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Group Briefing
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Securitisation Reform: Agreement reached

On 30 May 2017, provisional agreement was finally reached between the EU Council, the European Parliament and the European Commission on the changes to the European securitisation market originally put forward by the Commission in 2015.

BACKGROUND

» ***Capital Markets Union:*** In September 2015, the Commission's Action Plan on Building a Capital Markets Union (the **CMU Action Plan**) highlighted the benefits that would result from a safe revival of European securitisations to pre-financial crisis issuance levels, and from the re-building of the SME securitisation market.

» ***Commission proposals:*** As part of the CMU Action Plan, the Commission emphasised the importance of securitisation as both a funding tool and a risk-transfer tool. It signalled its intention to *"[revitalise] simple, transparent and standardised European securitisations to free up capacity on banks' balance sheets and provide access to investment opportunities for long term investors"* and published draft proposals for both an EU framework for simple, transparent and standardised (**STS**) securitisation, and for an amended Capital Requirements Regulation (**CRR**).

» ***Reaction:*** The Parliament proposed certain (and occasionally controversial) changes to the Commission's draft STS Regulation, with proposals to increase the minimum retention level to 10% or 20% causing considerable concern.

The provisional agreement reached last week provides welcome certainty for market participants and their advisors that the proposed reforms are progressing, and about the shape that those reforms will take.

KEY POINTS AGREED LAST WEEK

» While considerable work needs to take place on updating the draft Regulations to take account of the key points agreed last week, there is now more clarity on the following points in light of the statements released by the EU Council, Commission and Parliament:

» ***Retention:*** The risk retention level will remain at 5%. An ability for the European Systemic Risk Board to review the retention level (and recommend any necessary changes) is expected to be built-in to the STS Regulation.

» ***Investors:*** It appears that investments in securitisations will be capable of being made by professional investors, and by retail investors who pass a suitability test and who have a portfolio of <€500,000 – those retail investors will be allowed to invest up to 10% of that portfolio (subject to a minimum investment of at least €10,000). The *'securitisation seller'* will be responsible for ensuring compliance with the conditions around investments by those retail investors, and the Parliament's press release indicated that institutions issuing securitisations will be required to apply strict credit granting criteria to exposures that they want to securitise.

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

» ***Ability to benefit from STS securitisation regime:*** It appears that the availability of the STS securitisation regime will be limited to deals where each of the issuer, originator and sponsor is established in the EU. This will present significant issues for the United Kingdom in light of Brexit unless it is addressed as part of the Brexit negotiation process. A 'light-touch' authorisation process will be put in place for third parties that assist in verifying compliance with STS securitisation requirements, with the aim of preventing conflicts of interest. However, even if a third party is involved in the verification of STS securitisation compliance, the liability for ensuring such compliance will remain with originators, sponsors, original lenders and securitisation special purpose entities.

» ***Ban on re-securitisations:*** Re-securitisation will not be allowed for new issuances after the STS Regulation comes into force (subject to certain exceptions (in particular in respect of asset-backed commercial paper) which will be subject to approval by the relevant competent authority).

» ***Data repository:*** A data repository system (accessible to competent authorities and professional investors) will be created for securitisations with the aim of increasing transparency. Private securitisations will be out-of-scope.

» ***Regulated entity:*** The proposal that at least one of the originator, sponsor or original lender be a regulated entity.

» ***Investor details:*** The proposal that regulated investors be required to provide information on their securitisation holdings and beneficial ownership.

PROPOSALS THAT DID NOT FORM PART OF THE AGREEMENT REACHED LAST WEEK

Certain proposals put forward since the draft STS Regulation was first published in 2015 were not agreed to, and did not form part of the EU-level agreement reached last week, including:

NEXT STEPS

The text of the STS Regulation will now need significant work to reflect the terms of the agreement. The text of the Regulation that will amend the CRR to provide for a more risk-sensitive approach to the regulatory treatment of STS securitisations will be finalised at the same time, and the Permanent Representatives Committee of the Council of Ministers is expected to endorse the agreed texts, which will then move to the Parliament for a vote. The position on transitional arrangements and grandfathering will become clearer over time (divergent approaches have been proposed at EU level on those matters to date). It is difficult to predict how long this process will take, or when work will begin on the related Level 2 measures, but we will issue further updates as the developments occur.

In the meantime, please contact Cormac Kissane, Glenn Butt, Aiden Small, Phil Cody or Rob Cain if you would like to discuss these developments further.

KEY CONTACTS

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