

Legal Update

Disclosure Technical Standards and Templates Published in Relation to the EU Securitisation Regulation

Introduction

On 3 September 2020, two regulations were published regarding the detailed disclosure requirements under the Securitisation Regulation¹ (the "**Disclosure Technical Standards**"). These consist of regulatory technical standards concerning the information and the details of a securitisation to be made available (the "**Disclosure RTS**"),² and implementing technical standards with regard to the standardised templates (the "**Disclosure ITS**").³ The Disclosure Technical Standards will enter into force 20 days after publication, i.e. on 23 September 2020.

Background

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. Under Article 7 of the Securitisation Regulation, the originator, sponsor and SSPE⁴ of a securitisation are required to make specified information available to the holders of a securitisation position, the relevant competent authorities and, upon request, to potential investors. This information includes reports on the underlying exposures and investor reports. The reports are required to be provided on a quarterly basis for non-ABCP securitisations and on a monthly basis for ABCP securitisations. In addition, Article 5 of the Securitisation Regulation requires institutional

¹ 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.

² Commission Delegated Regulation (EU) 2020/1224 of 16 October 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://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1224&from=EN>.

³ Commission Implementing Regulation (EU) 2020/1225 of 29 October 2019 laying down implementing technical standards with regard to the format and standardised templates for making available the information and details of a securitisation by the originator, sponsor and SSPE, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1225&from=EN>.

⁴ Securitisation special purpose entity.

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.

The publication of the Disclosure Technical Standards in the Official Journal marks the end of a very lengthy process. ESMA⁵ was mandated under Article 7 of the Securitisation Regulation to prepare draft technical standards as regards the detailed information on the underlying exposures and investor reports which are required to be provided, together with draft standardised templates. ESMA's initial Consultation Paper on the draft Disclosure Technical Standards was published in December 2017 and drafts of the Disclosure Technical Standards were published by ESMA over two years ago, in August 2018. Further revisions were made in January 2019 and the European Commission adopted the Disclosure RTS and published the Disclosure ITS in October 2019.

The Templates

The Disclosure RTS contain various Annexes setting out the information that needs to be provided with respect to the underlying exposures, the investor reports and also, for public securitisations,⁶ inside information and significant events, and the Disclosure ITS contain Annexes with the templates which are required to be used. From the date on which the Disclosure Technical Standards come into force, the Securitisation Regulation transitional provisions mandating the use of the "CRA3" reporting templates will cease to apply.⁷

The templates are as follows:

Annex	Type of Template	Exposure Type	Type of Securitisation – ABCP/Non-ABCP
Annex II	Underlying exposures	Residential real estate	Non-ABCP
Annex III	Underlying exposures	Commercial real estate	Non-ABCP
Annex IV	Underlying exposures	Corporate	Non-ABCP
Annex V	Underlying exposures	Automobile	Non-ABCP
Annex VI	Underlying exposures	Consumer	Non-ABCP
Annex VII	Underlying exposures	Credit card	Non-ABCP
Annex VIII	Underlying exposures	Leasing	Non-ABCP
Annex IX	Underlying exposures	Esoteric ⁸	Non-ABCP

⁵ European Securities and Markets Authority.

⁶ Transactions for which a prospectus needs to be drawn up under the Prospectus Regulation (Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC).

⁷ Article 43(8) of the Securitisation Regulation.

⁸ It has been confirmed in the ESMA Q&As (as defined below) that this is the appropriate underlying exposures template for non-ABCP trade receivables.

Annex X	Underlying exposures	Add-on for non-performing exposures	Non-ABCP
Annex XI	Underlying exposures		ABCP
Annex XII	Investor report		Non-ABCP
Annex XIII	Investor report		ABCP
Annex XIV	Inside information/ significant event		Non-ABCP
Annex XV	Inside information/ significant event ⁹		ABCP

No Data Options

The Disclosure RTS allow the use of certain "No Data" options ("**ND Options**")¹⁰ which may be used where information cannot be made available, or is not applicable, where this is permitted in the particular Annex. However, these should only be used where there are justifiable reasons and should not be used to circumvent the reporting requirements. In July 2020, ESMA published its Final Report on Guidelines on securitisation repository data completeness and consistency thresholds (the "**ND Guidelines**").¹¹ The ND Guidelines are designed to assist securitisation repositories with their obligations to verify the completeness and consistency of the information provided to them with respect to public securitisations. Securitisation repositories are required to verify that the use of ND Options does not prevent the reported information from being sufficiently representative of the underlying exposures, and certain percentage thresholds with respect to "legacy assets" and "legacy IT systems" apply to the use of ND Options ND1 to ND4.

⁹ The ESMA Q&As (as defined below) indicate that the templates in Annexes XIV and XV of the Disclosure ITS are not required to be used for private securitisations, but this does not imply that the originator, sponsor and SSPE in a private securitisation do not have to comply with the reporting requirements under Articles 7(1)(f) and 7(1)(g) of the Securitisation Regulation.

¹⁰ The ND Options are as follows:

1. where the required information has not been collected because it was not required by the lending or underwriting criteria at the time of origination of the underlying exposure (ND1);
2. where the required information has been collected at the time of origination of the underlying exposure but is not loaded into the reporting system of the reporting entity at the data cut-off date (ND2);
3. where the required information has been collected at the time of origination of the underlying exposure but is loaded onto a separate system from the reporting system of the reporting entity at the data cut-off date (ND3);
4. where the required information has been collected the time of origination of the underlying exposure but it will only be possible to make it available at a date taking place after the data cut-off date (that later date must be specified) (ND4); and
5. where the required information is not applicable to the item being reported (ND5).

¹¹ ESMA Final Report on Guidelines on securitisation repository data completeness and consistency thresholds dated 10 July 2020, available at <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-guidelines-securitisation-repository-data-completeness-and>.

The ESMA Q&As

ESMA has published a set of questions and answers on the Securitisation Regulation (the "**ESMA Q&As**")¹² and these provide some useful guidance as to the completion of the templates. The ESMA Q&As also give examples of submission deadlines and data cut-off dates for both ABCP and non-ABCP securitisations.

Other Related Regulations

Further regulations pursuant to the Securitisation Regulation were also published in the Official Journal on 3 September 2020. These relate to the following matters:

- regulatory technical standards specifying the information to be provided in accordance with the STS notification requirements;¹³
- implementing technical standards with respect to templates for the provision of information in accordance with the STS notification requirements;¹⁴
- regulatory technical standards with respect to the application for registration of a securitisation repository and the simplified application for an extension of registration of a trade repository;¹⁵
- implementing technical standards with regard to the format of application for registration of a securitisation repository and for extension of registration of a trade repository;¹⁶ and
- regulatory technical standards on securitisation repository operational standards for data collection, aggregation, comparison, access and verification of completeness and consistency.¹⁷

¹² Questions and Answers On the Securitisation Regulation, Version 5, last updated on 28/05/2020, available at <https://www.esma.europa.eu/press-news/esma-news/esma-updates-its-questions-and-answers-securitisation-regulation>

¹³ Commission Delegated Regulation (EU) 2020/1226 of 12 November 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council and laying down regulatory technical standards specifying the information to be provided in accordance with the STS notification requirements, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1226&from=EN>.

¹⁴ Commission Implementing Regulation (EU) 2020/1227 of 12 November 2019 laying down implementing technical standards with regard to templates for the provision of information in accordance with the STS notification requirements, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1227&from=EN>.

¹⁵ Commission Delegated Regulation (EU) 2020/1230 of 29 November 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration of a securitisation repository and the details of the simplified application for an extension of registration of a trade repository, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1230&from=EN>.

¹⁶ Commission Implementing Regulation (EU) 2020/1228 of 29 November 2019 laying down implementing technical standards with regard to the format of applications for registration as a securitisation repository or for extension of a registration of a trade repository pursuant to Regulation (EU) 2017/2402 of the European Parliament and of the Council, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1228&from=EN>.

¹⁷ Commission Delegated Regulation (EU) 2020/1229 of 29 November 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on securitisation repository operational standards for data collection, aggregation, comparison, access and verification of completeness and consistency, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1229&from=EN>.

Conclusion

Market participants have been awaiting the publication of the Disclosure Technical Standards, together with the other regulations referred to above, for some time. While the disclosure templates are detailed and fairly onerous, particularly where asset-level data is required to be reported, market participants have had some time to consider the requirements. We anticipate that market practice as to the interpretation of the precise reporting requirements will continue to develop as the templates are completed in practice. However, the publication of the various regulations should now provide the market with greater certainty.

For more information about the issues discussed in this Legal Update, please contact any of the following lawyers.



Merryn Craske

Partner, London
E: mcraske@mayerbrown.com
T: +44 20 3130 3029



David O'Connor

Partner, London
E: david.oconnor@mayerbrown.com
T: +44 20 3130 3390



Dominic Griffiths

Partner, London
E: dgriffiths@mayerbrown.com
T: +44 20 3130 3292



Dasha Sobornova

Partner, London
E: dsobornova@mayerbrown.com
T: +44 20 3130 3294



Neil Macleod

Counsel, London
E: nmacleod@mayerbrown.com
T: +44 20 3130 3252

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