

31 March 2025

Via Online Submission: www.esma.europa.eu

European Securities & Markets Authority
201-203 rue de Bercy
CS 80910 - 75589
Paris Cedex 12
FRANCE

Re: Consultation Paper on the revision of the disclosure framework for private securitisation under Article 7 of the Securitisation Regulation

Dear Sir/Madam,

MFAⁱ appreciates the opportunity to represent the views of the global alternative investment industry in this written response to the Consultation Paper of the European Securities Markets Authority (“**ESMA**”) regarding its proposal for a simplified disclosure template for private securitisation (“**Consultation**”). We strongly support ESMA’s goals with the Consultation, including its efforts to “enhance proportionality while maintaining transparency in line with” the EU Securitisation Regulation (“**SECR**”).ⁱⁱ We believe targeted reforms can maximise the full potential of EU securitisation markets by allowing the financial services sector to serve the needs of the European economy and contribute to the development of a European Savings and Investments Union.

While ESMA’s objectives in moving the securitisation markets forward in the EU are to be commended, as we discuss in detail in Question 1 of the attached Annex, requiring a prescriptive (albeit simplified) disclosure framework and template for private securitisations between sophisticated institutional investors is unnecessary. Institutional investors considering investment in a private securitisation have the leverage to request extensive due diligence materials and do so freely. Additionally, as the securitisation markets have continued to develop, standard market practices have emerged, with investors and manufacturers alike having largely settled on the documents and information the investor will require.

Securitisation disclosure templates, even simplified, create additional risk for investors and thereby act as a disincentive for investors to purchase securitisations. The effect on significant risk transfers (“**SRTs**”) for example is

ⁱ Managed Funds Association (“**MFA**”), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA’s mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

ⁱⁱ ESMA, Consultation Paper on the revision of the disclosure framework for private securitisation under Article 7 of the Securitisation Regulation (13 Feb. 2025) (avail. at www.esma.europa.eu/document/consultation-paper-revision-disclosure-framework-private-securitisation).

that banks may find it more difficult or time consuming to engage in SRT, further delaying or denying the bank's ability to transfer risk away from its balance sheet and onto the nonbank counterparty's balance sheet.

It also is important for the Consultation proposal to be considered in the context of broader securitisation reform efforts. The March 2024 Eurogroup statement,ⁱⁱⁱ followed by similar statements by the European Council in April^{iv} and June 2024,^v all called for the wholistic relaunch, through both regulatory and prudential changes, of the EU securitisation framework. These calls were in line with the Enrico Letta^{vi} and Mario Draghi^{vii} reports, which both argued that revitalising the EU securitisation market would ultimately increase the EU's competitiveness. The European Commission is expected to propose legislation in Spring 2025 to review the securitisation framework. An overall assessment of all securitisation disclosure requirements, public and private, could benefit by affording stakeholders ample opportunity to consider any disclosure requirements in the context of the revised legislation when introduced.

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MFA appreciates the opportunity to provide these comments to ESMA in response to the Consultation Paper. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Rob Hailey (rhailey@mfaalts.org), Jeff Himstreet (jhimstreet@mfaalts.org), or the undersigned (jhan@mfaalts.org).

Respectfully submitted,

/s/ Jennifer W. Han

Jennifer W. Han

Executive Vice President and Chief Counsel
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ⁱⁱⁱ Eurogroup, *Statement of the Eurogroup in inclusive format on the future of Capital Markets Union* (11 Mar. 2024), avail. At <https://www.consilium.europa.eu/en/press/press-releases/2024/03/11/statement-of-the-eurogroup-in-inclusive-format-on-the-future-of-capital-markets-union/>.

^{iv} European Council, Special meeting of the European Council (17 and 18 April 2024) – Conclusions (18 Apr. 2024), avail. at <https://www.consilium.europa.eu/media/m5jlwe0p/euco-conclusions-20240417-18-en.pdf>.

^v European Council, Special meeting of the European Council (27 June 2024) – Conclusions (27 June 2024), avail. at <https://www.consilium.europa.eu/media/qa3lbgla/euco-conclusions-27062024-en.pdf>.

^{vi} Enrico Letta, *Much More than a Market* (April 2024), avail. At <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf>.

^{vii} Mario Draghi, *The future of European competitiveness: Report by Mario Draghi* (Sept. 2024), avail. at https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en.

ANNEX 1

General information about respondent

Name of the company / organisation	MFA
Activity	Association representing the global alternative asset management industry.
Are you representing an association?	☒
Country/Region	US, UK, EU

Questions

Q1 Do you agree with the proposed approach to disclosing information on private securitisations? If not, please specify any alternative approaches you would recommend, including their advantages and potential drawbacks.

MFA¹ does not support mandating specific disclosure requirements for private securitisations. Sophisticated institutional investors already conduct extensive due diligence regarding investments in securitisations. In our view, more attention should be given to the purpose of the EU's disclosure regime for securitisations, which should be to enable investors to access adequate information to make an informed decision.

Investors in private securitisations are sophisticated, institutional investors and have developed their own detailed due diligence requirements. The process of creating and issuing a private securitisation also takes place over several months, providing ample time for the potential investor to request trustee statements and whatever other information the investor deems necessary.

Market participants, particularly alternative investment funds ("AIFs") and other private funds, have found both the current and proposed disclosure templates to be unnecessarily granular and prescriptive. In addition, the

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Commission has noted that some investors might not use the prescribed disclosure “but instead [they] rely on their existing due diligence arrangements that were in place before the Securitisation Regulation entered into force.”²

MFA members that invest in EU securitisations are typically subject to EU regulation as alternative investment fund managers (“AIFMs”). AIFMs and other private fund managers are currently subject to extensive due diligence requirements and managers, as purchasers of securitisation offerings, are fiduciaries to the funds they manage. As such, they have developed and use robust and evolving due diligence practices before investing on behalf of their clients. MFA members, when acting in the capacity as institutional investors, generally do not find these reports helpful for the purpose of their own due diligence procedures.

MFA welcomes the concept of a more “principles-based” approach to rulemaking for institutional investors. In our view, it is appropriate to allow institutional investors to determine the scope and content of disclosures required for the purpose of their due diligence. We note that our members typically have not found the reporting templates prescribed under the EU (or UK) SECR to be any more informative than information that they would otherwise have requested as part of their due diligence procedures when deciding whether to invest in a securitisation. A simplified disclosure template such as the proposed Consultation template is unlikely to change this sentiment. On this basis, institutional investors should not be required to request reports in the form of the EU SECR prescribed templates (or anything “substantially the same” as these templates, in the case of non-EU manufacturers).

The proposed requested items continue to be too prescriptive: a truly principles-based approach would not set out each item of information and the frequency at which it needs to be obtained. Whilst we agree that AIFMs should receive information to enable them to independently assess the risks of investment opportunities, it is disproportionate to prescribe the information that they need to obtain specifically with respect to investments in securitisations. In practice, AIFMs are already required to maintain due diligences procedures under the FUND Sourcebook (“FUND”) (at 3.7.5 R), which applies to all investment positions held by the relevant AIF (whether that be a securitisation position or otherwise).

MFA also notes that AIFMs are already required to conduct extensive due diligence under applicable EU regulations, rendering the extra diligence that would be required through the prescribed templates to be duplicative and needlessly burdensome. In particular, we note the emphasis on risk management in FUND 3.7.5 R(1) and (2). For example, FUND 3.7.5 R(2)(b) requires AIFMs to maintain systems to identify, measure, manage and monitor the risks associated with the investment position of an AIF. This is aligned in principle with the proposed requirement to “assess the risks of holding the securitisation position” in SECN 4.2.1 R(1)(e) (as well as the requirement to conduct risk assessments in SECN 4.2.2 R). In addition, FUND 3.7.5 R provides that AIFMs must maintain documented due diligence processes on an ongoing basis, including appropriate stress testing procedures³, which is aligned with the requirements in SECN 4.3 to maintain written procedures and perform stress tests.

² Report from the Commission to the European Parliament and the Council on the functioning of the Securitisation Regulation, European Commission (Oct. 2022) (at page 9); avail. at <https://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0517>.

³ See FUND 3.7.5 R (2)(a) and (b).

In our view, there is no added benefit in prescribing a list of due diligence requirements, or the details of monitoring procedures, for investments in securitisations when FUND 3.7.5 R already provides adequate coverage. Therefore, in the interest of proportionality, we would encourage ESMA to extend the principles-based approach further with respect to AIFMs by removing the list in SECN 4.2.1 R(1)(e), as well as the related risk assessment and ongoing monitoring requirements in SECN 4.2.2 R and SECN 4.3.

More broadly, while MFA welcomes the concept of reforming the current information due diligence requirements, as discussed above, our members have found the risk retention due diligence requirements to be the most significant barrier to investing in securitisations whose sponsors or originators are outside of the UK or the EU. Accordingly, we believe that making reforms to the information due diligence requirements alone, without also reforming the risk retention due diligence requirements, would not have the desired effect of furthering the EU's competitiveness drive.

In short, a prescriptive, granular disclosure form is likely be of considerably less importance to the prospective investor than its own due diligence requirements and only acts as a continued deterrent to investors from pursuing investment in the private securitisation.

Q2 Do you agree with the proposed scope of application, which requires all of the originators, sponsors, original lenders and SSPEs to be established in the Union? Alternatively, do you see any merit in applying the new template when at least the originator and sponsor are established in the Union? Please provide specific examples where the application of the proposed scope might present practical challenges.

As we note in our response above, we do not believe there should be any specific, mandated disclosure template in private securitisation transactions between the manufacturer and sophisticated, institutional investors. Investors in private securitisations have ample opportunity to request the information they require to make an informed decision and need not rely on an overly cumbersome, mandated disclosure requirement.

If ESMA elects to move forward with a private securitisation template, MFA advocates a narrow interpretation as to the jurisdictional scope of the application, which would mean that all originators, sponsors, and lenders and SSPEs would need to be EU-based for the template to be required. We do not see any merit in applying the new template when both the originator or the sponsor is established in the EU and the lender is established elsewhere.

One of the persistent challenges with the EU securitisation markets has been the effect that the broad application of EU law has had on cross-border activities. Both the securitisation markets and the private funds industry are global in nature, and as such it is important that the securitisation requirements in the EU reflect the fact that a manager investing in a securitisation vehicle in the EU on behalf of its clients may be domiciled in the EU, the UK, the US, or elsewhere, in addition to the securitisation offering originating from the US or elsewhere.

Q3 Do you agree that the simplified template should be made available in CSV format, or should ESMA adopt a more flexible approach proposing a machine-readable format to be determined by the CA? Please specify which alternative format(s) you would recommend and provide your rationale.

Please see MFA's response to Question 1. If ESMA elects to move forward with some version of the private securitisation template, we encourage it to move to machine-readable format. We furthermore would encourage competent authorities to align on a technology-neutral format to facilitate ease of review by institutional investors that may be comparing multiple potential securitisations. ESMA and the competent authorities would only increase costs and barriers to entry for investors and the securitisation industry by adopting different and potentially conflicting machine-readable formats.

Q4 Do you agree with the disclosure frequency proposed in the Consultation Paper? Please provide your rationale.

No. The proposed disclosure format, in MFA's view, is too prescriptive as a truly principles-based approach would not set out each item of information and the frequency at which it needs to be obtained.

Q5 Do you agree with the structure of the simplified template, specifically the relevance of Section A to D for private securitisations? If not, please suggest any changes to the template's structure and provide the rationale for your proposed modifications.

Not answered. Please see MFA's response to Question 1 above.

Q6 Do you consider the use of ND Options in the template for private securitisations to be useful? Please provide your rationale.

Not answered. Please see MFA's response to Question 1 above.

Q7 Do you agree with the fields proposed in Table 1? If not, please suggest any changes to the Table's structure and provide the rationale for your proposed modifications.

Not answered. Please see MFA's response to Question 1 above.

Q8 Do you agree with the fields proposed in Table 2? If not, please suggest any changes to the Table's structure and provide the rationale for your proposed modifications.

Not answered. Please see MFA's response to Question 1 above.

Q9 Do you agree with the securitisation characteristics fields proposed in Table 3? If not, please suggest any changes to the Table's structure and provide the rationale for your proposed modifications.

Not answered. Please see MFA's response to Question 1 above.

Q10 Do you agree with the instrument/securities characteristics fields proposed in Table 4? If not, please suggest any changes to the Table's structure and provide the rationale for your proposed modifications.

Not answered. Please see MFA's response to Question 1 above.

Q11 ESMA is not aware of significant issues with the current disclosure framework for ABCP transactions. Do you agree with maintaining this approach (i.e., Annex 11), or do you consider that disclosure via the simplified template would be more appropriate for ABCP transactions? Please provide your rationale.

Not answered. Please see MFA's response to Question 1 above.

Q12 If you support the use of the simplified templates for ABCP transactions (Question 10), do you also agree with the specific fields proposed in Table 5? If not, please suggest any changes to the content or structure of the table, along with the rationale for your proposed modifications.

Not answered. MFA's view remains that a template is unnecessary for ABCP transactions, and for private securitisation transactions generally, as we note in Question 1.

Q13 Do you agree with the proposed approach for ABCP transactions, which focuses on information at the programme level? Alternatively, do you consider that disclosure should be based on transaction-level information to ensure alignment with the disclosure requirements for public transactions? Please provide your rationale.

Not answered. MFA's view remains that a template is unnecessary for private securitisation transactions, as we note in Question 1.

Q14 Do you agree with the contact information collected under Table 6? If not, please suggest any changes to the Table's structure and provide the rationale for your proposed modifications.

Not answered. MFA's view remains that a template is unnecessary for private securitisation transactions, as we note in Question 1.

Q15 Do you agree with the fields on the underlying exposures proposed in Table 7? If not, please suggest any changes to the Table's structure and provide the rationale for your proposed modifications.

Not answered. Please see MFA's response to Question 1 above.

Q16 Do you believe that a minimum set of information should be made available to users to monitor the evolution of the underlying risks? If so, do you consider that the fields proposed in Table 7 to be relevant for this purpose? If not, please indicate which alternative indications should be used and provide the rationale for your suggestions.

Not answered. Please see MFA's response to Question 1 above.

Q17 ESMA proposes the inclusion of fields to capture information on underlying assets to be reported at an aggregated level. Some of this information is also included in the Investor Report for non-ABCP transactions. Do you agree that such information should be provided in both the template for private securitisations and the Investor Report for non-ABCP transactions? Alternatively, would you support introducing the option to flag such fields as 'not applicable' in the Investor Report when used in the context of private securitisations? Please provide your views.

Not answered. MFA's view remains that a template is unnecessary for private securitisation transactions, as we note in Question 1.

Q18 Do you agree with the inclusion in table 7.5 of fields related to restructured exposures or do you consider that the information included in the investor reports is sufficient? Please provide your rationale for agreeing or disagreeing.

Not answered. MFA's view remains that a template is unnecessary for private securitisation transactions, as we note in Question 1.

Q19 If you agree with the inclusion of restructured exposure fields (Question 17), do you also agree with the specific fields proposed in Table 7.5? If not, please suggest any changes to the structure or content of Table 7.5, along with the rationale for your proposed modifications.

Not answered. MFA's view remains that a template is unnecessary for private securitisation transactions, as we note in Question 1.

Q20 Do you agree with the inclusion in table 7.6 of fields related to energy performance? Please provide your rationale for agreeing or disagreeing.

Not answered. MFA's view remains that a template is unnecessary for private securitisation transactions, as we note in Question 1.

Q21 If you agree with the inclusion of energy performance fields (Question 19), do you also agree with the specific fields proposed in Table 7.6? If not, please suggest any changes to the structure or content of Table 7.6, along with the rationale for your proposed modifications.

Not answered. MFA's view remains that a template is unnecessary for private securitisation transactions, as we note in Question 1.

Q22 Do you agree with the inclusion of the proposed fields related to risk retention, considering that this information is already covered in the investor reports? Please provide your rationale for agreeing or disagreeing.

Not answered. MFA's view remains that a template is unnecessary for private securitisation transactions, as we note in Question 1.

Q23 If you agree with the inclusion of risk retention fields (Question 21), do you also agree with the specific fields proposed in Table 8? If not, please suggest any changes to the structure or content of Table 8, along with the rationale for your proposed modifications.

Not answered. MFA's view remains that a template is unnecessary for private securitisation transactions, as we note in Question 1.

Q24 Do you agree with the fields proposed for the position level information in Table 9? If not, please suggest any changes to the Table's structure and provide the rationale for your proposed modifications.

Not answered. MFA's view remains that a template is unnecessary for private securitisation transactions, as we note in Question 1.

Q25 Do you agree with the fields proposed for synthetic securitisation in Table 9? If not, please suggest any changes to the Table's structure and provide the rationale for your proposed modifications.

Not answered. MFA's view remains that a template is unnecessary for private securitisation transactions, as we note in Question 1.

Q26 Do you foresee any operational challenges or implications arising from the implementation of the simplified template for EU private securitisations? If so, please describe the challenges you anticipate and suggest any measures that could mitigate them.

The challenges are that the proposed template for private securitisations, while simplified from its existing, public-facing form, are likely to persist as a deterrent for investors from participating in the EU private securitisation markets. Investors in US securitisations do not incur the additional compliance risk associated with the disclosure template and are free to conduct the due diligence that they as sophisticated institutional investors deem fit. MFA's view remains that a template is unnecessary for private securitisation transactions, as we note in Question 1.

Q27 What are the projected implementation costs for sell-side parties for transitioning to the simplified template for private securitisations, and how do these compare to the reduction of reporting burden?

Not answered.

Q28 To what extent does the simplified disclosure framework for private securitisation improve the usefulness of information for investors while maintaining their ability to perform due diligence?

The simplified disclosure template appears unlikely to improve the usefulness of information for investors beyond the fulsome due diligence that investors currently conduct. Please see MFA's response to Question 1 above.

Q29 Does in your view the introduction of the simplified template enhance the effectiveness of supervisory oversight without imposing disproportionate costs on market participants?

No. The simplified template will not enhance supervisory oversight in a manner proportionate to its costs on market participants, including MFA members. MFA acknowledges that the simplified template is an improvement over the current state, and we commend ESMA for its efforts to be responsive to extensive feedback on the shortcomings of the existing securitisation regulatory regime. One considerable improvement that would place EU SECR on more equal footing with that of US securitization markets would be to reconsider whether any disclosure template for private securitisation offerings is necessary at all given the sophisticated institutional investors participating in the EU private securitisation markets. We do not believe it is.