

Shaun Baddeley
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Association for Financial Markets in Europe (AFME)
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11 October 2023

JC 2023 53

Subject: Re – request for Joint Committee guidance to National Competent Authorities on investors' verification duties for third-country securitisations.

Dear Mr Baddeley,

Thank you for your letter from the Joint Associations dated 9 December 2022 on EU institutional investors' verification duties regarding third-country securitisations¹ under the Securitisation Regulation (SECR). The ESAs have considered with due attention your request to the Joint Committee (JC) to issue enforcement guidance to National Competent Authorities (NCAs) to address the challenges faced by EU institutional investors while investing in third country securitisations². This assessment involved different aspects and stakeholders, notably in light of the current work on exploring options regarding the reporting templates for securitisation, leading to a considerable delay in our reply for which we apologise.

As you know, the assessment of the European Commission (EC), included in its report on the functioning of SECR of 10 October 2022³, was that differentiating the scope of information to be provided, depending on where the issuing entity is located, is not in line with the legislative intent of the text. The EC also indicated that a review of the reporting templates for securitisation may be an opportunity to address the issue of third country securitisations.

We fully appreciate the importance for EU institutional investors to make informed investment decisions when they consider investing in third-country securitisations. The ESAs feel, however, that it would be premature to issue a JC enforcement guidance to NCAs at this point in time. We

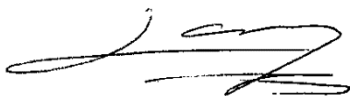
¹ Commission Delegated Regulation (EU) 2020/1224.

² The provisions under Article 5(1)(e) require EU institutional investors to verify, as a pre-condition of investing in a securitisation, that "the originator, sponsor or SSPE has, where applicable, made available the information required by Article 7 in accordance with the frequency and modalities provided for in that Article".

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0517&from=EN>, October 2022.

are conscious that, in the absence of Level 1 changes⁴, the fundamental issues around third-country securitisations could not be fully addressed. However, ESMA is considering what can be done in the absence of Level 1 changes in terms of reviewing the reporting templates for securitisation. We look forward to further collaboration with the Joint Associations, both for the purpose of the ongoing work on the reporting templates and to discuss potential enhancements to the Level 1 text.

Yours sincerely,



José Manuel Campa
EBA Chairperson
Chair of the Joint Committee



Petra Hielkema
EIOPA Chairperson



Verena Ross
ESMA Chair

CC: John Berrigan, Director-General, Directorate General for Financial Stability, Financial Services and Capital Markets Union, European Commission

Tanguy van de Werve, Director General, European Fund and Asset Management Association (EFAMA)

Som-Lok Leung, Executive Director, International Association of Credit Portfolio Managers (IACPM)

Olav Jones, Deputy Director General, Director ECOFIN, Insurance Europe

Jiří Król, Global Head of the Alternative Credit Council (ACC), Deputy CEO, Alternative Investment Management Association (AIMA)

Jennifer W. Han, Executive Vice President, Chief Counsel & Head of Global Regulatory Affairs, Managed Funds Association (MFA)

Bryan Pascoe, Chief Executive Officer, International Capital Market Association (ICMA)

Scott O'Malia, Chief Executive Officer, International Swaps and Derivatives Association (ISDA)

Jan-Peter Hülbert, Managing Director, True Sale International (TSI)

Chris Dalton, Chief Executive Officer, Australian Securitisation Forum (ASF)

Christopher B. Killian, Managing Director, Securitization and Credit, Securities Industry and Financial Markets Association (SIFMA)

Michael Bright, Chief Executive Officer, Structured Finance Association (SFA)

⁴ The Joint Committee issued an Opinion on the scope of application in March 2021 and a Report on the functioning of the SECR in May 2021 in which several courses of actions are proposed to amend the level 1 text, including, inter alia, the setting up of an equivalence regime for third countries.