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European Securities and Markets Authority
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Submitted online: www.esma.europa.eu

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Dear Sirs

Re: Consultation paper on CRA3 implementation – Draft regulatory technical standards on information on structured finance instruments (SFIs)

We are grateful for the opportunity to respond to the consultation paper published by the European Securities and Markets Authority (**ESMA**) which seeks views on the proposed regulatory technical standards to be made under article 8b of the Credit Rating Agency Regulation (**Consultation Paper**).

We would be delighted to meet with ESMA to discuss any aspects of this response, whether alone or with other law firms or market participants. Please refer any questions or comments to Fabrice Faure-Dauphin (fabrice.faure-dauphin@allenovery.com) and Nicole Rhodes (nicole.rhodes@allenovery.com) in the first instance.

About Allen & Overy LLP

Allen & Overy is one of the world's leading international law firms, with around 5,000 staff and 525 partners worldwide. Since opening its first office in London in 1930, the firm has grown into a global organisation with 43 offices in 30 countries across Europe, Asia, the US, South America and the Middle East. Allen & Overy LLP acts for many, if not all, of the systemic financial institutions in Europe, and has one of the most experienced securitisation teams in the market. We have extensive experience in acting for a variety of market participants on a range of structured finance transactions in Europe and elsewhere.

We welcome this opportunity to comment on the proposed regulatory technical standards set out in the Consultation Paper and, given the significance of certain matters under consideration, support the need for full consultation and appropriate engagement with market participants.

General support for the AFME response

We have actively participated in the preparation of the response submitted by the Association of Financial Markets in Europe (**AFME**) and fully support all of the comments made in that response.

We urge ESMA to take note of the key concerns outlined in the AFME response and of the general need to implement article 8b in a manner which is proportionate and does not threaten the recovery of the securitisation market.

Areas of particular concern

Like other AFME members, in particular, we are extremely concerned about the proposals in the Consultation Paper with respect to the scope of application of article 8b and, in particular, about the proposed application of the requirements to private and/or unrated transactions. We respectfully submit that this approach to application is not supported by Level 1 provisions of the CRA Regulation itself and raises heightened issues under other aspects of the proposals. Moreover, as highlighted in the AFME response, such an approach risks effectively removing access to an essential funding source for real economy assets in Europe.

Other key areas of concern relate primarily to the proposals to (a) adopt a disclosure standard under article 8b that is not aligned with the principles-based approach applied under (overlapping) article 409 of the Capital Requirements Regulation (CRR) and pursuant to which certain information would be required to be disclosed in respect of all transactions regardless of the nature of the structure and/or the underlying assets, (b) require the use of specified templates without flexibility for use of other appropriate formats and seemingly without provision for completion on a "comply or explain" basis and (c) require event-based reporting notwithstanding existing (separate) European regulation of this and the inconsistency of this approach with the Level 1 text.

We also note that the scope of the proposal may raise serious concerns over the extent of ESMA's power to develop such RTS, as well as the Commission's delegated power to adopt the proposed RTS under Article 8b(3) of the CRA Regulation:

- Article 10 of the ESMA Regulation (Regulation (EU) n°1095/2010) explicitly frames both ESMA's and the Commission's powers to develop and adopt RTS that do not imply strategic decisions or policy choices, and the content of which is delimited by the legislative acts on which they are based (in this case the CRA Regulation).

- The RTS to be developed by ESMA therefore cannot go beyond the scope of the CRA Regulation. Insofar as the CRA Regulation does not apply to private credit ratings (article 2(2)) and is not even relevant to unrated transactions, developing RTS applicable to private and bilateral transactions and transactions that are no offered to the public or admitted to trading in the EU would be in breach of this provision.

Furthermore, insofar as the proposed RTS impose disclosure obligations in relation to private transactions the proposed RTS may be seen as being in breach of EU law provisions protecting confidential information, among which, in the first place, Article 8 of the Charter of Fundamental Rights, but also, more specifically, Article 8b(2) of the CRA Regulation itself.

Overall, the proposal may also raise concerns over its compatibility with the principle of proportionality. According to settled case-law, this principle requires that measures adopted by European Union institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the relevant legislation. Accordingly, the proposed measures must not be disproportionate to the aims

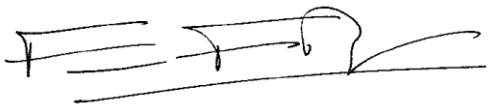
pursued and the disclosure obligations that the draft RTS seek to impose must therefore not extend to private unrated transactions that fall outside the scope of the CRA Regulation.

We urge ESMA not to dismiss these points and to carefully re-consider the aspects of the proposals referred to above.

Failure to do so would expose the proposed delegated acts to illegality claims under EU law.

Thank you once again for the opportunity to comment on the proposals set out in the Consultation Paper. Should you have any questions or need additional information regarding any of the comments set out above, please do not hesitate to get in touch.

Yours faithfully



For **Allen & Overy LLP**
Fabrice Faure-Dauphin, Partner