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To:
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ESMA, Paris

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RTS on disclosure rules for private ABCP- and non-ABCP-securitisations

1. Executive summary

This position paper aims to summarise certain major outstanding topics related to the RTS on disclosure rules for private ABCP and non-ABCP securitisations, and to reiterate the importance of those points. If not addressed and resolved in an appropriate way, the risk of material negative impact on private securitisations financing real economy transactions is elevated.

The RTS on disclosure does not sufficiently reflect the reality and market practice of private ABCP- and non-ABCP-securitisations in bilateral or syndicated ("co-funding") structures, leading to disproportional burden in transaction reporting and major inconsistencies for originators (mainly corporates for trade receivables, as well as leasing companies) as well as sponsor banks and regulators.

Private securitisations play an important role in the overall securitisation market in all kind of market environments. Additionally, also in stressed market conditions it can provide vital financing for the real economy when access to public markets is difficult (e.g. leasing companies or auto captives). SMEs or small lenders can also raise competitive secured financing through the banks or their ABCP programmes.

2. Real Economy Securitisations in Germany and France

Long term surveys from TSI have shown that the securitisation of trade and lease receivables from corporates and their finance arms via ABCP programmes and similar non-ABCP transactions (referred to as "Real Economy Securitisations") in

Germany has been a prosperous and well managed business[1]. A similar development can be observed in France.

Three major characteristics of Real Economy Securitisations should be noted for the scope of this position paper:

(i) Involved banks assume the role of lender and final risk taker – generally in the form of senior securitisation exposures -, either through fully supported ABCP programmes, or as private non-ABCP securitisation lender, or as direct purchaser of receivable pools onto the bank's balance sheet,

(ii) many large corporates prefer syndicated transactions in order to achieve diversification and less reliance on individual banks. As a consequence, this has led to different forms of syndication and co-funding structures, and

(iii) while in the past, most Real Economy Securitisations have been executed through ABCP programmes, going forward the new rating hierarchy offers alternative ways to get such transactions structured as bilateral, private non-ABCP securitisations (with or without SPVs). With these alternatives the menu of client offer actually increases and the market might accelerate as targeted by the regulation.

The economic differences of these structuring methods are minimal for the financing/sponsoring bank. In fact, we have already witnessed banks increasing their private non-ABCP securitisation business. To illustrate these securitisation techniques please refer to annex 1 of this paper. For the avoidance of doubt, none of these structures are related in any respect to re-securitisation, because tranching does only take place once.

It is important to note that usually the financing/sponsoring bank has an established business relationship to the originator and is structuring the transaction in the light of being the ultimate risk taker (stand-alone or as part of a syndicated securitisation). This enables the financing/sponsoring bank to use its existing credit know-how and history to execute such securitisation transaction in an embedded customer relationship.

Even in cases of co-funding structures, where two or more banks team up to provide the necessary facilities no potential information/transparency mismatch between investor and originator/sponsor does occur.

3. Templates for private ABCP- and non-ABCP-securitisations originated by non-banks

In case of private bilateral/multi-lateral securitisation transactions there is uncertainty about compliance with the transparency requirements of Article 7 Securitisation Regulation in relation to ABCP/non-ABCP and the relevant RTS templates developed by ESMA.

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[1] see https://www.true-sale-international.de/fileadmin/tsi_gmbh/tsi_downloads/TSI_kompakt/TSI__Auswertung_zu_Entwicklung_und_Bedeutung_ABCP-Markt_Version_2.8.pdf

According to Art 7.3 Securitisation Regulation the mandate of ESMA should take into account “the usefulness of information for the holder of the securitisation position, whether the securitisation position is of a short-term nature and, in the case of an ABCP transaction, whether it is fully supported by a sponsor”. Furthermore, the second mandate of ESMA under Art 17 Securitisation Regulation requires to take into account “the needs of the entities referred to in paragraph 1” (in summary regulators and investors).

We do not think that the level I text forces ESMA to strictly divide the disclosure templates into non-ABCP and ABCP. Although the level I text distinguishes for certain information requirements between non-ABCP and ABCP[2], this does in our view not contradict to a more substance related rather than formalistic approach.

This being said it is important to understand that such private non-ABCP bilateral / multilateral securitisation transactions would currently not be authorized to use Annexes 11 and 13 but rather the templates for specific asset classes.

Furthermore, absent a trade receivables” template, the wording of the ESMA Final Report in point 35[3] suggests to use the ‘esoteric asset class’ template (Annex 9) on all exposures not captured in the existing underlying exposure templates. Obviously, this template is not designed for typical corporate trade receivables (one payment, no interest, short-term, no bank-like credit policies, no collateral), which in turn, would hardly considered to be “esoteric”.

An even more problematic situation occurs if an originator within co-funding structures would have to prepare two sets of reports, one for the ABCP part of its financing structure and one for the non-ABCP part. Real Economy Securitisations would be unduly burdened and at (operational) risk by such constellation. For your reference, please find in annex 2 an exemplary list of existing transactions amongst real economy transactions from German and French banks using co-funding structures.

We therefore urgently propose to clarify that the templates applicable to private ABCP transactions (Annexes 11 and 13 of ESMA RTS Disclosure) do apply also to such private non-ABCP securitisation transactions securitising receivables originated by non-banks and no third party investors being involved.

A possible solution could be the following wording in the RTS:

„For private securitisation transactions securitising receivables originated by non-banks and where one or more banks and/or the originator are the only funding source, it should be allowed to use the transparency requirements for ABCP. This should apply accordingly in cases, where such private securitisation transactions involve several SPVs, each with its own funding scheme (whether ABCP or not). In the latter case the designated reporting entity for each funding source shall only be responsible for the information regarding Art 7 (1) Securitisation Regulation in respect of its own funding commitment.”

[2] Art 7.1 (a) quarterly vs. monthly investor reports, or Art 7.1 (e) (ii) data on the cash flows generated by the underlying exposures and by the liabilities of the securitisation only for non-ABCP, or information described in points (a), (c)(ii) and (e)(i) of the first subparagraph in aggregate form for ABCP

[3] see ESMA Final Report from 22 August 2018, page 16

4. **Reporting of triggers in ABCP securitisations**

The ESMA investor reporting template for ABCP (Annex 13) requires to report several triggers (IVAR 2-6) for each underlying transaction referring to definitions, including confidential information. Therefore, to comply with this requirement, market participants should gather all triggers at transaction level plus definitions related to those triggers. In addition, as investors may have access to these data, market participants should be careful not to breach confidentiality provisions while complying with ESMA requirements.

In ABCP securitisations, triggers exist at ABCP transaction level as well as at programme level. These are different triggers because they serve different purposes:

- Triggers at transaction level are linked to the performance of the assets and/or the solvency of the seller. Any non-remedied or non-waived breach would foremost affect the position of the primary risk taker, i.e. the sponsor bank providing liquidity in a fully supported ABCP programme. These are already captured and reported (breach Y/N) under field IVAS 7.
- Triggers at program level are different: they focus on (i) whether the ABCP programme has received enough cash (via coupons/ interests) from ABCP transactions it funds to repay the CP holders, (ii) whether the liquidity lines are renewed and valid, (iii) whether the liquidity line provider has the requested rating, (iv) whether the ABCP programme is insolvent, (vi) whether issuing tests are fulfilled etc. Any non-remedied breach would foremost affect the position of the ABCP investor.

Moreover, taking into account that all sponsor banks in Europe provide fully supported liquidity lines to their ABCP programme, it is obvious that the risk for ABCP investors is short-term in nature, on the sponsor bank and the way the ABCP programme is managed at program level rather than on the underlying ABCP transactions. In a fully supported ABCP programme triggers on individual ABCP transactions would not be material to the position of ABCP investors, who generally rely upon the support provided by the sponsor bank.

Therefore, we interpret the obligation in Article 7(1)(e)(ii) Securitisation Regulation[4] to refer only to events which trigger changes in the programme-level priority of payments and programme-level counterparties.

A possible solution could be the following wording in the RTS template IVAR1:

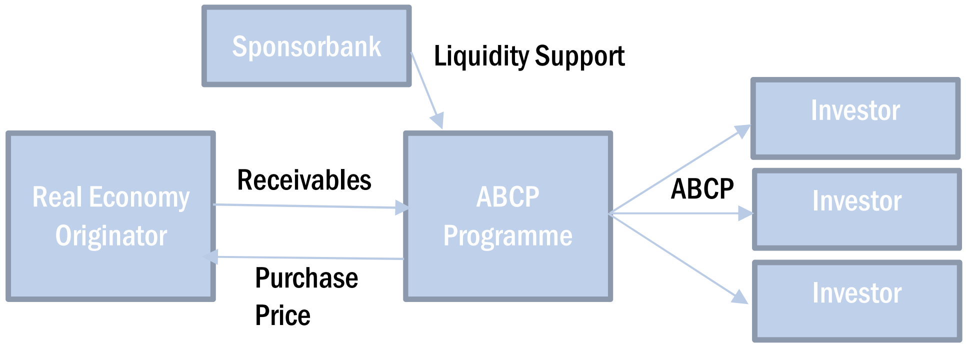
"IVAR1 Unique Identifier - ABCP Programme: Report the same unique ABCP programme identifier here as the one entered into field IVAN1."

[4] "The originator, sponsor and SSPE of a securitisation shall […], make at least the following information available to holders of a securitisation position, to the competent authorities […] and, upon request, to potential investors […] monthly investor reports, containing […] information on events which trigger changes in the priority of payments or the replacement of any counterparties"

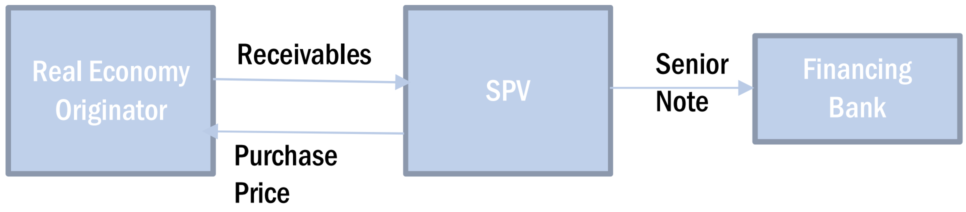
Annex 1: Possible structures of real economy securitisations

(For the avoidance of doubt, none of these structures are related in any respect to re-securitisation, because tranching does only take place once)

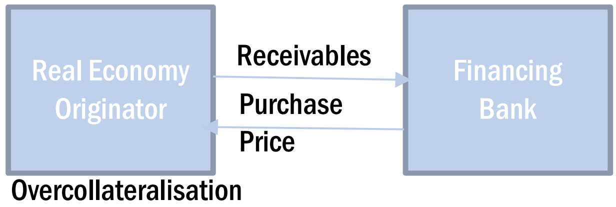
a) ABCP transaction:



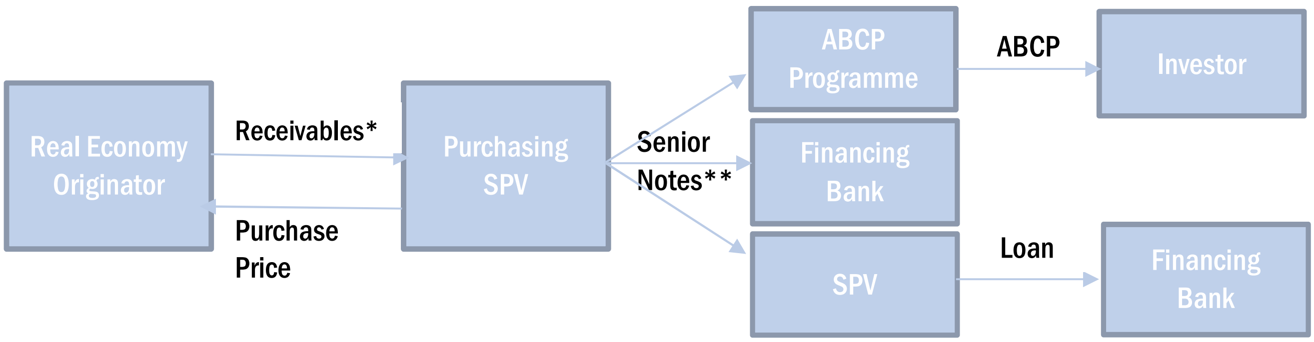
b) Non-ABCP bilateral, private securitisation with SPV:



c) Non-ABCP bilateral, private securitisation without SPV:



d) Combination of the above within co-funding structures:



* Receivables usually have tenors between 30-360 days (trade receivables) and 1-5 years (equipment leasing, auto loans, rental fleets)

** Senior securitisation exposures (in the form of Notes or loan facility or Schuldschein) usually have average maturities between 1 year (trade receivables) and 2-3 years (trade receivables, equipment leasing, auto loans, rental fleets)

Annex 2

List of co-funding structures amongst German and French Real Economy Securitisations: