



ESMA/2014/150 – Consultation Paper on CRA3 implementation
Comments of the Dutch Securitisation Association
April 11, 2014

Background

The Dutch Securitisation Association (DSA) was established in 2012 as representative body of the Dutch securitisation industry. Our membership includes issuers of securitisations both from the insurance and the banking industry, and we are operating in close cooperation with the Dutch investor community.

Our purpose is to create a healthy and well-functioning Dutch securitisation market. We try to achieve this i.a. by providing a standard for documentation and reporting of Dutch RMBS transactions, promoting (in close cooperation with PCS) further standardization and improvements in transparency, and active involvement in consultations about future regulation of the securitisation market.

Against this background, we would like to comment, on behalf of all Dutch RMBS issuers joined in the DSA, on the ESMA Consultation Paper 2-014/150.

Our comments (please note that all our comments refer to the draft RTS on information on structured finance instruments):

1) General comments

Financial markets are faced with ever increasing transparency requirements.

As transparency and standardisation are the main drivers behind the DSA initiative, we are strongly supportive of transparency.

However, duplication of transparency efforts leads to inefficient allocation of resources, and simply creates an additional burden, without improving overall transparency in the market.

DSA therefore strongly oppose the foundation of a database containing information available already to market participants through other channels. We believe that the ESMA database could refer to existing databases like the European Data Warehouse (for loan-level-data), the DSA (Offering Circular, Investor Reports), Trustees (documentation), specialist firms (Cash Flow models) etc., without sacrificing transparency.

If, irrespective of our comments, a new database infrastructure would be established for CRA3, we have the following questions:

- Who would provide the necessary IT and operations services for this database (a private company, like European Data Warehouse GmbH, or ESMA) ?
- Who would pay for the associated costs and what would those costs be ?
- What will be the policy of granting access to the data ?

2) Asset class categorisation / Scope of application

We repeat the concerns of other market parties about extending the scope of the RTS to privately placed transactions. This will effectively eliminate the private placement market, since one of its main drivers, the private nature of the information to be exchanged, will be eliminated.

We do not see why the fact that Article 8b of the CRA is silent about privately placed transactions would force ESMA to include them in the scope of the RTS.

3) Type of information to be published

We have 2 major concerns:

a) Publication of legal documents.

We wonder what the added value is of making these documents publicly available: they can already be obtained through the trustees of a transaction, and the Offering Circular provides a summary of the legal documents and their contents.

These documents also contain proprietary information on issues not relevant for investors. The requirement to make these documents public, will result in a “side-letter culture” which is not beneficial for the development of a transparent market. And for privately placed transactions (see our comment 2), additional agreements may be put in place that fall outside of the transaction scope. As a consequence, the information will still remain inaccessible to investors, adding merely complexity to placing transactions.

b) Cash flow models

The requirement to provide comprehensive cash flow models to an ESMA website would create a huge amount of work with no proven benefit. The modeling of payment streams in securitisation transactions in accordance with Annex 9 of the draft RTS is highly complex and would be challenging for even the most sophisticated market participants. Therefore, investors, and also issuers and originators, usually rely on specialist firms such as “Bloomberg”, “Intex” and “ABSnet” for their cash flow modeling. The models of the latter two are likely to meet the requirements of Annex 9. These firms model and maintain cash flow models for nearly every public European RMBS, ABS, CMBS and CDO transactions. As cash flow models are already accessible for investors via the specialist firms and/or investors have developed their own models, investors are able to make an informed assessment of securitisation transactions. Hence, we suggest referring to the websites/systems of specialist firms instead of providing the models via the ESMA website. If originators need to develop their own models that fulfill the requirements of Annex 9, then this would be costly and time consuming. The model must be audited by an external audit firm before investors can rely on such model for their own due diligence on the securitisation transaction. In addition, the model

must be audited due to the legal risk for the originator of disclosing such a model. Therefore we expect that the turnaround time of new securitisation transactions will be longer. An alternative to the models of specialist firms could be the obligation of publishing cash flow models by the rating agencies.

4) Frequency of reporting and disclosure

We notice the requirement to publish investor reports containing information as per Annex 8 of the draft RTS, on a monthly basis.

However, for transactions with a quarterly coupon (the overwhelming majority of securitisation transactions) only some of the information (like asset performance and stratification) can be reported on a monthly basis, while information related to cash flow allocation can only be provided between coupon dates, so on a quarterly basis.

So under the reporting standard of the DSA, 2 “investor reports” would be published, a monthly Portfolio and Performance Report and a quarterly Notes and Cash Report (the names are self-explanatory).

In our view it is inevitable to allow for quarterly reporting on cash flow items linked to quarterly coupons, unless you want to force the market to be based on monthly coupons only. That would however lead to increased costs and seriously constrain the future size of the market.

5) Coordination with existing ECB templates

We appreciate your approach to take the ECB templates as a starting point for the draft RTS, as evidenced by Annex 1-7.

However, it is crucial in our view that all country specific exclusions from the templates as applied by the ECB (referring to fields that are non-existing etc. in specific countries) also will be adopted by ESMA.

Also we note that there are no templates (yet) available for asset classes that are not covered by the ECB, like CLO's. We would appreciate to see these templates in due course and be able to comment on them before they will be included in the final RTS.

With kind regards

Rob Koning

Director

Dutch Securitisation Association

Email: rob.koning@dutchsecuritisation.nl

Phone (direct)+31-20-5502817 / (mobile)+31-6-14229842