

MAY 8, 2018

For more information,
contact:

George M. Williams, Jr.
+1 212 556 2122
gwilliams@kslaw.com

Angela Hayes
+44 20 7551 2145
ahayes@kslaw.com

King & Spalding

New York
1185 Avenue of the Americas
New York, NY 10036-4003
Tel: +1 212 556 2100

London
125 Old Broad Street
London EC2N 1AR, UK
Tel: +44 20 7551 7500

EBA Releases New Consultation Papers on STS Securitisations

On April 20, 2018, the European Banking Authority released two new consultation papers dealing with the criteria for “simple, transparent and standardised” (STS) securitisations,¹ one for asset backed commercial paper² (ABCP-CP) and the other for all other STS securitisations (Non-ABCP-CP).³ The two consultation papers elaborate on some of the provisions contained in the European Union regulation regarding STS securitisations that was adopted on December 12, 2017⁴ along with amendments to the prudential requirements relating to securitisations for credit institutions and investment firms.⁵ They are also companion pieces to the December 15, 2017 consultation paper on draft regulatory technical standards for risk retention, which were also affected by Article 6(7) of the STS Regulation.⁶

The ABCP-CP and the Non-ABCP-CP proceed by working sequentially through the applicable provisions of the STS Regulation, with the aim in each case of distinguishing between provisions in need of substantial clarification, those in need of only minor clarification and those that are clear enough as written. The consultation papers overlap substantially, because numerous requirements in the STS Regulation apply to all STS securitisations.

Among the overlapping clarifications are those relating to:

- True sale, the required legal opinion, severe deterioration of the seller's credit quality and the insolvency of the seller;
- Representations and warranties;
- Asset eligibility criteria and the prohibition on active management;
- Requirements relating to the nature of the underlying exposures, such as homogeneity, their contractual representation and their generation of periodic payments, and the prohibition on holding transferable securities as assets;
- The prohibition on acquiring exposures in default or those issued or guaranteed by credit-impaired entities;



- Determining similarity of exposures and nature of underwriting standards;
- The requirement that at least one payment of any kind must have been made on each exposure acquired;
- The manner in which interest rates are referred to;
- Impermissibility of depending primarily on the sale of assets;
- The permissible means of mitigating interest-rate and currency risk, including derivatives and other types of hedges;
- Provision of full transaction documentation to investors;
- Determining the expertise of the servicer;
- Remedies on the default of a debtor and description of “clear and consistent terms”;
- Requirements relating to acceleration notices; and
- Data on historical default and loss performance.

Criteria pertaining only to ABCP include:

- Prohibition on resecuritisation exposures at the transaction level,⁷ including a discussion of what does and what does not constitute a resecuritisation exposure at that level;
- Standards relating to the expertise of the seller;
- Remedies upon the default of a seller;
- Triggers for terminating a revolving period;
- Disclosure of how a credit institution qualifies as sponsor;
- Limits on temporary non-compliance at the transaction level;
- Calculation of remaining weighted average life;
- Establishing credit enhancement without creating resecuritisation;
- Limits on the use of call options; and
- Documentation of the ABCP program and related management requirements.

Finally, criteria pertaining only to Non-ABCP include the following:

- Standards relating to the expertise of the originator;
- Non-sequential priority of payments;
- Early amortisation;
- Sample verification;
- Standards applicable to models of liability cash flows;
- Describing environmental performance;
- Resolving conflicts among classes of investors; and
- General compliance with transparency requirements.



The ways in which the ABCP-CP and Non-ABCP-CP further articulate the provisions of the STS Regulation emphasize the focus on the initial provision to investors of detailed information that is intended to allow them to better understand proposed transactions both before and after they invest in them, to simplify the analysis of transactions by reducing the amount of permissible variation and to increase confidence in the structurers and managers of transactions by requiring that they have at least a significant level of experience. During the recent financial crisis it was a common complaint that investors and regulators could not numerically evaluate the risks and performance of securitisations because they were structurally opaque; concerns were also expressed about the level of care devoted to certain securitisations. Neither the STS Regulation nor the consultation papers discussed here prohibit opacity or lack of attention; the STS Regulation does, however, lower the risk weight floors for STS transactions in the hope of increasing their attractiveness in comparison to non-STS transactions. The December consultation paper on risk retention furthers the emphasis on disclosure and management experience by clarifying that certain information referred to in the current risk-retention requirements must in fact be part of the initial disclosure to investors and requiring that to be an originator an entity must have the financial and managerial resources to engage in a broader business than just securitisation.

The closing date for comments on the ABCP-CP and the Non-ABCP-CP is July 20, 2018. There will be a public hearing on June 11, 2018.

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¹ British spellings are retained in this Alert for certain terms, in particular for those in quotations and the various forms of the term "securitisation."

² EBA/CP/2018/04 is available [here](#).

³ EBA/CP/2018/05 is available [here](#).

⁴ Regulation (EU) 2017/2402 (STS Regulation).

⁵ Regulation (EU) 2017/2401.

⁶ EBA/CP/2017/22 is available [here](#). An additional presentation entitled "CP on draft RTS on Risk Retention," was prepared for a public hearing on February 19, 2018 and is also available [here](#).

⁷ *I.e.*, the level at which the ABCP conduit acquires its exposures, as opposed to the program level, the level at which commercial paper is issued.