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Finance for Europe

Article 5 Issues Report

Due-diligence requirements for institutional investors under Article 5 SECR

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Association for Financial Markets in Europe
www.afme.eu

I. Background

Investor due-diligence is one of the key pillars of the modern securitisation market. Despite industry consensus that due-diligence requirements play an integral role in supporting confidence in the market, they are also the source of many uncertainties and different interpretations, undermining the very purpose they seek to serve.

For the purpose of this report, (the ***Issues Report***) several buy-side participants (including large asset managers who are long-standing market participants, a major credit institution and several law firms which are regularly engaged in securitisation transactions) were requested to provide input on the key issues faced by institutional investors in the EU and in the UK, when seeking to comply with the applicable due-diligence requirements under the EU/UK Securitisation Regulations (as defined below).[1] It should be noted that while this Issues Report incorporates input from a number of buy-side participants covering different sectors of the market, the feedback received may not be representative of all issues faced by market participants.

The feedback received from these participants (appended hereto as Annex A *Anonymised feedback from buy-side market participants*) indicates that EU and UK institutional investors face several issues when looking to invest in securitisation transactions.

These issues affect existing investors and have the potential to deter new entrants to the market (in particular those investing directly rather than through a third party investment management entity). Additionally, these issues lead to:

- considerable levels of uncertainty, compliance risk and lack of flexibility and agility in the investment process;
- the unattractiveness of securitisation for investors targeting positions below a certain size (due to compliance costs and administrative burden, in particular when weighed against the limited regulatory capital treatment benefits available for non-STS positions);
- securitised products being held under management by an increasingly small and concentrated population of EU/UK asset managers;
- the development of alternative unregulated products outside scope of the EU/UK Securitisation Regulations;
- an underdeveloped market for capital markets securitised products, resulting in an overreliance on other forms of finance, such as bank loans and covered bonds, which is driven as much by regulatory reasons as by commercial reasons;
- reduced liquidity of securitised products compared to other markets where more investors are able to participate;
- an overall reduced competitiveness of the EU and UK asset management industries (in particular in comparison to investors that are not subject to similar requirements);
- a significant adverse impact on the development of a deep and liquid securitisation market.

It is therefore vital to provide buy-side parties with clarity on certain aspects relating to the due-diligence requirements. While this should ideally be carried out in the context of a wholesale review of the Level 1 text of the EU/UK Securitisation Regulations, this is not a practicable or timely option at least in relation to the EU Securitisation Regulation.[2] Nonetheless, urgent action to address the above issues needs to be taken, even if

[1] Currently, the Issues Report reflects issues identified in relation to the both the EU and UK Securitisation Regulations. It is envisaged that the Issues Report will need to be adapted in due course to deal with the issues under the EU and UK Securitisation Regulation separately.

[2] The European Commission has confirmed that no changes to the Level 1 text of the EU Securitisation Regulation are envisaged in the near future. Additionally, the EU Securitisation Regulations does not provide for a mandate for the enactment of RTS in relation to Article 5.

only by way of providing suitable guidance that gives investors confidence in their ability to comply with the due-diligence requirements while allowing the securitisation market to thrive and grow.[3]

Feedback from the wider AFME membership is being sought by Friday, 14 July 2023, in relation to the issues identified in this Issues Report, with a view to proposing guidance in the form of Q&As (the **Proposed Q&As**) which could be sought from the relevant competent authorities in order to provide better clarity to market participants in the interpretation of such requirements, particularly in the absence of a re-opening of the Level 1 text of the EU/UK Securitisation Regulations to address the issues directly. In the specific case of the UK regime, which is being recast, UK competent authorities may alternatively decide to address the same issues by making clarifications within the legislation itself.

It is intended that the Proposed Q&As will be put together and circulated to participants during the summer of 2023. Once finalised by the participants, a decision can then be taken as to whether and when to submit the Proposed Q&As to the relevant competent authorities.

II. Overview of due-diligence requirements for institutional investors under Article 5 of the EU/UK Securitisation Regulations

Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (the ***EU Securitisation Regulation***) includes requirements for institutional investors investing in securitisation transactions. Investor due-diligence is one of the key pillars of the modern securitisation market.

The recitals to the EU Securitisation Regulation note that "*investments in or exposures to securitisations not only expose the investor to credit risks of the underlying loans or exposures, but the structuring process of securitisations could also lead to other risks such as agency risk, model risk, legal and operational risk, counterparty risk, servicing risk, liquidity risk and concentration risk. Therefore, it is essential that institutional investors be subject to proportionate due-diligence requirements ensuring that they properly assess the risks arising from all types of securitisations, to the benefit of end investors. Due-diligence can thus also enhance confidence in the market and between individual originators, sponsors and investors (…)*".[4]

However, proving compliance with the requirements imposed on institutional investors under Article 5 of the EU Securitisation Regulation has created a significant administrative burden on those institutional investors. This causes holdups in the investment process and barriers to entry for both sell-side parties and potential investors alike. Although the meaning of certain provisions within Article 5 has been the subject of ongoing debate, significant obstacles remain unaddressed.

Additionally, the role of transparency and disclosure obligations imposed on sell-side parties should also be emphasised. The recitals to the EU Securitisation Regulation highlight that "*the ability of investors and potential investors to exercise due-diligence and thus make an informed assessment of the creditworthiness of a given securitisation instrument depends on their access to information on those instruments*. (…) *The main purpose of the general obligation for the originator, sponsor and the SSPE to make available information on securitisations via the securitisation repository is to provide the investors with a single and supervised source of the data necessary for performing their due-diligence*."[5] The transparency and disclosure obligations under the EU Securitisation Regulation are currently being revisited, in particular for private securitisations. This Issues Report does not address proposals in relation to revisions of the disclosure templates under Article 7 of the EU Securitisation Regulation and/or their impact on investor due-diligence, which are the subject of separate ongoing industry debate.

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3 Although certain issues have previously been flagged to regulators, both as isolated points and in the context of wider consultation exercises (namely the targeted public consultation on the functioning of the EU Securitisation Framework), this Issues Report attempts to summarise those issues with a view to determining whether there is suitable guidance that can be provided to buy-side market participants.

4 Recital (9).

5 Recitals (12) and (13).

Investor due-diligence requirements under Article 5 of the EU/UK Securitisation Regulations may be grouped into the following key areas:

- credit-granting criteria;[6]
- transparency and disclosure;[7]
- selection and pricing of non-performing exposures (***NPEs***);[8]
- due-diligence generally;[9] and
- ongoing risk monitoring, stress testing, internal reporting, policies and procedures;[10]
- delegated investment management;[11] and
- due-diligence compliance for positions in correlation trading portfolios.[12]

Following the expiry of the Brexit transition period, and through the onshoring process set out in the European Union (Withdrawal) Act 2018 (the ***EUWA***), the EU Securitisation Regulation became part of UK law with the amendments introduced by The Securitisation (Amendment) (EU Exit) Regulations 2019 (the ***UK Securitisation Regulation*** and together with the EU Securitisation Regulation, the ***EU/UK Securitisation Regulations***). While substantially aligned with the EU Securitisation Regulation in most aspects, the UK Securitisation Regulation introduced a new provision attempting to clarify the requirements in relation to disclosure and transparency applicable to third country securitisations.[13]

Over time, the due-diligence requirements imposed on institutional investors under the EU Securitisation Regulation (in the EU and in relation to EU institutional investors) and in the UK Securitisation Regulation (in the UK and in relation to UK institutional investors) have started to diverge. With the amendments made to the EU Securitisation Regulation in 2021[14] a new due-diligence requirement was introduced in relation to selection and pricing of NPEs.[15] It is expected that the UK Securitisation Regulation and the EU Securitisation Regulation will continue to diverge, in particular as the UK financial services regulation reforms progress.

III. Challenges and issues reported by buy-side market participants

A. General remarks

The burden of compliance appears to be an overarching topic for many participants. It has been noted that, while investors may be complying with the requirements under Article 5 of the EU/UK Securitisation Regulations, the administrative burden on investors to demonstrate compliance is the cause of significant bottlenecks in the investment process. Participants have reported that no other financial product in the EU or the UK is subject to a comparable administrative burden for investors, making securitisation a particularly onerous and unattractive product for investors.

Participants have noted that the administrative burden means that investors who have not performed due-diligence on a primary market issuance often cannot participate in secondary market trades, as compliance is virtually impossible within the timeframe of typical secondary trading. This reduces market liquidity and results in a less efficient market for all.

6 Article 5(1)(a), 5(1)(b) and 5(2) of the EU/UK Securitisation Regulations.
7 Article 5(1)(e) of the EU Securitisation Regulation and 5(1)(e) and 5(1)(f) of the UK Securitisation Regulation.
8 Article 5(1)(f) of the EU Securitisation Regulation.
9 Article 5(3) of the EU/UK Securitisation Regulations.
10 Article 5(4) of the EU/UK Securitisation Regulations.
11 Article 5(5) of the EU/UK Securitisation Regulations.
12 Article 2 of the Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014.
13 Article 5(1)(f) of the UK Securitisation Regulation.
14 Pursuant to Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis.
15 Article 5(1)(f) of the EU Securitisation Regulation.

Additionally, participants have indicated that while the recitals to the EU Securitisation Regulation[16] contain helpful references to institutional investors being subject to "*proportionate due-diligence requirements*", the industry lacks guidance on what this actually means in relation to the various requirements in Article 5 of the EU/UK Securitisation Regulations.

It has been highlighted that the scope of the investor due-diligence requirements is unclear, especially having regard to the position before and after the entry into force of the EU Securitisation Regulation in 2019. Article 5 of the EU/UK Securitisation Regulations refers to the investor "*holding a securitisation position*" (noting that "*securitisation position*" is defined as "*an exposure to a securitisation*") as the trigger for application of due-diligence requirements, whereas the previous regime referred to "*exposure to the credit risk of a securitisation position*". There are no regulatory technical standards (***RTS***) clarifying that investor due-diligence should be limited to exposure to credit risk and exclude pure hedging and senior liquidity facility positions.[17] Clarification on this point would be helpful.[18]

Finally, the lack of clarity in relation to the scope of the investor due-diligence requirements can lead to widely different interpretations from internal management, risk and compliance teams, fund administrators, trustees and custodians and, ultimately, (for asset managers) from end investors. The investor due-diligence requirements seem to have mostly been written with a single type of institutional investor in mind (i.e. a credit institution). The due-diligence requirements, other than Article 5(5) of the EU/UK Securitisation Regulations, do not accommodate more complex investment structures, such as public funds, in particular multi-asset funds, or segregated mandates.

B. Credit-granting criteria

Participants have identified issues in interpreting the wording in Recital (14) of the EU Securitisation Regulation ("*to the extent that trade receivables are not originated in the form of a loan, credit-granting criteria need not be met with respect to trade receivables*") in the context of the requirements in Articles 5(1)(a), 5(1)(b) and 5(2) of the EU/UK Securitisation Regulations.[19] It would appear that the exception mentioned in Recital (14) for trade receivables which are not originated in the form of a loan also extends to institutional investor due-diligence and that it would also apply to sponsors pursuant to Article 5(2) of the EU/UK Securitisation Regulations.

In relation to the references to "*proportionate due-diligence requirements*" in Recital (9), participants have flagged that it is unclear whether and how the expected standard of verification of compliance with credit-granting standards differs based on parameters such as investor type, tenor and seniority of the investment (senior / mezzanine / junior / equity), deal complexity, credit and market risk considerations or other extraneous circumstances. Furthermore, considering the references to "*proportionate due-diligence requirements*" in Recital (9) and the differences between the type and extent of information available in relation to third country originators and original lenders, participants enquired whether the threshold for compliance with Article 5(1)(b) would be viewed as lower than that in Article 5(1)(a), although the fact that these requirement should ultimately be possible to satisfy through an attestation from the relevant originator

[16] Recital (9). Please also refer to paragraph 2.9 of the Prudential Regulation Authority's Supervisory Statement 10/18, which notes that: "*the level and nature of investor due diligence prior to holding a securitisation position may be proportionate to the risks of the securitisation position, provided they comply with the requirements of Article 5*".

[17] For instance, in a third country(non-EU/non-UK) securitisation, where all sell-side and buy-side parties, save for an interest rate or currency swap provider, are located in a third country, a conservative reading of Article 5 of the EU/UK Securitisation Regulations (which the majority of the industry adopts as a settled position as at the date of this Issues Report), would result in the entire transaction being brought in-scope of EU/UK Securitisation Regulations requirements solely by virtue of the involvement of such swap provider.

[18] This issue has been raised with the European Banking Authority (***EBA***) on a number of occasions and the EBA has informally confirmed that, following entry into force of the EU Securitisation Regulation, the scope of application of Article 5 should remain the same as it was prior to the entry into force of the EU Securitisation Regulation. However, the EBA also acknowledged the differences in the wording of the relevant triggers in the Level 1 text but provided no formal clarifications in this regard. Therefore, uncertainty around the scope of application of Article 5 of the EU/UK Securitisation Regulations remains, and is further compounded by the absence of a mandate in the EU/UK Securitisation Regulations to provide further guidance through RTS in relation to Article 5. In this regard, it should also be noted that the EBA mentioned in its final report/consultation on the recast draft retention RTS in April 2022, that investor due-diligence-related provisions had been omitted as there was no mandate in that respect (this guidance was nonetheless originally retained by the EBA in its July 2018 draft RTS, in recognition that the EBA believed that no changes to the interpretation of this point should have occurred post-2019). The European Commission's original proposals relating to the EU Securitisation Regulation did not suggest any intention to expand the trigger for application of investor due-diligence requirements and no discussions on this point were held.

[19] It should be noted that these provisions also refer to other legislative sources, adding further complexity and compounding the existing interpretation issues.

or original lender mitigates these concerns. In this regard, it would be helpful to expressly require the relevant originator or original lender to provide such attestations for the benefit of institutional investors.

It has also been flagged that there may be issues in verifying compliance where the entity selling the exposures is not the original lender. In fact, references to "original lender" in Articles 5(1)(a) and 5(1)(b) of the EU/UK Securitisation Regulations are somewhat misleading without a clarification that the focus should only be on an original lender that is actually itself involved in a securitisation rather than being an entity that may not even be in existence or an entity that is a few steps removed as a result of portfolio sales. That is, in securitisation transactions relating to historical exposures (typically mortgage loans originated many years ago) where the original lender is no longer in existence or in securitisation transactions where the original lender is not a party to a securitisation as a result of re-sale of portfolio of loans, there is little clarity on how investors should consider the original credit-granting element (in particular where there is no offer of further credit by the original lender and/or where credit has originally been extended on terms which are no longer accepted or allowed, such as in the case of "high-LTV" mortgage loans). In those cases, investors should focus on the relevant originator of the securitised assets (e.g., the asset seller in a true sale traditional securitisation) and be able to rely on representations, warranties and information provided by such originator in this regard.

Due-diligence in relation to compliance with credit-granting criteria is usually performed directly by the investor or through information provided to investors during the marketing process.[20] While this due-diligence is likely to be performed by investors, the administrative burden on investors to demonstrate compliance is the cause of significant blockages in the investment process.

In relation to the position under the UK Securitisation Regulation, and in particular in light of the amendments to the EU Securitisation Regulation introduced in 2021[21] participants have raised questions in relation to NPEs and, in particular, whether the verification of compliance with credit-granting standards should be carried out to the same standard as that in relation to performing exposures, or if it would be sufficient to adopt a proportionate approach and verify compliance with a sound standard in relation to the selection and pricing of the exposures.

In relation to fully supported ABCP transactions, participants have queried whether the derogation to Article 5(1)(a) of the EU/UK Securitisation Regulations under Article 5(2) of the EU/UK Securitisation Regulations means that Article 5(1)(a) of the EU/UK Securitisation Regulations would not apply at all to institutional investors (other than the sponsor) or whether this derogation is intended to be narrower in scope.[22]

C. Transparency and disclosure

Participants have identified concerns arising from the sell-side transparency and disclosure requirements, which pose practical challenges for investors when verifying compliance. For instance, under Article 7(1) of the EU/UK Securitisation Regulations, the items required under paragraphs (b), (c) and (d) (i.e. the final offering document and underlying documentation, transaction summary and STS notification) must be made available before pricing. In certain private transactions where a "pricing" concept does not exist, the market has generally settled on the view that "pricing" in such context would broadly equate to the date of "signing" of the relevant transaction. Confirming compliance with Article 7 disclosure requirements pre-pricing does not tend to present challenges (and it makes sense) for investors in the primary markets. However, the position of an investor in the secondary markets might be different in this regard and there is interpretation

[20] In the context of certain transactions, designatedly private transactions subject to extension (such as certain ABCP securitisations), due-diligence can be performed periodically (e.g. every year) through updates of information initially provided.

[21] Article 5(1)(f)of the EU Securitisation Regulation.

[22] It should be noted that the European Commission Report has highlighted that "*the consultation suggested a broad consensus among respondents that the inconsistency identified between Article 5(1)(b) and Article 9 of the [EU] Securitisation Regulation should be resolved.*" This inconsistency arises from the fact that Article 9 of the EU Securitisation Regulation also requires the sponsor to ensure sound credit-granting standards are applied, while the corresponding due-diligence obligation in Article 5(1)(b) (applicable to the sponsor through Article 5(2)) does not mention the sponsor. This means that the sponsor of a securitisation would be required to comply with Article 9 of the EU Securitisation Regulation but, where it is not located in the EU, it is not subject to the verification by the institutional investor in accordance with Article 5(1)(b) of the EU Securitisation Regulation. However, in relation to this inconsistency, the European Commission has noted that this inconsistency does not have any harmful effect in practice since the sponsor (as defined under the EU Securitisation Regulation) does not grant credit on its own account and therefore does not apply credit-granting standards.

uncertainty as to whether such secondary market investors should be required at all to verify any pre-pricing disclosures. Proportionate approach to investor due-diligence would suggest that it should not be the case.

In relation to loan-level data, although Article 5(1)(e) of the EU Securitisation Regulation and Articles 5(1)(e) and 5(1)(f) of the UK Securitisation Regulation require investors to verify that the loan-level reporting obligations of sell-side parties under Article 7(1)(a) of the EU/UK Securitisation Regulations are complied with, the EU/UK Securitisation Regulations (including Article 5(4)) point in the direction of the required data being provided on an aggregated basis via, for example, stratification tables. Therefore, in the context of the EU and UK reforms to the reporting regime and its interplay with investor due diligence requirements, the industry would welcome the introduction of more flexibility to provide aggregated data reporting.

Participants have emphasised that information format plays an important role in compliance with investor due-diligence requirements. Specifically, where data is provided in .XML format only, compliance with due-diligence requirements is more challenging. Therefore, loan-level data should also be required to be provided in .CSV and .XLS format in order to make it easily accessible to all market participants and to eliminate information asymmetries between different investors. Finally, securitisation repositories should be required to provide information in a user-friendly and accessible format. Currently the data that they host (accessible through an .XML query) is not accessible or useful to investors, who are, therefore, forced to rely on information provided by originators on a website or through other methods. A strict interpretation of the requirements in Article 5(1)(e) of the EU Securitisation Regulation and Articles 5(1)(e) and 5(1)(f) of the UK Securitisation Regulation would mean that institutional investors are required to ensure that sell-side parties post data to a platform which those institutional investors do not access or otherwise find useful.

As the requirement to provide information under Article 7 of the EU/UK Securitisation Regulations is placed on the sell-side parties, not on the buy-side parties, an investor can only ensure that there is a clear commitment from the relevant sell-side parties to provide the information.

Additionally, despite the European Commission's views on the subject, it is manifestly difficult to comply with the requirements in Article 5(1)(e) of the EU Securitisation Regulation in relation to third country transactions, given that the relevant sell-side parties are not required to comply with the EU Securitisation Regulation. See the joint association's letter "*Request for guidance to national competent authorities to use enforcement powers in a proportionate and risk-based manner*" at Annex B for more detail on the comments in relation to Article 5(1)(e) contained in the Report from The Commission to the European Parliament and the Council on the functioning of the Securitisation Regulation dated 10 October 2022 (the ***European Commission Report***).

Specifically in relation to the EU Securitisation Regulation, questions on the interpretation of the expression "*where applicable*" in Article 5(1)(e) persist and there are a number of possible interpretations. Guidance on the meaning of this expression would allow more meaningful compliance with the requirements.

Additionally, in relation to the UK Securitisation Regulation, questions on the interpretation of the words "*substantially the same*" in Article 5(1)(f) of the UK Securitisation Regulation persist,[23] and it is unclear what formats of disclosure other than the one required under Article 7 of the UK Securitisation Regulation would be permissible. Guidance or guidelines in relation to general principles on disclosure would be helpful.

The FCA/PRA consultation on the parameters of the "*substantially the same as*" test is expected in Q3 2023 and will determine how the proposals for reform will be framed. The industry is looking forward to engaging with the FCA/PRA on this topic and would note that, in the context of such consultation, it would be useful to receive the following confirmations:

[23] Article 5(1)(f) of the UK Securitisation Regulation requires UK investors to verify that overseas securitisation sell-side parties have made available information which is substantially the same as that which they would have made available in accordance with Article 7 of the UK Securitisation Regulation setting out disclosure requirements, including substantially the same frequency and modalities. Industry feedback was gathered on this point in the context of the HM Treasury's Review of the UK Securitisation Regulation and the PRA will consult (simultaneously with the FCA) on draft rules to restate, with modifications where appropriate, the relevant provisions in the UK Securitisation Regulation and related technical standards in 2023-2024.

- that strict use of UK reporting templates is not required;
- that if the asset-backed securities issued pursuant to a third country transaction are admitted to trading in a regulated market operating in the UK, that would not trigger the requirement to post information to a UK-authorised securitisation repository;[24]
- that the requirement for the provision of loan-level information can be satisfied by the provision of aggregated data in certain cases (such as in credit card securitisations) and would not imply in all circumstances the provision of loan-by-loan data information; and
- that a principles-based approach can be taken in relation to the "substance over form" test.

D. Selection and pricing of NPE[25]

Participants have enquired whether the recently introduced Article 5(1)(f) of the EU Securitisation Regulation has the effect of disapplying the requirements in Articles 5(1)(a) and 5(1)(b) of the EU Securitisation Regulation. A purposive reading of these provisions (in light of the context in which the 2021 amendments to Articles 5(1)(f) and 9(1) of the EU Securitisation Regulation were introduced) clearly suggests it would, but confirmation that this is the intention of the authorities would be helpful.

In relation to scope of Article 5(1)(f) of the EU Securitisation Regulation, and although we note that there is no restriction in the Level 1 text, it is currently unclear whether this provision is intended to apply to structures where a "limb (b)" originator[26] purchases exposures originated by a third party with the intent of securitising them or if it is intended to be applied more widely to capture situations where the original lender or "limb (a)" originator[27] initiates a securitisation of its NPE (although we recognise this will not be frequent and may be restricted by other elements of the regulatory framework).

Furthermore, it is not clear from the wording of Article 5(1)(f) of the EU Securitisation Regulation whether this provision would only apply if at the time of the initial securitisation the relevant exposures were NPEs. Although the second paragraph of Article 9(1) of the EU Securitisation Regulation refers to underlying exposures that were NPEs at the time the originator purchased them from the relevant third party, it is unclear whether Article 5(1)(f) of the EU Securitisation Regulation could apply to securitisation exposures at the point when they become NPEs. For instance, this might be the case if an institutional investor acquires (in the secondary market) a securitisation position backed by exposures that become NPEs after the date on which they were initially securitised.

In relation to NPEs, participants have expressed the need for guidance around what "sound standards" would be given their credit quality. In particular, participants have enquired what price paid by a "limb b" originator[28] for NPEs would be considered to meet the "sound standards" test and satisfy the requirements in Articles 5(1)(f) and 9(1) of the EU Securitisation Regulation.

As with other requirements, participants also remarked that while investors would likely be seeking to comply with these requirements, the administrative burden on investors to prove compliance was prone to generate holdups in the investment process.

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24 This would also relate to the outcome of the discussions in relation to the definition of public and private securitisations.

25 While this (and the interplay between Articles 5(1)(a) and (b) and Articles 5(1)(f) (and Article 9(1)) in relation to standards applicable to NPEs) is clearly only relevant for the time being to the EU Securitisation Regulation, if the UK regime on credit-granting standards is updated to include adjustments in relation to NPE securitisations, this may become relevant.

26 An originator that meets the requirements of paragraph (b) of Article 2(3) of the EU/UK Securitisation Regulations.

27 An originator that meets the requirements of paragraph (a) of Article 2(3) of the EU/UK Securitisation Regulations.

28 An originator that meets the requirements of paragraph (b) of Article 2(3) of the EU/UK Securitisation Regulations.

E. Due-diligence

The key issue raised in relation to Article 5(3) of the EU/UK Securitisation Regulations relates to proportionality aspects. The interaction between Recitals (9) and (33) of the EU Securitisation Regulation and the due-diligence requirements seems to be the source of most queries received from participants.

As mentioned in Section B, the references to "*proportionate due-diligence requirements*" in Recital (9) raise uncertainties about the expected standard of verification of compliance with credit-granting standards and how it would differ based on deal parameters.

Recital (9) states that institutional investors must conduct due-diligence "*to the benefit of end investors*", but to date it is not clear who these would be and how due-diligence requirements would apply differently from one "end investor" to another. This also raises questions around whether and to what extent the "end investors" can benefit from and rely on the due-diligence performed by initial institutional investors (such as underwriters who invest in securitisation positions and then syndicate them).

Additionally, Recital (33) states that investors should perform their own due-diligence on investments commensurate with the risks involved, but it is unclear whether this should be assessed by reference to credit risk only or other risks and what is exactly meant by "commensurate" in the context of due-diligence.

In relation to transactions which have been designated as STS compliant but in respect of which the relevant institutional investors do not wish to rely on the STS designation or otherwise benefit from STS status, it would seem disproportionate to require the relevant investors to verify compliance with STS criteria. However, it is unclear whether they would still be required to do so in this case, therefore adding to their administrative and compliance burden with no tangible added value.

Participants have stated that the requirement to review STS notifications where there is no economic benefit to the end investor (i.e. where they are not a bank, insurance company for example) is an unnecessary burden, given it is not relevant to an investor's investment decision. An example of this would be a synthetic transaction designated as STS where only the originator would have the regulatory benefit arising from the STS designation (with none of the investors obtaining any regulatory benefit from the STS status).

It would be helpful to clarify that to the extent that investors do not rely on or benefit from the STS status, they do not have to ensure compliance with due-diligence requirement in that regard. The EU/UK Securitisation Regulations Level 1 text already appears to support this reading (through Recitals (9), (33) and (34)), but many industry participants still view STS-related due-diligence as applicable irrespective of whether the relevant investor benefits from the STS designation. As with other requirements, participants also remarked that while investors would likely be seeking to comply with these requirements, the administrative burden on investors to prove compliance was prone to generate blockages in the investment process.

Participants have identified Article 5(3) of the EU/UK Securitisation Regulations as one of the most problematic since, unlike Article 5(4) of the EU/UK Securitisation Regulations, it is not expressly subject to proportionality considerations (other than by virtue of Recital (9)) and it does not consider the risk of the investment (in terms of position in the capital structure or percentage of overall investments). Additionally, there is no guidance as to what level of evidence investors are required to obtain to satisfy the requirements thereunder (i.e. type of evidence and level of detail). The lack of clarity and guidance effectively means that investors who have not reviewed a transaction in the context of a primary market offering are unlikely to be able to participate in secondary market trades in relation to that transaction, leading to overall market inefficiencies as (i) compliance with the requirements of Article 5(3) of the EU/UK Securitisation Regulations is largely incompatible with the typical timeframe of secondary market trading and (ii) the level of work required to ensure compliance would mean that resource allocation would not make sense for smaller investments. Finally, the compliance burden associated with Article 5(3) of the EU/UK Securitisation Regulations provides a material advantage to third country investors (in particular US investors) not subject to these requirements, who are able to take advantage of short term market dislocations and opportunities.

Participants have also flagged that, in order to assist the industry with interpreting the due-diligence requirements consistently, it would be desirable to clarify the interplay of Article 5(3) of the EU/UK Securitisation Regulations with the wider concept of compliance with the requirements under the EU/UK Securitisation Regulations where the relevant provisions are silent as to who is required to comply (most notably, Articles 4, 6(2) and 8 of the EU/UK Securitisation Regulations).

Specifically in relation to fully supported ABCP programmes, the final paragraph of Article 5(3) of the EU/UK Securitisation Regulations states that "*institutional investors in the commercial paper issued by that ABCP programme shall consider the features of the ABCP programme and the full liquidity support*", notwithstanding Articles 5(3)(a) and 5(3)(b) of the EU/UK Securitisation Regulations. It is unclear whether this provision has the effect of allowing Articles 5(3)(a) and 5(3)(b) of the EU/UK Securitisation Regulations to be disapplied in such circumstances or whether this simply requires special consideration to be given to the features of the ABCP programme and the full liquidity support in addition to the remaining risks.

F. Ongoing risk monitoring, stress testing, internal reporting, policies and procedures

Although Article 5(4)(a) of the EU/UK Securitisation Regulations acknowledges that written procedures established by investors as part of the due-diligence process should be "*proportionate to the risk profile of the securitisation position*" there is no guidance on how to interpret this in practice. In contrast, the provisions of Article 5(4)(a) relating to ongoing risk monitoring are excessively detailed and not necessarily applicable to all asset categories, although it is recognised that these should be followed "*where relevant with respect to the securitisation and the underlying exposures*".

Currently, there is no indication of what supervisors would expect in terms of "*appropriate written procedures*". Recent statements from the Dutch and French designated national competent authorities (***NCAs***) and the European Central Bank (***ECB***) indicate that supervisors may have specific expectations in this respect. It would, therefore, be helpful to request greater transparency from supervisors in relation to expectation from the industry on this point.

In relation to stress testing in accordance with Articles 5(4)(b) and 5(4)(c) of the EU/UK Securitisation Regulations, participants highlighted the absence of a market standard or consistency in relation to what the appropriate level of stress testing would be, and have highlighted that this is a time and resource consuming process. Participants have underlined the material divergence between investor approaches and the absence of guidance on expected approach or purpose – guidelines to allow comparability between transactions and scenarios would be welcome, although these should not translate into a prescriptive process or less flexibility for institutional investors. Stress testing requirements should also be disapplied in relation to transactions with dynamic credit enhancement (such as trade receivables), as there would be no actual benefit in performing regular stress testing if the transaction has embedded credit enhancement dynamic adjustment features (as this would add to the compliance burden with no tangible added value for investors).

In Article 5(4)(d) of the EU/UK Securitisation Regulations, participants have expressed wishes for guidance in relation to the meaning of "management body", and, in particular, whether this would capture decision-making or specialised committees receiving reporting of this nature in larger organisations. It is important to stress that the references to "*ensure internal reporting to its management body so that the management body is aware of the material risks arising from the securitisation position and so that those risks are adequately managed*" in Article 5(4)(d) of the EU/UK Securitisation Regulations should not be construed as imposing any specific requirements for sign-off or approval in relation to each investment, and that institutional investors should be allowed to follow their own established processes and procedures.

As mentioned in Section B, it is unclear whether the references to "*proportionate due-diligence requirements*" in Recital (9) would impact the expected standard of verification of compliance with credit-granting standards and how it could differ based on deal parameters.

As with other requirements, participants also remarked that while investors would likely be seeking to comply with these requirements, the administrative burden on investors to prove compliance was prone to generate bottlenecks in the investment process.

G. Delegated investment management

Article 5(5) of the EU/UK Securitisation Regulations is a provision where participants would welcome greater clarity. Generally, there has been some disagreement as to the correct interpretation of this provision.

Some view this to mean (i) an institutional investor subject to the EU/UK Securitisation Regulations would not be liable for non-compliance with due-diligence requirements if it has delegated the compliance verification process to an institutional investor that is subject to the EU/UK Securitisation Regulations, and (ii) an institutional investor subject to the EU/UK Securitisation Regulations may contractually engage a third country entity to carry out investment due-diligence activities but the EU/UK institutional investor would remain fully liable and responsible for any non-compliance. Others have adopted a very narrow reading, understanding this to mean that an institutional investor under the EU/UK Securitisation Regulations cannot contractually delegate any due-diligence activities to a third country entity, even if retaining full liability and responsibility for compliance with the EU/UK Securitisation Regulations Requirements.

There has been a reported practice by some regulators (and as a result other market participants, such as auditors and fund administrators) of considering both the institutional investor and the investment managing party responsible for compliance, therefore multiplying regulatory compliance requirements along the investment chain and overlooking Article 5(5) of the EU/UK Securitisation Regulations, greatly increasing the risk of misunderstandings and misinterpretation.

Although Article 5(5) of the EU/UK Securitisation Regulations appears to place the burden of compliance on the managing party (if so instructed to fulfil obligations under Article 5 of the EU/UK Securitisation Regulations on behalf of the institutional investor), greater clarity and consistency of approach from NCAs in relation to the identity of the entity ultimately responsible for providing evidence of compliance would be hugely beneficial.

In many cases, asset managers managing investments for their clients do not, in their role as manager under a separately managed account, fall within the definition of an "institutional investor" for the purposes of the EU/UK Securitisation Regulations. In those cases, the relevant "client" institutional investor will either (i) be required to delegate compliance with Article 5 of the EU/UK Securitisation Regulations under contractual arrangements (being required to retain regulatory compliance risk), (ii) select a managing entity from a much smaller pool of entities who qualify as an "institutional investor" for the purposes of the EU/UK Securitisation Regulations or (iii) invest in a pooled vehicle (undertakings for collective investment in transferable securities or alternative investment fund), even where that may be a less appropriate form of investment. In relation to the UK Securitisation Regulation, should any future amendment (or clarification) thereto result in the exclusion of non-UK authorised alternative investment fund managers that market or manage an alternative investment fund in the UK from the definition of alternative investment fund managers (and as such from the definition of "institutional investor"), the same conclusion would apply.

Given that delegating investment and investment management is usually driven by the inability to overcome certain investment barriers or a desire to benefit from investment expertise and economies of scale not available to institutional investors "in-house", the current regulatory framework creates hurdles and may prevent market access for some potential investors (depending on the commercial approach to regulatory risk).

In situations where delegation is required (for instance where the instructing institutional investor is looking to appoint a discretionary manager or has made a passive investment managed externally), the relevant institutional investor may, in the absence of clear guidance, be expected to specifically negotiate the instruction of another institutional investor as managing party in line with Article 5(5) of the EU/UK Securitisation Regulations. Given that the instructing party would be required to negotiate commercial arrangements with the managing party, there could be a delay in the investment process (or even a compromise of the investment, in light of potentially changing market conditions) or result in the instructing party having to compromise on commercial matters or be required to provide indemnities in relation to matters outside of its control. Therefore, guidance should be provided to enable institutional investors to enter into discretionary mandates with third party institutional investors under which any requirements under Article 5 of the EU/UK Securitisation Regulations would automatically be imposed on the managing party, who would be required to comply with these on the instructing party's behalf.

H. Deemed due-diligence compliance for positions in correlation trading portfolio

Correlation trading can constitute "securitisation", bringing this activity in-scope of certain regulatory requirements. Correlation trading benefited from a special regime pre-2019, which resulted in disapplication of risk retention requirements and deemed compliance with investor due-diligence, provided certain conditions were met.[29]

With the introduction of the EU/UK Securitisation Regulations, the risk retention exemption for correlation trading was carried forward in Article 6(6) and Article 13 of the recast draft EBA risk retention RTS of April 2022,[30] but there has been a deficiency in the transposition of the treatment of these transactions compared to the pre-2019 position. There are no longer deemed compliance provisions for investor due-diligence and there is no exemption from burdensome transparency and reporting requirements, which were never designed for this type of transactions.

By way of background, under the EU/UK Securitisation Regulation, correlation trading is defined as transactions "*based on clear, transparent and accessible index, where the underlying reference entities are identical to those that make up an index of entities that is widely traded, or are other tradable securities other than securitisation positions*". Broadly, correlation trading may be broken down into: (i) trades on commonly traded indices (e.g. trades referencing iTraxx or CDX); (ii) bespoke index trades on names for which a liquid two-way market exists and could include a customised portfolio of corporate names, provided such liquidity exists in respect of all the names in the portfolio; and (iii) any other activities booked within a correlation trading portfolio in accordance with Article 338(1)(b) of the EU/UK Capital Requirements Regulations[31] or that is otherwise eligible for inclusion in a correlation trading portfolio.

The lack of guidance on deemed compliance with investor due-diligence requirements is an oversight and a direct result of the lack of mandate under Article 5 to provide clarifications via RTS. Therefore, given that, from a policy perspective, the position with regard to the treatment of this type of transactions should not have changed post-2019: (i) in the EU (in the absence of the possibility to amend the Level 1 text), the reinstatement of pre-2019 guidance through Q&As or some form of recommendation replacing and confirming the conditions set out in Article 20 of Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014 is needed to fill this gap and to provide clarity and certainty in the medium to long term and until it is possible to address this point more permanently through amendments to the Level 1 text and (ii) in the UK, the recast of the UK Securitisation Regulation regime under the Edinburgh reforms should include the reinstatement of the pre-2019 guidance in the FCA/PRA rulebooks.

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29 On the latter, please see Article 20 of Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014.

30 Article 6(6) of the EU Securitisation Regulation mentions that "*Paragraph 1 shall not apply to transactions based on a clear, transparent and accessible index, where the underlying reference entities are identical to those that make up an index of entities that is widely traded, or are other tradable securities other than securitisation positions*."

31 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 and the relevant UK "onshored" version.

Annex A
Anonymised feedback from buy-side market participants

Annex A will be completed upon receipt of further feedback following release at Global ABS 2023.

Annex B

Joint associations' letter "Request for guidance to national competent authorities to use enforcement powers in a proportionate and risk-based manner"

Ms. Petra Hielkema
Chairperson, European Insurance and Occupational Pensions Authority
Chair, Joint Committee of the European Supervisory Authorities

Ms. Verena Ross
Chair, European Securities and Markets Authority

Mr. José Manuel Campa
Chairperson, European Banking Authority

9 December 2022

Dear Ms. Hielkema
Dear Ms. Ross
Dear Mr. Campa

Re: Request for guidance to national competent authorities to use enforcement powers in a proportionate and risk-based manner

Background

We, the associations named in the Annex to this letter (the "**Joint Associations**"), refer to the Report from The Commission to the European Parliament and the Council on the functioning of the Securitisation Regulation dated 10 October 2022 (the "**SECR Report**"). In general, we welcome the additional certainty that comes from the SECR Report providing interpretive guidance in relation to a number of areas of the Securitisation Regulation ("**SECR**"). We also welcome the Commission's invitations to ESMA both to review the existing disclosure templates for underlying exposures and to draw up a single, simplified, dedicated template for private securitisation transactions[1]. The Joint Associations believe that this is an elegant and appropriate

[1] In this respect, we appreciate the proactive engagement by ESMA with the industry to date and look forward to ongoing engagement via a consultation in 2023.

solution to a number of significant operational difficulties that will be both effective and capable of implementation in the short to medium term.[2]

The Joint Associations do, however, have a significant concern about one relatively temporary – but nonetheless significantly harmful – effect of the SECR Report. We refer specifically to the Commission's interpretation of Article 5(1)(e) set out at section 11.2 of the SECR Report that requires EU institutional investors to obtain full Article 7 information even in relation to third-country securitisations by stating that "it is not appropriate to interpret Article 5(1)(e) in a way that would leave it to the discretion of the institutional investors to decide whether or not they have received materially comparable information". Third country reporting entities have, since the original date of application of the Securitisation Regulation, been reluctant to provide full Article 7 information since reporting entities would need to make substantial and costly adjustments to their reporting systems to comply with the Article 7 templates. We expect this reluctance to increase further now that the templates for private securitisations are expected to be significantly changed (and simplified so as to significantly reduce the scale of the changes and costs required) in the relatively short term. As the Commission correctly acknowledges, a strict interpretation of Article 5(1)(e) "de facto excludes EU institutional investors from investing in certain third-country securitisations". In fact, the effect of the SECR Report is to exclude EU institutional investors from investing in *most* third-country securitisations – significantly reducing the universe of securitised products in which they may invest.

The SECR Report goes on to make clear that it is the Commission's expectation and policy intention that the resulting competitive disadvantage imposed on EU institutional investors should be addressed by the introduction of a new private securitisation template that all private securitisations would use, whether EU or third country. If this happens, the *de facto* exclusion the Commission refers to would only be temporary[3]. This outcome is perverse – the more so because EU institutional investors are not, in general, taking as relaxed a view of the requirements of Article 5(1)(e) as the Commission might fear. For example, as required under Articles 5(3) and 5(4), EU institutional investors are already required to carry out a due-diligence assessment which enables them to assess the risks involved (including the risk characteristics of the individual securitisation position, the underlying exposures and the structural features of the securitisation) and that such investors have in place written policies and procedures for the risk management of their investments in securitisations. Indeed, EU institutional investors active in third country markets have rigorous systems in place to identify exactly what information they require to make a well-informed credit judgment, thus allowing them to determine the credit-relevance of any missing information and whether they might be able to get it from other reliable sources. Any increased risk or uncertainty resulting from the lack of data then forms part of these investors' risk-reward assessment when making an investment decision. EU institutional investors are also, of course, protected by other requirements that have never been ambiguous, such as requirements to check risk retention, disclosure of credit-granting standards, and more general due diligence aimed specifically at credit issues.

In the immediate, therefore the SECR Report's interpretation of Article 5(1)(e) denies EU institutional investors the ability to make suitable investment decisions and generate attractive yields balanced by the risk mitigation offered by global diversification, for both themselves and their clients. This loss of investment opportunity will create costs for European stakeholders of all kinds. To the extent that they are asset managers, it will negatively affect their ultimate stakeholders – who are broadly members of the public in the EU (e.g., via pensions). A further concern is that this will also result in a loss of liquidity for the non-EU borrowers who rely on EU lenders and other institutional investors to raise capital, with attendant harm to the global real economy as many markets are "experiencing broad-based and sharper-than-expected slowdown, with inflation higher than seen in several decades."[4].

Another, more pernicious, problem is that this exclusion will have longer term effects. The inability – even if it is only for a year or two – of market participants in the EU to make investments in third country securitisations will mean skills and resources may be permanently lost and relationships damaged. An institutional investor who cannot make attractive investments in third country securitisations is unlikely to keep paying the individuals and maintaining the systems necessary to that line of business in the meantime.

2 We would note that the effectiveness of this solution depends on the revised templates following the general theme set out by the Commission in the SECR Report. That is to say, it will only function if the revised templates include a private securitisation template that is simple, high-level and designed to give supervisors basic information needed to effectively supervise the markets, leaving the parties free to negotiate a bespoke, commercially useful disclosure package among themselves.

3 In this regard, the Commission itself notes in the SECR Report that amendments to private securitisation reporting "will make it easier also for sell-side parties from third-countries to provide the required information".

4 https://www.imf.org/en/Publications/WEO/Issues/2022/10/11/world-economic-outlook-october-2022

Once lost, these skills are complicated, difficult, time-consuming and expensive to get back. What is more, an investor who is unable to continue investing in an originator or sponsor's transactions will struggle to maintain the relationships and continual data reports needed to make efficient, well-informed investment decisions once the ban is eventually lifted. In relationship driven transactions, that investor also risks developing a reputation for being unreliable, which may lead to a reduction in investment opportunities being offered to them in the future (either in the form of diminished allocations or simply not being invited to form part of a lending syndicate). For banks specifically (see illustrative example no. 1 below) securitisation can also be a relationship tool. If they cannot offer it as a service to a client, their ability to access the most profitable business lines with that client will be affected.

Illustrative examples

Three illustrative examples of EU institutional investors whose business risks needlessly being damaged by the approach set out in the SECR Report are set out below:

1. **An EU bank with a significant New York branch:** A large part of this bank's US business consists of providing receivables financing to local corporates. This business is profitable and accretive to the overall profitability of the bank. The transactions are securitisations because the financing is tranched, with recourse limited to the assets being financed. If, during this interim period, this bank is forced to require full Article 7 templates in order to lend, then the relevant corporates will simply choose another bank – one that is not similarly constrained – to join the syndicate. The EU bank may well never get its position on the syndicates back, and even if it does it will come back with a substantially less current understanding of the relevant corporates' businesses, making it more difficult and expensive to conduct appropriate diligence for future investments.

2. **An EU pension fund that makes significant returns by investing in non-EU on-balance-sheet securitisations:** This pension fund is highly sophisticated and is therefore able to consistently and responsibly invest in the junior or mezzanine tranches of on-balance-sheet synthetic securitisations. One element of the investment strategy that allows them to maximise their risk-adjusted returns on these investments is a diversification strategy, meaning that they invest not only in EU banks' transactions but also in third country synthetic securitisations (e.g. Swiss or Canadian bank transactions). If, during this interim period, this pension fund had to require full Article 7 templates, it would simply not be able to invest, since the relevant third country banks would not be willing (or in many cases would not under local law be permitted) to provide these. Given that banks tend to choose their synthetic securitisation investors with care and a view to a long-term relationship, this inability to participate will damage the pension fund's ability to do this business well beyond the currency of the temporary requirement to get the current versions of the full Article 7 templates.

3. **An EU AIFM who manages funds invested in by EU pension funds, insurers and other EU investors:** Similar to the pension fund, the AIFM's risk management strategy includes diversification of investment portfolios, such that they invest heavily in EU securitisations of all asset classes, but also Australian RMBS, Japanese RMBS and equipment lease securitisations, US credit card securitisations and US managed CLOs. If, during this interim period, this AIFM had to require full Article 7 templates, it would have to restrict its securitisation investments to EU-originated securitisations. The resulting geographic concentration risk might mean that investments in EU securitisations would have to be reduced in order to appropriately hedge the risks in its overall portfolio, with a logical corollary of reduced liquidity in the product. Given that this will make investments in securitisation overall less effective and reduce the level of familiarity the AIFM has with third country securitisation structures and regulatory regimes, there is a significant risk that the systems and expertise necessary to maintain this line of business will be lost, making them very costly and operationally difficult to recover as a result of the notionally temporary restriction on their ability to invest in third country transactions.

Proposed solution

All of this said, it is clearly not sensible to simply ignore the requirements of Article 5(1)(e) and we would not suggest such an approach. Rather, the Joint Associations respectfully submit that the best solution to address the period between now and the finalisation of the new private securitisations template would be the issuance of enforcement guidance by the Joint Committee of the ESAs addressed to national competent authorities ("**NCAs**"). That guidance would set the expectation that NCAs would apply their supervisory powers in their day-to-day supervision and enforcement of Article 5(1)(e) in a proportionate and risk-based manner. This approach would entail that NCAs can, when examining EU institutional investors' compliance with Article 5(1)(e) of the SECR, take into account the type and extent of reliable information already available to them, regardless of format or source. This approach would not entail general forbearance, but a case-by-case assessment by the NCAs of the degree of compliance with the Securitisation Regulation and the risks associated with any non-compliance identified. This approach also entails that NCAs can take into account the simplification of the Article 7 templates for private securitisations proposed in the SECR Report which "will make it easier also for sell-side parties from third-countries to provide the required information".

The Joint Associations believe that this solution balances, on the one hand (i) the immediate need identified in the SECR Report for a more uniform understanding of the required compliance standards; and (ii) the medium-term policy goals of the Commission, with, on the other hand (iii) the potential for market disruption in the short term; and (iv) damage to markets and market participants in the longer term. Further, to the extent any are not already doing so, this approach will encourage all institutional investors to undertake the type of rigorous gap analysis (and resulting risk assessment) described above, such that they would be able to demonstrate to their NCA the level of any non-compliance and that it does not entail significant (or perhaps any) risk.

We further believe this solution is justified as a transitional measure, since the SECR Report's clarification as to the correct interpretation of Article 5(1)(e) comes after several years of that provision being in force, and just as many years of that provision being the subject of industry requests for clarity. The result of those years of ambiguity is a set of market systems and practices that will need time to be unwound in an orderly fashion so as to minimise the costs of implementing the necessary changes.

In closing, we wish to thank the Joint Committee of the ESAs for their attention and willingness to engage with market participants on issues related to the SECR. The Joint Associations would welcome the opportunity to discuss the above proposal with you and would be happy to answer any further questions that you may have.

Yours faithfully,

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Scott O'Malia
Chief Executive Officer
International Swaps and Derivatives Association (ISDA)

Jan-Peter Hülbert
Managing Director, True Sale International (TSI)

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Kristi Leo
President, Structured Finance Association (SFA)

CC:
Sean Berrigan, Director-General, Directorate General for Financial Stability, Financial Services and Capital Markets Union, European Commission

ANNEX

Descriptions of the Joint Associations

The **Association for Financial Markets in Europe (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 listed on the EU Register of Interest Representatives, registration number 6511006398676.

The **European Fund and Asset Management Association (EFAMA)** is the voice of the European investment management industry, which manages over EUR 30 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors.

Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities. EFAMA is a primary source of industry statistical data and issues regular publications, including Market Insights and the authoritative EFAMA Fact Book.

More information is available at www.efama.org

The **International Association of Credit Portfolio Managers (IACPM)** is a global industry association established in 2001 to further the practice of credit exposure management by providing an active forum for its member institutions to exchange ideas on topics of common interest. The IACPM's institutional member firms comprise the world's largest financial institutions, and as such overlap the membership of several other financial industry associations. Our perspective is different, however, in that the IACPM represents the teams within those institutions who have responsibility for managing credit portfolios, including actively controlling concentrations, adding diversification, managing the return of the portfolio relative to the risk and applying capital to new lending. In carrying out these responsibilities successfully, credit portfolio managers contribute to maintaining the safety and soundness of their respective financial institutions. Effective credit portfolio management is critically important to our prudential supervisors and to policy makers more broadly because of its role in supporting financial institutions' ability to lend.

Insurance Europe is the European insurance and reinsurance federation. Through its 36 member bodies — the national insurance associations — it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers pay out almost €1 000bn annually — or €2.7bn a day — in claims, directly employ nearly 950 000 people and invest over €10.4trn in the economy.

The **Alternative Investment Management Association (AIMA)** is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than US$2.5 trillion in hedge fund and private credit assets.

AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry.

AIMA set up the **Alternative Credit Council (ACC)** to help firms focused in the private credit and direct lending space. The ACC currently represents over 250 members that manage US$600 billion of private credit assets globally.

AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors).

The **Managed Funds Association (MFA)**, based in Washington, DC, New York, and Brussels, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 150 member firms, including traditional hedge funds, crossover funds, and private credit funds, that collectively manage nearly $2.6 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.

The **International Capital Market Association (ICMA)** is the trade association for the international capital market with over 600 member firms from more than 65 countries, including banks, issuers, asset managers, infrastructure providers and law firms. It performs a crucial central role in the market by providing industry-driven standards and recommendations for issuance, trading and settlement in international fixed income and related instruments. ICMA liaises closely with regulatory and governmental authorities, both at the national and supranational level, to help to ensure that financial regulation promotes the efficiency and cost effectiveness of the capital market. www.icmagroup.org

Since 1985, the **International Swaps and Derivatives Association (ISDA)** has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 79 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org.

True Sale International GmbH (TSI) is dedicated to support the development of the securitization market in Germany and Europe, its regulation and the further development of its legal framework. Through training courses and specialist conferences, we contribute to the qualification of the participants and to an open exchange between market participants, supervisory authorities and science. In doing so, we do not narrowly define the securitisation issue and include related fields from the broad field of structured finance and asset-based finance. https://www.true-sale-international.com/

The **Australian Securitisation Forum (ASF)** is the peak body representing the securitisation industry in Australia and New Zealand. The ASF's role is to promote the development of securitisation in Australia and New Zealand by facilitating the formation of industry positions on policy and market matters, representing the industry to local and global policymakers and regulators and advancing the professional standards of the industry through education and market outreach opportunities. The ASF is comprised of a National Committee, specific subcommittees and a national membership of over 170 organisations.

The **Securities Industry and Financial Markets Association (SIFMA)** is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development.

The **Structured Finance Association (SFA)** is the leading trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. Members of SFA represent stakeholders across the entire securitization market, including consumer and commercial lenders, issuers, institutional investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers, and trustees. SFA was established with the core mission of supporting a responsible, robust, and liquid securitization market, recognizing that securitization is an essential source of core funding for the real economy. As part of that core mission, SFA is dedicated to furthering public understanding among members, policy makers, consumer and business advocacy groups, and other constituencies about structured finance, securitization, and related capital markets. Further information can be found at www.structuredfinance.org.

Annex C
AFME Working Group Participants

Freshfields Bruckhaus Deringer (in the role of coordinator)

TwentyFour Asset Management

BlackRock

M&G Investments

USS Investment Management

Credit Agricole Corporate & Investment Bank

Allen & Overy LLP

Simmons & Simmons LLP

Latham & Watkins LLP

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