



European Securities and  
Markets Authority

## Response form for the Consultation Paper on Third Party Firm



## Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper on Third Party Firm (ESMA33-128-108). Responses are most helpful if they:

- respond to the question stated;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all responses received by 19 March 2018.

## Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in the present response form.
- Please do not remove tags of the type <ESMA\_QUESTION\_TPF\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your response, name your response form according to the following convention: ESMA\_TPF\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_TPF\_ABCD\_RESPONSEFORM.
- Upload the form containing your responses, **in Word format**, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” → “**Consultation on draft technical standards on third-party firms providing STS verification services under the Securitisation Regulation**”).

## Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. **Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed.** A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.





### **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Data protection”.

### **Who should read the Consultation Paper**

The Consultation Paper may be of particular interest to investors, issuers, offerors or persons asking for admission to trading on a regulated market as well as to any market participant who is affected by the Third Party Firm.



## General information about respondent

Name of the company / organisation	True Sale International GmbH
Activity	Other Financial service providers
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

## Introduction

*Please make your introductory comments below, if any:*

<ESMA\_COMMENT\_TPF\_1>

TYPE YOUR TEXT HERE

<ESMA\_COMMENT\_TPF\_1>

**Q1** Fehler! Verweisquelle konnte nicht gefunden werden.

<ESMA\_QUESTION\_TPF\_1>

Yes, we agree.

<ESMA\_QUESTION\_TPF\_1>

**Q2** Fehler! Verweisquelle konnte nicht gefunden werden.

<ESMA\_QUESTION\_TPF\_2>

We generally agree with the statements made by ESMA on the third-party pricing model. In our opinion, the pricing model should be based on a fixed fee that covers the imputed standard expenditure involved in the verification of a transaction. However, from our experience the individual underlyings and transaction structures as well as the underwriting and servicing standards are of varying complexity. Particularly in complex structures, the work involved in the assessment cannot be estimated until the assessment is underway. In our opinion, the assessment of transactions that will qualify as simple, transparent and standardised also involve varying levels of effort. The pricing model should therefore provide scope for cases in which the actual effort of verification exceeds the calculated standard effort in order to be able to charge any identified additional work beyond the fixed fee in a transparent and comprehensible manner. In this regard, we are of the opinion that the additional effort should be quantified in hours worked and on the basis of a fixed hourly rate.

Any travel and overnight expenses are explicitly not included in the fixed fee described above for the verification of transactions. These should be directly passed on as expenses to the party commissioning the verification on the basis of travel guidelines yet to be developed.

A differentiation of the pricing model based on the result of the assessment should be ruled out on the basis of the third party's general terms and conditions.

<ESMA\_QUESTION\_TPF\_2>

**Q3** Fehler! Verweisquelle konnte nicht gefunden werden.

<ESMA\_QUESTION\_TPF\_3>

The independence of the third party should be evident from its governance. In this regard it should be assured that neither the shareholder nor any other third parties can influence the activity of the enterprise in the meaning of Article 28 of the regulation. The obligation to maintain independence should therefore be an integral part of the work contracts with the managing director of the third-party company and all employees and other board members.

We also agree that the third-party company should be largely free of other direct business obligations with the party commissioning the verification, although there is one exception here that should be taken into account: It should be possible for the third-party institution to assume all obligations for verification resulting from the regulation itself, as set out in Article 22 para 2, for example, because this enhances its view of the transaction and strengthens the quality of its verdict.

As regards dependence on individual customers, we would like to point out that the boundaries should not be drawn too tightly here because this would otherwise go at the expense of specialisation and professionalism. Thus, the specialisation of a third party certification body on transactions with auto loans and auto leasing as underlying, for example, would automatically restrict the circle of customers. Such specialisation, however, would benefit the quality of the verification to be performed. We therefore hold the view that the independence should be reflected primarily in the company's governance. In contrast, we believe that high granularity of client relationships is not always desirable from the point of view of quality and specialisation.

<ESMA\_QUESTION\_TPF\_3>

**Q4** Fehler! Verweisquelle konnte nicht gefunden werden.

<ESMA\_QUESTION\_TPF\_4>



Yes. Quality, professionalism and independence are closely connected with the management of the company. Here we would like to point out that in Germany there is a two-tier management system. Under existing laws, the independent directors would always have to be part of the supervisory board. However, the criteria presented should apply uniformly to both the management board and to all members of the supervisory board.

<ESMA\_QUESTION\_TPF\_4>

**Q5 Fehler! Verweisquelle konnte nicht gefunden werden.**

<ESMA\_QUESTION\_TPF\_5>

We believe it is important that the company bylaws, the company's internal business procedures and the work and employment agreements contain clear provisions on the independence of all stakeholders' actions in the meaning of Article 28 and the RTS, and that the company shareholders have no power to intervene in the third-party company's verification services and results. It is only through this organisational framework that the independence of the STS verification and the exclusion of conflicts of interests are legally codified. Furthermore, the processes should ensure that the certification verdict is free of any influence. If individual services are outsourced to third parties in the context of STS verification, it must be ensured that these services represent schematic and controllable acts of verification of factual circumstances not tainted by value judgements.

<ESMA\_QUESTION\_TPF\_5>

**Q6 Fehler! Verweisquelle konnte nicht gefunden werden.**

<ESMA\_QUESTION\_TPF\_6>

Yes, we agree with the approach of the ESMA.

<ESMA\_QUESTION\_TPF\_6>

#### **Questions to stakeholders regarding the preliminary cost-benefits analysis:**

**Q7 : Do you agree with the ESMA's preliminary analysis on the main costs and benefits of (i) the information to be submitted to the respective competent authorities and, specifically (ii) the information on the extent of outsourcing of the activities of the applicant applying for providing the STS verification services.**

<ESMA\_QUESTION\_TPF\_7>

With respect to the information to be submitted to the competent authorities, we agree with Option 2 ("flexible harmonisation option"). With respect to the information on the extent of outsourcing of the activities of the applicant applying for providing the STS verification services, we agree with Option 2 ("Explicitly include information on outsourcing arrangements").

<ESMA\_QUESTION\_TPF\_7>

**Q8 : Please provide quantitative estimates of the magnitude of expected one-off and ongoing costs of complying with the proposed RTS requirements (both at the time of application and thereafter)? When specifying and quantifying the costs please refer to the individual cost types as a percentage of applicant's current/budgeted operational costs.**

<ESMA\_QUESTION\_TPF\_8>

We expect the one-off costs involved in commissioning the verification of the STS criteria to be around EUR 25,000 – EUR 30,000 per transaction. As set out under Q2, this sum includes the imputed standard expense per transaction. This amount does not include possible additional costs resulting from any higher



effort of assessment, possible travel and overnight expenses and any cost allocation by the competent regulatory body that is to be borne by the third party company. The one-off cost of verification ends with the STS report from the originator or sponsor to the ESMA which, according to Article 27(2) of the regulation contains a declaration that compliance with the STS criteria has been confirmed by the accredited third-party company. The STS report contains the name of the accredited third-party company, the location of its branch and the name of the responsible authority that has accredited it.

For the moment we do not see any ongoing costs of verification for the third party company because the responsibility set out in Article 27 (4) of the regulation to immediately notify the regulator in case the STS criteria are no longer met lies with the originator or sponsor of the transaction. Should the third-party company perform verifications in this context, the hours worked should be settled on the basis of a fixed hourly rate, as set out in Q2.

The costs of operation incurred by the third party and their allocation to individual cost types is difficult and can only be estimated at this time. We assume that the costs of the third-party company are largely determined by the personnel expenditure for the management and the independent directors and by the company's employees. Depending on whether services are to be outsourced to a third party, personnel costs can be substituted by consultancy costs. Rental costs and consumption costs are also incurred, as well as costs of data processing, running a website, external accounting and tax consultancy, etc., which probably make up around 30 to 35% of total costs.

At this time it can be assumed that the breakeven point of the third-party company is reached after around 20-25 transactions per annum.

<ESMA\_QUESTION\_TPF\_8>