ESMA Consultation Paper on Amendments to the EMIR Clearing Obligation under the Securitisation Regulation
This document provides the response of the Dutch Securitisation Association ("DSA") on the EBA Consultation Paper dated 4 May 2018.
We welcome the opportunity to commend on this Consultation Paper.

DSA Background
The Dutch Securitisation Association was established in 2012 as representative body of the Dutch securitisation industry. Our membership includes issuers of securitisations both from the insurance and 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 and Consumer ABS transactions, promoting (in close cooperation with PCS) further standardisation and improvements in transparency, and active involvement in consultations about future regulation of the securitisation market.
Against this background, we would like to commend, on behalf of all Dutch issuers joined in the DSA, on the ESMA Consultation Paper on Amendments to the EMIR Clearing Obligation under the Securitisation Regulation (individual DSA members may also provide their own comments).

Our comments

Question 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?
We wonder whether arrangements for securitisations are also applicable to transactions issued before 1 January 2019 that are considered STS under the Transitional provisions of Art 43 of Regulation (EU) 2017/2402. If not so, these transactions might become subject to the Financial Counterparty status as currently considered in the EMIR review, which would create a difficult situation, or best case be regarded as Non Financial Counterparties, which also could create problems for those groups exceeding the relevant thresholds.

Question 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?
We do agree.

Question 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?
We do agree with the proposed approach. We are not aware of additional information or different conditions that should be applicable.

Question 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?

We do not really understand the concept that recourse to the issuer can be compensated by the disallowance of a waiver of the pari passu condition, so in our view there is no convincing argument why the waiver of the pari passu rank would not apply to securitisations.
We do agree that it is better to clarify that the pari passu ranking applies with respect to the most senior bondholders.

Question 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.
No, we do not.