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| 23 May 2018 |

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| Response form for the Consultation Paper on the Amendments to the EMIR Clearing Obligation under the Securitisation Regulation  |
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| Date: 23 May 2018 |

Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper on the Amendments to the EMIR Clearing Obligation under the Securitisation Regulation (Regulation (EU) 2017/2402). Responses are most helpful if they:

* respond to the question stated;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all responses received by 15 June 2018.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

* Insert your responses to the questions in the Consultation Paper in the present response form.
* Please do not remove tags of the type <ESMA\_QUESTION\_ECO\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your response, name your response form according to the following convention: ESMA\_ECO\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_ECO\_ABCD\_RESPONSEFORM.
* Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation on Securitisation Repositories Application Requirements”).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Data protection”.

Who should read the Consultation Paper

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from counterparties who are entering into OTC derivatives transactions with covered bond issuers or with cover pools for covered bonds, or who are entering into OTC derivatives transactions with Securitisation Special Purpose Entities (SSPEs), as well as central counterparties (CCPs).

# General information about respondent

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| Name of the company / organisation | True Sale International GmbH |
| Activity | Non-financial counterparty |
| Are you representing an association? |[ ]
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ECO\_1>

Assuming that special purpose entities can continue to be treated as non-financial counterparties, we assume that the two draft delegated regulations will have only a minor impact on securitisations. This would change drastically if securitisation special purpose vehicles had to be classified as financial counterparties in accordance with the Commission's draft for EMIR II. We therefore confine ourselves to one aspect in Article 30a which is not in line with market practice and which, if the two delegated regulations were relevant, would lead to an increase in the refinancing costs for STS securitisations, since the counterparty of the securitisation purpose company will charge for the risk of having to provide collateral and also for all the associated costs.

It is market practice to waive the exchange of collateral if and as long as the counterparty to the securitisation special purpose vehicle has a minimum rating. In practice, this generally requires an "A" rating, which corresponds to quality level 2. If the rating falls below this minimum rating, a guarantee from a guarantor with a minimum rating of quality level 2 can also be considered as an alternative. In addition, we would like to add that in practice it is possible for the counterparty to provide the collateral not only in cash but also in the form of securities. The latter is currently permitted under Article 4 of the Delegated Regulation (EU) 2016/2251, so that it is not clear why the collateral in securitisation transactions should be limited to cash collateral in future. An adjustment should be made accordingly:

Accordingly, an adjustment should be made in Article 30a(1)(a). Point (a) could be supplemented as follows:

(a) that variation margin is not posted by the securitisation special purpose entity but that it is collected from its counterparty **~~in cash~~** and returned to its counterparty when due **where the rating of its counterparty is or falls below the credit quality step 2 and where the variation margin is not covered by a guarantee with a counterparty with a credit quality step of at least 2 pursuant to Annex III of the commission implementing regulation (EU) 2018/634".**

<ESMA\_COMMENT\_ECO\_1>

**Q 1: Do you have any comments on the conditions and objectives for developing the technical standards on the clearing obligation under the mandate of Article 4(6) of EMIR?**

<ESMA\_QUESTION\_ECO\_1>

See Introduction

<ESMA\_QUESTION\_ECO\_1>

**Q 2: Do you agree with the proposed approach to migrate the conditions of the two Delegated Regulations on the clearing obligation into the new technical standards developed under Article 4(6)? If not, what new information should be taken into account to decide on a different approach and different conditions?**

<ESMA\_QUESTION\_ECO\_2>

See Introduction

<ESMA\_QUESTION\_ECO\_2>

**Q 3: Do you agree with the proposed approach to mirror for securitisation the conditions applicable in the case of covered bonds but to exclude the conditions that are assessed as only relevant for covered bonds? If not, what additional information should be taken into account to decide on a different approach and different conditions, and specifically what should be these different conditions?**

<ESMA\_QUESTION\_ECO\_3>

Yes.

<ESMA\_QUESTION\_ECO\_3>

**Q 4: Do you agree that the waiver of the pari passu rank only applies for covered bonds and not to securitisations? Do you agree that it is better to clarify that the pari passu ranking applies with respect to the most senior bondholders?**

<ESMA\_QUESTION\_ECO\_4>

Yes.

<ESMA\_QUESTION\_ECO\_4>

**Q 5: Do you identify other benefits and costs not mentioned above associated to the proposed approach? If you advocated for a different approach in the responses to the previous questions, how would it impact this section on the impact assessment? Please provide details.**

<ESMA\_QUESTION\_ECO\_5>

Yes, the proposed approach would entail higher costs because the financial counterparty would have higher costs due to the fact that the financial counterparty shall provide the variation margin which is not market standard in case of OTC derivatives for securitisations. To mitigate the counterparty risk it is market standard that the financial counterparty has to have an external minimum rating. If the external rating of the financial counterparty falls below the minimum rating then it is market practice to provide collaterals or that a guarantee is provided from a third counterparty that has got a minimum rating. Thus, we have made a proposal above (see introduction) that mitigates the counterparty risk, but avoids additional costs for the financial counterparty that at the end would have to be borne by the originator. Hence, the proposal would contribute to avoid rising financing costs for STS-securitisations.

<ESMA\_QUESTION\_ECO\_5>