE”), and forms on the outside counsel website for non-CRE commercial lending transactions

(<https://www.suntrust.com/Microsites/LoanDocumentationSite/intro.html>)

The Basel III High Volatility Commercial Real Estate requirements (150% risk weighting), which are applicable to SunTrust Bank as of January 1, 2015, apply to all loans that finance **acquisition, development and/or construction** of real property, excluding (i) 1-to-4 family residential properties, (ii) certain qualifying community development investments by a bank, (iii) the purchase or development of agricultural land, and (iv) commercial real estate projects satisfying the specific LTV and cash equity requirements set forth below.[[1]](#footnote-1) The requirements would not apply to permanent term financing for a stabilized, income producing property, so the HVCRE minimum requirements could be deleted for those transactions; the requirements would apply, however, if the purpose of such a loan is to finance repositioning or rehabilitation or such loan is a bridge loan for same.

The following are HVCRE provisions for term sheets and commitments. While outside counsel will rarely be involved at this stage, we are providing the language to you to the extent relevant:

**Suggested Term Sheet / Commitment Letter HVCRE language:**

***Loan:*** *A senior, secured [construction/term] loan (“****Loan****”) in an aggregate amount equal to the least of:*

1. *$\_\_\_\_\_\_\_\_;*
2. *\_\_\_\_% of the* ***[****lesser of acquisition cost or* ***–add for an acquisition loan]*** *projected appraised value of the Project [“as is”/“as completed”/”as stabilized”], as determined by reference to an appraisal in form and substance satisfactory to Bank;[[2]](#footnote-2)*
3. *\_\_\_\_\_\_\_\_.*

***Required Equity:*** *Borrower must provide evidence to the Bank’s satisfaction of a minimum investment of equity of $\_\_\_\_\_\_\_\_\_\_\_\_\_ in the form of* ***[cash] [acceptable project value]*** *prior to any advances of Loan proceeds. Without limitation of the foregoing, (i) Borrower’s equity investment in the Project must at a minimum include a contribution, in the form of cash, unencumbered readily marketable assets or paid development expenses out-of-pocket, of at least 15% of the “as completed” value of the Project, as determined in an appraisal satisfactory to the Bank in its sole discretion (the “****Minimum Required Cash Equity****”), and (ii) the Minimum Required Cash Equity must be contributed by Borrower to the Project prior to any advances of Loan proceeds and no distributions shall be permitted during the term of the Loan that would cause the Loan to be classified as High Volatility Commercial Real Estate pursuant to Part 217 of Chapter II of title 12 of the Code of Federal Regulations.*

The Loan Documents will include a covenant regarding item (ii) above.

**HVCRE provision to insert as appropriate in SunTrust form Loan Agreements:**

As indicated in the “Required Equity” section above, in order for a loan not to be classified as High Volatility Commercial Real Estate under Basel III Regulations, one statutory requirement is that there be a contractual requirement that the required equity remain invested in the project throughout the term of the loan. Accordingly, a provision substantially as follows must be incorporated in the loan documents.

Insert the following as an addition to Agreement to Commercial Note, Section II.C. Dividend Payments, if needed. If the Agreement to Commercial Note is not used, insert a conformed provision in the loan agreement where appropriate:

## ***“Without limiting the foregoing, Borrower shall not at any time declare or pay any dividends or make any other payments or distributions that would cause the indebtedness evidenced by this Agreement to constitute a high volatility commercial real estate (HVCRE) exposure pursuant to Part 217 of Chapter II of title 12 of the Code of Federal Regulations.”***

We appreciate your attention to this matter and your continued assistance. If you have any questions concerning this bulletin, please contact the following members of SunTrust Bank’s Commercial Lending Legal Team: Shelli Willis (404) 588-8616 or Marc Bearden (404) 581-1491.

1. Loans that are classified as HVCRE will have higher pricing than loans that are not classified as HVCRE due to the increased capital SunTrust is required to maintain for HVCRE exposures (150% of the capital SunTrust would be required to maintain if the exposure were not classified as HVCRE).

   [↑](#footnote-ref-1)
2. *Note to drafter*: use FDICIA LTV limits here (the FDICIA LTV limits are incorporated into the HVCRE rule). [↑](#footnote-ref-2)