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Our Ref: 10023-16973 ICM:653125.2

5th February, 2003

Mr. Fabrice Demarigny
The Committee of European Securities Regulators
11-13 avenue de Friedland
75008 Paris
France

Dear Mr. Demarigny,

Addendum to the Consultation Paper (Ref. CESR/02-185-b) - Proposed disclosure requirements for asset backed securities

Allen & Overy has one of the most experienced securitisation teams in the European asset backed debt market. The team has acted for a wide variety of market users and participants on a broad range of securitisation transactions, including transactions involving notes listed in the UK, Ireland and/or Luxembourg.

We have reviewed the proposed disclosure requirements for asset backed securities set out in Annex 4 and Annex 10 to the Addendum to the Consultation Paper dated December 2002 which outlines the Committee's advice on possible Level 2 implementing measures for the proposed Prospectus Directive.

We welcome this opportunity to review and comment on the proposals and thank the Committee for highlighting the importance of full consultation. Below is our considered response to the proposed requirements. In respect of each item discussed, we have attempted to outline why we think the relevant item is or is not an appropriate disclosure requirement for asset backed securities. We would be happy to discuss our response with you or your colleagues at your convenience.

Securities Note Building Block (Annex 10)

1. Paragraph B.2.2(a)

If the obligors are companies, the general characteristics and descriptions of the obligors must be given

Please see our general comments regarding obligor disclosure in respect of paragraph B.2.11 below. In addition, it is our view that any requirements to provide information in respect of an obligor should be expressly restricted to information that is publicly available as issuers may not be legally able to provide certain information and/or may not have access to the relevant information. It is critical to note that in most cases the underlying obligors will not be part of the transaction and thus are under no legal or moral obligation to assist with the provision of such information.

Additionally, paragraph B.2.2(a) refers to only obligors that are "companies" - is it intended that obligors who are individuals, partnerships, government agencies or other types of legal entities would be treated similarly under this paragraph?

2. Paragraph B.2.2(b)

A description of the economic environment will be provided, as well as global statistical data referred to the loans (guarantees of the loans, average yield, geographical distribution of the debtors, etc).

It is unclear to us what is required to provide "a description of the economic environment". If this is intended to require disclosure regarding the general economic environment, in our view this is inappropriate as such a description would be extremely difficult for issuers to provide with any certainty of accuracy (as such a description is inherently subjective) and may be misleading if relied upon by investors. Moreover, specific risks in respect of the economic environment (if any) are required to be disclosed in the "Risk Factors" section in order for the issuer to meet its general disclosure obligations.

3. Paragraph B.2.11

Where the assets comprise obligations of 5 or fewer obligators or where an obligor accounts for 20% or more of the assets, or where an obligor accounts for a material portion of the assets, so far as the issuer is aware and/or is able to ascertain from information published by the obligor(s) the information required in respect of each obligor will be the same as that which would be required if it were itself the issuer of the securities unless the obligor has securities already admitted to trading on a regulated market or on the markets of the third countries for which the Commission has decided in application of Article 20, para.3, of the Directive that the broad equivalence of prospectuses is ensured or the obligations are guaranteed by an entity admitted to trading on a regulated market or on the markets of the third countries for which the Commission has decided in application of Article 20, para. 3, of the Directive that the broad equivalence of prospectuses is ensured, in which case only the name, address, country of incorporation, nature of business and name of the market in which its securities are admitted must be disclosed in respect of the obligor and also the guarantor (if applicable).

In our view, in respect of true sale transactions where there is no recourse to the obligors (for example, within the context of certain commercial mortgage backed securities transactions and synthetic collateralised debt obligations transactions), disclosure relating to the obligors is inappropriate and irrelevant. Asset backed securities which are supported by a pool of discrete assets without recourse to an obligor should be clearly described as such in the offering document and information regarding the obligors in the offering document is potentially confusing and/or misleading to investors.

More generally, it is our view that obligor related disclosure requirements should be kept at a minimum for offering documents in respect of asset backed securities. The key is the words "asset-backed". As highlighted in paragraph 141 of the Addendum, from an investor perspective, it is essential that an offering document for asset backed securities include sufficiently detailed information about the assets that actually back the debt. Additionally, as noted above, any requirements to provide information in respect of an obligor should be expressly restricted to information that is publicly available as issuers may not be legally able to provide certain information. Moreover, issuers may not be able to directly verify certain obligor information and, as such, issuers should not be required to include (and thus take responsibility for) such information as part of the offering document.

Lastly, in respect of paragraph B.2.11 we are concerned that the requirements to include disclosure in respect of an obligor which "accounts for a material portion of the assets" is far too broad and would in practice require obligor disclosure in almost all cases.

4. Paragraph B.2.16

Where a material portion of the assets are secured on or backed by real property, a valuation report relating to the property setting out both the valuation of the property and cash flow/income streams.

Compliance with this disclosure is not required if the issue is of securities backed by mortgage loans with property as security, where there has been no revaluation of any of the properties for the purpose of this issue, and it is clearly stated that the valuations quoted are as at the date of the original initial mortgage loan origination.

We note that the valuation requirements set out in Annex 10 are more flexible than the valuation requirements specified in the UKLA Listing Rules (Chapters 18 and 23). In our view, this increased flexibility is appropriate as in certain circumstances the current requirements (particularly those regarding form and presentation) are too onerous and do not allow enough flexibility. It is interesting to note that wide disparity of practice between London, Dublin and Luxembourg in this area which has led to exchange "arbitrage" on certain deal types.

With regard to the general valuation requirements, we are of the view that where a large number of properties are involved (for example, a portfolio of pubs), the requirements should expressly permit valuation based on a sample of the relevant properties. In our view, if the disclosure is clear as to what has been done, the basis upon which it was done, the date of valuation, the sample size and methodology, then investors should be able to assess property valuation information properly and little investor protection is gained by requiring a full valuation of all properties in the portfolio. We note that the rating agencies are comfortable with sample pool valuations and typically deem about 22.9% to be an acceptable sample size for valuations completed on this basis.

5. Paragraph B.3

Where the assets backing the issue represent an ownership interest in an actively managed pool of assets:

B.3.1 equivalent information to that contained in B1 and B2 to allow an assessment of the type, quality, sufficiency and liquidity of the asset types in the portfolio which will secure the issue;

B.3.2 the parameters within which investments can be made, the name and description of the entity responsible for such management including a description of that entity demonstrating suitable expertise and experience, a summary of the provisions relating to the termination of the appointment of such entity and the appointment of an alternative management entity, and a description of that entity's relationship, if any, with any other parties to the issue.

It is unclear what types of assets and transactions will fall within this requirement. We believe this is aimed at CDO and CBO deals but, as drafted, it could equally apply to a pool of mortgages or credit card receivables. It would be very helpful if further clarification could be provided as to the intended meaning of "actively managed".

In general, we note that we are in favour of the inclusion in the offering document of information regarding a third party service provider's "expertise and experience" as this information is of importance to investors for the purposes of assessing the risk of deterioration of the collateral and the ability to manage delinquent or defaulting assets. Interestingly, we note that paragraph D.1.7 does not require the same information to be provided in respect of an administrator or cash manager. We believe it should.

6. Paragraph C.2

Average life and method of calculation for the securities for different prepayment rates

At present, average life information is generally included in offering documents in respect of notes backed by discrete pools of established / relatively predictable securitisation asset classes. In our view, even when this information is clearly qualified by the relevant assumptions, it is speculative in part and should be viewed with caution by investors. As such, we do not think this information forms part of the essential information package investors should receive and, accordingly, that its inclusion is an appropriate disclosure requirement. We support reasonable guidelines as to how this information should be presented so as not to be misleading to investors; however, we do not support a requirement that all issuers include this information as it may be best suited to certain asset types and certain issuers may not be willing to take responsibility for the presentation of such information in the offering document because they will not have proposed it, prepared it nor be capable of verifying it.

7. Paragraph C.3

Details of any ratings issued by a recognised rating agency

It is unclear what is intended by this requirement. Is it meant to apply in respect of third party service provider ratings or in respect of the notes? It does not make sense to include this information in respect of the notes as the ratings are not assigned until closing and the offering document is finalised prior to that time. We note that it is current practice to disclose in the offering document the note ratings required to be assigned for completion.

8. Paragraph D.1.1

Description of the structure of the transaction

We note that we support the current UKLA policy of requiring a structure diagram in the offering document as, in our view, this is a useful tool for investors.

9. Paragraph D.1.4(a)

How the cash flow from the assets will meet the issuer's obligations to holders of the securities on an illustrative basis, a financial service table and a description of the assumption used for the development of the table may be included

We are not in favour of a requirement to include a financial services table in the offering document. In general, in our view, financial services tables are by their very nature speculative and not factual. Additionally, there is no market standard methodology of preparation and these tables may be confusing and/or misleading to investors. We support reasonable guidelines as to how these tables should be presented so as not to be misleading to investors; however, we do not encourage their inclusion in the offering document in general.

10. Paragraph D.1.5

The name, address and significant business activities of the originator or creator of the assets backing the issue

In our view, in respect of true sale transactions, disclosure about the originator should be kept to a minimum as there is no recourse to the originator. As stated above, in our view, asset backed securities which are supported by a pool of discrete assets are by definition without recourse to an originator and anything which suggests otherwise in the offering document is potentially confusing to investors. Origination information should be restricted to asset information such as the information referred to in paragraph B.2.7 of Annex 10. This paragraph requires disclosure of "the method of origination or creation of the assets, and for loans and credit agreements, the principal lending criteria and an indication of any loans which do not meet these criteria". In our view, paragraph B.2.7 appropriately focuses on the origination criteria in respect of the assets (to which investors have recourse) rather than the originator (to which the investors do not have recourse).

11. Paragraph D.1.6

Where the return on, and/or repayment of the security is linked to the performance or credit of other assets which are not assets of the Issuer, the disclosures contained in B2 and B3 are necessary

Further consideration may be required to determine what information would need to be disclosed in respect of credit linked notes. In our view, certain requirements set out in paragraphs B2 and B3 would not be appropriate for disclosure. For example, paragraph B.2.8 refers to disclosure of "significant representations and warranties given to the issuer relating to the assets"; however, in a transaction involving credit linked notes, representations and warranties in respect of the underlying assets will be provided to the underlying issuer rather than the issuer of the asset backed securities. Additionally, transactions involving credit linked notes may involve a significant number of underlying assets to which the repayment of the security is linked and it may not be appropriate to require full disclosure under paragraphs B.2 and B.3.

Put simply, it may be legally and practically impossible for issuers to comply with this requirement which may well have a very negative impact on the development and expansion of this increasingly important market.

12. Paragraph E

The issuer shall indicate in the prospectus whether or not it intends to provide post-issuance transaction information regarding securities to be admitted to trading and the performance of the underlying collateral. Where the issuer has indicated that it intends to report such information, the issuer shall specify in the prospectus what information will be reported, where such information can be obtained, and the frequency with which such information will be reported.

We support the flexibility in the proposed disclosure requirements for post issuance reporting.

General Summary

In addition to the specific points that we have set out above, we would stress the need for the utmost flexibility in these new rules. Whilst we are broadly supportive of a regime which applies equally across the European exchanges, thus getting rid off the current practice of "arbitraging" listing rules, this can only truly work if the rules are drafted in such a way that they can keep up with potential changes to asset classes and transaction structures. If there is too much rigidity in the rules, this is likely to drive issuers outside the European Union where a number of new exchanges have been formed with favourable asset-backed listing rules (e.g., Channel Islands, Cayman Islands).

We would reiterate the point made above about these being "asset backed" rules rather than corporate rules. Historically and in the proposal, there has been far too strong an emphasis on corporate entities, even where, by the nature of the structure itself, there is no recourse to any corporate entity. This is very misleading to investors, since even whilst the legal documentation may not provide for recourse, the listing rules by their very wording suggest recourse.

In our view, the general legal obligation to give full disclosure of all material facts and matters should be the guiding principle for disclosure. Specific rules are welcome also, but the market has developed a way of making disclosure that is broadly accepted whatever exchange is used. This structure and approach is broadly accepted by major banks, issuers and investors alike. It would be unfortunate if any proposal would change that approach.

If there are any comments or questions or you would wish to consult with us further about any of the points raised in this letter or generally in relation to the proposal, please do not hesitate to contact Julian Tucker or Nicole Rhodes of these offices.

Yours sincerely,

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cc: Graham Walker and Nikki Schurer
Financial Services Authority, UKLA