Pieces published in this series are developed with the assistance of AI tools, which support drafting, editing, and research. Underlying arguments, positions, and conclusions are my own. Unless otherwise indicated within a given piece, research referencing corporate services providers (CSPs) primarily concerns UK market entities.

BROKEN STRUCTURED FINANCE
Where We Keep Getting It Wrong — A Series by Peterson Frederick

NO. **01**
DATE **20 JUL 2026**
STATUS **PUBLISHED**

LEGAL & GOVERNANCE COMMENTARY

The Independent Director Myth: Structured Finance's Most Convenient Governance Fiction

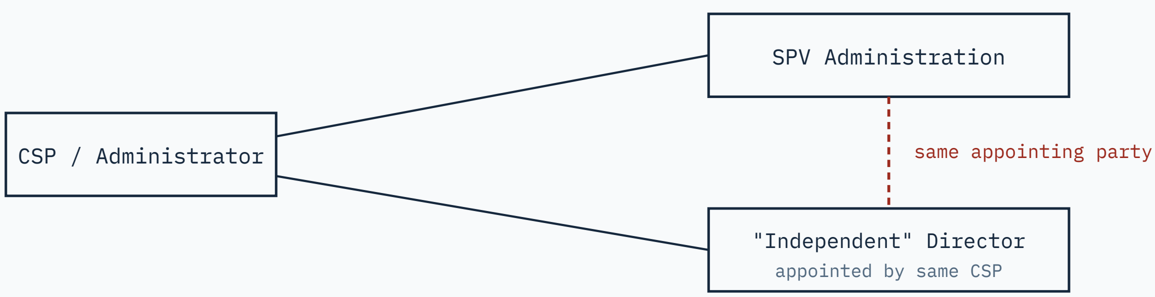

FIG. 1 — THE STRUCTURE MARKET PRACTICE DOES NOT FLAG

ABSTRACT

This piece argues that the standard practice of corporate services providers (CSPs) routinely appointing their own personnel as "independent" directors of special purpose vehicles constitutes a persistent unexamined structural conflict of interest. Market practice, rating agency criteria, and existing case law address independence from the *issuer, originator, sponsor and certain other transaction parties, but remain silent on independence from the CSP (as administrator) itself. Drawing on an analogous line of bankruptcy case law involving lender-appointed independent directors, plus market-practice evidence from Cayman and CLO structures, I argue that real governance requires the decoupling of the internal employee-director appointments by CSPs to true independent contractor-directors sourced from conflict-free providers with no relationship to the SPV's administrator — and I propose sourcing and disclosure reforms to get there.*

Practically every structured finance offering memorandum contains the same reassuring phrase: the Issuer's board includes an independent director. Investors read that line and move on. Rating agencies tick a box. Lawyers copy the clause from last quarter's deal and change the date. Nobody stops. Nobody asks the only question that actually decides whether the sentence means anything: *independent of whom?*

I structure non-securitisation, single-tranche ABS deals for a living — the edge-case stuff nobody writes textbook chapters about. And this is one of the governance assumptions in the entire market that has never sat right with me. We treat it as settled. It isn't.

For an industry completely obsessed with risk identification, structured finance has spent remarkably little time interrogating one of its most deeply embedded governance assumptions. We spend endless billable hours on parsing bankruptcy-remoteness, framing limited-recourse provisions, tightening non-petition language, debating true-sale analyses and non-consolidation opinions. Whole teams built around killing off risks that might never show up in real life. Meanwhile, the market just casually accepts a governance setup where the entity running the SPV's day-to-day operations also supplies the very directors sitting on its board labelled as "independent." Over three decades of that and maybe it's time somebody called it what it is: a governance safeguard whose independence may be more apparent than real.

---

§1 The question nobody wants to ask

Strip the marketing terminology away. Look at what's actually happening. Cayman orphan companies. Irish Section 110 vehicles. Luxembourg securitisation companies. Delaware bankruptcy-remote entities. Doesn't matter which jurisdiction — the operating model barely changes. The corporate services provider administers the SPV. The same CSP appoints the SPV's independent director who is usually a direct employee, officer, or professional affiliate of that administrator – drawing a paycheck from the CSP directly.

This isn't some fringe practice at a second-tier shop cutting corners nor is it some marginal, niche loophole. Look at Cayman CLOs specifically: it's routine, not rare, for a majority of the Issuer's directors — sometimes every single one — to come from the same administrator running the vehicle day to day. That's not an edge case. That's the market.

So here's the question. If this exact setup showed up anywhere else in finance, would anyone call it independence? Say it out loud. You already know the answer.

---

§2 The industry's quiet redefinition of independence

The structured finance world did not simply ignore the concept of independence; it redefined it — quietly, without ever holding a vote on the matter. Mainstream corporate governance has a fairly simple definition: an independent director is someone completely insulated from relationships that could warp objective judgment. Structured finance took that idea and shrank it. Independent from the sponsor. Independent from the originator. Independent from any transaction party whose economic interest might threaten bankruptcy-remoteness. Fine so far.

Here's what got quietly dropped: independent from the organisation running the SPV's day-to-day administration. Appointment by a sponsor? Red flag, obviously a conflict. Appointment by an administrator? Standard paperwork. Nobody explains the distinction, because nobody's forced to. It just sits there, unexamined, doing its job.

Try this thought experiment. An originator walks into a deal and says: "our own people will supply your independent director, we'll pay them, and we'll reassign them whenever it suits us." That pitch gets laughed out of the room in about four seconds. Now swap "originator" for "administrator." Same sentence. Same arrangement. Barely a raised eyebrow. Why? Because we've decided administrators are neutral.

But neutral and independent aren't the same word wearing different clothes. A neutral party might have zero incentive to misbehave. An independent party needs to be free from the influence of whoever they might one day have to stand up to. Structured finance keeps treating those as interchangeable. They're not. Not even close.

---

§3 Why this is not hypothetical

This industry has already fought this exact battle once — just with a different party in the appointment seat. *In re General Growth Properties, Inc.*, 409 B.R. 43 (Bankr. S.D.N.Y. 2009), is the case to know here. Lenders had installed their own independent managers across 166 bankruptcy-remote SPE subsidiaries. The whole point was having someone in the room who'd block a Chapter 11 filing if push came to shove. Then General Growth Properties' (GGP's) parent swapped those managers out right before filing. Lenders howled. The court wasn't moved.

Delaware law, the court held, runs an independent manager's fiduciary duty to the company and its shareholders — not to whoever nominated them onto the board. That's straight out of the Delaware Supreme Court's reasoning in *North American Catholic Educational Programming Foundation, Inc. v. Gheewalla*, 930 A.2d 92 (Del. 2007). Appointment isn't loyalty. Full stop.

Now, let's be precise, because sloppiness here would undercut the whole argument: GGP is about lender-appointed managers. Not CSP-appointed directors. No court has touched CSP self-appointment on these exact facts. The leap from lenders to CSPs is mine — it's the argument I'm making, not a rule some judge already wrote down for me. But the logic underneath transfers clean, no matter who's doing the installing. A director's independence is only as real as their distance from whoever put them there. Swap "lender" for "administrator" and the reasoning doesn't even flinch.

And here's the part that should bother people more than it does: we've named this problem before. Back in 1998, Sheryl Gussett wrote a piece for the *American Bankruptcy Institute Journal* called "A Not-So-Independent Director in a Bankruptcy Remote Structure." Nearly thirty years old. You could publish that exact title today about CSP self-appointment and nobody would blink. The industry spotted this shape once, filed it under "lender problem," and walked away.

§4 What the referees have — and haven't — said

Rating agencies publish criteria for SPV independent directors. Read them closely and you'll notice what's missing. They cover insulation from the originator. They cover insulation from the sponsor. They cover the bankruptcy-remoteness mechanics down to the comma. CSP self-appointment as its own conflict category? Not there. Cayman law goes even further the other way — it doesn't require an independent director at all, and rating agencies have built that straight into their Cayman-specific criteria without blinking.

So the two gatekeepers best positioned to actually price this risk have said almost nothing about it. Silence isn't proof the conflict doesn't matter. Silence just means nobody's forced anyone to name it clearly enough yet.

§5 Structured finance's uncomfortable exception

Everywhere else in this market, independence gets policed hard. Auditors: independent, or they're out. Valuation agents: scrutinized for conflicts constantly. Calculation agents: disclosure requirements up and down. Legal opinion providers: affiliation risk assessed as a matter of course. And then structured finance carves out exactly one exception — for the single role whose entire purpose is exercising independent judgment on the SPV's behalf. That's the role we let slide.

The exception's been around so long that most people in the market don't even clock it as an exception anymore. Repetition became its own justification. But doing something for over thirty years doesn't make it sound governance. It just makes it old.

§6 The conflict that only appears during stress

The most frequently used and strongest defense of this operational setup is simultaneously its weakest argument. Defenders point out that most CSP-appointed directors are sharp, highly competent professionals. Most SPVs run exactly the way they're supposed to. Most deals never see a real governance fight. All true.

None of it matters.

⊢

> ***Nobody buys insurance because the house is already on fire.***

⊣

Independence only shows its value in the moment two interests collide and somebody has to pick a side. That's exactly why a structural conflict matters most precisely when it looks least relevant — it sits there, dormant, for years, until a stress event lands and everyone suddenly discovers the independence they were counting on was never actually defined in the first place.

§7 Moving past the obvious objections

Predictably, the industry falls back on a few standard excuses to preserve the status quo.

Q1 *"CSPs answer to professional and regulatory codes of conduct."* Sure. Beside the point. A code of conduct shapes behaviour. It doesn't manufacture independence from your own employer (who also cuts your paycheck).

Q2 *"Somebody has to supply these directors, and CSPs already have the infrastructure."* That's an argument for convenience. Not an argument for correctness. Different things entirely.

Q3 Finally, there is the classic retrospective justification: *"Nobody's actually been hurt by this."* Yet. Absence of a blown-up deal isn't absence of risk — it's absence of a stress test. The exposure's latent, not gone, and latent structural conflicts have a habit of surfacing exactly when fixing them costs the most. By that point, trying to fix the engine mid-flight becomes infinitely more expensive than having designed it correctly in the first place.

---

§8 The real issue

None of this is a knock on CSPs, and it's not a knock on the directors doing this work either. Most of them are conscientious professionals, doing exactly what a market built around them expects. This isn't personal. It's structural — and structural problems are the most dangerous kind precisely because nobody feels like it's their job to fix them.

Institutional investors figure lawyers already checked it. Lawyers figure rating agencies already checked it. Rating agencies figure regulators already checked it. Regulators figure the market's accepted it this long for a reason. Round and round it goes. That's how a governance gap this obvious hides in plain sight for thirty years.

§9 Beyond fiduciary risk: a gatekeeping concern

There's a second argument worth raising here, even though it demands its own evidentiary treatment. The same bundling that creates a fiduciary conflict also concentrates onboarding power in a single, largely unaccountable gatekeeper. When one organisation controls both SPV administration and director appointment, it also controls, quietly, who gets waved through and who gets declined, delayed, or priced out. In my experience across UK and EU CSPs, those decisions are rarely explained in blunt terms. They tend to arrive wrapped in the vocabulary of "risk appetite," "compliance de-risking," or "jurisdictional complexity" — language that sounds procedural but can just as easily launder a decision that has nothing to do with risk at all.

I want to be precise about how far this claim goes here. The same structural concentration that creates fiduciary hazard also creates the conditions where discriminatory or exclusionary onboarding decisions are hardest to detect and easiest to deny. That's a distinct claim from the fiduciary argument above, and it deserves its own evidentiary treatment rather than a paragraph appended to this one.

§10 What genuine independence would require

The fix isn't complicated. Inconvenient, sure. Not complicated. The director tasked with protecting the SPV's interests shouldn't have any compensation tie, appointment tie, or reporting line back to whoever's administering that same SPV. Source them from a different, completely unaffiliated provider. We already run this exact playbook for auditors and valuation agents. It's time to run it for the one role that's been dodging it.

So next time a prospectus hands you that quiet little reassurance — the Issuer's board includes an independent director — don't nod along. Ask the only question that was ever going to matter: independent of whom?

NOTES

1. *In re General Growth Properties, Inc.*, 409 B.R. 43 (Bankr. S.D.N.Y. 2009).
2. *North American Catholic Educational Programming Foundation, Inc. v. Gheewalla*, 930 A.2d 92 (Del. 2007).
3. Sheryl A. Gussett, "A Not-So-Independent Director in a Bankruptcy Remote Structure," 1998 Am. Bankr. Inst. J. 24.
4. Market-practice observations on Cayman SPV director sourcing and CLO governance are drawn from published securitisation practice guides and comparative legal guides current as of 2025–2026; rating agency criteria references reflect publicly described methodology for SPV bankruptcy-remoteness and Cayman-specific accommodations as of the same period.

ABOUT PETERSON

Peterson Frederick is Chairman and Interim CEO of Northern Providence Investments (NPI), a Montreal-based asset management firm specializing in socially responsible investing (SRI) for institutional investors. His practice centres on bespoke, non-securitisation private credit and ABS structures — bankruptcy-remote SPVs, limited-recourse facilities, and ESG-integrated frameworks — aiming to

deliver resilient, predictable yields tailored for Tier-1 pension funds and insurers across UK/EU markets. *Broken Structured Finance: Where We Keep Getting It Wrong* is his ongoing series examining the governance and market assumptions structured finance treats as settled — how embedded market architecture, administrative design, and institutional practice shape who gets access and on what terms.

He holds double Bachelor of Science degrees in Mathematics and Economics from Concordia University, double undergraduate certificates in Risk Management and Public Relations Management from McGill University, and a graduate diploma in Treasury Finance, also from McGill University. He holds a Master of Business Administration (MBA) with a concentration in Corporate Finance from HEC Montréal, and obtained a Certified Risk Manager (CRM) designation from the Global Risk Management Institute in 2005. Further details are available at petersonfrederick.com.