

## **AFME response to ESAs consultation to amend RTS under EMIR on the clearing obligation and risk mitigation techniques in relation to STS securitisations**

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### **Consultation on draft RTS amending Delegated Regulation (EU) 2016 2251 on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP (JC-2018-15)**

On behalf of the Association for Financial Markets in Europe ("AFME")<sup>1</sup> and its members, we welcome the opportunity to respond to this consultation on draft regulatory technical standards (the "**Draft RTS**"), amending Delegated Regulation (EU) 2016/2251 on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP (the "**Margin RTS**") in the context of simple, transparent and standardised ("**STS**") securitisations.

Members support the aim of the Draft RTS to ensure a level playing field and consistency of treatment between derivatives associated with covered bonds and derivatives associated with STS securitisations. Having reviewed the Draft RTS, we consider that they do broadly achieve that aim, of extending the exemption from certain requirements under the Margin RTS for derivatives associated with covered bonds (i.e. no exchange of initial margin and collection only of variation margin) to STS securitisations.

Members are, however, of the view that this special treatment should not be limited to derivatives that rank at least *pari passu* with the most senior class of notes under an STS securitisation, as this would limit the practical benefit of the exemption in the context of STS securitisations.

For example, separate currency swaps may be used to hedge different classes of notes in an STS securitisation, with each swap ranking *pari passu* with the class of notes it hedges. In this case, the special treatment under the Draft RTS would apply only in respect of the currency swap ranking *pari passu* with the most senior class of notes, and not in respect of any of the other currency swaps hedging and ranking *pari passu*

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<sup>1</sup> AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association ("**GFMA**") a global alliance with the Securities Industry and Financial Markets Association ("**SIFMA**") in the US, and the Asia Securities Industry and Financial Markets Association ("**ASIFMA**") in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 6511006398676.

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with more junior classes of notes, thus largely negating the practical benefit of the special treatment afforded to the swap associated with the most senior tranche.

Therefore, members request that the Draft RTS are amended to provide that the special treatment of derivatives associated with STS securitisations should apply where the swap ranks at least *pari passu* with the relevant STS securitisation tranche with which it is associated.

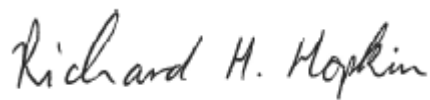
We also note that the Draft RTS do not provide an exemption for derivatives associated with securitisations that are not STS securitisations, but understand that this is in line with the scope of the mandate provided to the EBA and ESMA under Article 11 of EMIR (as amended by Article 42 of the Securitisation Regulation).

In this respect, members take comfort from the fact that it currently seems likely that amendments under the EMIR Refit proposal will not amend the definition of "financial counterparty" to include securitisation special purpose entities ("**SSPEs**"), in line with the EMIR Refit texts agreed in both the European Parliament and the Council.

On this basis, the margin requirements would effectively only apply where the SSPE is a NFC+. By contrast, the general approach in the market is that SSPEs are structured to be NFC- entities. The Draft RTS are nevertheless broadly welcomed, as noted above.

We are grateful for the opportunity to comment on the Draft RTS and we would be happy to answer any further questions that you may have or develop further issues of interest to you.

Yours sincerely,



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