



## WHITE PAPER

March 2019

### ESMA Opinion Details Technical Standards for Securitisation Disclosures

With the aim of contributing to delivering a regulatory rulebook for European securitisation markets, the European Securities and Markets Authority (“ESMA”) has published an Opinion ([ESMA33-128-600](#)) containing a revised set of draft regulatory standards (“RTS”) and implementing technical standards (“ITS”) under the Securitisation Regulation that address which details of a securitisation need to be published by the originator, sponsor, and Securitisation Special Purpose Entity, as well as the relevant format and templates. The Opinion reflects ESMA’s response to the European Commission’s (“EC”) request for certain amendments to the disclosure RTS/ITS published in ESMA’s Final Report ([ESMA33-128-474](#)) in August 2018. Additionally, ESMA published a first set of Q&As ([ESMA33-128-563](#)) that covers technical issues on how to complete template fields.

In this Jones Day *White Paper*, we set out ESMA’s key proposals as amended in response to the EC’s request.

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Additionally, ESMA published a first set of Q&As ([ESMA33-128-563](#)), based on stakeholder feedback and questions on the disclosure ITS/RTS received by ESMA since August 2018, covering technical issues on how to complete template fields, which will be updated in due course.

In this Jones Day *White Paper*, we set out ESMA’s key proposals as amended in response to the EC’s request.

## CURRENT STATUS AND NEXT STEPS

Based on ESMA’s Opinion, the EC will adopt Delegated Regulations with regard to:

- RTS specifying the information and the details of a securitisation to be made available by the originator, sponsor, and SSPE; and
- ITS on the format and standardised templates for making available information and details of a securitisation by the originator, sponsor, and SSPE.

The templates enter into force according to the date set out in the Delegated Regulations that the EC will adopt. For the time being, reporting entities are invited to refer to the [statement](#)

made by the Joint Committee of the European Supervisory Authorities that makes reference to Article 43 of the Regulation (EU) 2017/2402.

## KEY OUTCOMES OF THE CONSULTATION AND THE OPINION

New templates were added on nonperforming underlying exposures, including collateralised loan obligations (“CLO”), securitisations (“Annex 10”), and esoteric underlying exposures (“Annex 9”).<sup>2</sup>

New templates were added on insider dealing and market manipulation relating to securitisations that must be made public under the Market Abuse Regulation<sup>3</sup> (“MAR”), also including significant events affecting the securitisation, addressing material changes in its structural features, changes to its risk characteristics and STS criteria, or where authorities have taken remedial or administrative sanctions (Annexes 14 for non-asset backed commercial paper (“ABCP”) securitizations and 15 for ABCP).

Regarding the “No Data” option, adjustments and clarifications to the template fields were made. In particular, ESMA has:

- adjusted the content to report for fields relating to borrower employment status, certain income-related fields (e.g., primary income, primary income type, primary income currency); the calculation method for the balance of the underlying exposure in arrears; the definition of “restructuring”; and fields relating to geographic regions;
- adjusted the collateral sections of the residential and commercial real estate templates to streamline the structures of these templates and remove several fields that became no longer necessary as a result of the restructuring;
- adopted a more closely adapted arrangement for risk retention signalling in ABCP securitisations.

Deviating from the initial proposal, the reporting entity designated among the originator, sponsor, and SSPE should be responsible for the creation of unique identifiers to track information across the securitisation/ABCP transactions instead of the securitisation repository.

## REPORTING ON UNDERLYING EXPOSURES

In the revised RTS draft specifying the information and the details of a securitisation to be made available by the originator, sponsor, and SSPE, ESMA has changed the structure of

reporting templates, which will be attached to the corresponding ITS, as set out in the table below with links to the relevant Annex. While maintaining the distinction between ABCP and non-ABCP securitisations, ESMA notably added Annexes 9, 10, 14, and 15<sup>4</sup>:

Securitisation type/exposure type	Underlying exposures	Investor report	Inside information/ Significant event
(a) Residential real estate	<a href="#">Annex 2</a>	Annex 12	Annex 14
(b) Commercial real estate	<a href="#">Annex 3</a>		
(c) Corporate	<a href="#">Annex 4</a>		
(d) Automobile	<a href="#">Annex 5</a>		
(e) Consumer	<a href="#">Annex 6</a>		
(f) Credit cards	<a href="#">Annex 7</a>		
(g) Leasing	<a href="#">Annex 8</a>		
(h) Esoteric	<a href="#">Annex 9</a>		
Add-on non-performing exposures	<a href="#">Annex 10</a>		
ABCP	<a href="#">Annex 11</a>	Annex 13	Annex 15

## ESOTERIC SECURITISATIONS

ESMA's new "esoteric securitisation" template aims to capture essential information on all underlying exposures, which is not captured in the existing templates (a)-(g). It contains two sections: (i) underlying exposure-level and (ii) collateral-level information. As with the other templates, the sections should be completed for each underlying exposure and each item of collateral securing each underlying exposure.

ESMA emphasises that not all fields will be relevant for each esoteric underlying exposure (such as electricity tariff receivables, postal pensions, or future flows). In that case, the use of the "No Data" option "ND5" (i.e., "not applicable") remains available. The proposed template applies to non-ABCP securitisations only. Regarding ABCP securitisations, all "other" underlying exposure types shall be reported by using the ABCP underlying exposures and investor report templates.

## ADD-ON NONPERFORMING EXPOSURES

With regard to nonperforming exposures ("NPE"), ESMA confirmed the approach set forth in the RTS/ITS published in ESMA's Final Report, where it is provided that, in case the securitisation is a nonperforming exposures securitisation, the reporting entity shall make available the relevant information using the applicable standardised templates (as relevant to the underlying exposure type) and also a separate template that complements the generic underlying exposures templates ("Annex 10"). To establish whether an exposure qualifies as NPE, the following hierarchy of definitions should be applied:

- Paragraphs 145-162 of Annex V of Regulation (EU) 2015/2275
- Where point (a) does not apply, Appendix A of Regulation (EU) 2016/20676 (credit-impaired financial assets)
- Where points (a) and (b) do not apply, national Generally Accepted Accounting Principles developed under Council Directive 86/635/EEC7 (credit-impaired financial assets)

Further, ESMA proposes additional sections for NPE securitisations:

- An underlying exposure information section, containing fields that are of “critical” relevance for due diligence of NPEs (e.g., “Date of Insolvency Practitioner Appointment,” “Date of Obtaining Order for Possession,” “Start/End Date of Interest-Only Period,” “Last Payment Date,” “Syndicated Portion”);
- A collateral-level information section to be completed for each collateral item backing each NPE, including the current enforcement status over the collateral, whether any other secured creditors have taken steps to enforce security over the asset, and the percentage of completion of the property construction;
- A historical collections information section to be completed for each NPE on a monthly basis, going back 36 months prior to the data cutoff date. The fields in this section are: “Legal Unpaid Balance at month n,” “History of Past-Due Balances at month n,” “History of Repayments—Not from Collateral Sales at month n,” and “History of Repayments—From Collateral Sales at month n.”

## COLLATERALISED LOAN OBLIGATIONS

With regards to collateralised debt obligations (“CDOs”) and collateralised loan obligations (“CLOs”), ESMA did not propose a dedicated template as discussed in the Consultation Paper (“CP”). However, the “Corporate” template now includes the date at which the underlying exposure was added to the pool, key balance sheet variables on the obligor (e.g., EBITDA, enterprise value), as well as any put options for the CLO manager to sell back the underlying exposure to the seller and any underlying exposure-level swaps in place. ESMA rejected stakeholder concerns that CLO managers would not have all information available and proposed that, in principle, they should provide information on the jurisdiction of the originator/original lender, origination channel of a loan, its origination date, and its original principal balance. CLO securitisations should complete:

- The relevant template for each underlying exposure in the pool (as with other non-ABCP securitisations);
- An additional securitisation section on the type of CLO, on the current period in which the CLO securitisation is in (e.g., warehousing, ramp-up, reinvestment, post-reinvestment/

wind-down), as well as possible restrictions on the CLO manager’s actions;

- An additional CLO manager template on the size of the CLO manager in terms of assets under management, capital, employees, as well as its operational arrangements (e.g., pricing frequency and time needed for settlement) and the performance of its CLO securitisation-related investments in recent years.

## CONNECTION BETWEEN RISK-RELATED FIELDS AND THE CRR

With regards to the risk-weighted assets calculation under the SEC-IRBA, ESMA proposes to remove the probability of default (“PD”) and the loss given default (“LGD”) fields from the underlying exposure templates. To ensure comparability and that a “frequency distribution” is made available to institutional investors: (i) a weighted-average PD measure for the securitisation exposures and (ii) a set of six fields for PDs to capture the relative amounts of exposures falling into each category should be disclosed at the level of the securitisation transaction.

## REPORTING OF ABCP UNDERLYING EXPOSURES SEGMENTED AT TRANSACTION LEVEL

Emphasising that transaction-level information should help investors and authorities effectively monitor and perform due diligence on ABCP transactions—in particular on the strength and robustness of any support arrangements (e.g., liquidity facilities, swaps, and/or guarantees), as well as the financial strength of the originator—ESMA has removed certain fields that were highlighted by market participants as problematic with regard to confidentiality (e.g., name and Legal Entity Identifier of the originator). Moreover, certain fields from the ABCP programme-level information section have been inserted in the ABCP transaction information section as well (e.g., “Overcollateralization” and “Excess Spread”). Insertions and clarifications were also made on “Maximum Funding Limit” and “Purchased Amount.”

ESMA has also removed a number of fields that, given market practices, were deemed too detailed, such as “Originator Affiliate,” “Primary Income Type,” “Number of Payments Before

Securitisation,” “Current Interest Rate,” “Syndicated,” “Lien,” as well as risk-related fields on PD, LGD, and “Risk Weight Approach” (see above).

As for reporting of inactive exposures—such as loans that have defaulted with no further recoveries expected or loans that have been redeemed, prepaid, cancelled, repurchased, or substituted—ESMA states that it is appropriate for respective information to be reported only once, in order to allow transparency on their transition from an “active” to “inactive” status, but to be reported no longer thereafter.

## INVESTOR REPORTS

In view of adjustments to the investor report section, ESMA stated that it will undertake to provide further clarity and adjustments on the templates in specific situations, including:

- Clarifications of certain field descriptions (e.g., “Arrears,” “Purchased Amount,” “Maximum Funding Limit,” “Annualised Constant Default Rate”);
- Modification of certain field options; for example, including more accurate categories in {LIST} fields (e.g., “Liquidity Facility Type” and “Counterparty Type”);
- Deletion of certain fields that appeared to overlap with others (e.g., “Currency of Receivables Transfer Limit”) or that appeared not to be widely used (e.g., ABCP programme-level fields, such as “Security Name,” “Current Overcollateralisation,” “Securitisation Excess Spread,” “Letter Of Credit Provider Name”);
- Insertion of certain fields on tranches/bonds, such as “Tranche/Bond Disbursement Date,” “Coupon Floor,” “Coupon

Cap,” “Day Count Convention,” as well as fields in the “Tests/Events/Triggers” information section, including “Test/Event/Trigger Level” and “Test/Event/Trigger Value”; and

- Adjustments with regards to the scope of reporting for the “Tranche/bond-level information section” to include all tranches defined in the Securitisation Regulation, as well as subordinated loans.

In the absence of visible transactions in the EU, ESMA does not see a need to develop reporting requirements and a standardised reporting template for potential synthetic ABCP securitisations.

Originators, sponsors, or SSPEs may also provide the same information via a second investor report format. However, for the purposes of satisfying the requirements of the Securitisation Regulation (in this context Article 7(1)(e)), Annex 13 is required to be completed as set out in the RTS and ITS.

## “NO DATA” OPTIONS

ESMA emphasised that it is important that investors understand why certain data is not provided when carrying out a due diligence. Hence, supervisors could pay particular attention to whether any “No Data” options are being used appropriately by reporting entities. In light of the Commission’s request, however, ESMA significantly expanded the ability for reporting entities to use the “No Data” options in the disclosure templates. The basis for making these adjustments has been the Commission’s request, as well as market feedback received. The table below summarises the “No Data” options and their definitions:

No Data Option	Explanation
ND1	Data not collected as not required by the lending or underwriting criteria.
ND2	Data collected on underlying exposure application but not loaded into the originator’s reporting system.
ND3	Data collected on underlying exposure application but loaded onto a separate system from the originator’s reporting system.
ND4	Data collected but will only be available from YYYY-MM-DD (YYYY-MM-DD shall be completed).
ND5	Not applicable.



While providing examples where the use of “No Data” options is acceptable, the ND1-ND4 options, in principle, should not be used in the investor reports, inside information, or significant events.

**ABCP.** ESMA, however, has expanded the possibility for “No Data” options to be used in the majority of fields relating to the ABCP underlying exposures templates and adjusted the use of “No Data” options for several fields under the control of the sponsor/originator in the ABCP investor report and significant event templates.

**Non-ABCP.** ESMA also expanded the ability for reporting entities to use the “ND5” option in 102 additional fields across the combined non-ABCP securitisation templates (i.e., underlying exposures, investor report, inside information, and significant event templates). ESMA further notes that the NPE add-on template provides already extensive flexibility to use “No Data” options throughout the templates for all fields not related to identifiers and the data cutoff date.

## DATA CUTOFF DATES

ESMA proposes to maintain the data cutoff date provisions as set out in the CP, clarifying that the data cutoff date of the ABCP programme may not be older than one month before the report submission date, while the data cutoff date of each ABCP transaction may not be older than two months before the report submission date (i.e., in line with the practices for non-ABCP securitisations).

## SCOPE OF THE REPORTING REQUIREMENTS ACROSS PUBLIC AND PRIVATE SECURITISATIONS

In light of recital 13 of the Securitisation Regulation—which provides for the possibility to exempt private securitisations (for which “no prospectus has to be drawn up in compliance with the Prospectus Directive”) from the requirement to notify information to a securitisation repository—ESMA has stated that using the technical standards as a vehicle for defining different categories of information to be provided for public versus

private securitisations, on the basis of “the holder of the securitisation position,” would not be within its mandate. While the distinction between “private” and “public” securitisations only appears in Article 7(2) of the Securitisation Regulation—which concerns, *inter alia*, where the information in these reporting requirements and templates must be made available (i.e., to a securitisation repository)—no distinction is made regarding the degree of transparency being provided under Article 7(1) to investors, potential investors, and competent authorities for private relative to public securitisations.

In regard of public transactions that have already been initiated, and that are envisaged to be closed before the provisions relating to the securitisation repositories enter into force, the relevant information may be disclosed on a website that complies with the requirements set forth by Article 7 of the Securitisation Regulation.

## CONCLUSIONS

Compared with its original proposals, ESMA’s new approach shows some significant enhancements, in particular with regard to the clarifications of the “No Data” options and the fine-tuning of the NPE definition.

In view of the ABCP templates, another positive aspect is that due to the EC’s action, severe drawbacks in the ABCP conduit market were avoided, as sponsors of ABCP conduit programmes responsible for compliance with the transparency requirements would have no contractual right to request all of the formerly envisaged information from the sellers to the ABCP conduits. This could have led to making ABCP conduits refrain from making new issuances, as it would have been difficult for sponsors to comply with completing the draft disclosure templates in full.

However, market participants are left with a number of open questions, which might partly be resolved in the Q&A (for example, how reporting should be performed for private securitisations). Other areas where guidance has not been provided yet are STS notifications, commercial real estate (“Annex 3”), Leasing (“Annex 8”), and Esoteric (“Annex 9”).

## LAWYER CONTACTS

For further information, please contact your principal Firm representative or the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at [www.jonesday.com/contactus/](http://www.jonesday.com/contactus/).

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## ENDNOTES

- 1 Regulation 2017/2402 of the European Parliament and of the Council laying down a general framework for securitisation and creating a specific framework for simple, transparent, and standardised securitisation.
- 2 Such templates were already included in the Final Report of 22 August 2018.
- 3 Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation).
- 4 In its Final Report, ESMA initially proposed separate templates for inside information and significant events which are now merged (Annexes 14 and 15).
- 5 [Commission Implementing Regulation \(EU\) 2015/227](#) of 9 January 2015 amending Implementing Regulation (EU) No 680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions, according to Regulation (EU) No 575/2013 of the European Parliament and of the Council.
- 6 [Commission Regulation \(EU\) 2016/2067](#) of 22 November 2016 of the European Parliament and of the Council as regards International Financial Reporting Standard 9.
- 7 [Council Directive 86/635/EEC](#) of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions.

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