

Opinion of True Sale International GmbH<sup>1</sup> on the  
ESMA Discussion Paper on CRA 3 Implementation  
(ESMA/2013/891), dated 10 July 2013

We welcome the opportunity to comment on the ESMA Discussion Paper on CRA 3 Implementation (ESMA/2013/891) published on 10 July 2013 ("ESMA DP"). In the light of the mission of TSI and its partner organisations, we will restrict our comments to Chapter II of the aforementioned document on the Draft RTS on Information on Structured Finance Instruments, which is based on Article 8(b) of Regulation (EU) No. 462/2013 dated 21 May 2013 amending Regulation (EC) No. 1060/2009 on credit rating agencies ("CRA 3").

### **General remarks**

Generally speaking, Article 8(b) of CRA 3 and the related paragraphs in the ESMA DP aim primarily at improving "the ability of investors to make an informed assessment of the creditworthiness of structured finance instruments".<sup>2</sup> It is assumed that such an improvement can be achieved "if investors were provided with sufficient information on those instruments", in particular regarding the underlying securitised assets, and in terms of quality and performance. Furthermore, it is assumed that additional information of this kind would reduce investors' dependence on credit ratings and increase the number of unsolicited ratings and hence competition between credit rating agencies. The European Commission is asked to report by January 2016 on a potential extension of the envisaged disclosure requirements to other financial products, in particular covered bonds.

We fully agree with the objective of ensuring that investors in the structured finance market are well informed and able to perform thorough and exhaustive credit assessments of securitisation transactions.

In the case of securitisations, however, we are in the fortunate position that the regulatory consequences were taken into account for banks back in 2010 with CRD II. Since then, under CRD II, regulated investors have been required to take account of their own comprehensive review and due diligence obligations independently of ratings; these obligations were first implemented in the domestic supervisory law of the European states from 2011 onwards, and have also been included in its Article 405 et seq. of the CRR, which will enter into force on 1 January 2014. Possible neglect of those duties will incur severe sanctions. The CRR thus stipulates very precisely that every investor in the regulatory sphere of the CRR must follow exactly worded information in order to obtain its own picture of the intrinsic value of a securitisation position. The investor's reviews must be documented and non-compliance will incur sanctions extending from additional risk weighting to deduction of capital.

<sup>2</sup> All quotations in this paragraph are taken from recital 30 of CRA 3.

These provisions are very sensible and, in the meantime, have proved extremely worthwhile.

Furthermore, the ECB has determined that for all ABS transactions for which banks endeavour to acquire ECB repo eligibility in the context of the money market policy, whose originators must use an extensive template set up by the ECB to provide all investors with detailed single loan level and transaction data on a monthly or quarterly basis on a publically accessible data warehouse, the [European Data Warehouse](#). This applies to almost all ABS transactions issued in Europe and has already been operating since the start of 2013.

We therefore disagree with the hypotheses that investors need additional information on securitisation transactions beyond what is already available and that additional information would improve the quality of their credit assessments. On the contrary, more information in the sense of microdata than is already available today would be counterproductive, confusing and misleading. We return to this point below.

Having said that, we approve of the idea of setting up a centralised website under the auspices of the EMSA as a means of creating an all-encompassing repository for offering circulars and investor reports for those who do not have access to Bloomberg or similar information providers.

It is beyond our remit to assess the extent to which more information will increase the number of unsolicited ratings and, ultimately, the degree of competition in the credit rating market. As far as we can tell, the quality and amount of credit analysis work carried out by securitisation investors in order to meet current regulatory requirements and to take well-founded investment decisions has already led to far-reaching independence of external credit ratings, which are now taken as just one indicator among many. For other credit products, ex-securitisation, name recognition and investor's trust in the issuer and not least in their credit rating are given far greater prominence. On the other hand, unbiased, up-to-date information on those products is scarce and credit assessment must at least try to take account of a wealth of factors other than pure credit risk, which is not the case for securitisation.

In other words, supported by the current regulatory requirements, in particular Articles 406 and 409 of the CRR<sup>3</sup>, which have, as said, already been implemented in national laws via Article 122(a), as part of the CRD II package, as from 1 January 2011, the rigorous analytical framework as well as the availability of unbiased information within and outside the securitisation market has already established benchmark status for all capital market-based credit instruments.

<sup>3</sup> The initial Article 122(a) of CRD II has been explained in the [CEBS Guideline "Feedback to the public consultation on Guidelines to Article 122\(a\) of the Capital Requirements Directive"](#), 31 December 2010.

Because infringements of the above-mentioned requirements were, and still are, severely penalised on the basis of Article 122(a) of CRD II and Article 407 of the CRR, bank investors in securitisation transactions are careful to comply with them.

As we see it, it is pointless to impose additional, diverging requirements on banks that target the same circumstances. This would merely lead to redundant activities, high additional cost and less, instead of more, transparency for the market and control for the supervisory authorities. Instead, the existing CRD II regulations for banks, which have proved successful and valuable, should be used as the role model. By the same token, we would like to emphasize and strongly recommend that similar requirements that mirror and draw on Articles 405 to 409 of the CRR should also be stipulated for non-bank investors that are also affected by Article 8(b) of CRA 3. This would establish to a consistent framework across the sectors (see Articles 405 et seq. of the CRR, attached).

In our view these requirements are in keeping with the substantive idea of Article 8(b) of CRA 3 and reflect the information which should be published on the forthcoming ESMA website for all publicly listed securitisation transactions. The ESMA website should be conceived as a central repository for offering circulars (OCs) and investor reports (IRs) (both in pdf and Excel formats). The publication of those documents would be a precondition for every securitisation investment. They contain all information needed to take a well-founded investment decision.

Serious questions would be raised if the investor were to be provided with additional information, especially in a refined and readily prepared format, i.e. a list of certain key indicators or ratios. Above all, the unambiguousness of OCs and IRs would be forfeited. Investors could be incentivised to neglect a thorough analysis of OCs and IRs as primary sources of information and shift their attention to "secondary" or "derived" and standardised pieces of information published on the ESMA website, with no more than doubtful legal relevance compared to OCs in the legal sense of a prospectus and the related prospect liability.

We would refrain from paving the way for a narrow data mining and standardised key ratio tracking approach, which might lead to investors being overwhelmed by a flood of statistical information and hence becoming unable to differentiate between the essential and the superfluous. Only a thorough analysis of source documents – in particular, OCs and related material such as IRs – should lay the foundation for investment decisions.

## **Annex 1: Literature and sources**

Dec 2010 Committee of European Banking Supervisors

- » **Feedback to the public consultation on Guidelines to Article 122a of the Capital Requirements Directive**

Feb 2013 European DataWarehouse

- » **European DataWarehouse Presentation**

European DataWarehouse

- » **Event section**
- » **Video on Edwin, the software application**

Jun 2013 European Parliament and Council

- » **Regulation (EU) No 575/2013: Requirements for Investor Institutions Articles 405 – 409**

2013 European Central Bank

- » **Loan-Level Data Templates**

## **TSI – What we do**

Securitisation in Germany and TSI – the two belong together. True Sale International GmbH (TSI) was set up in 2004 as an initiative of the German securitisation industry with the aim of promoting the German securitisation market.

In the last nine years TSI has strongly supported the development of the German securitisation market. Its concern has always been to give banks an opportunity to securitise loans under German law on the basis of a standardised procedure agreed with all market participants. Another objective is to establish a brand for German securitisation transactions which sets a high standard in terms of transparency, investor information and market making. And finally the goal is to create a platform for the German securitisation industry and its concerns and to bridge the gap to politics and industry.

Nowadays TSI Partners come from all areas of the German securitisation market – banks, consulting firms and service providers, law firms, rating agencies and business associations. They all have substantial expertise and experience in connection with the securitisation market and share a common interest in developing this market further. TSI Partners derive particular benefit from TSI's lobbying work and its PR activities.

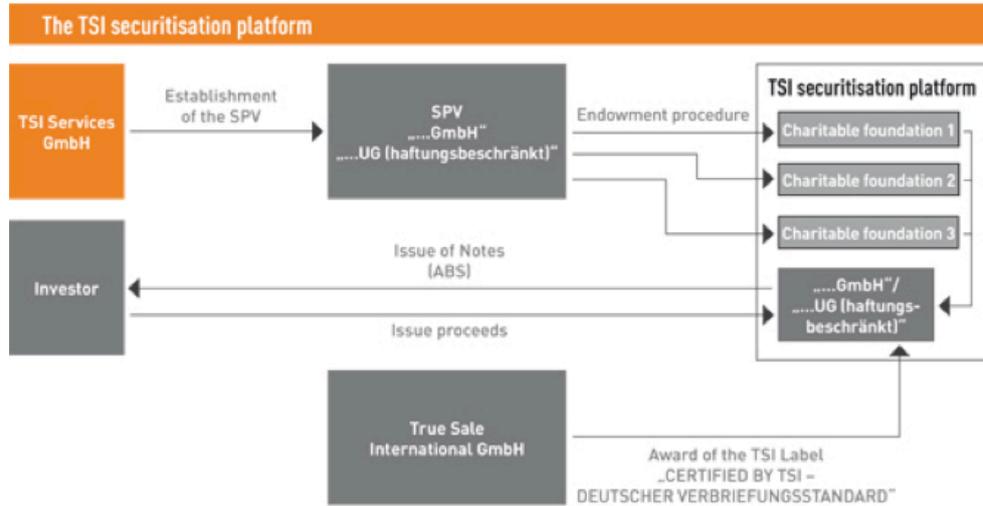
## **TSI securitisation platform**

TSI has been providing special purpose vehicles (SPVs) under German law since 2005. In far more than 80 transactions (as of February 2013), German and other originators have already taken advantage of German SPVs as part of the securitisation process.

The TSI securitisation platform comprises three charitable foundations, which become shareholders in the SPVs set up by TSI. The charitable foundations provide support for academic work in the following fields:

- Capital market research for Germany as a financial centre
- Capital market law for Germany as a financial centre
- Corporate finance for Germany as a financial centre

The three charitable foundations are committed to promoting scholarship and science with a focus on capital market and corporate finance topics.



**CERTIFIED BY TSI – DEUTSCHER VERBRIEFUNGSSTANDARD**



The high quality of German securitisation transactions reflects the high quality of the standards applied to lending and loan processing.

The brand label DEUTSCHER VERBRIEFUNGSSTANDARD is founded on clearly defined rules for transparency, disclosure, lending and loan processing. Detailed guidelines and samples for investor reporting ensure high transparency for investors and the Originator guarantees, by means of a declaration of undertaking, the application of clear rules for lending and loan processing as well as for sales and back office incentive systems. The offering circular, the declaration of undertaking and all investor reports are publicly available on the TSI website, thus ensuring free access to relevant information.

**Events and Congress of TSI**

Events of TSI provide opportunities for specialists in the fields of economics and politics to discuss current topics relating to the credit and securitisation markets. The TSI Congress in Berlin is the annual meeting place for securitisation experts and specialists from the credit and loan portfolio management, risk management, law, trade and treasury departments at banks, experts from law

firms, auditing companies, rating agencies, service providers, consulting companies and investors from Germany and other countries. Many representatives of German business and politics and academics working in this field take advantage of the TSI Congress to exchange professional views and experience. As a venue, Berlin is at the pulse of German politics and encourages an exchange between the financial market and the world of politics.