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19. March 2003

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

Re: Comments on Level 2 Proposals for Asset Backed Securities under the proposed EU Prospectus Directive

Dear Mr. Demarigny,

The purpose of the European Securitisation Forum¹ (“**ESF**” or “**Forum**”) is to promote the efficient growth and continued development of securitisation throughout Europe, and to advocate the positions and represent the interests of its members — European securitisation market participants. The Forum also attempts to identify, recommend and implement market standardisation policies, practices, guidelines and related documentation to promote liquidity, transparency and efficiency in the primary and secondary European securitisation markets. Among various activities, the Forum promulgates recommendations for market participants, which have been assembled in the ESF Securitisation Market Practice Guidelines² (“**Guidelines**”). These Guidelines are regularly revised and updated to reflect developments in the securitisation area.

The Forum has also produced a document entitled “A Framework for European Securitisation³” referred to as the “**Whitepaper**”. The aim of the Whitepaper is to set forth goals “that collectively define the elements needed to facilitate a more uniform and harmonised framework for securitisation in Europe”. Of particular relevance to the ESF’s consideration of the Prospectus Directive and Level 2 consultation process are the stated goals of encouraging a regulatory regime to promote clear and understandable disclosure to facilitate informed investment (see Section 11), that all potential investors should receive the same information prior to being required to commit and that investors should be entitled to expect securitisation transactions to embrace good corporate governance (see Section 12).

As part of these efforts, the Forum commented on the proposed EU Prospectus Directive⁴ (the “**Prospectus Directive**”) and wrote to you in August 2002 proposing an amendment in relation to post-issuance reporting. The Forum is pleased that this amendment has been incorporated into the most recent version of Annex 10 to the Prospectus Directive (CESR Proposal for the Asset Backed Securities - Securities Note Building Block) (“**Annex 10**”).

The Forum is now writing to you to suggest some further amendments to the latest version of Annex 10 and also to Annex 4 (CESR Proposal for the Asset Backed Securities Registration Document) (“**Annex**

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 Guidelines contain a number of recommendations concerning post-issuance reporting and other market practices designed to bring greater efficiency and standardisation to the European securitisation markets. The Guidelines, recently translated into French, German, Italian and Spanish, are available on the ESF Website at www.europeansecuritisation.com.

³ The Whitepaper is available on the ESF website at www.europeansecuritisation.com.

⁴ The Forum has, for the purposes of this letter, invited comments from its members on the contents of Annex 10, Annex 4, Annex L and Annex 1 (as defined on the next page) only and has not considered or invited comment on any other part of the Prospectus Directive.

4”) and to Annex L (Securities Note: Debt Securities Schedule) (“**Annex L**”). Each of these comments is motivated by the desire to preserve a balance between clear and meaningful disclosure on the one hand, and the avoidance of new regulatory requirements that could be inappropriate, given the distinctive features of securitisation transactions, on the other. We are concerned that introducing disclosure requirements that are not well-adapted to securitisation transactions, or that are unduly burdensome, costly or onerous to fulfil might otherwise restrict the development and liquidity of the European securitisation market. With a record €157.7 billion issuance in 2002 alone, according to the ESF Securitisation Market Data Report⁵, the European securitisation market has become an essential contributor to the stability and effective functioning of the financial sector and has proved its value as an efficient funding and risk management tool. Securitisation is a source of highly credit rated fixed income assets for investors and permits banks to achieve a more precise matching of the duration of their assets and liabilities.

Asset backed securities take a number of forms and can be issued by different types of issuers. As a result, it is difficult definitively to define what asset backed securities and/or securitisation are. However, for the purposes of setting our comments in context, a generic description of a securitisation is that it is a transaction involving the transfer of rights associated with an identified or identifiable pool of assets to a special purpose vehicle (“**SPV**”) which will have been established for the transaction. That SPV will issue asset backed securities in order to fund the purchase of the assets. In some structures the SPV will fund its purchase of the assets by borrowing from another SPV which will, in turn, issue asset backed securities. The issuer SPV (and any intermediate SPV) will usually grant security over all its assets to the holders of the asset backed securities. The payments due on the asset backed securities are funded, directly or indirectly, by the cash flows generated by the assets. Facilities designed to cover delays or defaults arising in relation to the assets and hedging agreements to cover basis and exchange rate risk may also be provided to the relevant SPV. In each transaction, the transfer methods, the assets, the extra facilities provided and every other component of the structure may change. The overall aim is usually to isolate or “ring-fence” the particular assets within a robust legal structure in order to provide investors with credit exposure to those assets, which exposure will be further protected by the structural features/facilities forming part of the deal.

Other types of transactions/products which are distinct from securitisation could also fall within the definition of asset backed securities such as mortgage debenture stock and other securities which are secured, and the Forum has tried to reflect this in their comments.

The way in which disclosure requirements are framed for these deals should therefore be flexible enough to elicit a clear description of the pertinent characteristics of the assets and structure in order to enable investors of the kind to whom the securities will be offered to make an informed decision. The key for investors in securitisation is an understanding of the assets and the extent to which the structure of the transaction effectively isolate and enhances the potential return on those assets.

Like most other financial instruments, asset backed securities are not without risks. What matters is that the risks are clearly explained, together with any mitigating features of the structure. The aim of the disclosure requirements should not be to eradicate risks, but to ensure they are fully disclosed so that investors have a good understanding of them. As a consequence, the Forum’s emphasis has been on the substantive content and drafting of Annex 10. However, we have also considered the application of the other annexes which apply to asset backed securities.

Before setting out our detailed drafting comments on Annex 10, we have two key points which are of more general application.

First, it is difficult from the Consultation Papers published thus far to determine which Annexes, and which parts of which Annexes, should apply to a particular issue of asset backed securities. The Forum’s aim in suggesting a number of the comments below, and in the attached schedules, is to clarify that where certain information may not be appropriate or applicable in all cases, there should be flexibility to exclude it. At present, it seems that for all issues of asset backed securities, the information contained in Annex 1 (CESR Proposal for the Wholesale Debt Registration Document Building Block based on IOSCO International Disclosure Standards and European Directive 2001/34/EC) (“**Annex 1**”), Annex 4, Annex 10 and Annex L would need to be included in the Prospectus. However, the information contained in Annex 1 relating to the issuer either duplicates that

⁵ The Report is available on the ESF website at www.europeansecuritisation.com.

included in Annex 4 or would be inappropriate in relation to issues of asset backed securities. The Forum assumes that it is therefore not intended that the disclosure requirements of Annex 1 apply to asset backed securities at all, but rather that Annex 4 only should apply. Accordingly, the Forum proposes that this should be clearly confirmed either within Annexes 1 and 4 or elsewhere. For this reason, the Forum has not commented specifically on Annex 1.

Attached to this letter are schedules setting out the text of Annex 4 and Annex L amended to indicate where, and for what reasons, the disclosure requirements would be unnecessary or inappropriate in an issue of asset backed securities. For these purposes, the Forum has not addressed any issues relating to the disclosure requirements for debt securities generally. The Forum proposes that it be made clear that the disclosure requirements in Annex L which would, in the Forum's view, be inappropriate to asset backed securities should not apply to them. In addition Annex 4 should be amended as set out in the schedule to this letter. The method of indicating which requirements of Annex L do not apply to asset backed securities could be effected by incorporating notes to that effect in the Annex itself or by way of general guidance.

Secondly, in order to avoid restricting the development of the European asset backed securities market, there should be clear guidance on what should be done if the requirements of any of the annexes are either inappropriate for a particular issue or the requirements for a particular issue are not specifically covered in any of the Annexes. It is, of course acknowledged that the purpose of Level 2 is to establish EU wide standards and thereby to promote a single market. However, the Forum strongly suggests that this would not be achieved if there is insufficient flexibility in the Level 2 requirements to allow the development of the market. The chief concern is that without guidance on what should be done when a particular issue of asset backed securities does not fit within any Annex or part of any Annex, it may simply not be possible to undertake that issue. The risk outlined in the previous sentence could result in the stifling of a market characterised and driven by continuous innovation. Most importantly, if it is uncertain whether certain transactions can be done, this seriously threatens to put the European business and securitisation market at a competitive disadvantage.

In summary, the comments relating to Annex 4 draw the distinction between SPV issuers and operating company issuers and highlight the disclosure items which the Forum regards as too detailed for SPV issuers. The comments on Annex L simply identify where there is overlap with other annexes which would apply to asset backed securities and draw attention to the fact that no attempt has been made to address the significant issues relating to the securities generally, which a number of other market bodies have already done.

ESF comments on Annex 10 are set out below:

- The definition of "Asset Backed Securities" in Annex 10 has clearly been drafted widely so as to be inclusive and flexible. The Forum welcomes this approach. However, there are a number of specific concerns arising from the drafting. First, if (as the Forum considers is desirable) it is intended to include within the definition "synthetic securitisations", the amendments made below to the second limb of the definition will be required. Synthetic securitisations generally involve the issuance of credit-linked and secured notes in relation to which payments are made by reference to an asset or portfolio of assets or credits not necessarily owned by the issuer. The issuer usually achieves the cash flows necessary to fund such payments by entering into an agreement known as a credit default swap. Secondly, we have suggested a number of drafting changes to both limbs of the definition which the Forum considers improves the overall meaning.

Definitions:

Asset Backed Securities: "debt securities of a type which either"

1. (a) represent an ownership interest in, or (b) are secured by, a discrete pool of assets or a single asset (including any rights designed to assure servicing, or the receipt or timeliness of receipts by holders of assets of amounts payable thereunder); or
2. (a) are secured by assets and (b) by their terms, provide for payments of principal and interest (if any) calculated by reference to an identified or identifiable asset or specified risk or a pool of such assets or risks.

- A.2: The requirement for an issuer to confirm that publicly available information cited in the Prospectus is complete is too onerous as it could require extensive work to verify. In addition, the requirement to disclose the source of the information is not necessary as by definition the information is publicly available. Accordingly, we suggest A2 reads as follows:

“the information relating to the undertaking/obligor has been accurately reproduced from information published by the undertaking/obligor or from other public sources”.

- B.1: The Forum suggests that this general statement be amended as follows to reflect the key requirements that the available cash flows arising from both assets and supporting facilities should enable (i) timely payment and (ii) payment in full. However, in addition it should be clear that what is required is full disclosure on the basis of which investors of the type to whom such securities will be offered can properly assess the risks associated with the relevant assets (together with any added structural features intended to mitigate such risks) as opposed to creating the impression that some kind of assurance as to performance of the assets should be given, which the Forum respectfully suggests may be the effect of the current wording. ESF considers that the best way to achieve this is by using more general wording:

“The Prospectus must disclose details of the characteristics of the assets backing the issue or by reference to which payments on the securities will be made which, when read in conjunction with the information relating to the structure and/or cash flows of the transaction, would allow investors of the type to whom it is intended to offer the securities to make an informed assessment of the risks associated with such securities”.

- B.2: In order to reflect the proposed amendment to the first limb of the definition of “Asset Backed Securities”, this paragraph should be amended to read as follows:

“Where the asset backed securities represent an ownership interest in, or are secured by, a discrete pool of assets or by a single asset.”.

An equivalent change should be made to B.3.

- B.2.1: It is not clear what is meant by “legal jurisdiction(s)” in this paragraph. Accordingly, the Forum suggests this be amended to read “governing law”.
- B.2.2.2 (b): The Forum does not consider that it is appropriate or reasonably practicable to require inclusion of general information in respect of the economic climate relating to assets. Accordingly, the Forum proposes the following amended wording:

“a description of the global statistical data referred to the assets (guarantees of the assets, average yield, geographical distribution of the debtors etc)”.

- B.2.3: The term “legal nature” of the assets used in this paragraph is unclear. The Forum considers that because it is difficult to define the meaning of this expression it would be better to exclude it altogether to avoid causing uncertainty. The general requirement to disclose appropriate information should suffice to elicit all relevant information of a legal nature in any particular case.
- B.2.4: In some cases, it is not possible to specify the expiry or maturity date of certain assets, accordingly, the Forum recommends that this paragraph be amended by the addition of the words “where appropriate and readily available” at the end.

- B.2.9: It will not always be possible to predict the impact of a substitution of any assets in advance and so the final words of this sub-paragraph (“with a description of the impact of such substitution”) should be deleted. Reliance is usually placed on the satisfaction of certain financial and other eligibility criteria prior to substitution, which would be required to be set out in full in the Prospectus as a result of the preceding part of this sub-paragraph.
- B.2.11: A number of concerns have been raised with the Forum on behalf of issuers that the requirements in this paragraph are very wide and could involve a great deal of cost being incurred in order to produce the relevant information which could make some transactions impractical. ESF has a number of specific drafting changes which are intended to clarify the specific requirements. In its amended form, ESF believes that the resultant disclosure requirements would be appropriate for retail issues. However, ESF considers that the disclosure requirements would be inappropriate for wholesale issues. In relation to such issues, it is proposed that the requirements be limited to the information required for listed issuers (as described in paragraph (ii) of B.2.11). This is because sophisticated investors should be able adequately to make their own assessments and conduct their own further enquiries depending upon their specific concerns as to the associated risks on the basis of such information.

“Where the obligations of 5 or fewer obligors comprise the total nominal amount of assets ultimately forming the pool of assets from which the payments of principal and interest on the securities will be serviced, whether directly or indirectly or where an obligor accounts for 20% or more of the total nominal amount outstanding of the assets in the pool as a whole, the information required in respect of the relevant obligor will be the same as that which would be required if it were itself the issuer of the securities provided that: (i) such information has been published and is reasonably accessible to the issuer or the person responsible for gathering such information and (ii) unless the obligor has securities ... etc”.

A second and important point in relation to paragraph B.2.11 is that it should be clear that where publicly available information is to be provided there should be no additional requirement to add to or reformat such information to comply with any differences in such information from that which would be required were it being drawn up under the equivalence requirements.

- C2: The statement of the average life of the securities is not common to all transactions and therefore it should be made clear that such statistics should only be included as and when relevant to the transaction and/or investors. Accordingly, ESF proposes the insertion of the words “as appropriate and readily available”.
- D.1.4 (b): ESF believes that it would be useful to include mention of the fact that if there are any shortfalls, one or more of the tranches of noteholders may bear more risk than the others. Accordingly, the Forum suggests the addition of the following sentence at the end of this sub-paragraph: “If one or more classes of securities bears such risks to a greater extent than the others, a statement to this effect is to be provided”.
- D.1.6: As the precise definition of the occurrence of an event of default is key to the credit linked issues referred to in this sub-paragraph, the Forum proposes the addition of the following sentence: “In addition, a description of the circumstances in which such performance or credit will be regarded as having failed or where a default or credit event would be regarded as having occurred which would affect the return to investors and the expected impact of such failure, default or credit event on the securities”.

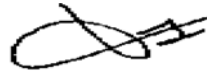
Given the specific nature of the comments provided and their importance to the continued viability of the securitisation markets in Europe, we would welcome discussing any questions or issues you would like to raise in a meeting with senior market participants either at our offices in London or at CESR's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

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

Yours sincerely,



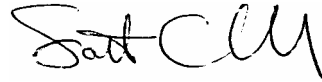
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