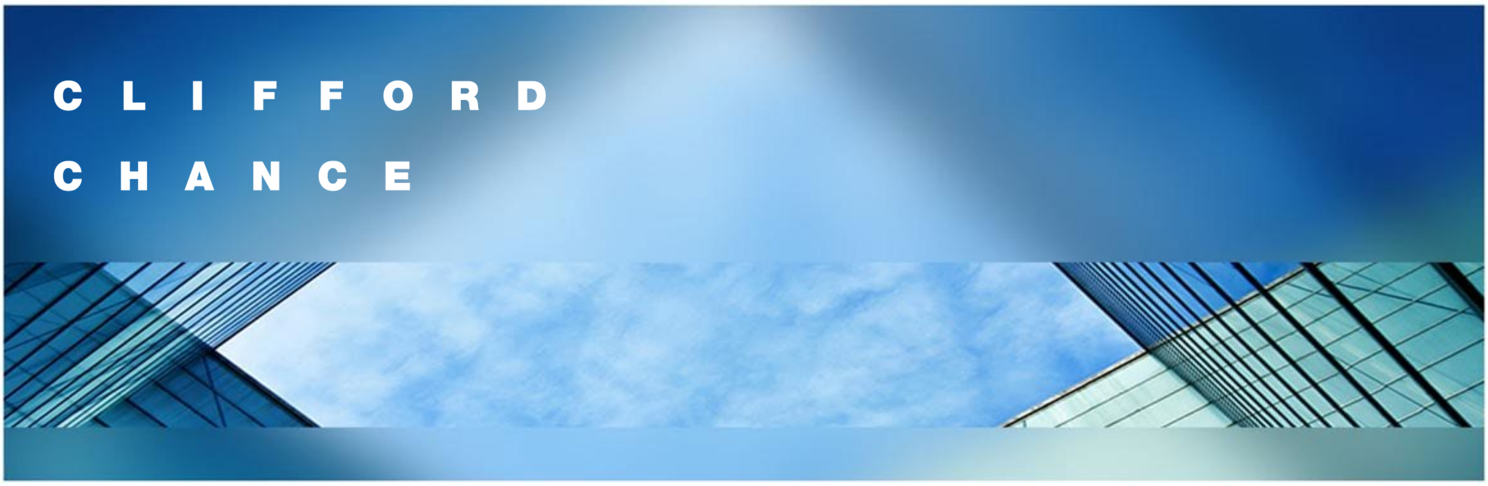

ESMA CONSULTS ON "SIMPLIFIED" DISCLOSURE REQUIREMENTS FOR PRIVATE SECURITISATIONS

The European Securities and Markets Authority ("**ESMA**") published a consultation paper (the "**CP**") on 13 February 2025 proposing a new "simplified" disclosure framework for private securitisations which would replace detailed loan-by-loan reporting with more summary, portfolio-level disclosures – a welcome move. However, as an attempt to alleviate the burden of excessive regulation on securitisation, the CP falls short, and it is difficult to understand the thinking behind it in places. The scope of the proposals is so narrowly drawn as to exclude some of the most important use cases for simplified reporting, while also adding reporting requirements that will be new to most market participants.

Key issues

- ESMA is consulting (deadline to respond: 31 March 2025) on new "simplified" loan-level disclosure templates for European private securitisations.
- The new template would apply only where no European prospectus is required and where all sell-side parties are established in the EU - thereby effectively excluding many of the most important use cases for a simplified private securitisation template.
- The new template would be uniformly applicable to both ABCP and non-ABCP securitisations, irrespective of the underlying assets.
- The new template would require portfolio-level information, rather than loan-by-loan information, but would also borrow new disclosure requirements from the European Central Bank templates that are currently only required of systemically significant banks.
- The consultation ends before the market sees the results of the Commission's targeted consultation on securitisation that closed in December 2024, which addresses similar questions regarding the European securitisation disclosure regime.

Background

The consultation paper relates to the loan-level transparency requirements for originators, sponsors and SSPEs in accordance with Article 7(1)(a) of Regulation (EU) 2017/2402 (the "**EUSR**"). The details for such disclosure requirements (along with prescribed templates) are set out in secondary legislation with ESMA primarily responsible for its development.

Under the EUSR transparency regime, "private securitisations"[1] have to report virtually identical information to "public" ones, but are exempt from reporting to securitisation repositories. As a result, many types of transactions, including ABCP transactions, synthetic securitisations, trade receivables financings by banks in securitisation format, or private asset-backed warehouse facilities are subject to the same disclosure templates as public transactions, an outcome generally agreed (including by senior government and EU officials) to be undesirable. The CP is a first concrete proposal from the authorities to address this issue.

Substance of the proposals

ESMA proposes to replace the existing asset class-specific templates required under Article 7(1)(a) of the EUSR with a simplified disclosure template that

1 'Private securitisations' are those for which an approved prospectus is not required under the Prospectus Regulation, while 'public' ones are those for which an approved prospectus is required under the Prospectus Regulation.

would be uniformly applicable to all asset classes and would apply to both ABCP and non-ABCP securitisations.[2] The idea is to ensure, as a primary goal, that *supervisors* receive the necessary data, while allowing investors and potential investors to access it. The proposals also envision investors receiving further reporting information provided in mutually agreed formats, not restricted by any prescribed templates. This would, therefore, replace detailed loan-by-loan disclosures with portfolio-level disclosure more in the style of stratification tables. A move in this direction is very welcome, albeit most market participants would say it doesn't go far enough.

However, the rest of the consultation is more than a little bit confusing, and even concerning. First, and most obviously, the "simplification" will only apply to a specific subset of private securitisations, being "European private securitisations", where the transaction is private and all sell-side parties — the originator, sponsor, original lender, and SSPE — are established in the EU.

This is a significant limitation, as one of the main reasons market participants have been advocating for a separate private securitisation disclosure regime was to enable EU institutional investors to invest in non-EU securitisations (which would generally be "private" for the purposes of the EUSR) by eliminating the need for such investors to obtain the full prescribed EU templated disclosure. Restricting the simplified template to European private securitisations in this way would prevent the proposed "simplification" from addressing that need. This is especially noteworthy given that the genesis of this simplification exercise was the October 2022 review report by the European Commission which was intended, among other things, to "help reduce the competitive disadvantage for EU institutional investors…[by making] it easier also for sell-side parties from third-countries to provide the required information."[3] It is even more surprising in the context of explicit calls from ECB President Christine Lagarde to build a large securitisation market to rival that of the United States and President of the European Commission Ursula von der Leyen's calls for far-reaching simplification to build the Savings and Investments Union. It should be noted, however, that ESMA has explicitly invited market participants to comment on its proposed geographic limitations.

What is more, the CP says that "originators, sponsors and SSPEs of private transactions must still provide the full set of 'public' disclosure information outlined in Article 7(1)(a) of the SECR to investors, potential investors and competent authorities upon request"[4]. If true, this would completely defeat the purpose of the exercise, as sell-side parties would still need to collect all of the existing required information and put in place systems to prepare the full "public" template reports anyway – and do that in addition to collecting the information required under the proposed new "simplified" template. The result would be that the CP's proposals would create a higher compliance burden for European private securitisations, not a lower one. It is difficult to understand the rationale for such a proposal. However, it is possible that this might have been a stray sentence from a previous draft of the CP, because there is no

2 While this note is focused on developments in the EU, for completeness, we note that the FCA has engaged in similar discussions with stakeholders in the context of the UK Securitisation Framework (see CP23/17 - Rules relating to Securitisation (Chapter 7)). In Policy Statement PS24/4, the FCA noted that the feedback received will be considered further and will inform its future consultation which will propose changes to its rules where appropriate. Similarly, the PRA noted in its Policy Statement PS7/24 that it may consult on proposals in this area in a future consultation paper.

3 See paragraph 11.2, near the bottom of p. 21.

4 See paragraph 22 of the CP.

reference to this requirement to provide the full loan-by-loan information on request in the proposed legislative wording appended to the CP.

Déjà vu all over again

The starting point for preparing the new simplified template was the SSM template, required by the European Central Bank of systemically significant banks on their securitisations. These were repurposed from ECB templates without considering the impact of the new context – a pattern we have seen before.

Back when the existing reporting templates were prepared, it was a case of repurposing the old ECB loan-level templates without accounting for the fact that they had been designed as an opt-in for a narrow portion of the market (deals that could achieve ECB eligibility). The result was to require reporting of vast amounts of information that most investors had no interest in, that was (legitimately) confidential, that often made no sense when applied to certain types of transactions, or was information the sell-side parties could not reasonably be expected to know, much less provide.

This time the CP proposes repurposing templates hitherto provided only by systemically important banks to the ECB only for supervision purposes. In their new incarnation, the CP is proposing to require them of all sell-side market participants, most of whom will be much smaller, have less sophisticated systems and greater sensitivity to marginal increases in compliance costs than systemically important banks. It is also proposing to require the reports to be provided to investors and potential investors (rather than on a confidential basis to a central bank or supervisor), despite the fact that the some of the fields contain potentially sensitive confidential information.

Structure of proposed new disclosure template

The proposed template is structured into four sections:

(i) *key transaction information of the securitisation:* This covers things like identifiers, entity names and details, contact information, and basic transaction features.

(ii) *exposure and risk retention:* This covers information on the underlying exposures at pool level (their currency, jurisdiction, asset class, principal balance, default status etc.) as well as relatively detailed explanations for how each of the "risk retention" (including the no adverse selection) requirements is met, down to the way relevant parts of the detailed rules in the regulatory technical standards are complied with. In relation to the risk retention requirements, given that this information would all be included in either the transaction documentation or the transaction summary, the requirement to also put it in the reporting templates seems excessive.

(iii) *information on securitisation positions:* Information about the tranches issued, including their sizes, ISINs and amount retained. Like the ECB template which inspired this, it is confusingly articulated.

(iv) *synthetic securitisation information:* information about the features of transactions structured as synthetic securitisations, including whether the credit protection is funded or unfunded, attachment and detachment points, the type of credit protection used (e.g., guarantee, CDS), the protection provider name, the currency of the protection and the notional amount of the protection. Much of this overlaps with information that would already be reported in item (iii). Further, given that most synthetic securitisations utilise credit-linked notes held in a clearing system, it is not possible for the originator to report on the name of the protection provider, nor would it be appropriate for the identities of multiple protection providers to be disclosed to other investors or potential investors.

Notably, there is also a new requirement for a formalised disclosure of "significant events" such as material breaches of obligations, changes in structural features, shifts in risk characteristics, and loss of STS status (which effectively track limbs (i)-(v) of Art. 7(1)(g) EUSR).

All of this suggests that implementing these proposals would involve the imposition of significant compliance costs on the industry. In the light of the broader Commission review that is expected to lead to a legislative proposal covering much of the same ground in the next few months, it is unclear how the proposals in this CP would contribute to reducing the regulatory burden on the in-scope securitisations.

Next Steps

The consultation will be open until 31 March 2025, with a final report and draft technical standards expected to be published by Q2 2025. However, ESMA notes that, in light of the ongoing review of the EUSR Level 1 text, it shall ensure that any proposed changes will align with any such potential changes.

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