

Legal Update

Regulatory technical standards in relation to transparency adopted by the European Commission

The European Commission (the “**Commission**”) has now adopted and published the regulatory technical standards¹ (the “**RTS**”) in relation to the transparency requirements under the EU Securitisation Regulation² (the “**Securitisation Regulation**”).

The Securitisation Regulation has been applicable since 1 January 2019 to all securitisations (as defined therein) other than securitisations existing prior to that date to the extent that they are grandfathered.³ Article 7 of the Securitisation Regulation sets out transparency requirements (the “**Article 7 Requirements**”) for originators, sponsors and securitisation special purpose vehicles (“**SSPEs**”). In addition, Article 5 of the Securitisation Regulation requires institutional investors, other than the originator, sponsor or original lender, to verify (among other things) that the originator, sponsor or SSPE has, where

applicable, made available the information required by Article 7 in accordance with the frequency and modalities set out therein.⁴

The Article 7 Requirements provide that the originator, sponsor and SSPE of a securitisation must report certain information to (i) holders of a securitisation position, (ii) competent authorities and (iii) (upon request) potential investors. The minimum information that must be reported is, in summary, as follows:

1. information on underlying exposures;
2. transaction documentation;
3. where the securitisation does not have a prospectus, a summary of the transaction;
4. for a securitisation that complies with the “simple, transparent and standardised”, or “STS”, criteria, the STS notification;
5. investor reports including information on the underlying exposures, trigger events, cash flows and risk retention;
6. any inside information required to be made public under the Market Abuse Regulation; and

1 Commission Delegated Regulation (EU) .../... of 16.10.2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the information and the details of a securitisation to be made available by the originator, sponsor and SSPE, available at https://ec.europa.eu/info/law/better-regulation/initiatives/c-2019-7334_en.

2 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/EC and Regulations (EC) No 1060/2009 and (EU) No 648/2012, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R2402&from=EN> (hereinafter cited as “**SR**”).

3 See also our Legal Update “The EU Securitisation Regulation – Where are we now?”, available at https://www.mayerbrown.com/-/media/files/%20perspectives-events/publications/2019/06/%20eusecuritisationregulationwherearewenow_june19.pdf.

4 Article 5(1)(e) SR. See also our Legal Updates “The EU Securitisation Regulation – Where are we now?”, referenced in the previous footnote and “The Impact of the EU Securitization Regulation on US Entities”, available at <https://www.mayerbrown.com/en/perspectives-events/publications/2018/12/the-impact-of-the-eu-securitization-regulation-on>, for further discussion of the jurisdictional scope of Article 5(1)(e). The market is hoping for some guidance from the European supervisory authorities on this point.

7. any other significant event (such as a material breach, a change in structure, a change in risk characteristics, an STS securitisation ceasing to meet the STS requirements or any material amendment to the transaction documents).

Items 2, 3 and 4 must be made available before pricing. Items 1 and 5 must be reported either quarterly or, in the case of ABCP, monthly, for the duration of the securitisation. Any relevant information under items 6 or 7 must be reported “without delay”. The originator, sponsor and SSPE are required to designate one entity between them to comply with the Article 7 Requirements for the securitisation.

Article 7 contains a requirement for the European Securities and Markets Authority (“**ESMA**”) to develop regulatory technical standards setting out the information to be provided in relation to items 1 and 5, and related implementing technical standards (“**ITS**”) with standardised reporting templates. The RTS are based on the draft regulatory technical standards published by the European Securities and Markets Authority on 31 January 2019 (the “**Draft RTS**”).⁵ ESMA have also produced a set of Q&As which is useful in interpreting the disclosure requirements and which is expected to be updated and expanded from time to time.⁶ We are currently reviewing the RTS against the Draft RTS, but while there are a number of changes it is not anticipated that they will be material. The related ITS have not yet been adopted.

The RTS contain a set of Annexes, each of which applies to a particular type of underlying exposure. Each Annex specifies in detail the information which must be reported under items 1 and 5 above in relation to the particular type of underlying exposure.

If the information for a field in the applicable reporting template is not available or not relevant for the particular underlying exposures, it may be possible to use one of the “No Data” options (where permitted for that field). There are five specific circumstances in which a “No Data” option can be used – where the required information:

1. was not collected at origination because the lending/underwriting criteria did not require it (ND1);
2. has not been loaded onto the reporting entity’s system (ND2);
3. has been loaded onto a system separate from that the reporting entity (ND3);
4. has been collected but can only be made available at a later date (that later date must be specified) (ND4); and
5. is not applicable to the relevant item (ND5).

The RTS emphasise that these circumstances should be narrowly construed, and that they should not be “used to circumvent” the Article 7 Requirements. Upon request of the relevant authorities, a reporting entity will have to provide details that justify the use of any “No Data” option.

The next stage in the process is for the RTS to be approved by the European Parliament (the “**Parliament**”) and the Council of the European Union (the “**Council**”). The Parliament and the Council have a three month “no objection” period in which to do so. Again, it is not expected that there will be any material changes made during this process. Once approved, the RTS will be published in the Official Journal and they are expected to come into force 20 days after the date of such publication. We assume that the ITS will need to be adopted by the Commission and approved by the Parliament and the Council so that they will come into force at the same time. This means that the RTS and ITS are likely to become effective in Q1 2020 (likely to be February 2020 at the earliest).⁷ No transitional period is expected to apply. Consequently it would be advisable for market participants to ensure that they are ready and have the relevant data available to allow them comply with the new reporting requirements once the RTS and ITS come into effect.

⁵ Available at <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-opinion-and-qa-disclosure-technical-standards-under>.

⁶ Questions and Answers on the Securitisation Regulation, Version 3, Last updated on 17/07/2019, available via the link in the previous footnote.

⁷ In the United Kingdom, the extent to which the RTS and ITS will apply will depend on the outcome and timing of Brexit. Please see our previous Legal Update “Onshoring the EU Securitisation Regulation – How will it apply in the UK in the event of a no-deal Brexit” for further information, available at https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2019/08/onshoringtheeuropeansecuritisationregulatoryregime_aug19.pdf.

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