

Clients & Friends Memo

Further Delays in the Expected Application Date of the Disclosure Templates for EU Securitisation Reporting

29 March 2019

Summary

This memorandum provides an update regarding the further delay in the application of the transparency regulatory technical standards (“**RTS**”) (which include the new reporting templates¹) under the EU Securitisation Regulation².

It has now become apparent that there will be insufficient time for the RTS, which are still to be adopted by the European Commission, to pass through the final stage of the legislative process during this session of the European Parliament.

It now looks likely that the European Commission will by mid-April adopt the RTS in substantially the same form as that published by the European Securities and Markets Authority (“**ESMA**”) in January 2019. The Commission will adopt the RTS in the form of a draft delegated regulation which is expected to be notified to the new European Parliament in July. It is unlikely that the European Parliament will raise any objections to the contents of the RTS.

It, therefore, seems unlikely that the RTS (and the new reporting templates) will apply before August 2019 (and the application date could be some time later). However, it also appears that the templates annexed to the draft RTS published by ESMA on 31 January 2019 will be the form of the templates that will apply later this year.

Background: The Securitisation Regulation’s Transparency Requirements

The Securitisation Regulation provides that the originator, sponsor and Securitisation Special Purpose Entity (“**SSPE**”) (i.e. the issuer) of a securitisation must make certain prescribed

¹ The draft templates are annexed to the draft RTS contained in ESMA’s Opinion dated 31 January 2019 at: https://www.esma.europa.eu/sites/default/files/library/esma33-128-600_securitisation_disclosure_technical_standards-esma_opinion.pdf

² Regulation (EU) 2017/2402

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information relating to the securitisation available to investors, competent authorities (i.e. national regulators) and, upon request, to potential investors³. The originator, sponsor and SSPE are to designate one of them to fulfil the disclosure requirements (the “**reporting entity**”). The Article 7 reporting obligations apply to securitisations, the securities of which are issued (or where no securities are issued, the securitisation positions of which are created), on or after 1 January 2019. One of the requirements of Article 7 of the Securitisation Regulation is the provision of quarterly⁴ underlying exposure and investor reporting to be made using standardised templates⁵.

Article 7 directed ESMA to develop draft technical standards specifying the form and content of these reporting templates. After initially being rejected by the European Commission, ESMA resubmitted draft RTS⁶ to the Commission by way of its Opinion published on 31 January 2019. We discussed the contents of these RTS and their annexed reporting templates in our Clients & Friends memorandum dated 4 February 2019⁷.

The Application Date of the RTS

As noted above, the Commission is expected to adopt the ESMA draft RTS and the associated templates in the form contained in ESMA's 31 January 2019 Opinion.

There are European Parliament elections at the end of May 2019 under which a new Parliament will be elected. As a result of the slippage in the timescale for adopting the RTS, it now seems likely that the RTS will be considered by the new European Parliament once it sits in July.

If neither the European Parliament nor the European Council objects to the RTS, they will be published in the Official Journal of the European Union and will enter into force 20 days thereafter. The key date however will be when the RTS apply. This has not yet been specified.

Conclusion

The RTS would ideally have been ready for the application of the new Securitisation Regulation regime on 1 January 2019, but this deadline had already been missed. This further delay is not particularly unexpected. The industry should, however, have the benefit of seeing the templates

³ For “public securitisations” i.e. those where a Prospectus Directive compliant prospectus has to be drawn up – which is the case where securities are admitted to trading on an EU regulated market, the information is to be made available by means of a securitisation repository registered with ESMA. None is yet registered and until a securitisation repository is registered the information is to be made available by means of a website that meets prescribed conditions.

⁴ Monthly for ABCP.

⁵ We discussed the reporting templates under the Securitisation Regulation's transitional regime in our Clients & Friends memorandum dated 3 December 2018:
<https://www.cadwalader.com/uploads/cfmemos/63c1757ef1b58dc81617ba9fc2de5468.pdf>

⁶ And Implementing Technical Standards.

⁷ <https://www.cadwalader.com/uploads/cfmemos/21be33a61bff703ed3d05665734712f78.pdf>

in substantially their final form from mid-April, which should give market participants some time to prepare for their application later this year.

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