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ACC and AIMA Comments on ESMA's Consultation Paper 'On the securitisation disclosure templates under Article 7 of the Securitisation Regulation'

The Alternative Credit Council ("ACC")[1] and the Alternative Investment Management Association ("AIMA")[2] welcome the opportunity to comment on the European Securities and Markets Authority's ("ESMA") consultation paper outlining options for potential changes to the current securitisation disclosure framework.

We welcome ESMA's openness to considering reforms to the EU securitisation regulatory framework and the consultative approach taken towards seeking input from participants in the securitisation market on the best way forward. While this review of the disclosure templates regime is a good starting point, the current disclosure regime is part of an interconnected and wider set of challenges ingrained within the EU Securitisation Regulation. We believe that ESMA and other policymakers need to tackle these collectively, through broader reforms to the Securitisation Regulation in order to unlock the potential of the EU securitisation market.

We believe that there are many elements of the current securitisation disclosure templates that are effectively immaterial to investors while imposing significant costs and operational burdens on the market. Feedback from our members highlighted that many of the reporting requirements

1 The Alternative Credit Council ("ACC") is a global body that represents asset management firms in the private credit and direct lending space. It currently represents 250 members that manage over $1 trillion of private credit assets. The ACC is an affiliate of AIMA and is governed by its own board which ultimately reports to the AIMA Council. ACC members provide an important source of funding to the economy. They provide finance to mid-market corporates, SMEs, commercial and residential real estate developments, infrastructure as well the trade and receivables business. The ACC's core objectives are to provide guidance on policy and regulatory matters, support wider advocacy and educational efforts and generate industry research with the view to strengthening the sector's sustainability and wider economic and financial benefits. Alternative credit, private debt or direct lending funds have grown substantially in recent years and are becoming a key segment of the asset management industry. The ACC seeks to explain the value of private credit by highlighting the sector's wider economic and financial stability benefits.

2 The Alternative Investment Management Association ("AIMA") is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than $3 trillion in hedge fund and private credit assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialized educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

under Article 7 require the provision of detailed granular data that provides no real value to investors, regulators or other market participants.

Therefore, we believe that policymakers should pursue a more ambitious and thorough review of the disclosure templates as part of a comprehensive Level 1 revision.

Should ESMA decide to pursue reform of the templates independently from any potential review of the Level 1 text, we believe that Option C, namely focusing on a targeted review for streamlining the information required and developing a new dedicated template for private securitisations, would be the best way to proceed. Option C offers the greatest potential to address the immediate challenges faced by investors with respect to asset classes and transactions where the existing reporting and disclosure requirements are disproportionate.

We recognise that any revisions under Option C would be constrained by what is currently required under the Securitisation Regulation, and that it is hard to anticipate how such work might interact or overlap any review of the Securitisation regime should that be taken forward at a later date. However, we believe that any action should seek to remedy the following challenges with the existing reporting requirements:

- **Loan-Level Data ("LLD")**: Granularity requirements should be driven primarily by investors, particularly as investors value different types of data for different asset classes. LLD reporting requirements currently fail to provide investors with material information and as a result have become less useful for investors when undertaking their risk analysis of securitisation positions. LLD granularity is particularly unhelpful in private securitisations, where investors will determine the relevant information that they need in the documentation over the course of negotiations, ensuring their ability to request relevant data regularly. These practices are extensive, for example, in the current Collateralised Loan Obligations ("CLO") market, where investors need regular access to information on the revolving pools of assets.

- **Private securitisations:** Disclosure templates for private securitisations should be separated from the requirements for public securitisations, as the investor base for the two is very different. This distinction has already been accepted in other areas, for example in the EU Prospectus Regulation. Private securitisations are offered to sophisticated investors that, throughout the negotiations, have the ability to tailor reporting to their due diligence and risk management needs. The current template form adds little value to investors' risk management and instead imposes costs to the originators and sponsors. The current prescriptive disclosure templates also place EU investors at a competitive disadvantage with non-EU investors.

- **Simplifying and streamlining the templates:** The templates should broadly be simplified and streamlined, with some unnecessary fields being deleted. The proposal to create different templates based on the characteristics and nature of underlying assets might be positive if those differentiated templates follow a principles-based and voluntary approach that allows market participants to select the most appropriate form of disclosing information tailored to each market and asset class. Mandating new additional annexes would constitute a major change compared to current market practices, thus imposing additional burdens on market participants. The adoption of this proposed change should be carefully considered in order to avoid a negative impact on the market. A cautious approach could focus on mandating separated templates for public and private securitisations, with additional voluntary annexes for specific asset classes.

Where appropriate, we have also provided comments below on the questions where ESMA is seeking specific feedback. We would be happy to elaborate further on any of the points raised in this letter or annex below. For further information please contact Nicholas Smith, Managing Director, Private Credit (nsmith@aima.org).

Yours sincerely,

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ALTERNATIVE CREDIT COUNCIL

LENDING FOR GROWTH

AIMA/ACC Comments on ESMA's Consultation Paper 'On the securitisation disclosure templates under Article 7 of the Securitisation Regulation'

Option A

Q1. Option A focuses on maintaining the current framework in its entirety. Do you agree with maintaining the current disclosure framework unchanged?

No. We believe that there needs to be a broad review of the Securitisation Regulation to determine what reforms are needed to enhance the EU securitisation markets. Such a review would impact the disclosure requirements and therefore we see merit in waiting for that process to happen rather than pursue piecemeal reform.

Q2. Do you agree that LLD granularity is essential for performing proper risk evaluation, including due-diligence analysis or supervisory monitoring? Please explain your answer considering the costs and benefits of keeping the current level of granularity in terms of operational costs, compliance burden and any other possible implications.

No. Our members have highlighted that the reporting templates prescribed by ESMA are not fit for purpose as they are not meeting the needs of investors while also imposing significant costs on asset managers and data providers. The templates are largely a 'tick box' requirement within the broader risk analysis undertaken by investors. As they are currently formulated, LLD granularity requirements provide little value to the market.

In securitisations with a large number of loans, LLD becomes burdensome to work with and provides few additional insights over and above aggregate metrics such as quantiles and aggregated counts by bucket. The exact number of loans where LLD stops providing any value varies but is generally in the range of a few hundreds to a few thousands. We believe that for the purposes of due-diligence and transparency, requiring the disclosure of aggregate metrics is sufficient for highly granular asset classes like, for example, most types of US ABS.

For private securitisations, current market practice means that any information of material value to private securitisation investors is provided over the course of a transaction upon request. Otherwise, reporting of key information is agreed within the documentation so that investors receive it, for example, in any quarterly payment or asset reports, which are extensively negotiated.

Overall, the ESMA templates are cumbersome to complete and to analyse due to their complexity, length and the lack of relevance which their contents have to most investors. That is not to say that LLD is irrelevant, but this LLD reporting should be driven by the investors themselves not by regulators. A simplification of the LLD disclosure granularity level for some asset classes would be a welcome development.

AIMA ALTERNATIVE CREDIT COUNCIL

Q3. Do you agree that the current design of disclosure templates is adequately structured to facilitate comprehensive risk evaluation, including due diligence analysis and supervisory monitoring of securitisation transactions? If not, please explain your answer.

No. Broadly, our members believe that many of the reporting requirements under Article 7 of the EU Securitisation Regulation do not add any value to the market and do not meet the needs of investors. These do not make use of the information contained in the templates and have alternative ways of obtaining the data needed for their risk evaluation and due diligence.

Q4. Do you agree that disclosure and reporting requirements should be maintained consistent between private and public securitisation?

No. For private securitisations, the majority of cases are either offered to sophisticated investors or are bilateral financings dependent upon the commercial relationship between the originator and the finance provider. In private securitisations, the level of information reported is extensively negotiated by investors to enable them to carry out their risk analysis and is a matter of substance not form. Requiring prescribed information to be reported, which has to follow a template form and is not necessarily required by the investor, is an arduous and expensive exercise for an originator to provide. This exercise has time and cost implications for the relevant parties and the market as a whole.

In addition, these prescriptive disclosure and reporting requirements place EU investors at a competitive disadvantage to non-EU investors in securitisations. From the investor perspective, simplified and standardised templates would open up the market to those transactions which currently EU institutional investors are in effect excluded from investing in, as long as these do not result in a huge cost burden for third country securitisation parties to provide.

Public securitisations can be aimed at a completely different investor base and therefore it would not make sense to have the same disclosure and reporting requirements across both. The existing EU Prospectus Regulation regime is also clear in making its own distinction between the level of mandatory disclosure as well as prescriptive prospectus formatting and publication requirements for "offers to the public" and "exempt public offers", which, for example, include offers to a limited number of investors and offers to certain qualified professional investors, which are out of scope of the EU Prospectus Regulation prospectus requirements.

Option B

Q11. Do you believe that the proposal of enriching the Annexes with climate risk indicators (presented in Section 5.4) is warranted?

No. We do not believe that there is a justification to add climate-related disclosures in this framework. These would be redundant considering the existing disclosures under SFDR and other associated requirements and would only impose additional costs and burdens on market participants.

Our members recognise that ESG and climate related disclosures are necessary for investors to make informed decisions when allocating capital. The asset management sector is currently subject to multiple regulatory requirements in relation to the identification, assessment and disclosure of ESG risk factors. These requirements meet the EU's stated objectives regarding climate-related disclosures in the securitisation market. It is unclear what benefit additional climate risk indicators requirements within the securitisation framework would provide and why specific climate disclosure requirements for securitisation are being considered when there are no equivalent proposals for other capital raising investment structures. We would also highlight that there are substantial challenges around ESG data collection that remain outside the scope of the Securitisation Regulation.

Option C

Q14. Do you agree with Option C as the preferred way forward (simplified template for private transactions, removal/streamlining of loan-level data for some asset classes, new template for trade receivables) for the revision of the disclosure templates?

Option C would be an improvement on the current regime in the interim while a Level 1 revision is undertaken. We believe that it is particularly vital to simplify the template for private transactions. This would increase flexibility for investors if ESMA adopted a more principles-based approach for the asset classes and transactions that do not fit well within any of the current templates. This would also result in better quality of disclosures for both the investor and the regulator in monitoring the market.

In the experience of our members around private securitisations, investors will be fully focused on the level and type of information they need on the underlying assets in order to carry out their credit analysis. They will negotiate the provision of this information themselves as part of the terms of the private securitisation. Typically, the requested data is very different from the information prescribed by the ESMA templates. In particular, we would note that CLOs involve revolving pools and are subject to extensive stipulations by investors when it comes to their reporting requirements and where the use of ESMA templates does not add any benefit for investors.

Q15. Do you agree with the analysis and the inclusion of a new simplified template for private transactions that focuses mostly on supervisory needs?

Yes. We agree that as a starting point the simplified private reporting template should be aimed at meeting supervisory needs. This will provide more straightforward reporting requirements for these transactions, while still allowing investors to obtain the required data and information bilaterally based on the established practices for each product.

Q17. Do you consider that a simplified template can be useful even though the operational way to submit the data is exempted from the mandatory reporting via the SRs?

Yes. There should be no need to mandate the use of securitisation repositories for private securitisations. To do so would place EU investors at even more of a competitive advantage as the extra expense would deter non-EU originators from marketing their deals to EU investors.

Q18. Do you believe that ESMA should proceed with the review of the RTS based on the proposal to deviate from loan-level data reporting for those asset classes which are highly granular, of short-term maturity or revolving pools? What are the potential benefits, challenges, or considerations that ESMA should consider if adopting this approach?

Yes. In securitisations with a large number of loans, LLD becomes cumbersome to work with and provides few additional insights over and above aggregate metrics such as quantiles and aggregated counts by bucket. The exact number of loans where LLD stops providing any value varies but is generally in the range of a few hundreds to a few thousands. We believe that for the purposes of due-diligence and transparency, requiring the disclosure of aggregate metrics is sufficient for highly granular asset classes like, for example, most types of US ABS.

This should be pursued particularly for revolving asset classes like CLOs. We would note that CLOs involve revolving pools and are subject to extensive stipulations by investors when it comes to their reporting requirements and where the use of ESMA templates does not add any benefit for investors.

Given that CLOs are private deals, the introduction of a reporting template for private securitisations, as proposed in Option C, would provide a short-term solution to this issue. It would also significantly reduce the burden and cost of regulatory reporting, as CLOs will not be required to prepare duplicative ESMA templates, focusing instead on meeting investor reporting requirements, for example through trustee reports.

Established practices across the European and US CLO markets include the preparation of monthly and quarterly deal reports for investors, which are produced by the deal's trustee and agents teams, as well as the ability of investors to schedule bilateral meetings with managers in order to go through items such as individual credits. Moreover, CLO investors also require CLO contractual documentation to permit the disclosure of these reports and to make them available to subscription-based industry information platforms like Bloomberg, Creditflux and Intex, which increases the transparency and availability of deal reporting and performance disclosure.

Investors' preferred reporting practices differ considerably from Article 7 template reports in form, substance, flexibility and utility for investors. Because of this, these reports achieve the right balance between aggregate portfolio reporting and granular individual-asset reporting, for example where a particular asset is distressed or a specific credit event has occurred. Furthermore, their contents are dynamic, updating from deal to deal to reflect new pressure points and points of interest for investors in a way that a regulatorily-prescribed report template never could.

We believe that existing industry standards demonstrate the benefits of a more simplified and principles-based approach to ESMA's Article 7 templates that takes into account investor preferences and existing practices. As previously stated, this should be pursued as part of a comprehensive Level 1 revision. In the meantime, the robustness of existing practices in the CLO market also provides assurances that ESMA's adoption of a separate template for private securitisations as outlined in Option C will not undermine investors' ability to continue accessing all of their required data.

Q19. Are there any additional asset classes that should be further explored based on the proposal of deviating from the loan-level data reporting? Please list the relevant asset classes or annexes and explain why.

Yes. See Q18 above.

Q20. Do you agree, in the context of option C, that ESMA should further explore the deletion of the current disclosure templates? Please provide details in your answer.

Yes. ESMA should delete, or significantly simplify and streamline, the current disclosure templates. This is particularly relevant to clarify that there are no requirements that data from third-country securitisations must be disclosed according to a particular format, template, or schema, as long as it can be shown that any mandatory information is indeed disclosed. See the response to Q25 for more details.

Option D

Q25. Do you agree with Option D (a comprehensive review of the disclosure framework) as the preferred way forward for the revision of the disclosure templates?

Yes. However, this comprehensive review should be part of a full revision of the Level 1 legislative framework and should not be confined to differentiating template requirements solely according to asset class, but also include a simplification of the template for private securitisations. In the short and medium-term, our preference is the introduction under Option C of a dedicated template for private securitisations shaped on supervisory needs.

A comprehensive review of the disclosure framework is particularly important in order to address the competitive disadvantage that EU institutional investors face by not being able to invest in third-country (non-EU) securitisation transactions if the third-country sell-side entities do not provide all information according to Article 7.

A key problem with the existing framework is that the current wording of the EU Securitisation Regulation applies regardless of whether the third country has its own securitisation regulatory regime with similar disclosure requirements and templates. In many cases, these third-country regulatory regimes are substantially similar to EU requirements in terms of enabling investors to evaluate risk and perform due diligence, and in many circumstances identical information is reported, albeit in a different format to the prescribed Article 7 templates. This means that the current Article 7 wording:

a) adds the significant administrative overhead of performing a gap-analysis exercise between the disclosure requirements of the third-country securitisation regulations and those of Article 7 for each new prospective investment opportunity; and

b) prevents EU Institutional Investors from investing in third-country securitisations where sufficient information to allow investors to evaluate risk and perform due diligence is disclosed (or made available on request), but the level of detail or exact format of disclosures does not match that prescribed by Article 7.

This is a problem that encompasses all third-country securitisations, but its most significant impact is to investors that are locked out of investing in substantial portions of US securitisation markets, which are some of the most liquid and dynamic securitisation markets in the world.

An illustrative example is an investor interested in an Auto ABS originated in the US. SEC regulations require the disclosure of

a) asset-level information covering 70+ fields[3]. We believe that this information is fully sufficient to allow investors and investment managers to evaluate risk and perform due diligence. Furthermore, it has substantial overlap with the 84 fields required by the SECR Annex 5, even though it does not perfectly match all fields. Due to the few remaining gaps, and to the fact that the information is not provided in the template format of Annex 5, EU institutional investors are prevented from investing in this asset class.

b) distribution and pool performance information[4]. This information is substantially similar, but not identical to, the 64 fields mandated by Annex 12, and is, according to our members, fully sufficient to allow investors and investment managers to evaluate risk, monitor performance, and perform due diligence. However, as above, a small number of gaps remain and the template format issue, exclude EU investors from this asset class.

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[3] *US CFR 17 Part 229.1125 Schedule AL - Asset-Level Information - Item 3 - Automobile Loans*, https://www.ecfr.gov/current/title-17/chapter-II/part-229/subpart-229.1100/section-229.1125

[4] *US CFR 17 Part 229.1121 – Distribution and pool performance information,* https://www.ecfr.gov/current/title-17/chapter-II/part-229/subpart-229.1100/section-229.1121

Q26. Do you think that it would be possible to achieve a level of simplification and standardisation within fields, across multiple templates, without having an impact on the overall risk analysis of the transaction? Please explain the rationale behind your answer.

Yes, feedback from our members has emphasised that the reporting templates prescribed by ESMA are largely a tick box regulatory requirement that investors do not consider when making their risk analysis. In particular, for private securitisations the majority of cases are either offered to sophisticated investors or are bilateral financings dependent upon the commercial relationship between the originator and the finance provider. In private securitisations the level of information reported is extensively negotiated by investors to enable them to carry out their risk analysis and is a matter of substance not form. Requiring prescribed information to be reported in a template form that is not necessarily required by the investor is arduous and expensive for an originator and it has time and cost implications for the relevant parties and the market as a whole. In addition, it places EU investors at a competitive disadvantage to non-EU investors in securitisations. From the investor perspective if simplified and standardised templates would not result in a huge cost burden for third country securitisation parties to provide, it would open up the market to those transactions which currently EU institutional investors are in effect excluded from investing in.

Q27. Do you think that the overall usability would improve with simplified and standardised templates? Please explain the rationale behind your answer.

Yes, at the moment ESMA's templates are cumbersome to complete and to analyse, due to their complexity, length and the lack of relevance which their contents have.

Q28. Do you agree with the approach proposed by Option D, to create a set of templates based on the characteristics and nature of underlying assets rather than the categorisation of the securitisation transaction (i.e., public or private, true sale or synthetic)?

No. In our view Option D should not be confined to differentiating template requirements solely according to asset class. Instead, it should focus on an extensive simplification of all templates, focusing particularly on a distinct template for private securitisations that follows a principles-based approach that matches the current practices of market participants. Creating new templates based on the underlying asset characteristics risks imposing additional unsustainable costs and creating additional disincentives to investors.

Q29. Do you believe that ESMA should proceed with the review of the RTS based on the proposal to deviate from loan-level data disclosure for those asset classes which are highly granular, of short-term maturity or revolving pools? What are the potential benefits, challenges, or considerations that ESMA should consider if adopting this approach?

Yes. We agree with the proposal to refocus away from loan level disclosure more generally. The benefits will be greater flexibility in adopting a more principles-based approach for the asset classes and transactions that do not fit well within any of the current templates. This will result in better quality of disclosure for both the investor and the regulator in monitoring the market.

In our members' experience with private securitisations, investors will be fully focused on the level and type of information they need on the underlying assets in order to carry out their credit analysis. They will negotiate the provision of this information themselves as part of the terms of the private securitisation. Typically, this is very different from the information prescribed by the ESMA templates. In particular we would note that CLOs involve revolving pools and are subject to extensive stipulations by investors when it comes to their reporting requirements and where the use of ESMA templates does not add any benefit for investors.

Q30. Are there any additional asset classes that should be further explored based on the proposal of deviating from the loan-level data reporting? Please list the relevant asset classes or annexes explain why.

In particular, we would note that CLOs involve revolving pools and are subject to extensive stipulations by investors when it comes to their reporting requirements and where the use of ESMA templates does not add any benefit for investors.

Q31. What are your views on the proposal to transition from the current 'no-data' options to a framework based on 'mandatory', 'conditional mandatory' and 'optional' fields for securitisation transactions?

We believe that as part of a comprehensive Level 1 review, following the Option D approach, ND options should be removed and ESMA should clarify, on a per-asset-class basis, which of the disclosure items are Mandatory and which are Optional. During this process the opportunity should be taken to:

a. limit the number of Mandatory items in order to reduce the administrative cost of performing a gap-analysis exercise for third-country securitisations;

b. ensure that remaining Mandatory items are aligned with those commonly required and reported in major third-country securitisation markets, particularly the USA. This will simplify the process of identifying which third-country securitisation markets are and are not permitted for EU institutional investors;

c. clarify that in the case of third-country securitisations, disclosure of substantially similar or equivalent data is also sufficient to satisfy Article 7 requirements. For example, consider a case where a Mandatory data value "A" is not reported by a third-country securitisation, either because it is not required by its home securitisation regulations, or because market conventions and industry standards in the third country differ to those in the EU. However, if data values "B" and "C" are reported, and "A" can be calculated deterministically from "B" and/or "C", then this should be deemed compliant with Article 7. To take a concrete example, we note that Annex 12, Field Code IVSS22, requires the disclosure of the Annualised CPR. In some third-country securitisation deals, like US Auto ABS, the industry standard is to report a different measure of prepayment speed such as the Monthly ABS. One can be calculated from the other, and the information content is identical, but a strict interpretation of the Annex 12 requirements could conclude that US Auto ABS deals are not compliant with Article 7 since they do not disclose the Annualised CPR.