association of the luxembourg fund industry

**Subject:** **ALFI response to ESMA draft RTS on Securitisation Regulation on "Disclosure and Operational Standards"**
**Date**: 16 March 2018

**Q 1: Do you agree with ESMA's initial views on the possibility of developing standardised underlying exposures templates for, respectively, CDOs and "rare and idiosyncratic underlying exposures"? If you perceive a need to develop one or all of these underlying exposure templates, please explain in detail the desirable consequences that this would have. As regards CDOs, if you are in favour of developing a dedicated template, then please also indicate whether 'managed CLOs' and 'balance sheet CLOs' should be dealt with under the same template or separately under different templates.**

We agree with ESMA's view that the disclosure requirements must be set in a way that ensures sufficient and appropriate information to the (potential) investors. However, our observations in the market shows that throughout Europe securitisations may be structured in very different ways and securitise diverse sorts of underlying exposures. Those may even go beyond the classic credit risk securitisation in some jurisdictions.

Therefore, we would rather refrain from using standardised templates but seek harmonisation (instead of standardisation) of the information to be provided. This is similar to what you outlined in point 30 for cases where a standardised underlying exposure template does not fit. Yet, we would suggest not relying on templates at all, i.e. focusing on the substance of the information instead of the form.

In our opinion, standardisation is mainly beneficial in case of high volumes of very similar information and for statistical purposes. An investor would not be interested too much whether a similar product (in which does not or does not intend to invest) discloses the same relevant information in the same form. It may even be counterproductive because the information that really matters for such product or an investor is hidden somewhere in amongst other standardised information.

We would suggest defining minimum information requirements as suggested in your point 30, which need to be disclosed in either the investor reporting or the annual accounts of the securitisation vehicle. For information that is important to be received on a regular basis, the (often quarterly) investor report might be the best place. For information that needs to be reliable in the sense of externally validated, one might think about adding additional disclosure requirements to the annual accounts and subject to audit.

Securitisation transactions are generally static and passively managed (except for some managed CLOs). Therefore, a regular information in a standardised way across all similar products would be of less importance compared to externally validated information.

Last but not least, investor reportings already exist, in a way deemed appropriate by the arranger and the investor. Some may not fulfil the minimum disclosure requirements discussed above. Thus, they would have to be amended. The same applies to annual reporting requirements. But in any case, processes and reporting exist and it would be much more cost efficient to amend these than to create a complete new set of reporting. Especially, since such standardized reporting would not fully replace the individual reporting needs for specific investors and transactions, as also acknowledged in point 52.

**Q 2: Do you agree that ESMA should specify a set of underlying exposure disclosure requirements and templates for NPL securitisations, among the set of templates it will propose to the Commission? If so, do you agree that the draft EBA NPL exposures templates could be used for this purpose? Are there additional features (excluding investor report information, discussed in section 2.1.4 below) that are pertinent to the securitisation of NPL exposures that would need to be reflected or adjusted, in relation to the draft EBA NPL exposures templates?**

As mentioned in response to Question 1, ALFI remains rather sceptical about prescribing strict standardised templates instead of principles-based harmonised minimum disclosure requirements. Yet, until the underlying exposure disclosure for NPL securitisations is made obligatory, we believe that the set of those requirements should be clearly specified and templates made available, similar as it is designed for other types of assets.

The EBA NPL exposure template to be completed for each individual receivable in the pool of underlying exposure should be consulted with specialised third parties having expertise to process large volumes of information for issuers. It would be beneficial to ensure their system capabilities and compatibility and confirm the relevance of those disclosures.

We see examples of NPL securitisation where the information availability or processing of large volume data is a challenge and thus the accurate reporting might be costly and time consuming. The historical data (both dynamic and static) in NPL portfolios might have limited use for making judgements thus the emphasis should be made amongst others on cash flow forecasts, value and quality of the underlying collateral and NPV, rather than characteristics of the line-by-line portfolio.

We find the templates sufficiently detailed but the required granularity of the information might cause challenges in accurate reporting depending on the age of the portfolio and other factors.

**Q 3: Do you have any comments on the loan/lease-level of granularity for non-ABCP securitisations? If so, please explain, taking into account the due diligence, supervisory, monitoring, and other needs and obligations of the entities discussed above.**

We agree that a loan/lease-level report is of importance, but the degree of required granularity may differ. An investor would probably take its decision not on each loan/lease but based on clusters and eligibility criteria (assuming we are speaking of hundreds or thousands of individual underlying exposures). Therefore, the "most beneficial level of detail" (point 34(a)) may differ from transaction to transaction and investor to investor.

In line with our reasoning above, we are of the opinion that minimum disclosure requirements on loan/lease level exposure should be set – for investor reports and annual accounts – but no standardized reporting template.

If, for some reason, a specific information is deemed important for each securitisation transaction and useful to obtain in a centralised manner, we agree that a standardised reporting is needed. However, instead of creating a new reporting template, we would follow your approach in point 34 (c) and 35 referring to the ECB templates. These have originally been made for statistical purposes but one might think about amending them and making them available to (potential) investors (currently ECB provides information on aggregated level only).

Yet, this should be considered for very few additional field only. The overriding principle should remain substance over form and harmonisation over standardisation. Furthermore, focus should be on the quality of information, not on the quantity. From experience, self-certification of self-reporting may not help in information becoming more reliable. Therefore, and as stated above, one should consider defining which information must be externally validated and include this into the annual accounts disclosure requirements subject to audit. Any additional external review requirements, e.g. of information disclosed in the quarterly investor reports, may of course be added on a contractual basis.

**Q 5: Do you have any views on the contents of the non-ABCP securitisation underlying exposure requirements found in the templates in Annexes 2 to 8 in the ITS (located in Annex V to this consultation paper)?**

The granularity of the information is significant and it has to be carefully considered if such detail is necessary (and if the relevant information is easily available for reporting). The securitisation entities are obliged to report certain information to the ECB. It would be beneficiary to use the same coding and formats where possible and similar rules as issuers are familiar with those.

ALFI finds that the ECB reporting requirements are sufficiently detailed and the issuers / servicers / collateral administrators are familiar with those requirements thus certain harmonisation could limit the cost of implementation.

**Q 8: Do you agree with the proposed reporting arrangements for inactive exposures? If you prefer the alternative (i.e. require all inactive exposures to continue to be reported over the lifetime of the securitisation), please provide further evidence of why the envisaged arrangement is not preferred.**

When dealing with a portfolio of NPL loans, we do maintain the inactive exposures for reconciliation purpose and proper accountability of gains and losses on the portfolio. This approach might not have a justification with other asset classes.

For the discussed disclosure requirements, we do not see any added value in disclosing those inactive exposures and ECB approach seems correct.

**Q 9: Do you have any views on these proposed investor report sections? Are there additional fields that should be added? Are there fields that should be adjusted or removed? Please always include field codes when referring to specific fields.**

We agree that most of the information provided in investor reports is similar from one to another transaction. Therefore, it may help users and preparers to have “illustrative investor reports” with the normally expected or minimum required sections per transaction class. Yet, has help for users and preparers, as means for harmonisation – not as standardised template. In our opinion, having a long list of different fields and identifiers will not ensure having better information for the investors. In the contrary, arrangers may be tempted to fill in this template in the most complete way, squeezing some specific information into a standardized field and forgetting or involuntarily hiding highly relevant transaction-specific decision-relevant information.

Even though we are not in favour of a detailed template, we agree with the overall sections suggested by you. Those could be used in an illustrative investor report with some breakdown but not the same level of detail as proposed in the template.

**Q 10: Do you have any views on the ‘protection information’ and ‘issuer collateral information’ sections, for synthetic securitisations?**

We agree that synthetic securitisations merit additional disclosure in investor reports as well as annual accounts. The risk is not only linked to the underlying exposure but also to the derivative counterparty.

However, to avoid confusion to the investor, this section should not be called “protection information” but rather “underlying exposure information” or similar. Otherwise, the investor might think that his investment is somehow protected while he is in fact the protection seller (assuming that it is rather uncommon to have the securitisation vehicle being a protection buyer).

In addition, a minimum disclosure requirement might be a description or chart of cash flows, indicating counterparties and potential risks. This is true for each securitisation transaction, but even more for synthetic risk transfers. Furthermore, defined trigger events should be clearly disclosed because, contrary to a true sale, the investor may lose his money not only at bankruptcy of the underlying exposure (assuming a loan) but also potentially at an earlier stage when a trigger event is met.

**[…]**

**Q 14: Do you have any views on these 'No data' options? Do you believe additional categories should be introduced? If so, please explain why.**

We believe that only three categories should be sufficient:

- data not collected / permanently unavailable
- data not found / in processing
- not relevant

**Q 16: How much time would you need to implement these disclosure requirements? Do you have views on the date of effect of these disclosure requirements?**

We believe that feedback should be sought especially from data providers and the readiness of their systems to extract information.

We believe that the transitory period should apply, when the reporting is obligatory but a grace period of 18 months is granted to make sure all the parties are able to comply with the requirements.

**Q 20: Do you agree with the requirement that securitisation repositories produce unique identifiers that do not change over time?**

ALFI believes that this definitely helps avoiding any doubt especially knowing that on the market there may be several securitisation vehicles with similar names. Local trade register numbers may serve as already existing identifiers but – as mentioned above – they are local. We suggest to assess whether leveraging on the ECB identifier is possible and useful.