18th August 2021

AFME Response to Consultation Paper on Draft Technical Standards on content and format of the STS notification for on-balance sheet securitisations under the amended Securitisation Regulation

This paper sets out responses on behalf of AFME members to the ESMA Consultation Paper setting out draft technical standards on content and format of the STS notification for on-balance sheet securitisations under the amended Securitisation Regulation (ESMA82-402-200, published 27 May 2021) (the "**Consultation Paper**").

In this response, the following defined terms are used:

- "**EUSR**" means the EU Securitisation Regulation (Regulation (EU) 2017/2402) as amended by Regulation (EU) 2021/557.
- "**Draft RTS**" means Commission Delegated Regulation (EU) 2020/1226, as proposed to be amended on the terms set out in Section 5.4 of the Consultation paper.

Question 1: *Do you agree that the selected general information items will facilitate the identification of the synthetic securitisation and the credit protection agreement? Do you have any further proposals? If so, please elaborate.*

We agree that the selected general information items will facilitate the identification of a synthetic securitisation and credit protection agreement. We do, however, have some concerns with the General Information section, which are set out in our response to Question 2, below.

Question 2: *Do you agree that information regarding the location of the protection seller should be added to the general information's section? Likewise, do you agree that where the protection seller is classified as "NFC+" under EMIR, then this information should also be reported using the general information section? If not, please detail your reasons.*

In principle, AFME members have no objection to the requirement to provide information about the protection seller. However, a number of points should be borne in mind.

First, depending on the type of synthetic securitisation, the identity of the protection seller is likely to be either a SSPE or investors in credit-linked notes held in global form through a clearing system. In the case of a SSPE, there is little practical benefit in knowing the identity of the protection seller as it will be, by definition, a special purpose entity with no activities other than the securitisation. Where the

Association for Financial Markets in Europe
London Office: 39th Floor, 25 Canada Square, London E14 5LQ, United Kingdom T: +44 (0)20 3828 2700
Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 788 3971
Frankfurt Office: Bürohaus an der Alten Oper, Neue Mainzer Straße 75, 60311 Frankfurt am Main, Germany T: +49 (0)69 153 258 963
www.afme.eu

Company Registration No: 6996678 Registered Office: 39th Floor, 25 Canada Square, London E14 5LQ
AFME is registered on the EU Transparency Register, registration number 65110063986-76

securitisation takes the form of credit-linked notes issued by the originator directly, the protection seller(s) will be the noteholders. While the originator may be aware of the identity of those protection seller(s) upon closing, where, as is usually the case, the CLNs are freely-transferable, there is no way for the originator to continue to be aware of the identity of those protection sellers, making any information reported in the STS notification of limited use. The only circumstances in which the identity of the protection seller will really be meaningful is in the case of a bilateral synthetic securitisation contracted in the form of a financial guarantee or credit derivative (i.e., without the use of a SSPE), the vast majority of which are transactions involving the European Investment Fund as protection seller.

Secondly, it is important that, in the case of private securitisations, the identity of the protection seller(s) remains private. Thus, any information about private securitisations to be made public (as discussed in paragraph 16 of the Consultation Paper) should not include the identity of the protection seller(s), despite that being included in the "General Information" of the proposed STS Notification Template.

Thirdly, we do not agree that the EMIR classification of the protection seller is relevant for the purposes of assessing a STS synthetic securitisation. In many cases (such as where the securitisation takes the form of a financial guarantee or CLNs issued by the originator directly), there will be no EMIR derivative involved in the transaction, making the EMIR classification of the protection seller entirely irrelevant. Even where the transaction does involve an EMIR derivative, none of the STS criteria are affected in any way by whether or not the protection seller is a NFC- or NFC+ (or, indeed a financial counterparty). While the parties to a synthetic securitisation which involves an EMIR derivative will need to ensure that the transaction complies with any obligations which may be imposed by EMIR, that will not affect the STS status of the transaction. AFME members firmly believe that the information required to be reported in the STS Notification should be limited to matters that are relevant for the purpose of assessing how the transaction satisfies the STS criteria set out Articles 26a to 26e of the EUSR, and should not include other unrelated matters.

Question 3: *Do you agree to apply the same approach in line with the RTS on STS notification for traditional private securitisations, to synthetic private securitisations?*

In principle, yes. However, we do not see a need for the creation of what is effectively a third category of synthetic securitisations, being private securitisations in which a SSPE issues listed or rated CLNs to investors, as discussed in paragraph 16 of the Consultation Paper. It is not at all clear why the fact that the listed CLNs may be held through the clearing systems necessitates a higher level of disclosure than would be the case for any other private synthetic securitisation. Further, there is no basis in the EUSR framework for the separate treatment of this type of private synthetic securitisation.

On a more technical level, it is also not clear in the Draft RTS how this additional reporting is to be made. As with the case of the existing RTS on STS Notification, the drafting of Article 1(2) is ambiguous in this regard.

Question 4: *Do you agree that the proposed list of items in paragraph 17 for private synthetic securitisations should be published on ESMA's public website? Do you have any further proposals? If so, please elaborate.*

It is not entirely clear in the Consultation Paper whether this list of items is only relevant for the "third category" of private synthetic securitisations referred to in paragraph 16 of the Consultation Paper, or whether it would apply to all private synthetic securitisations.

AFME members broadly agree with the information listed here. However, we note that the "General Information" section in the draft STS Notification Template does actually include a number of other fields which are not referred to in paragraph 17 of the Consultation Paper. In light of the concerns expressed in our response to Question 2, we therefore propose that the "General Information" is revised to include *only* the items listed in paragraph 17, and if the other information items currently listed in that section are retained, they should be moved a separate section of the table.

We also note that the list of fields referred to in proposed Article 1(2)(d) of the Draft RTS do not fully align with the information listed in paragraph 17 of the Consultation Paper.

Question 5: *Where the private synthetic securitisations involve listed CLNs, do you agree that the related ISIN securities code should be made public? Do you have any further proposals? If so, elaborate.*

No. We do not think that whether the CLNs are listed makes any difference to the level of reporting that should be required as part of the STS notification. The level of disclosure required by virtue of CLNs being listed is governed by the listing rules of the relevant stock exchange. The only distinction that is relevant for the purposes of the EUSR framework is whether or not a prospectus needs to be drawn up. If it does, then the transaction is a public securitisation anyway. If it does not, then it should make no difference whether the CLNs are listed or not.

Question 6: *As with the STS notification for traditional securitisations, do you agree with the proposal to have three different levels of required explanation in the STS notification, depending on the nature of the criteria?*

Yes. However, please see our observations below in response to Question 9 in relation to the classification of some of these fields.

Question 7: *Do you agree with the proposal of cross-referring in an STS notification between the STS elements and those from Prospectus, where available, or otherwise other securitisation documentation related to the credit protection agreement? If so, please elaborate.*

In principle, yes.

However, we propose deleting the reference to "the synthetic excess spread" from proposed Article 2(c) of the Draft RTS. Where a synthetic securitisation makes use of synthetic excess spread, this would form part of the credit protection agreement and would not be contained in a separate document.

Further, we note that the "Additional Information" column in the draft STS Notification table refers almost exclusively to requirements from Commission

Delegated Regulation (EU) 2019/980, which is relevant where a prospectus is being drawn up. As most synthetic securitisations are private securitisations for which no prospectus is required to be drawn up, most of these references will not be relevant for the majority of transactions. In most cases, the relevant cross-references should in that case be to provisions of the credit protection agreement or the other documentation for CLNs (where applicable).

Question 8: *Do you have any general comments on the proposed content required for the STS notification for synthetic securitisations?*

No.

Question 9: *Do you agree with the required level of explanation for each of the STS criteria as sets forth in section 4.4 (Annex IV – draft RTS) of this consultation paper with respect to requirements for:*

(1) simple, transparent, and standardised on-balance sheet synthetic securitisations (Article 26b of SECR), as proposed in fields STSSY 19 to 59?

We propose the following changes to the required level of explanation:

Field	Current requirement	Proposed requirement	Comments
STSSY21	Concise explanation	Confirmation	There is little that can usefully form part of an explanation on this point beyond a confirmation that this is the case.
STSSY24	Concise explanation	Confirmation	As any further hedging is not permitted, and it is not possible to demonstrate the absence of such hedging, only a confirmation should be required.
STSSY29 to 34	Concise explanation	Confirmation	It is not clear what sort of explanation is required here. Each representation should stand on its own terms without the need for further explanation for how it meets the relevant requirements.
STSSY43	Detailed explanation	Concise explanation	A concise explanation should be sufficient to satisfy this requirement.
STSSY44	Detailed explanation	Concise explanation	A concise explanation should be sufficient to

Field	Current requirement	Proposed requirement	Comments
			satisfy this requirement.
STSSY46	Detailed explanation	Confirmation	This requirement should be treated in the same way as STSSY48. Both points would usually be addressed through eligibility criteria and are thus easy to confirm without the need for a detailed explanation.
STSSY55 to 57	Concise explanation	Confirmation	These points would generally be addressed through eligibility criteria and are thus easy to confirm. It is not clear what sort of explanation would be expected in relation to these points.

(2) standardised on-balance sheet synthetic securitisations (Article 26c of SECR) as proposed in STSSY fields STSSY 60 to 91?

We propose the following changes to the required level of explanation:

Field	Current requirement	Proposed requirement	Comments
STSSY63	Concise explanation	Confirmation	This is similar to STSSY 46 and 48 and would usually be addressed through eligibility criteria. As the only other explanation that can be given is a statement that no such derivatives exist, a confirmation should be sufficient.
STSSY86	Concise explanation	Confirmation	There is little to be said by way of explanation on this point other than to identify the relevant policies.
STSSY89	Detailed explanation	Concise explanation	These are relatively straightforward points to demonstrate in a concise explanation.

(3) transparent on-balance sheet synthetic securitisations (Article 26d of SECR) as proposed in STSSY fields 92 to 99?

We have no comments on these fields.

(4) credit protection agreement, the third-party verification agent and the synthetic excess spread (Article 26d of SECR), as proposed in STSSY 100 to 161?

We propose the following changes to the required level of explanation:

Field	Current requirement	Proposed requirement	Comments
STSSY126	Concise explanation	Confirmation	This should be a simple matter of confirming that the verification agent has been appointed.
STSSY127 to 132	Concise explanation	Confirmation	These fields all relate to matters which the verification agent is required to verify. It should be sufficient to confirm this by pointing to the relevant provision of the credit protection agreement providing for this.
STSSY141	Concise explanation	Confirmation	The content to be reported here is not correct as currently drafted. All that can be provided at the time of STS notification is confirmation that the transaction documentation includes the obligation to notify the competent authorities. No actual notification will have been made at that time.
STSSY146 and 147	Concise explanation	Confirmation	Detail of how the one-year expected losses on a portfolio are calculated is commercially sensitive and should not need to be disclosed, even in a public securitisation.
STSSY152	Detailed explanation	Concise explanation	As this will generally be a fairly

Field	Current requirement	Proposed requirement	Comments
			straightforward matter, a concise explanation should be sufficient.
STSSY154	Concise explanation	Confirmation	As this is a simple disclosure matter, a confirmation should be sufficient to satisfy this requirement.
STSSY155	Concise explanation	Confirmation	A confirmation should be sufficient to satisfy this requirement.
STSSY161	Concise explanation	Confirmation	It is a simple matter to confirm that the issuer of the CLNs is the originator itself. There is no need for further explanation on this point.

Question 10: *Do you agree with the proposed cross references to the relevant sections in prospectus as presented in section 4.4 of this consultation paper (Annex IV - draft RTS)?*

See response to Question 8, above.

Question 11: *Do you agree to continue applying the same format as the one used in the STS notification for traditional securitisations i.e. in an electronic and machine-readable form?*

Yes.

Question 12: *Do you agree with the format of the proposed notification templates as described in section 4.5 of this consultation paper (Annex V - draft ITS)?*

Yes.

Question 13: *Do you agree with the proposed amendments to be introduced in STSS4, STSS17, STSS18, STSS19, STSS21 and STSS22 of Annex I of the RTS on STS notifications for traditional securitisations; STSAT4, STSAT17, STSAT18, STSAT19, STSAT21, STSAT22 of Annex II of the RTS on STS notifications for traditional securitisations; and STSAP4 of Annex III of the RTS on STS notifications for traditional securitisations?*

In respect of STSS4, STSAT4 and STSAP4, these changes are sensible, but we would note that the corresponding field format prescribed by Commission Implementing Regulation (EU) 2020/1227 for all three fields restricts these responses to 100 characters, which would make it difficult to offer a meaningful explanation in the statement now required. We would suggest making corresponding changes to the ITS to expand the number of characters permitted accordingly.

In respect of STSS17 and STSAT17 it is helpful that the changes make the logic consistent. The fix proposed by ESMA does ensure consistency. However, answering "Yes" to the question "Originator (or original lender) **not** a credit institution" (emphasis added) is counterintuitive. We believe it would be more intuitive to amend the field name to "Originator (or original lender) is a credit institution" and the content to be reported to "A 'yes' or 'no' statement as to whether the originator or original lender is a credit institution or investment firm established in the Union". In that way a "yes" response would mean there was a credit institution and a "no" response would mean there was not – which is what you would expect intuitively.

Question 14: *Do you agree with the arguments set out in the preliminary CBA? Do you think that other items should be factored into the CBA and if so, for what reasons?*

Unlike traditional securitisations, most synthetic securitisations involve the first loss and/or mezzanine tranches of the securitisation being placed with unregulated investors, while the senior tranche is retained by the originator. Because the only economic benefit which derives from a synthetic STS securitisation is the reduction in the risk-weight applied to that senior tranche (which, pursuant to Article 270 of the CRR, is only available to the originator itself), there is little direct investor interest in whether or not a synthetic securitisation satisfies the STS requirements.

This is relevant for the cost-benefit analysis because, unlike with a traditional STS securitisation, it is less likely that investors will be as concerned to satisfy themselves that the STS criteria are satisfied for a synthetic STS securitisation, given that whether that is the case or not will not affect their economic position. Further, as most synthetic securitisations are private securitisations, for which the full STS Notification table will not be made available anyway, there will be little opportunity for investors to make use of the information reported therein for the purposes of their own due diligence obligations as discussed in Section 5.1 of the Consultation Paper.

Taking these considerations into account, AFME members are of the view that there is merit in adopting the Option 1 approach set out in paragraph 47 of the Consultation Paper.

AFME Contacts

Richard Hopkin	Anna Bak	Pablo Portugal
richard.hopkin@afme.eu	anna.bak@afme.eu	pablo.portugal@afme.eu
+44 (0)20 3828 2698	+44 (0)20 3828 2673	+32 (0)27883974
+44 (0) 7584 582759	+44 (0) 7789 870120	+32(0) 479027993