

## **Disclosure rules under the new STS regulation may not be implemented in time by ABCP sponsors. Negative impact for real economy originators must be avoided**

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With reference to the Final Report regarding Technical standards on disclosure requirements under the Securitisation Regulation issued by ESMA on 22 August 2018 we would like to draw attention to some potentially unintended consequences for the future financing of real economy enterprises via ABCP securitisations. This relates to corporates securitising their Trade Receivables and likewise to finance arms of such corporates (so-called "captives") securitising lease receivables for their manufactured goods.

According to a document issued by Moody's Investors Services on May 15, 2018, EU conduits had outstanding assets of USD93 billion at the end of 2017. These assets are primarily Trade Receivables, followed by auto loans and leases, thus refinancing directly real economy needs. The conduits finance themselves by issuing short-term Asset-Backed Commercial Paper (ABCP) backed by liquidity lines provided by their sponsors, a group of about 15 large institutions.

We appreciate ESMA's efforts to accelerate the date of release of this report in order to be ready in time for the application of the new securitisation regulation. Yet we believe that insufficient consideration has been taken to address many aspects of the ABCP securitisations from the corporate sector.

In broad terms this relates to

- unclear guidance on the first application of the new disclosure templates for existing ABCP transactions ("grandfathering")
- the lack of a sufficiently long transitional period for originators and sponsors to implement the new templates ("transition") and
- a too wide definition on information fields which are declared mandatory ("mandatory fields").

In the following we have further analysed these areas of concern and provided proposals to solve these.

### **1.) Remarks regarding grandfathering:**

We note that there is an uncertainty about the grandfathering status of ABCP transactions issued before 1<sup>st</sup> of January 2019. There is a risk that ABCP might be caught inadvertently in the scope of application of the Technical Standards on day one. Indeed, the transitional provisions of the STS regulation in Article 43 (1) mention that the new

rules apply to "securitisations the securities of which are issued on or after 1st January 2019". We believe that the intention of this Article was not to catch ABCP transactions issued before 1<sup>st</sup> of January 2019. However, they could be caught under a literal interpretation of the text because ABCP conduits continuously issue commercial paper. It is likely that national supervisors follow this literal interpretation and hence, the disclosure requirements could apply broadly to all of the conduit assets as soon as a conduit issues new ABCP in the market, which happens more or less every day.

But this does not take into account the fact that conduits hold assets originated before the date of application of the securitisation regulation. This means that conduit sponsors were not able and did not require from their clients to provide information which was not defined at the time. The sellers of the assets will be generally unwilling to provide additional information once they have received funding or a commitment to funding from the conduit. These sellers may also just be unable to provide information for some fields that they do not track or keep in their records. Consequently as sponsor banks cannot request these data to existing sellers based on legal clauses, they are left with the choice of either (i) stop funding their clients via ABCP to respect ESMA disclosures requirements or (ii) keep funding their clients and have a risk of sanction by national regulators.

It is not reasonable or proportionate to prevent such assets from continuing to be financed by conduits because this data was not collected. Furthermore, the cut-off date of this grandfathering rule must give originators sufficient time to identify data fields not currently being captured, and amend their origination processes to commence capturing and uploading them into systems.

To solve this issue we urgently ask the commission that the delegated act shall contain language for a full grandfathering of any exposures where the original loan/sale agreement was put in place prior to 30 June 2019 or permission to use ND fields indefinitely (i.e. even after the fixed transitional period ends – see point 2). This should apply in cases where the information was not captured at the closing of the ABCP transaction.

Hint: ESMA has given consideration to this issue by allowing in some limited cases the use of "ND" fields (non-mandatory information). We think that having a carve-out from mandatory disclosure for legacy positions is an appropriate grandfathering measure.

## **2) Remarks regarding transition**

The standards define extensive lists of information to be disclosed regarding the securitised assets and the securitisation structure. The primary reason for our deep concern stems from the scope of application of these disclosures: in the Consultation issued on this subject in December 2017, ESMA was widely understood to have excluded all private securitisations (including conduits) from the scope of disclosures. It looked logical to market participants as private securitisations are neither subject to reporting to a securitisation repository nor subject to reporting to a dedicated website, and ABCP programmes (either located in EU or in the US) already provide the pieces of information

required by article 7, for instance by mean of their monthly investors reports, as indicated to ESMA during its consultation process.

This view leading to an exclusion of private securitisations and ABCP from disclosure requirements was also in line with Article 7(3) of Regulation 2017/2402 (the "Securitisation Regulation") that defines the mandate of ESMA:

"ESMA ... shall develop draft RTS to specify the information that the originator, sponsor and SSPE shall provide ... taking into account the usefulness of the information for the holder of the securitisation position, whether the securitisation position is of a short-term nature and in the case of an ABCP transaction, whether it is fully supported by a sponsor."

But based on an internal legal analysis developed in § 20 of the Final Report, ESMA reversed it's this position in the final report. Hence, industry participants have not been able to check whether the required information can be prepared by their clients who sell the assets to the conduits.

The time needed to prepare all systems and reports, at the level of the sellers and conduit sponsors, is certain to exceed the few months before the standards are supposed to apply. There should be a transitional period of 18 months after the publication of the Technical Standards, during which the information fields are not made mandatory (through the use of unrestricted "ND" fields), for all exposures, to allow market participants time to create systems which capture and process the relevant data.

### **3) Remarks regarding mandatory fields**

Conduit sponsors are faced with a situation where they will have to disclose very extensive, and mostly mandatory, information as soon as the disclosure standards apply.

The underlying exposure template for ABCP (annex 11 - pages 234-237 of the ESMA Report) has 49 fields of which 39 are fully mandatory. By way of example only and based on a limited sample checks, we think that out of the 39 fully mandatory fields, at least 25 are problematic because either the information is not currently available or is not relevant. For instance, we think that the information requested under IVAL 39-49 regarding Restructured Exposures is likely to be problematic and possibly irrelevant, particularly for non-bank sellers of Trade Receivables. It should also be noted that this information is only relevant for STS compliant transactions (under Art 24 (9) STS-Reg) and not explicitly captured under Art 7 (1) (a) or (e), which is the base for ESMA's mandate.

In addition, we believe that fields IVAL22-24 about principal, interest and floating rate, are not relevant for Trade Receivables assets. However, the template does not foresee the option to declare this information as not applicable ("ND 5") and therewith not mandatory.

A review of the information fields should be done to determine which ones are really mandatory. Some of the fields are probably not appropriate or relevant for all securitisations – especially non-regulated originators.

**Conclusion:**

If the above mentioned issues are not appropriately addressed before the disclosure standards become applicable, sponsors may feel that it is necessary to cease issuance, which could effectively stall the European ABCP market entirely. This would create very significant problems for all EU market participants: sponsor banks, investors, and sellers. Indeed, as indicated above, ABCP conduits are funding working capital of European companies and also support factoring activities through dedicated securitisation programs.

We feel that the lawmakers cannot have intended a disclosure requirement so burdensome that it is not practically possible for large numbers of issuers to meet it. ABCP conduits sponsored by European banks are funding real economy assets for the benefit of their clients. It is not reasonable to create a liquidity disruption in day to day funding of European companies due to disclosure requirements. We therefore respectfully urge you to take these issues into consideration.