Setting the standard
for securitisation

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Dear Sirs/Madams 15th March 2024

We would like to thank ESMA for the opportunity to respond to its December 2023 consultation paper on disclosure standards under the Securitisation Regulation (the "Consultation"). We believe that, with other necessary reforms around the rules that govern European securitisations, an improvement in the disclosure regime, able to fulfil the needs of investors and supervisors for transparency, without unnecessary and costly additions, is essential for securitisation to play the vital role of financing Europe's future.

GENERAL CONSIDERATIONS

Before responding to the specific queries raised by ESMA in the Consultation, we think it is worth briefly reminding ourselves of what is at stake and why we are here. We would also like to address conceptually some of the concerns that run through the entire document.

What is at stake?

The triple transition and strategic autonomy

Europe finds itself facing a daunting challenge: the triple transition of green, digital and competitiveness. Looking at the deteriorating climate situation, the geo-political events taking place across the Atlantic, in the South China Sea and across the European Union's eastern border, it also faces this triple challenge in an increasingly unforgiving environment. This underpins the desire of European policy makers to achieve some form of strategic autonomy. This may appear to be an overdramatic opening to what is, after all, a response to a deeply technical consultation on the use of ND fields in disclosure templates. But we believe it is vital, when framing these technical standards, to remember what is at stake.

The Eurogroup estimates that the financing of the triple transition will require additional funding of ***€988 billion every single year*** till 2030. The European Commission has put the cost of the green transition alone at an additional €670 billion a year.

It is almost unanimously accepted that this financing cannot be provided without, amongst other developments, the creation of a robust capital markets union (“CMU”).

The ECB has joined the voices that, for a number of years now, have pointed out that – on the fixed income side – any CMU must pass by the revitalisation of the European securitisation market[1].

For reasons PCS has set out in other publications[2], we believe there is an unimpeachable case for the argument that, by allowing banks to manage their capital (especially in the face of the final Basel implementation) whilst simultaneously generating high quality fixed income instruments to channel European savings into the CMU, securitisation is the only tool that can generate a deep enough capital market in the time we still have to meet the triple transition challenge.

It is also the universally held view of stakeholders – with the backing it would appear of the European Central Bank[3] – that miscalibrated regulations are one of the, if not the, primary reason for the failure of the European market to revive. Any such revival must pass through an increase in the number of originators willing to issue and the number of investors willing to purchase high quality securitisations. Without questioning the wisdom of having some baseline mandated disclosure requirements, the current complexity and inflexibility of the data required to be disclosed is one of the many, in our view, unnecessary barriers that deter new originators from participating in the market. In the case of some financial institutions or in the case of some asset classes for a given institution, the absence of a small and non-essential data set in their records could simply prohibit the issuance of an otherwise high quality, low risk, securitisation.

So, if the issue of disclosure templates may appear a dry one, the stakes in getting them right are very significant.

“Why are we here?” and the need for a holistic approach

PCS is aware that regulatory authorities such as ESMA may only make rules pursuant to primary legislative mandates. We are also aware that the European Commission has asked ESMA to examine the disclosure requirements set out in Article 7 of the Securitisation Regulation. ESMA has no authority to create disclosure rules for other instruments nor, to our knowledge, has it been asked to address disclosure levels for other capital market instruments.

[1] “A Kantian shift for the capital markets union” Christine Lagarde, Nov. 2023 (https://www.ecb.europa.eu/press/key/date/2023/html/ecb.sp231117~88389f194b.en.html) and “Statement by the ECB Governing Council on advancing the Capital Markets Union”, ECB, March 2024 (https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.pr240307~76c2ab2747.en.html)

[2] “Securitisations, Europe’s categorical imperative” PCS, Feb. 2024 (https://pcsmarket.org/wp-content/uploads/Securitisations-Europes-categorical-imperative.pdf)

[3] This is explicitly mentioned in the Governing Council statement - See footnote 1.

It is also the case though that no other capital market asset class has remotely the level of mandatory disclosure imposed on securitisations.

The reasons are well known: in 2007/2008, badly structured opaque securitisations ***from the United States*** suffered enormous credit losses, triggering the Great Financial Crisis ("GFC"). Quite rationally, the first wave of regulations imposed enormous disclosure obligations of all securitisations. However, as became subsequently apparent, traditional European securitisations performed extremely well. In the traditional asset classes that form STS today, not a single euro of loss was suffered on the senior tranches anywhere in Europe. This was notwithstanding the dire economic circumstances encountered in many European jurisdictions.

This is not to argue that mandatory disclosure requirements are not useful and protective. It does though point out that the discriminatory nature of these disclosure requirements, falling as they do only on securitisations and not on any other asset-dependent fixed income instrument, is not based on actual credit performance. This produces what is a deeply uneven playing field where some instruments are subject to much heavier and costlier regulatory rules than other instruments despite similar performances.

The problem of the lack of a level playing field is that it creates regulatory arbitrage, as the market gravitates to the less regulated cheaper instruments. This distorts the markets and potentially generates systemic risks.

For these reasons and bearing in mind that we recognise ESMA's limited mandate, we therefore urge ESMA when considering changes to the article 7 disclosure regime to use a holistic approach. By this we mean that, when determining whether a particular data point should be required on a mandatory basis, ESMA does so not only in isolation but taking account of the impact of such decision on the existing regulatory arbitrage and therefore on the European capital markets as a whole rather than solely in the securitisation silo.

The Scope of the Task

Compliance with mandatory disclosure requirements imposes a cost on potential originators. As such it has a deterrent effect on financial institutions considering the securitisation market. If certain data are required that are not available, this will be a fatal barrier to potential securitisations. Considering the importance of revitalising the securitisation market, this is not trivial.

At the same time, investors purchasing securitisations without key information allowing them to ascertain the credit risk of their investments creates potential systemic risks if the asset class is sufficiently widespread. This was the rationale behind article 7.

Therefore, PCS believes that a proper balancing of these two considerations must take place, leading ESMA to the proportionate response it and the European Commission seek.

It is worth remembering also that investors can and do ask for additional information in cases where some idiosyncratic aspect of the transaction makes it appropriate.

It is also worth remembering that investors in all other asset classes in fixed income are trusted to ask for relevant information. It would be strange for regulatory authorities to rely on investor discretion and professionalism when investing, as an example, in a bond backed by a gold mining project in an emerging market in the throes of a civil war but determine that ***all*** such discretion must be eliminated when that same investor purchases a senior tranche of a AAA STS German auto transaction with a flawless credit performance throughout the GFC.

Therefore, we urge ESMA not to see the scope of mandatory disclosure as encompassing all and every possible data point that could ever be of interest to each and every investor in every possible permutation of assets and structures, "just in case". On the contrary, it seems to us that the logic behind the legislative intent in setting *mandatory* disclosures is not for the co-legislators and the regulatory authorities to substitute themselves for the investor community but to set a floor. That floor should be one beneath which a reasonable investor would not feel confident in making a reasonable investing decision.

PCS is not an investor or an originator

Although, through daily dealings with investors and originators, PCS has a strong sense of the issues behind mandatory disclosure, we are obviously neither. As a result, in our response to the Consultation, we will put forward considerations of a general nature but will have nothing to say on highly specific aspects of the templates such as the appropriateness of given ND fields. This is better left to stakeholders.

Current use of the ESMA mandated templates

ESMA acknowledges in the Consultation that investors and potential investors tend to make limited use of the SR data.[4] We think this may understate the issue. In PCS' interaction with investors, we have never encountered an investor who has ever made use of an ESMA template downloaded from a SR. Although admittedly anecdotal, these interactions range from STS AAA senior tranche only investors buying "cash equivalent" paper to funds with high return thresholds purchasing the lowest tranches. The European Data Warehouse's own data bears out the small use made of the securitisation repositories.

Anecdotal evidence gathered by PCS also indicates that no investor believes all the data required in the ESMA template is useful. This strongly suggests that even those investors and potential investors who do download templates do not make use of the template in its entirely.

[4] Paragraph 43

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We also are not convinced that the conclusion drawn by ESMA follows. That conclusion is that, since investors never look at the templates, their comments on those templates' efficacy may be limited.[5]

The templates have been around for three years. Every investor has had the opportunity to look at them, at least once. The fact that very few do so can only lead to the conclusion that, for whatever reason, they are not fit for the purpose for which the legislation designed them.

This fact alone would justify a serious look at their format, content and structure. We are not, obviously, suggesting that the data contained in the templates or mandated pursuant to article 7 is not, in part at least, used by investors or that no data should be mandated. Clearly, some of the mandated data would be considered essential by any investor. But the templates as designed do not work. This leads us to the idea of an investor council.

Investor Council

Taking into account our comments in "Scope of the task" and "Current use of the ESMA mandated templates" as well as our reflection that we are not well placed to substitute for professional investors – and would respectfully suggest neither are supervisory authorities – we would strongly urge ESMA set up a permanent investor council. This council could be composed of very experienced securitisation investors. ESMA may also add, if it believes this to be appropriate, a selected group of credit rating agencies. These investors (and, possibly, CRAs) would guide ESMA in determining what a "reasonable" investor would consider to be the minimum required data set needed for a credit decision on a traditional securitisation.

An advantage of such a council, beyond asking those with expertise how to meet the aims of the Securitisation Regulation, would be its capacity to react to changes in the market – such as new asset classes or structures. This would allow ESMA to adapt the templates as needed and avoid being "gamed" by the market.

We would also suggest that ESMA bring on board originators to sound out their reactions to the conclusions of the investor council. All decisions around disclosure, as we have written, involve a balance between the benefits in systemic stability and investor protection and the costs in constricting an economically necessary securitisation market. Therefore, an investor council "nice-to-have" suggestion might be rejected if the cost of providing it is prohibitive or would dramatically reduce issuance in a given asset class without commensurate systemic benefits.

We have noted the need expressed by regulators also to have information at their disposal so as to fulfil their mandates. We deal with this later in this response. But we assume that ESMA already has fora in place to gather this information.

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[5] Paragraph 44

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Third Country Securitisations

As an initiative set up to revive the securitisation market in Europe, PCS does not have an official position on the treatment of third-country securitisations. When our views have been requested, we have suggested that the current absolute exclusion unless full compliance with EU standards was achieved seemed in excess of what was required to protect EU investors and financial stability.

However, based on discussion with third-country originators, notably in Australia, it seems that many of the issues relating to disclosure flow from the excessive burden imposed by the current rules. Should, as we advocate, a proper revision along Options C or D be effected, we suspect many of the issues currently faced by third-country originators would abate.

SPECIFIC CONSIDERATIONS

Private vs Public

Hiding in the shadows?

First, we would like to address the concern [6] that the growth in private transactions may reflect a desire by originators to avoid disclosure and thus leave regulatory authorities "in the dark" about possibly negative trends. PCS' experience in its STS work does not bear this out.

In 2023, out of all PCS' STS verification mandates, 50% were private. However, out of those private transactions, 12.5% were ABCP transactions and 16.5% were synthetic securitisations. ABCP and synthetic securitisation have always been private and so their numbers in no way reflect a move away from public deals.[7]

This leaves only 21% of transactions that, in theory, could have been public. In practice though, this is not the case. The vast majority of these transactions are warehouse transactions off banks' balance sheet. These types of transactions were never public. In fact, until the broad legislative definition of "securitisation" became law, few would have even thought of warehouse lines as part of the world of "securitisation". Some remainder transactions were on-balance sheet transactions identical commercially to ABCP transactions but conducted by banks that do not have a conduit. Again, these transactions were not public prior to the coming into force of the Securitisation Regulation.

Nothing in our experience indicates meaningful, if any, movement away from public to private. Even less, one driven by a desire to avoid disclosure.

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[6] Paragraph 26

[7] Technically, some synthetic transactions in the past were public via credit linked notes. The CLN market has all but disappeared but for reasons unconnected to disclosure issues.

Regulatory concerns

PCS acknowledges and agrees with the concern of regulators that a lower regulatory disclosure regime will leave them less able to monitor developments in the market and therefore any possible build-up of systemic risk.

It also acknowledges and agrees with the comments of investors and CRAs that similar deals require similar disclosures irrespective of whether they require a prospectus. This renders odd the concept of lower disclosure standards for private transactions.[8]

Originator concerns

PCS also has great sympathy for the argument put forward by banks entering into private securitisations that they already have robust underwriting criteria and procedures for their ABCP or on balance sheet lending and that, other than costs, nothing is added by a duplicative disclosure process. This is particularly true for instruments which, as we have seen, did not suffer any meaningful credit deterioration during the GFC and since. This credit performance strongly supports the idea that existing underwriting processes were and remain more than sufficient to the task.

These concerns are heightened in the case of banks that compete internationally and where the additional costs imposed by disclosure requirements on potential ultimate borrowers will lead them to select a non-EU bank with which to transact. This is particularly true of ABCP conduits.

A possible and complete solution

PCS does not believe that these two positions are in fact in opposition. We note that the arguments about robust underwriting are made in the context of ABCP, bank warehouses and on-balance sheet bank lending. In other words, for securitisations where the credit risk (and thus the due diligence obligations) lies with a prudentially regulated banking institution.

We also note that the concerns of the investors and the CRAs are only relevant in cases of a rated instrument with an outside investor.

Finally, the concern of regulators quite rightly focuses on the emergence of an opaque unregulated securitisation market. But securitisations where the credit risk lies with banks and which are structured by banks are not opaque to prudential regulators. These transactions are conducted by prudentially regulated entities. All information needed is available to prudential regulators. The underwriting criteria and processes – including the sufficiency and adequacy of disclosure – is overseen by the prudential regulator. Presumably, these have met the relevant prudential regulator's standards under its Pillar 2 oversight. For these types of private securitisations there is no possibility of an

[8] Paragraphs 38 and 137

opaque and unregulated market. Also, as the investor is a bank and most of these transactions are unrated, the investor and CRA issues are moot.

On the other hand, securitisations which are private by dint only of the absence of a prospectus but placed with investors that are not prudentially regulated do create the possibility of an opaque and unregulated market. Equally, such securitisations do have investors whose concerns in not receiving as much information as they would otherwise need are legitimate.

Therefore, it would seem the best approach would be to provide two sets of templates. One for securitisations structured by prudentially regulated banks where they are the ultimate investors (including ABCP since the risk always lies with the sponsor). The other for capital market securitisations – ie everything else.

The first template could be extremely short since regulators already have access to all the relevant information. The second should be minimally different, if even that, from the public transactions template.

Finally, as a general point, we strongly urge ESMA to work with other regulatory bodies to agree a single template. Currently, especially bank funded transactions and synthetic securitisations require the completion of multiple templates: ESMA, ECB, local regulators (AFM, Consob, etc…). All are differently drafted but serve the same purpose of providing basic information about private transactions. Although we would not wish this standardisation effort to cause a delay in the revision of the existing ESMA template, it should be sought.

Loan Level Data (LLD)

ESMA noted in the Consultation that views on LLD were mixed. It stated that feedback was not unanimous on the side of investors and supervisors.[9]

Obviously, as PCS is not privy to those discussions, we cannot tell from the Consultation whether the desire for LLD expressed by some stakeholder was in respect of all asset classes. Nor do we know what proportion of stakeholders favoured one option over the other.

First, though, and in line with our comments above[10], we believe that the task at hand is to set a reasonable floor such that a reasonable investor (as defined by a broad consensus of experienced investors) believes he or she has sufficient information to make a reasonable assessment of the risk of a securitisation instrument. Therefore, ESMA should not move forward with a simplification of the disclosure requirements only upon reaching unanimous approval for such a change.

[9] Paragraph 39
[10] "Scope of the task" and "Investor Council"

This approach, which does not seek to eliminate investor discretion, is also a response to the concerns expressed by ESMA that "some investors" may ask for more[11]. It is not the task of article 7 to cover any possible investor's requirements before they can be made. An investor coming up with an idiosyncratic request no other investor has thought of and which is not in the mandatory disclosure is not a sign that ESMA has failed in its design of the article 7 templates. If an investor does ask for additional information, the originator can elect to provide it or decline to have that investor in its distribution.

Secondly, based on conversations with investors (and credit rating agencies) going back many decades, the staff at PCS has no doubts that almost no – in fact, probably no – investor would ever express the view that LLD was unnecessary in any securitisation. We are not aware of any investor who would not insist on loan level data for RMBS, CMBS or CLOs.

Thirdly, PCS would be extremely surprised if there was any meaningful support amongst investors for LLD on granular pools such as credit cards, trade receivables or consumer loans.

This is where we would invite ESMA to turn to an investor council and remove the LLD requirements for all asset classes where all or almost all investors (and credit rating agencies) agree that they do not rely on such data in doing their analysis. In such cases, the LLD is literally useless as no one looks at it.

We also are unconvinced by the argument set out in paragraph 145, that supervisors have not had sufficient time to gauge the usefulness of LLD disclosure. Even if this is true, we draw attention to the following facts: (a) heavy and costly data disclosure is a limiting factor in the growth of a securitisation market deemed essential to funding Europe's future; (b) for decades, all experienced investors and credit rating agencies have not used LLD for granular pool analysis; (c) the performance of these European securitisations without LLD analysis has been flawless during and after the GFC. So, balancing the costs and benefits, PCS struggles to find a justification for supervisors asking, at real cost to the economy, for information that has not been needed or useful to a successful investor community "just in case" it might turn out to be useful at some point in the future. This is even more so when considering the lack of evidence adduced for that proposition.

The Consultation also points out that LLD remains a requirement of the Eurosystem.[12] This is noted but irrelevant. The purpose of article 7 is to ensure that investors have sufficient information to make a reasonable analysis of the credit risks embedded in a securitisation. It is not the purpose of the legislation to provide information necessary for a securitisation to be proffered as collateral to a central bank. We also note that central bank collateral rules can and do change and such changes can be effected rapidly. Changes to article 7 templates take a considerable amount of time.

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[11] Paragraph 80

[12] Paragraph 146

Costs and Survivor Bias

In the Consultation, ESMA quite rightly broaches the issue of the costs to originators of any changes to the mandated information. We are aware that a number of originators have suggested that, since all the costs of retooling their IT systems to generate all article 7 data had been incurred, they would be satisfied with no changes to the current regime.

First, PCS would point out that this set of data (ie originators' responses) is a classic case of what is known in statistical analysis as "survivor bias". "Survivor bias" occurs when data is collated not from the whole set but only from a sub-set defined as those that have "survived" a relevant event but is then used to describe the full set. Basically, ESMA sensibly reached out to originators in the market. However, the fact the respondents were still originators meant, by definition, that they are entities able to collate all article 7 data. Not included in the survey – again quite logically – were all the originators that had not "survived" article 7's introduction. This group includes issuers that dropped out of the market because – inter alia – of the cost of complying with the disclosure requirements and any potential originator who gave up accessing the market when they were presented with the mandatory data to be disclosed.

PCS does not advocate ignoring responding originators' views of course. But it is important to acknowledge that they do not represent the full set of those affected by not changing the existing rules. Silent are all the new originators who could help grow the securitisation market if the cost and data burden were lighter but will almost certainly not be responding to this Consultation, were they even aware of its existence. In that group would be found many smaller European banks which could benefit substantially from the capital management possibilities made available by securitisation.

Secondly, siding with those "survivors", PCS believes that ESMA can easily accommodate both the desire not to impose additional cost on existing originators and allow for a lighter burden. This can be achieved by ensuring that the data to be provided is not modified. Instead, as suggested in Option D, the data already required by the rules should be divided between mandatory and optional data. This meets the needs of both groups. (The alternative approach of increasing the use of ND fields in Option C may also achieve this result – and we refer to our comments on this subject later in our response.)

Timing of a Potential Review

The Consultation draws attention to the potential interaction between the timing of any revision to the disclosure RTS and a potential review of the Securitisation Regulation level 1 text[13]. The concern expressed is that this may result in further additional costs to the industry if the revision of the level 1 text impacts the disclosure standards.

[13] Paragraphs 50 to 52

At the outset of our response, we draw attention to the urgency of Europe's funding needs and the importance of the revival of the securitisation market to meeting those needs.

Bearing in mind:

(a) how late Europe already is in raising finance for the transition;

(b) the time it will take for the securitisation market to grow even if miscalibrated regulatory barriers are lifted;

(c) the uncertainty as to whether there will be a revision to the Securitisation Regulation (as mentioned by ESMA itself[14]); and

(d) if disclosure has been thoroughly reviewed in the current process to the satisfaction of both private sector and public sector stakeholders, whether any such putative revision would even seek to re-open the disclosure regime;

PCS believes that concerns over the risk of any positive changes made as part of this process being revisited soon thereafter should absolutely not be used to delay any necessary changes.

Supervisory Needs

It is agreed by an increasing number of public sector bodies and policy makers that Europe urgently needs a CMU driven by securitisation if it has any hope of achieving its enormous funding needs in the next one to two decades.

It is also agreed that supervisory bodies must have sufficient information to ensure that no repeat of the 2007/2008 crisis should ever occur again, even if – as we have seen – traditional European securitisations such as those that currently exist had no role in that crisis.

Throughout the Consultation. ESMA refers to supervisory needs for data relating to securitisations. That such needs exist is self-evident. But we have also noted that excessive data requirements under article 7 are a brake on the market's growth, when that market is becoming essential to the well-being of the European economy and the feasibility of the triple transition.

Therefore, it is legitimate that any supervisory request for information should be judged in a balance between the benefits provided to financial stability on the one hand and the potential negative impact on the economy and the funding of the transitions.

As an example, we examined in our response on LLD the request of some supervisors for loan level data on highly granular pools notwithstanding that no investor or rating agency had ever used such data to calculate credit risk and the regulatory community acknowledged that it had no evidence that such data

[14] Paragraph 51

would ever be useful. It did not seem to us that this request demonstrated a plausible case to counterbalance the harm done to the potential future market by requesting this type of data.

Therefore, it seems fair that when supervisory authorities request data that a consensus of investors and rating agencies deem unnecessary, they should provide some information. In that information they should explain exactly what they intend to do with that data – eg what models they intend to run. They may also wish to explain what plausible mechanism could link that data to any systemic risk. Finally, they may wish to set out how often they will be examining that data and running it through the models.

Only with this information will it be possible for stakeholders but, more importantly, for policy makers to determine whether the benefits are commensurate with the costs to the European economy.

When examining these issues, policy makers may also want to ask themselves how vital it is to collect such data on low-risk products such as STS securitisations when no such data is collected by supervisory authorities in respect of other financial instruments issued in much greater volumes, including many universally acknowledged to hold much greater risks (eg highly leveraged loans or private equity investments).

Finally, as mentioned in our earlier paragraph ""Why are we here?" and the need for a holistic approach" the history of the crisis explains why, through the Securitisation Regulation and only for securitisations, there is a requirement to provide large amounts of data via Securitisation Repositories. This allows supervisors to leverage the Securitisation Regulation to obtain data that they have no other means of obtaining. This data is not relevant to securitisations necessarily but to asset quality in the banking system generally.

Unfortunately, this is another case of the lack of a level playing field as securitisation is "punished" as the only asset class required to provide this amount of data even if the use is not to supervise securitisation. Therefore, in view of the importance of securitisation's revitalisation, we would urge supervisors not to "piggy-back" on the Securitisation Regulation to obtain data not relevant to securitisation *per se*. If such data is important, regulators should ask the relevant policy makers to provide them with a tool to collect it that does not discriminate against a vital funding channel.

More Disclosure and ESG

PCS noted with some concern the notion that the review process may be used to extract further data from originators particularly in the ESG space.[15]

PCS will not comment on the controversy animating many debates on green finance as to whether the policies of requiring enormous levels of data before

[15] Paragraphs 62 and 108 to 116

allowing any instrument or funding to be defined as “green” is not crushing the amount of actual green funding available to the European economy.

However, and as an absolute minimum, it must be made clear that such information can only be made mandatory if it is already in the possession of the originator within a centralised database. The EU Green Bond Standard Regulation follows this approach[16]. The selection of this approach reflects the co-legislators’ acknowledgment that one of the main problems with sustainable finance generally is the absence of data. Without such a caveat, a mandatory requirement for sustainability data will simply shut down the European securitisation market. We note positively ESMA’s awareness of this problem.[17]

Also, once more the issue of level playing field raises its head. PCS strongly doubts that a European securitisation market has much hope of growth if, rather than levelling the regulatory playing field, the regulators pile on yet more obstacles to this asset class’ viability. Therefore, the requirement for such additional information can only be contemplated if similar requirements are established for all other asset classes in the capital markets, including covered bonds and secured notes.

COMMENTS ON THE OPTIONS

As a general point, PCS believes that all the options presented contain a number of separate proposals. In particular, Options C and D each contain suggestions, some of which we support, some with which we strongly disagree. Therefore, PCS cannot fully endorse any of the proffered options but would rather endorse separate suggestions appearing in some of the options. We set this out below as “Option X”.

Option A

Option A, involving no change, appears to be a very bad option.

As set out above, in “Current use of the ESMA mandated templates”, the fact that no investor examines the ESMA templates is indicative that the current system is not fit for purpose. The advantages of Option A set out in the Consultation also appear to be illusory.[18]

The advantage of continuity is meaningless if no-one actually reads and even less uses the templates. It is true that no changes will be required under Option A but only insofar as the templates unread before will continue to be unread.

The issue of costs can be resolved as we have indicated in our paragraph “Costs and Survivor Bias”. Therefore, this does not seem to be an advantage specific only to this option.

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[16] Article 19.2 - REGULATION (EU) 2023/2631 of 22 November 2023

[17] Paragraphs 117 to 119

[18] Paragraph 93

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Option B

Option B, involving no meaningful change but increasing the burden of disclosure appears to be the worst option of all.

For the reasons set out in "PCS is not an investor or an originator" and because we believe Options C and D are preferable, there is no point in commenting on the ND field use.

On the introduction of additional fields, we refer to "More Disclosure and ESG".

Option C

On the issue of private vs public disclosure proposed in Option C, we refer you to the section entitled "Private vs Public" and especially our proposal: "A possible and complete solution".

We note the references to "supervisory needs" in much of the discussion of Option C.[19] Whilst accepting entirely the reality and essentiality of this concept, we refer you to our discussion in "Supervisory Needs".

As to the discussion on LLD, we refer you to our section "Loan Level Data (LLD)".

On the issue of the reconciliation of various stakeholders needs[20], we hope much of this will be achieved in our proposal on private vs public disclosure that provides the information to investors and CRAs when they are involved, ensures that no information escapes supervisory authorities but frees prudentially regulated institutions from unnecessary and duplicative work.

Similarly, on LLD, we propose to eliminate it only when it is not used[21], in other words on highly granular pools.

On the issue of whether some users may ask for additional information and thus create a second channel leading to a failure of simplification[22], it seems odd to PCS that one would elect to maintain for ***all*** transactions a vastly complex requirement out of concern that, if one were to simplify it for the vast majority, some very few transactions could become more complex than the chosen simpler approach.

On whether the SSM template is appropriate[23], we express no views and would recommend this be asked of an investor council.

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[19] e.g. paragraph 130.ii and paragraph 145

[20] Paragraph 158

[21] Please note we use the word "used" and not "requested" deliberately.

[22] Paragraph 158

[23] Paragraph 135

On the issue of the introduction of new templates for specific asset classes, PCS expresses no view as this falls squarely in the topics where we would rely on the expertise of both investors and originators.[24]

Option D

Considering the small use made of the current templates, the near universal view of the investor community that they contain much that is not useful and the way in which data requirements likely contribute to the absence of new originators from the banking sector[25], PCS believes that a simplification of the mandatory disclosure regime is necessary and welcome.

Whether the best way to achieve this simplification is an extension of the ND fields or the introduction of a mandatory/optional distinction is difficult to gauge since the optimal solution will turn on what is included in the mandatory bucket and/or how the ND fields are modified. Conceptually, the latter option (mandatory/optional) seems the more flexible and simpler option.

When designing the simplification, PCS would suggest focusing on a number of elements:

(a) the result should not limit the ability of investors to perform a reasonable assessment of the risks associated with the relevant transaction – in answer to the legitimate concern expressed by ESMA.[26]

(b) the result should, if at all possible, not impose additional costs on originators – again addressing one of ESMA's concerns.[27]

The first should be achieved by paying due attention to the views of the investor council and supervisory bodies.

The second could easily be achieved in the mandatory/optional and the ND field extension by retaining the current templates but designating large sections as "optional" or available for ND field choice. Originators who have set up IT and data capture systems to complete existing templates would need change nothing. Potential new entrants in the market could, as a first step, only fill in the mandatory fields.

PCS acknowledges the longer timeline implied in Option D[28] and would urge ESMA to make this a priority. As we have seen, the European Union does not have much time to create a deep CMU. But it seems that yet another partial

[24] Paragraphs 154 to 156
[25] For these purposes we do not include as "banks" the one category of new originator that have appeared, namely non-bank financial institution even when, for legal reasons, these have acquired a banking licence but do not conduct traditional banking business – especially deposit taking.
[26] Paragraph 180
[27] Paragraph 181
[28] Paragraph 182

reform will just prolong the period of underperformance of the securitisation market.

Option X

Option X would be the blend of Options C and D which we believe best achieves the balance between investor protection and financial stability, on the one hand, and the removal of ucecessary costs and barriers to the revival of a strong and safe European securitisation market, on the other.

In line with our comments in “Costs and Survivor Bias”, we do not believe that the templates should be revised by the introduction of additional or different data requirements. This would just impose yet more costs on existing originators without any commensurate benefit. But the burden of completing these templates must be lightened, consistent with investor and supervisory needs (as to which, see “Supervisory Needs”).

The best way to achieve this is therefore to maintain the existing templates – other than in respect of those asset classes where LLD should no longer be required (see “Loan Level Data (LLD)”). Then, based on the feedback of investors, supervisors and originators (see “Investor Council”), those data that are not necessary for a reasonable credit assessment may be either (a) declared optional or (b) become allowable ND fields. To determine what is “necessary”, PCS would refer back to its paragraph on “The Scope of the Task”.

RESPONSE TO THE QUESTIONS

Option A

Question 1:
Option A focuses on maintaining the current framework in its entirety. Do you agree with maintaining the current disclosure framework unchanged?

No. See “General Considerations”, especially “The Scope of the Task” and “Current use of ESMA mandated templates”.

Question 2:
Do you agree that LLD granularity is essential for performing proper risk evaluation, including due-diligence analysis or supervisory monitoring? Please explain your answer considering the costs and benefits of keeping the current level of granularity in terms of operational costs, compliance burden and any other possible implications.

Although this is a matter on which we will defer to investors and their expertise, PCS notes that its staff is not aware of investors or rating agencies using LLD to analyse highly granular assets such as trade receivables, credit card receivables or consumer loans. This is strongly suggestive that LLD is not essential for those asset classes. Equally, we are not aware of any investors or rating agencies analysing mortgage pools or corporate loan pools (outside

of micro-SME loans that are equivalent to consumer loans) without recourse to LLD. See “Loan Level Data (LLD)”.

Question 3:
Do you agree that the current design of disclosure templates is adequately structured to facilitate comprehensive risk evaluation, including due diligence analysis and supervisory monitoring of securitisation transactions? If not, please explain your answer.

Probably. But it is also excessive in the number and nature of data points required and so comes at an unnecessary cost to the growth of the securitisation market. It is disproportionate for many types of securitisations and asset classes.

Question 4:
Do you agree that disclosure and reporting requirements should be maintained consistent between private and public securitisation?

No. See “Private vs Public”.

Option B

Question 6:
Do you believe that the additional adjustments to the current framework proposed by Option B, such as restricting the use of ND options and including additional risk indicators (including climate-related indicators) are necessary? Do you support a revision of the technical standards accordingly? Please explain your answer, indicating whether you support these proposed adjustments and any reasons for your agreement and disagreement.

No. See answer to Question 3 and “General Considerations” as well as “Comments on the Options – Option B”.

Question 7:
Do you believe that a reduction of ND thresholds would materially improve the representation of data of securitisation reports? Please explain your answer.

No. See answer to Question 6.

Question 8:
Do you think that the advantages stemming from restricting the consistency thresholds and/or removal of ND options for specific fields, resulting in more accurate representation of data, would justify the heightened compliance costs for reporting entities?

No. See answer to Question 6.

PCS

Question 9:

Do you believe that the proposal of enriching the Annexes with additional risk-sensitive indicators (presented in Section 5.3) is necessary?

It is not necessary. Whether it is useful, see "More Disclosure and ESG".

Question 10:
Do you believe that reporting entities would face challenges and/or significant costs if requested to report those additional indicators? If yes, please elaborate your answer.

Yes, but this is a question best answered by reporting entities.

Question 11:
Do you believe that the proposal of enriching the Annexes with climate risk indicators (presented in Section 5.4) is warranted?

See answer to question 9 and "More Disclosure and ESG".

Question 12:
In addition to the list of advantages and challenges identified by ESMA in introducing the proposed sustainability indicators, do you believe additional advantages and challenges should be factored in?

No.

Option C

Question 14:
Do you agree with Option C as the preferred way forward (simplified template for private transactions, removal/streamlining of loan-level data for some asset classes, new template for trade receivables) for the revision of the disclosure templates?

Whether Option C or D are to be preferred – or a combination of both – is highly dependent on how the proposed simplification is done. In other words, what will continue to be mandatorily required and what will be, in one way or the other, optional. See our comments under "Option X".

See "Comments on the Options – Option C and Option D". Also see the section "Costs and Survivor Bias".

Question 15:
Do you agree with the analysis and the inclusion of a new simplified template for private transactions that focuses mostly on supervisory needs?

This depends on whether the securitisation is a capital market transaction or a bank transaction. See "Private vs Public".

For our views on supervisory needs, we refer you to the section "Supervisory Needs".

Question 16:
Do you believe that ESMA should proceed with the review of the RTS based on this option and using the SSM notification template as a starting point? Please provide details in your answer.

We have no views and leave this to the expertise of originators and investors. See "PCS is not an investor or an originator".

Question 17:
Do you consider that a simplified template can be useful even though the operational way to submit the data is exempted from the mandatory reporting via the SRs?

We leave this to the expertise of originators and investors. See "PCS is not an investor or an originator".

Question 18:
Do you believe that ESMA should proceed with the review of the RTS based on the proposal to deviate from loan-level data reporting for those asset classes which are highly granular, of short-term maturity or revolving pools? What are the potential benefits, challenges, or considerations that ESMA should consider if adopting this approach?

Yes. See "Loan Level Data (LLD)".

Question 19:
Are there any additional asset classes that should be further explored based on the proposal of deviating from the loan-level data reporting? Please list the relevant asset classes or annexes and explain why.

We leave this to the expertise of originators and investors**.** See "PCS is not an investor or an originator".

Question 20:
Do you agree, in the context of option C, that ESMA should further explore the deletion of the current disclosure templates? Please provide details in your answer.

No. See "Costs and Survivor Bias" and "Comments on the Options – Option D".

Question 21:
Do you agree, in the context of option C, that ESMA should further explore the streamlining of the current disclosure templates? Please provide details in your answer.

Yes. See our response generally, but especially "General Considerations".

PCS

Question 22:
Do you consider that a new template for non-ABCP trade receivables should be included and why? Please provide reasons for your answer.

We leave this to the expertise of originators and investors. See “PCS is not an investor or an originator”.

Question 23:
Which additional template could be relevant for the reporting of other asset classes that are not currently covered in the framework? Please provide details in your answer.

We leave this to the expertise of originators and investors. See “PCS is not an investor or an originator”.

Option D

Question 25:
Do you agree with Option D (a comprehensive review of the disclosure framework) as the preferred way forward for the revision of the disclosure templates?

Yes, up to a point. See “Comment on the Options – Option D” as well as “Costs and Survivor Bias”.

Question 26:
Do you think that it would be possible to achieve a level of simplification and standardisation within fields, across multiple templates, without having an impact on the overall risk analysis of the transaction? Please explain the rationale behind your answer.

Yes. See “The Scope of the Task” and “Current use of the ESMA mandated templates”.

Question 27:
Do you think that the overall usability would improve with simplified and standardised templates? Please explain the rationale behind your answer.

Yes.

Question 28:
Do you agree with the approach proposed by Option D, to create a set of templates based on the characteristics and nature of underlying assets rather than the categorisation of the securitisation transaction (i.e., public or private, true sale or synthetic)?

Up to a point. See “Private vs Public”. But it does seem to us that the underlying assets are the driver of credit quality and that the disclosures are almost entirely based on the assets.

Question 29:
Do you believe that ESMA should proceed with the review of the RTS based on the proposal to deviate from loan-level data disclosure for those asset classes which are highly granular, of short-term maturity or revolving pools? What are the potential benefits, challenges, or considerations that ESMA should consider if adopting this approach?

Yes. See “Loan Level Data (LLD)” and “Comments on the Options – Option C”.

Question 30:
Are there any additional asset classes that should be further explored based on the proposal of deviating from the loan-level data reporting? Please list the relevant asset classes or annexes explain why.

We leave this to the expertise of originators and investors. See “PCS is not an investor or an originator”.

CONCLUSIONS

PCS believes that a revitalized securitisation market is essential to the European economy and future. To achieve this a proper balance must be struck between the needs of investors and supervisors and the burden placed on originators. We are quite certain that the current disclosure regime does not strike this balance. It requires a level of disclosure that, although costly, does not reflect the analytical needs of either investors or credit rating agencies, especially when one considers the exceptional performance of traditional European securitisations during the crisis and the legislative framework contained in the Securitisation Regulation to ensure the continued quality of this financing channel.

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