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European Securities and Markets Authority
103 rue de Grenelle,
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Dear Sirs

Consultation Paper on the draft technical standards on disclosure requirements, operational standards, and access conditions under the Securitisation Regulation (the "Consultation Paper")

We are writing in respect of the Consultation Paper and the annexed Draft Technical Standards.

The Loan Market Association[1] principally wishes to highlight a number of overriding issues concerning the Draft Technical Standards.

We appreciate the complexities of ESMA's work in producing disclosure templates and welcome the early attention that has been given to this task. However, there are certain aspects of the reporting templates, particularly those concerning the reporting of the underlying exposures, that would not really work for CLOs – especially in circumstances where the originator is not a bank, and where it has purchased the exposures on the secondary market.

Given the complexities of the new reporting requirements, it is our view that ESMA should consider a phased implementation period.

Jurisdictional Scope of the Disclosure Obligations

We first wanted to highlight a fundamental point regarding the jurisdictional scope of the disclosure obligations.

One of the mandates for ESMA developing draft regulatory technical standards is under Article 7(3) of the Securitisation Regulation (Regulation (EU) 2017/2401) which requires ESMA to develop draft RTS to specify the information that the originator, sponsor and SSPE are to provide in order to comply with their obligations under Article 7(1) (a) and (e) (the "**Disclosure RTS**").

Article 7(2) states that the originator, sponsor and SSPE of a securitisation shall designate one entity amongst themselves to fulfil these information requirements. The Article 7

[1] Please see Appendix 1.

obligation is not stated to be limited to EU established originators, sponsors and SSPEs. We presume that the transparency requirements are not intended to apply where none of the originator, sponsor or SSPE is established in the EU. The reference in the due diligence requirements, in Article 5 of the Securitisation Regulation, to investors ensuring that the originator, sponsor or SSPE has *"where applicable"* made available the information required by Article 7, and the absence of a provision for a competent authority to supervise compliance with Article 7 for a reporting entity established outside the EU, both indicate that this was not the intention. However, we are not aware of this having been made clear anywhere in the legislation or in any guidance.

We cannot see any policy reason for these disclosure obligations to apply to securitisations which have no connection with the EU and presume that this is not the intention of the legislation.

We are hoping that ESMA can use these Disclosure RTS, which relate to the Article 7(1) obligation, as an opportunity to provide clarity on this point. If ESMA feels that its mandate for these RTS does not extend this far, could this point be clarified in some other way by ESMA and/or the EBA and/or the Commission? The current position is highly unsatisfactory in that the jurisdictional scope of these obligations in the Securitisation Regulation remains unclear.

Jurisdictional Scope of the Disclosure Obligations - the Application of the Requirements of Chapter 2 of the Securitisation Regulation on a Consolidated Basis

The potential extra-territoriality of the disclosure obligations will be exacerbated by the changes to Article 14 of the Capital Requirements Regulation (Regulation (EU) No 575/2013) (the "**CRR**"). The jurisdiction of the disclosure obligations (as well as the other obligations in Chapter 2 of the Securitisation Regulation) will be expanded as a result of changes to the CRR: Article 1(11) of the CRR Amendment Regulation (Regulation (EU) 2017/2401) amends Article 14 of the CRR so as to apply these Securitisation Regulation obligations to EU institutions subject to the CRR, on a consolidated basis.

This means that these obligations will apply to consolidated subsidiaries of the EU institutions who are subject to the CRR, even where the subsidiaries are established outside the EU. Compliance with these disclosure obligations for such non-EU subsidiaries would therefore be required. This would put non-EU subsidiaries of EU banks at a competitive disadvantage when compared with the position of other entities operating in non-EU markets.

Again, if it were possible, it would be helpful if these RTS could be used as an opportunity to provide clarity on this point.

The Practicalities of Firms complying the all of the Disclosure Obligations

There will be significant practical challenges for the reporting entities in developing the reporting systems required to fulfil all the disclosure obligations in the Disclosure RTS. Systems will need to be developed to collect all of the information required in the applicable templates and to input that information in the specified format. This will necessitate significant time and cost resources and may cause disruption in the securitisation market, especially if templates for the various asset classes all have to be developed and complied with at the same time. Other EU legislative initiatives have contained phased implementation periods, or delayed implementation, to take account of such practical systems development issues. Especially if it becomes clear that the practical implementation difficulties are going

to be such that they are likely to result in disruption in the EU securitisation markets, ESMA should consider a phased implementation of the requirements.

The Potential Impact of the Transitional Provisions

The Securitisation Regulation states that until the Disclosure RTS apply, originators, sponsors and SSPEs shall, for the purposes of the obligations set out in Article 7(1)(a) and (e), make available the information contained in the reporting templates in the RTS pursuant to Article 8b of the CRA3 Regulation (the "**Article 8b RTS requirements**"). If the Disclosure RTS were to apply at some time after 1 January 2019, there will be a period from 1 January 2019 until the Disclosure RTS applied, in which the Article 8b RTS requirements would apply. To avoid all the complications that would arise (for example, in terms of developing reporting systems) from having to comply with the Article 8b RTS requirements, and then the Disclosure RTS, it is of course important that the Disclosure RTS apply from 1 January 2019.

It would also be helpful to have the Disclosure RTS in near final form at the earliest possible date, in order that firms have sufficient time in which to develop the reporting systems required to comply with the new reporting obligations.

Disclosure Obligations – Transaction Documentation to be made Available

Article 7(1) of the Securitisation Regulation provides that all underlying transaction documentation shall be made available before pricing. The timing of this transaction documentation disclosure obligation will potentially be problematic given that documents are typically still in draft form, and often incomplete, at the time of pricing. In fact, pricing is necessary prior to finalising CLO documentation: many of the documents in a CLO cannot be finalised until pricing is complete. In practice, it will therefore normally only be draft information that can be provided before pricing. We would hope that the RTS could clarify that draft documentation will satisfy this obligation to provide documentation before pricing. Final documents and blacklines showing changes could then be made available within a reasonable period after closing.

Article 22(5), in relation to STS Securitisations, provides that transaction documentation shall be made available before pricing "at least in draft or initial form". The RTS could clarify that the same standard applies to all securitisations and that the transaction documentation to be made available before pricing shall be "at least in draft or initial form".

Disclosure Obligations – Protection of Confidentiality

Article 7(1) of the Securitisation Regulation, provides that when complying with their disclosure obligations, the originator, sponsor and SSPE of a securitisation shall comply with national and EU law protecting the confidentiality of information, as well as any confidentiality obligation relating to customer, original lender or debtor information, unless such confidential information is anonymised or aggregated. It would be helpful if the RTS were to provide that the transaction documentation to be disclosed may redact such confidential information. It would also be sensible if the RTS were to provide that sensitive or clearly proprietary content can also be redacted from the disclosed transaction documentation.

Similarly, the no data fields in the templates should allow for the possibility of non-disclosure of confidential information that cannot be anonymised or aggregated i.e., in circumstances

where disclosure would breach confidentiality laws and obligations, which in turn would breach Article 7(1) of the Securitisation Regulation.

Disclosure Obligations – Non-Bank/Non-Original Lender Originators

Many of the data fields in the templates are written in terms which assume that the originator is a bank. This is not always the case. For example, some of the fields refer to a bank's regulatory capital treatment (please see below). Originators may be entities that have purchased loans on the secondary market and then securitise them (please see below). It is important that the templates are designed so that all types of originator can comply, and not solely bank originators.

Credit Granting Obligations and Disclosure

A problematic obligation in the Securitisation Regulation relates to the circumstances in which an originator purchases a third party's exposures for its own account and then securitises them (a "**limb (b) originator**"), and as to how that originator is to verify that the entity which was involved in the original agreement that created the obligations to be securitised, fulfilled the credit granting requirements.

Such originators will find it very difficult in practice to fulfil this obligation. This is not how secondary market purchases work. We would propose that a limb (b) originator should be able to satisfy the credit granting obligations by doing its own credit analysis prior to its purchase, rather than having to verify the credit granting procedures of the entity that was involved in the original agreement. From a policy perspective, the entity securitising an exposure should apply their credit analysis to the securitised exposure.

Alternatively, if that option is not considered acceptable, if the loan is originated by an entity subject to applicable EU regulation, then there could be a presumption that the credit granting obligations have been satisfied by virtue of the fact that the original lender was subject, under the relevant EU regulatory regime applicable at the time of the original loan, to apply sound credit granting criteria.

If it is not possible to change or clarify this obligation, we would ask ESMA to consider each of the fields in the reporting templates in connection with the position of limb (b) originators who purchase a third party's exposures. We would highlight the practical difficulties that limb (b) originators will face in having to comply with each of reporting obligations in respect of underlying exposures that have been acquired from third parties.

ESMA could consider adding a no data field for limb (b) originators where data is not available because the original lender has not provided it. It will not always be the case that, when it made the loan, the original lender obtained and recorded all the data required by the relevant templates in the Disclosure RTS. The original lender's "sound and well-defined credit granting criteria" may have differed in certain respects from the criteria implied by the information specified in each data field in the disclosure templates. This possibility should be reflected in the templates.

CLO reporting and ESMA question 1

"Do you agree with ESMA's initial views on the possibility of developing standardised underlying exposures templates for, respectively, CDOs and "rare and idiosyncratic underlying exposures"? If you perceive a need to develop one or all of these underlying

exposure templates, please explain in detail the desirable consequences that this would have. As regards CDOs, if you are in favour of developing a dedicated template, then please also indicate whether 'managed CLOs' and 'balance sheet CLOs' should be dealt with under the same template or separately under different templates."

We would propose that a separate reporting template is prepared for CLOs, or that the Corporate Loans Underlying Exposures Template in Annex 4 be modified so as to make it appropriate for CLOs. We would be happy to work with ESMA in assisting with the preparation of a new CLO template, or a modified version of the Corporate Loans Underlying Exposures Template. We note that ESMA are considering a dedicated CDO template. Since CDOs (ie those that are not CLOs) are now rare, it would be more appropriate to develop a CLO template

To respond to ESMA's specific question, we expect that 'managed CLOs' and 'balance sheet CLOs' could be dealt with under the same template.

If it is decided to use a version of the Corporate Loans Underlying Exposures Template in Annex 4 for CLO reporting, we consider that significant amendments to the template will be necessary to allow it to be used for CLOs. In particular, we would note the following points as regards the Annex 4 template (and the other applicable templates):

(i) The templates should be appropriate for non-bank originators, as well as for bank originators (please see above and below).

(ii) Compliance with the reporting obligations in the templates should be practicable for reporting entities that are not original lenders (please see above and below).

As regards specific data fields in Annex 4, we would highlight, as examples, that the following fields will need modifying if a version of Annex 4 is to be used for a CLO template:

(i) CORPL 11 (Basel III), CORPL 19-22 (regulatory capital data). These are designed for banks rather than for non-bank lenders. Similarly, a non-bank lender may use a different definition for arrears in CORPL 56.

(ii) CORPL 9 (originator establishment country) – original lender country may not be known.

(iii) CORPL 10 (customer relationship length). This is designed for original lenders and this data may not be captured.

(iv) CORPL 61-63 (number of payments before securitisation, percentage of prepayments allowed per year, cumulative prepayments). These are designed for original lenders and this data may not be captured.

(v) CORPL 14 (origination channel). This is not aligned for asset type (i.e. wholesale rather than retail) and may not be known by non-original lenders.

(vi) CORPC 6 (collateral type). This is not aligned for asset type - security over all assets of an obligor would be much more common for corporate loans than specific asset backed lending. However, this is not envisaged in Annex 4.

(vii) CORPC 4 (current valuation amount); CORPC 5 (current valuation method); and CORPC 7-12 (valuation dates and methods for collateral). These have an asset valuation focus, whereas leveraged lending is not specifically asset backed. This information is also not available to non-original lenders.

(viii) CORPL 25, 28 (balance on origination date), 30 (prior balances). A non-original lender would not have access to tthis information.

(ix) CORPL 44-50 would not be available for bond assets purchased (CLOs may purchase a limited percentage of bond assets.)

(x) CORPL 72, 73 and 75 are clearly only known after the date of default.

We have listed fields in Annex 4 that would (or could) be problematic for CLOs in Appendix 2 to this letter.

CLOs currently provide investors with an extensive monthly report which includes asset level reporting. We would be happy to share an example with you.

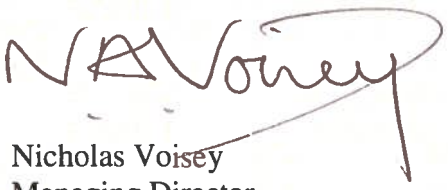
Conclusion

We would like to thank you for consulting on these issues. We would be pleased to answer any questions you may have and to meet if you wish to discuss the points we have raised.

As noted above, we would be happy to work with ESMA in assisting with the preparation of a new CLO template, or a modified version of the Corporate Loans Underlying Exposures Template.

If you would like to do so, please contact Nicholas Voisey of the Loan Markets Association (nicholas.voisey@lma.eu.com) or David Quirolo (david.quirolo@cwt.com) of Cadwalader, Wickersham & Taft LLP.

Yours faithfully



Nicholas Voisey
Managing Director
Loan Market Association

APPENDIX 1

Loan Market Association

The Loan Market Association ("**LMA**") is the trade body for the European syndicated loan market founded by banks operating in that market. Its aim is to encourage liquidity in both the primary and secondary loan markets by promoting efficiency and transparency, as well as by developing standards of documentation and codes of market practice which are widely used and adopted.

Since the establishment of the LMA in 1996, membership has grown to over 650 organisations, comprising commercial and investment banks, institutional investors, law firms, service providers and rating agencies.

The LMA has gained substantial recognition in the market and has expanded its activities to include all aspects of the primary and secondary syndicated loan markets. It sees its overall mission as acting as the authoritative voice of the European loan market *vis à vis* lenders, borrowers, regulators and other interested parties.

APPENDIX 2

We have noted those data fields in the Corporate Loans Underlying Exposures Template (Annex 4) that would (or could) be problematic for CLOs (notably in circumstances where the originator is not a bank and/or where the originator has purchased the exposures on the secondary market).

For example, where an originator purchases loans on a secondary market it would not in practice have access to much of the data required. We have noted below the likely applicability of the data fields in Annex 4 to such an originator.

Key to the comments below

1. Where the loans are purchased on the secondary markets, the originator does not have access to this data.

2. Not applicable to balance sheet loans and bonds.

3. Where the loans are purchased on the secondary markets, the originator would not have access to this data on collateral.

4. These fields could also be problematic for CLOs.

Annex 4 Field	Applicable	Comment
CORPL1	Yes	-
CORPL2	Yes	If supplied
CORPL3	Yes	If supplied
CORPL4	Yes	If supplied
CORPL5	Yes	If supplied
CORPL6	Yes	If supplied
CORPL7	Yes	If it is the underwriter
CORPL8	Yes	-
CORPL9	No	1
CORPL10	No	1
CORPL11	Yes	-
CORPL12	No	1
CORPL13	Yes	-
CORPL14	No	1
CORPL15	No	1
CORPL16	Yes	-
CORPL17	Yes	-
CORPL18	No	1
CORPL19	No	1
CORPL20	No	1
CORPL21	No	1
CORPL22	No	1
CORPL23	No	1
CORPL24	No	1
CORPL25	No	1
CORPL26	Yes	-

CORPL27	Yes	-
CORPL28	No	1
CORPL29	Yes	-
CORPL30	No	1
CORPL31	Yes	-
CORPL32	Yes	4
CORPL33	Yes	-
CORPL34	Yes	-
CORPL35	Yes	-
CORPL36	Yes	-
CORPL37	Yes	4
CORPL38	Yes	-
CORPL39	Yes	4
CORPL40	Yes	-
CORPL41	Yes	-
CORPL42	Yes	-
CORPL43	Yes	-
CORPL44	No	2
CORPL45	No	2
CORPL46	No	2
CORPL47	No	2
CORPL48	No	2
CORPL49	No	2
CORPL50	No	2
CORPL51	Yes	-
CORPL52	Yes	4
CORPL53	Yes	4
CORPL54	Yes	-
CORPL55	Yes	-
CORPL56	Yes	Different definition of default may be used in practice
CORPL57	Yes	-
CORPL58	Yes	-
CORPL59	Yes	-
CORPL60	Yes	-
CORPL61	No	1
CORPL62	No	1
CORPL63	No	1
CORPL64	Yes	4
CORPL65	Yes	4
CORPL66	Yes	-
CORPL67	No	1
CORPL68	Yes	4
CORPL69	Yes	4
CORPL70	Yes	4
CORPL71	Yes	-
CORPL72	Yes	but from the date of default
CORPL73	Yes	but from the date of default
CORPL74	Yes	4

CORPL75	Yes	but from the date of default
CORPC1	No	1
CORPC2	Yes	4
CORPC3	Yes	-
CORPC4	No	3
CORPC5	No	3
CORPC6	No	3
CORPC7	No	3
CORPC8	No	3
CORPC9	No	3
CORPC10	No	3
CORPC11	No	3
CORPC12	No	3