EC securitisation overhaul puts Euro manager retainers 'back to status quo' – Mayer Brown's Chris McGarry

By Shant Fabricatorian

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The regulatory landscape for European CLO manager retainers has returned to where it began 2025, following the European Commission's decision not to endorse the European Supervisory Authorities' (ESAs') interpretation on risk retention guidance, Mayer Brown Structured Finance Partner Chris McGarry told *Creditflux*.

"Basically, we are back to the status quo ante for manager retainers," he said.

Smaller European managers were among the most severely affected in the wake of the amended guidance published by the Joint Committee of the ESAs on 31 March, which resulted in a good deal of **agita and uncertainty** across the European CLO market. While the revised guidance did not carry legal standing, the fact that it was issued by the regulatory authority meant that market participants reacted to it as if it effectively carried that status.

As such, along with the Trump Administration's unexpectedly severe tariff agenda, it contributed to a three-week-long pause in European CLO issuance, as the market adjusted to the uncertainty the changes brought to bear. It even contributed to some US managers deliberating over the value of issuing European risk-retention-compliant CLOs, *Creditflux* **previously reported**.

However, the revised guidance for risk retention has not been endorsed by the European Commission's draft proposals released on 17 June, McGarry said – nor have any changes to risk retention rules relevant for the CLO market been proposed.

According to McGarry, per last month's legislative proposals, the European Commission (EC) has taken the view that the current risk retention rules, both in the existing level 1 regulation and the level 2 regulatory technical standards (RTS), are doing their job. The result is that smaller manager retainers are now able to come to market as they did prior to the revised guidance from the Joint Committee.

"In the case of third-party retainers, since investors are now used to asking about predominant revenue, that practice may continue, as it is one way to satisfy the 'not sole purpose test'," he said.

"But the position is different for manager retainers, whose broader business purpose has always been acting as an asset manager, and that is their basis for satisfying the 'not sole purpose test'. The market is already moving on in this regard, on both sides of the pond."

The decision not to adopt the "potentially more problematic" aspects of the proposals is positive from the standpoint of boosting securitisation issuance, in line with the EC's stated policy objectives, McGarry said. He added that improvements in securitisation risk weights under the proposed amendments to the capital requirements regulation (CRR) will increase banks' appetite and ability to lend to consumers, SMEs and corporates, helping improve the relative value of CLOs, which will have an indirect pricing benefit.

According to an **analysis** of the proposed revisions published by a group of Mayer Brown partners including McGarry last month, the proposed widening of the 'public securitisation' definition would mean that the range of securitisations able to use a simplified reporting template for private securitisations would be much-narrowed. The effect would be that securitisations listed on an EU-regulated market or multilateral trading facility (MTF) – including most European CLOs – would become public deals.

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