LMA | Loan Market Association

10 Upper Bank Street
London
E14 5JJ

t: +44 (0)20 7006 6007
e: lma@lma.eu.com
w: lma.eu.com

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Dear Sirs,

Consultation Paper on guidelines on securitisation repository data completeness and consistency thresholds (the "Guidelines")

We are pleased to respond to the above consultation .

The Loan Market Association ("**LMA**") is the trade body for the syndicated loan markets in Europe, the Middle East and Africa ("**EMEA**") and was founded in December 1996 by banks operating in those markets. Its aim is to encourage liquidity in both the primary and secondary loan markets by promoting efficiency and transparency, as well as by developing standard documentation and codes of market practice, which are widely used and adopted. Membership of the LMA currently stands at over 750 organisations across EMEA and consists of commercial and investment banks, institutional and other non-bank investors, law firms, rating agencies, service providers, regulatory and governmental bodies (including the European Commission).

General observations

We consider that there are a number of areas in the Consultation Paper that do not take into account the structure and standards of the Collateralised Loan Obligation ("**CLO**") market. As we have noted in our previous communications relating to the Annexes to the Transparency RTS, the lack of a CLO-specific template increases the probability that some market participants will be required to use the ND1-ND4 options on a frequent basis (where permissible under the Transparency RTS). Accordingly, we consider that EU securitisation repositories should be permitted a greater degree of flexibility in permitting the use of ND1-ND4 responses in the Annex IV ESMA template, while still ensuring that the data submission is sufficiently representative of the underlying exposures in a securitisation transaction. If an insufficiently flexible approach is adopted on this issue, it is possible that the managed CLO market and investors could be adversely affected, as collateral managers could be deterred from including certain assets, or types of asset, into the pool where they are concerned that the thresholds under these Guidelines would be exceeded. This could increase concentration risk and remove liquidity from certain borrowers and industry sectors.

We also consider that ESMA should provide additional flexibility in relation to the completion of the templates by originators established outside the EU. It is expected that a number of non-EU securitisations will be required to complete the templates to assist EU investors in satisfying their due diligence obligations under Article 5(1)(e) of the Securitisation Regulation. In particular, we are concerned that there are a number of non-EU jurisdictions where regulatory rules or legislation would prevent the relevant transaction party from providing values in certain fields in the templates. For example, we understand that Swiss banks will need to use the ND1–ND4 codes in a number of the CRPL fields, in accordance with Swiss

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bank secrecy laws. We consider that the use of ND1–ND4 responses should be unrestricted by the Guidelines where such use is required to ensure compliance with local regulation. This would mean that such responses should not count in the "legacy assets" and "legacy IT systems" allowances in the Guidelines.

Q1. Do you agree with the guiding principles used for developing the thresholds, as discussed in this section (section 3.1)?

We consider that the guiding principles set out in section 3.1 on the setting of thresholds are broadly appropriate.

In particular, we support the recognition that there should be a consultation period with market participants and relevant public authorities. We believe that there should be a *formal* consultation process among those stakeholders prior to any future adjustment to the thresholds, rather than only informal consultation. This will ensure that all interested stakeholders are able to participate and ESMA will benefit to the maximum extent possible from the expertise and experience of market participants.

We also support the principle that it may be appropriate for the threshold setting process to be specific to particular categories of securitisations within each type of underlying exposure. In particular, we consider that CLO transactions should be permitted the same allowances for ND values as that permitted for ABCP, NPE and Esoteric reporting, so that the allowance for "legacy assets" and "legacy IT systems" fields are set at the same level (i.e., the maximum number of fields for which an ND1-ND4 value is permitted under the Transparency RTS). This would reflect the concept, acknowledged in the Consultation Paper, that where there is no *relevant* data available for calibration from historic ECB loan level reporting (as is the case for ABCP, NPE and Esoteric reporting), the initial permitted level should be set at a level equal to the number of underlying exposure fields that can accept the ND1-ND4 option in the relevant template. As discussed further below, the SME data gathered in the ECB reporting process from 2013 will not assist in appropriately calibrating the thresholds for managed CLO transactions where the main exposures securitised are syndicated loans to medium and larger corporates.

Q2. Do you agree with the proposed calibration approach and proposal for the percentage threshold, as discussed in this section (section 3.4)?

We broadly support the proposed calibration approach for the percentage threshold.

Q3. Do you agree with the proposed calibration approach and proposal for the 'number of legacy assets fields' thresholds, as discussed in this section (section 3.5)?

The Consultation Paper makes clear that ESMA has placed substantial weight on ECB data when determining the calibration approach for the percentage threshold. While this will be appropriate for certain classes of underlying assets, we consider that the data reported to the ECB's securitisation repository since 2013 has limited utility for calibrating the 'number of legacy assets field threshold' for managed CLO transactions. This is because the ECB data for corporate exposures is relates to mainly to SME transactions. By contrast, CLO transactions are typically securitisations of the debt of medium and larger corporates. These exposures are materially different to those of SMEs in terms of the type and availability of data that can be collected. Lenders will also often employ a very different methodology in how they assess risk (and the associated capital impact) when lending to SMEs compared with lending to large corporates. SME lending also constitutes only a small sub-set of the corporate debt which is typically securitised.

This lack of appropriate reference transactions in the ECB reporting means that the calibration for the "number of legacy assets fields" threshold may not accurately reflect the reality of the market and the true availability of asset level data. In particular, an approach that does not take into account the lack of availability of information in a major part of the securitisation market (the managed CLO segment) may result in securitisation repositories rejecting reporting which actually is sufficiently representative of the underlying exposures in the securitisation. We support an approach that acknowledges that where no relevant ECB data is available for an asset class (as is the case for ABCP, NPE and Esoteric) the limit on the use ND1-ND4 responses in the legacy assets fields threshold should not go beyond the permitted number in the Transparency RTS.

Furthermore, we consider that the lack of suitable ECB reference data means that a similar approach should be adopted for CLO transactions. Functionally, we suggest that where a transaction meets certain defined criteria which mean it is considered a managed CLO (e.g. where the reporting firm has completed the CLO Securitisation information section" and the "CLO Manager information section" in the templates), the initial legacy assets fields threshold in relation to the Corporate/SME template should be 53, (i.e. the total number of ESMA fields where ND1-ND4 responses are permitted) rather than 20.

Q4. Do you agree with the proposed calibration approach and proposal for the 'number of legacy IT system fields' thresholds, as discussed in this section (section 3.6)?

Please see our response to Q.3 above regarding the potential inappropriate use of ECB data relating to SME loans when calibrating appropriate thresholds for managed CLO transactions using the Annex IV template. As with the "legacy assets field threshold", we suggest that the "initial legacy IT systems fields" threshold for Annex IV for managed CLO transactions should be set at 53 (i.e. the total number of ESMA fields where ND1-ND4 responses are permitted) rather than 20.

Q5. Do you have any comments on the threshold revision process? Are there any other aspects on this topic that are missing in your view and should be taken into consideration?

We support the process suggested for threshold revision. We do not consider it is necessary to set a path for the thresholds over time, as we anticipate that the thresholds should be adjusted in the future to take account of the views of market participants on the effectiveness and efficacy of the initial thresholds.

If you would like to do so, please contact Nicholas Voisey of the Loan Market Association (nicholas.voisey@lma.eu.com) or David Quirolo (david.quirolo@cwt.com) of Cadwalader, Wickersham & Taft LLP.

Yours faithfully

Nicholas Voisey
Managing Director
Loan Market Association