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18. June 2003

Mr. Fabrice Demarigny
Secretary General
Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
France

Re: Comments on Draft Advice on Level 2 Implementing Measures for the Proposed Prospectus Directive April/May 2003

Dear Mr. Demarigny,

The European Securitisation Forum¹ ("ESF" or "Forum") welcomes this opportunity to comment on the CESR's Advice on Level 2 Implementing Measures for the Proposed Prospectus Directive and Feedback Statements released in April and May 2003.

We refer to a letter of 19. March 2003² containing comments on Level 2 Proposals for Asset-Backed Securities under the proposed EU Prospectus Directive. Those comments were produced after consultation with our members which include investors as well as banks, issuers, arrangers, trustees, servicers, legal and accounting firms, rating agencies and other service providers participating in the European securitisation markets. Having again consulted with our members in relation to Annex H (Minimum Disclosure Requirements Asset Backed Securities SN Building Block), we have identified five key areas where important issues remain to be resolved.

In summary the five areas are:

1. definition of asset-backed securities;
2. the information required to be disclosed in relation to obligors;
3. the requirements in relation to the reproduction by the issuer of public information;

¹ The European Securitisation Forum is an organisation, which brings together securitisation market participants throughout Europe in order to promote the efficient growth and continued development of securitisation. Membership of the ESF comprises over 100 firms from across Europe, including Germany and Austria, France, Italy, England, Scotland, Spain, Ireland, Holland, Belgium, Switzerland, Luxembourg, Sweden, Norway and Portugal. Participants include securities firms, banks, issuers and arrangers, investors and asset managers, trustees, servicers, legal and accounting firms, rating agencies, financial guarantors, stock exchanges and industry utilities and other participants in the European securitisation markets.

² The letter is available on the ESF website at www.europeansecuritisation.com.

4. the requirements relating to the need to disclose valuations; and
5. we have two points relating to Annex G (Minimum Disclosure Requirements for Asset Backed Securities Registration Document).



1 Definition of asset-backed securities

We note that this has been moved to the body of the draft Technical Advice from Annex H and has been slightly amended. Whilst these amendments have been helpful, there remain three concerns. First, that it be absolutely clear that the intention is for Annex H also to cover synthetic securitisation. Although the definition does seem to contemplate some forms of synthetic securitisation, the concern is that it is not sufficiently widely worded to include the full variety of synthetic products or indeed the most common of them. Given the difficulty with phrasing definitions, the Forum recommends that the Technical Advice simply clarifies that it is the intention that synthetic securitisation be covered by Annex H, together with any other appropriate Annexes. Indeed, on the basis of comments made at the open hearing in Paris on 27. May it is understood that the next published guidance will include guidance on which annexes and building blocks apply to which types of security. This would be an ideal opportunity to address this issue.

Secondly, the definition does not contemplate that there could be a single asset underlying the transaction. Although not common, there are a number of transactions where there are single loan assets or other single credit risks which form the basis of the transaction. It would be preferable for this specifically to be mentioned in the definition. This could be achieved simply by adding the words “or asset” after each time the word “assets” is used.

Thirdly, it has now been clarified in the Technical Advice that covered bonds are not to be included within Annex H. Whilst this clarification is welcomed, there is a concern that this might result in an asymmetrical treatment as between securitisation and covered bonds resulting in a danger that transactions which might otherwise be done as a securitisation could be “dressed up” as a covered bond in order to take advantage of this potential disparity. ESF’s suggested solution to this would be to provide in the Debt Securities Note (Annex E) that where (a) the securities are to be secured, (b) such securities would not otherwise be required to fulfil the requirements of Annex H and, (c) the assets the subject of the security are relevant to analysing the risks associated with such securities, then equivalent information as would be required if Annex H applied should be supplied.

2 Disclosure relating to obligors

Paragraph 2.2.2 (a) and (b) of Annex H contain two disclosure requirements in relation to obligors. There are two specific comments on these sections but the overwhelming motivation for making them is to avoid significantly increasing the amount of disclosure which is required to be given from that which is currently the case in most jurisdictions. The ESF feels strongly that if these points are not addressed there is a significant danger that the cost to issuers and borrowers alike of preparing the appropriate disclosure statements would be too onerous and costly. The two comments are as follows:

- 2.1 It is not clear what is meant in paragraph 2.2.2 (a) by “a small number of easily identifiable obligors”. In some transactions the identities of the obligors are either required by law to be protected (in the case of consumers) or there is a desire not to disclose details of the obligors because they are not being notified of the transaction. Whilst acknowledging that it is clearly important to give details of the underlying credit in an asset-backed securities transaction, ESF considers that it is of crucial importance to ensure that the disclosure requirement require a generic description of any obligor



subject to specific data protection and banking secrecy law. This should be achieved by inserting the word “general” before the word “description” in this section.

- 2.2 In relation to section 2.2.2(b), the Forum has considered CESR’s comments in the Feedback Statement in relation to this section and that it is considered important by CESR that global statistical data is given. However, the terms used in this paragraph are very wide and the ESF proposes that the words “economic environment, as well as global statistical data” should be deleted and replaced with the words “key economic risk factors”. This suggestion is made in order to ensure that the resultant disclosure which is given is more meaningful and more specific than that which might be produced in response to the previous wording. This is because ESF members consider the meaning of this expression to be more precise.

3 Reproduction by issuer of public information

In relation to paragraph 1.2, the Forum wishes to clarify that information relating to the undertaking/obligor should be capable of being sourced from third party sources, for example information regarding historical price movements third party information vendors or comparisons across sectors. However it should also be further clarified that the issuer’s responsibility for information published by the undertaking/obligor or a third party source should be limited to accurately reproducing, extracting or summarising such information.

4 Valuations (paragraph 2.2.16)

It is noted that the Feedback statement made clear that CESR “considers it appropriate to require a valuation report” where a material portion of the assets are backed by real property. ESF agrees with this in principle. However, the exception to this requirement contained in the second paragraph of 2.2.16 does not make clear (as we assume is intended) that in certain circumstances this requirement is not to apply where there are multiple properties. Accordingly, it is proposed that the second paragraph reads “Compliance with this disclosure is not required if there are five or more properties, in which case the disclosure required by paragraph 2.2.6 shall be sufficient”.

5 Annex G: requirement for auditing of special purpose vehicle/display documents

- 5.1 In relation to paragraph 3.4 of this Annex ESF considers an audit report should not be required in relation to a special purpose vehicle where this would not otherwise be required in the jurisdiction of its incorporation.
- 5.2 It is noted that paragraph 2.6 has been amended so as to delete a number of the documents originally required to be displayed, which is welcomed by ESF. With respect to the documents to be displayed as indicated in paragraph 2.6, the Forum generally supports the possibility of inspecting such relevant documents. However, the wording at the end of the paragraph requiring the issuer to provide an indication of where the “documents concerning the issuer” may be inspected could have the effect of widening the display requirement to all documents mentioned in the prospectus. It is assumed that this is unintentional. The meaning of these words should be clarified by inserting the words “these above mentioned” before the word “documents” in the first line of this last sentence of paragraph 2.6 and by adding the word “registration” before document in the second line of the same sentence.

Given the specific nature of the comments provided and their importance to the continued viability of the securitisation markets in Europe, we would welcome discussing any questions or issues you would like to raise in a meeting with senior market participants either at our offices in London or at CESR’s offices in Paris.

Please feel free to contact Scott-Christopher Rankin at +44.20.77 43 93 00.

Yours sincerely,



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Members of the ESF Market Standards and Practices Subcommittee
Members of the ESF Legal Regulatory and Capital Subcommittee
Members of the ESF Commercial Mortgage Securitisation Subcommittee
Members of the ESF Investors Task Force
Members of the ESF/ISDA Synthetic Task Force
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