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Welcome

This regular Structured Capital Markets Briefing from Baker & McKenzie's SCM Team in London aims to provide you with an update on the key legal, regulatory and market developments affecting UK and European structured capital markets transactions, more in-depth features on key topics, and provide links to some of our recent alerts and publications. For further information on any of the topics covered in this Edition of the Structured Capital Markets Briefing, please contact the Editor, any of the London SCM Partners listed below, or email structuredcapitalmarkets@bakermckenzie.com. Previous Editions of the Briefing are available here if you missed them.

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European Commission's CMU Action Plan contains legislative proposals for "Simple, Transparent and Standardised" securitisation and its prudential treatment

As widely anticipated, the European Commission has been working on draft legislation that would introduce a set of European Criteria establishing a legislative framework for "Simple, Transparent and Standardised" (STS) securitisation, as part of its plans to build a Capital Markets Union (CMU) within the EU (see Edition 15 of this SCM Briefing for detailed background on the CMU Green Paper and related consultations, and Edition 16 for the latest progress update on developing a definition of "qualifying securitisation"). As we noted in previous Editions, the legislative proposals (and indeed the CMU Action Plan) were due to be officially released on 30 September 2015. The European Commission has now released its CMU Action Plan, which comprises a draft proposal for a Securitisation Regulation, a Regulation Amending the Capital Requirements Regulation (CRR), a Consultation Document on Covered Bonds, a Consultation Document on venture capital and new rules on the Solvency II treatment of qualifying infrastructure projects. In conjunction, the Commission has also released a Call for Evidence on the EU regulatory framework for financial services, which is intended to gather views on the appropriateness and efficacy of the EU post-global financial reforms introduced to date within the EU. Focusing on the key aspects of the CMU Action Plan affecting structured finance market participants, the CMU Action Plan, the Securitisation Regulation, the Regulation Amending CRR and the Consultation on Covered Bonds are summarised

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in further detail below (and the Call for Evidence is briefly summarised). The Commission was also due to release its plans for a "radical" overhaul of the Prospectus Directive as part of the CMU Action Plan, but these proposals have been delayed and will now be released at a later stage, but before the end of 2015.

The CMU Action Plan

The CMU Action Plan explains the economic and political background to the initiative, summarising the key legislative proposals and consultative measures which make up the core building blocks of the CMU. CMU is intended to reinforce the third pillar of the Investment Plan for Europe, enhancing Economic and Monetary Union (EMU) by supporting economic convergence and absorbing economic shocks in the Eurozone. Stronger capital markets will strengthen the link between savings and growth to provide more options and better returns for savers and investors, while businesses will have more funding options at different stages of their development. The CMU Action Plan only mentions securitisation briefly, to note that its revival (including for small- and medium-sized enterprises (SMEs)) would make over €120 billion of additional funding available, and help build a long-term investor base as well as diversify funding sources. Further background and explanatory information on CMU generally is available from the Commission's CMU webpages linked below (see "useful links").

Background to the STS Criteria and Prudential Treatment

Echoing many of the sentiments expressed in the original CMU Green Paper, the Commission notes that the development of Simple, Transparent and Standardised (STS) securitisation is the "natural next step to build a sustainable EU market for securitisation", the concept referring to the *process* rather than the *credit quality* of the underlying assets, with the framework based on a two-step process: (i) identification of sound instruments based on clear eligibility criteria; and (ii) adjustment of the regulatory framework to allow a more risk-sensitive approach (for STS deals). The STS framework would not replace thorough due diligence by investors, nor credit control in relation to the securitised loans (the Commission making it clear that already-introduced regulation, e.g. provisions on risk-retention, increased prudential regulation and higher underwriting standards, are being simplified and harmonised across existing legislation, and not being replaced by this legislation, and extensive repeals and amendments to the LCR and Solvency II Delegated Acts will also be required). This approach also encourages market participants to develop standardisation, which the Commission calls upon Member States to help facilitate. As you may expect, the STS legislative framework is heavily underpinned by the European Supervisory Authorities (the "ESAs", the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA)) having a key role in the monitoring and evaluation of the framework, co-operating with national regulators and in preparing a raft of further delegated legislation (mainly in the form of Regulatory Technical Standards (RTS), Implementing Technical Standards (ITS) and Guidance) that is required to accompany these legislative proposals by specifying further detail on various aspects of the STS proposals. Indeed, the Commission's STS Criteria largely implement the recommendations of the EBA's earlier Report and Opinion to the Commission on "Simple, Standard and Transparent" securitisation - see the summary of the EBA's advice in Edition 16 of this SCM Briefing. The STS Criteria also build upon the 14 global Criteria for "Simple, Transparent and Comparable" securitisaton recently finalised by the Basel Committee and IOSCO (see the Key Developments section of this SCM Briefing for a summary), although the CMU legislative proposals go further in terms of extending the STS legislative framework to encompass short-term (ABCP) transactions. The Commission also notes the consistency of the STS Criteria set out in the proposed Securitisation Regulation with the ECB's collateral policy for asset-backed securities (ABS), which includes the additional rules and guidance released with regard to the ECB's ABS purchase programme (see Edition 13 of this SCM Briefing for further information) and notes that the legislative proposals envisage a preferential (i.e. lower) regulatory capital treatment for STS deals than that set out in the Basel Committee's Final Revisions to the Securitisation Framework (see the Feature Piece Edition 14 of this SCM Briefing for further background). Indeed, the Basel Committee has committed to reviewing in 2015 the status of its (global) capital rules for securitisations and plans to issue a revision in due course, such that these proposals (at least relating to the regulatory capital treatment - see the summary of the Regulation Amending CRR below) to some extent pre-empt that revised, global framework (which will need to be implemented by all Basel Committee member countries - so setting the EU rules now could mean a re-write further down the line). However the Commission does clearly note that no outcome on that Basel Committee work-stream is expected before mid-2016.

The Securitisation Regulation

The Securitisation Regulation is split into two main parts - the first provides a harmonised set of EU securitisation rules applicable to *all* transactions (whether STS or not), bringing together all the various aspects of the differing legislation that apply to securitisation (covering the key definitions, due diligence, risk-retention and transparency rules) and the second part sets out the specific STS Criteria for both long-term and short-term (asset-backed

commercial paper or ABCP) transactions, of which there are over 50 separate Criteria. Then follows the supervision framework for the STS Criteria and a final section sets out the (fairly minor) amendments required to be made to other pieces of EU legislation, all which are described below.

Part 1 - harmonising existing legislation

- **Definitions:** definitions of all the key concepts relating to securitisation are set out in the legislation (some for the first time), including the provision of a 'clear definition' of "securitisation" (which is actually the same as that currently set out in Article 4(1) CRR, referencing the tranching of credit risk associated with a pool of exposures, with payments dependent upon the performance of that pool, and subordination of the tranches determining the distribution of losses) and definitions of "Securitisation Special Purpose Entity" (SSPE), "originator", "sponsor", "tranche", "ABCP", "servicer", "investor" and so on are also provided (Article 2). Interestingly, (some of) the corresponding references in CRA III to the term "structured finance instrument" would be replaced by references to "securitisation instrument", which helpfully introduces a degree of consistency previously lacking as a result of the differing terminology used in existing legislation.
- **Due diligence:** existing due diligence rules across all sectors of investor (banks, insurance companies and investment firms) will be repealed and replaced by the harmonised, streamlined provisions set out in Article 3. These provisions will be extended in future to include investors in securitisations that are regulated under the Directive on Undertakings for Collective Investment in Transferable Securities (UCITS), and the Directive on Institutions for Occupational Retirement Provision (IORPs). By way of recap, the due diligence provisions require investors to verify (non-bank) originators' origination practices and that the risk-retention provisions are being met, assess the risk characteristics and structural features of the securitisation, establish written procedures for compliance with the due diligence requirements, perform stress tests on the underlying cash flows and collateral, ensure adequate internal reporting, and be able to demonstrate to regulators that they have a thorough understanding of their securitisation positions. Additional provisions require investors in STS securitisations to have carried out specific due diligence on the deal's compliance with the STS Criteria (and not just that the (5%) material net economic interest is being held by the party retaining risk). Templates for the "originator, sponsor or SSPE" to jointly declare the deal's compliance with the Criteria (then notify ESMA which will publish an official notice on its website), and for investors to complete their due diligence, will be developed. The central role of issuer "self-attestation" (as to compliance with the STS Criteria) under the proposals is significant: there would be no independent, third-party verification of a deal's compliance with the Criteria, which the majority of market participants have to date appeared to support, given the potential for wide (and possibly divergent) interpretations of the Criteria by the 28 Member States' national regulators. Originators and sponsors are jointly liable for any loss or damage resulting from incorrect or misleading notifications, and deals which cease to meet the Criteria (or where remedial measures have been imposed by the competent authority) should be notified to ESMA.
- **Risk-retention:** the existing "indirect approach" to risk-retention will be replaced with a new "direct approach" requiring the originator, sponsor or original lender to retain the 5% net economic interest and confirm they have done so under Article 4 (by way of notification to ESMA via a standard template - see Article 14). This is in addition to the obligation placed on EU investors to verify (prior to becoming exposed to a securitisation) that the retention obligation is being met. The five main forms of risk-retention remain largely unchanged (save for a clarification of the "originator interest" form of retention to the effect it can be used for *any* revolving securitisation and not just securitisations of revolving exposures, as currently) and have not been expanded. The Commission notes in the explanatory text of the Securitisation Regulation that the existing indirect approach will remain available, but only to non-EU-established originators, sponsors and original lenders, however, the proposed legislation does not appear to explicitly provide for this. With further RTS to specify additional detail on the risk-retention requirement (which must be submitted by the EBA within six months of the Regulation taking effect), this may be where these provisions are set out. Following some - but by no means all - of the EBA's key recommendations on risk-retention set out in its December 2014 Report and Opinion to the Commission, as outlined in Edition 14 of this SCM Briefing, the Commission notes that it is closing the "loophole" which allowed a looser interpretation of the (existing) risk-retention provisions (such that an entity NOT the originator, sponsor or original lender could retain risk, which effectively allowed third-party entities in collateralised debt obligation (CLO) transactions to hold the retention piece rather than the CLO manager having to hold it as "sponsor"). Article 4 makes clear that an entity (i.e. an SSPE) established for the sole purpose of securitising exposures cannot be considered an originator, with the Commission giving the example that the entity retaining the economic interest must have the capacity to meet a payment obligation from resources not related to the exposures being securitised.

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- **Transparency and disclosure:** the proposed Securitisation Regulation specifies the minimum information to be made available to investors and competent authorities, and requires the use of common templates for reporting of information to investors (which must include loan-level information, transaction documents, a detailed description of the priority of payments, hedging documents, and, for STS deals, a copy of the notification to ESMA which is required under Article 14). The originator, sponsor and SSPE are to designate amongst themselves one entity to fulfil these requirements. The Regulation provides for the set-up of a free, centralised website for storage of STS notifications, deal documentation and reporting forms (Article 5). The reporting requirements will utilise and build on the existing standardised disclosure templates and will possibly add others for the first time (e.g. for ABCP). This approach is intended to allow reporting to e.g. the existing European Data Warehouse. Again, RTS will be drafted to specify in further detail the information to be provided, which will also define the "private and bilateral" transactions that are (currently) excluded from the reporting obligations (for further background on this issue, please see Edition 12 of this SCM Briefing). How the transparency requirements will fit with the (near-equivalent) transparency provisions of Article 8b of CRA III (which are not repealed by the Securitisation Regulation) is currently unclear, but additional RTS yet to be drafted may deal with this, which will hopefully also provide for what should happen during the intervening period between the Securitisation Regulation taking effect and the application of the new RTS.

Part 2 - the STS Criteria - Articles 8, 9 and 10 (long-term deals)

- The underlying exposures must be acquired by an SSPE means of a "sale" or assignment that is enforceable against the seller or other third party including in the event of the seller's insolvency, and there must be no severe clawback provisions. Synthetic deals cannot comply, but the Commission will continue to assess whether those and other transactions could be covered (such as non-true-sale deals).
- The seller must provide representations and warranties that the underlying exposures are not encumbered or in a condition that could adversely affect enforceability of the sale or assignment.
- The exposures must meet predetermined and clearly defined eligibility criteria for the transfer of exposures from the seller to the SSPE (and thereafter, no active portfolio management or sales of transferred exposures.)
- The transaction must be backed by pools of homogenous exposures which are contractually guaranteed and enforceable obligations with full recourse to debtors, with defined payment streams, and not be backed by transferable securities as defined by MiFID. (This provision does not apply to ABCP - see below for further information on the differing requirements for ABCP transactions.)
- The underlying exposures must not include assets that are themselves securitisations (so that "resecuritisations" are effectively excluded.)
- The exposures must be originated in the ordinary course of the originator's or original lender's business, with requirements imposed upon those entities to meet particular underwriting standards, including creditworthiness assessments as required under, e.g. the Directive on Mortgage Credit. (This provision does not apply to ABCP - see below.)
- At the time of transfer to the SSPE, the exposures are not in default, and do not include exposures to a credit-impaired debtor/guarantor that has declared insolvency, agreed a debt dismissal or reschedule etc, or is on an official registry of persons with adverse credit history, or has a credit score indicating significant risk that payments will not be made.
- At the time of transfer, the debtors must have made at least one payment (except where the deal is backed by loans to individuals for personal, family or household consumption purposes, trade receivables or other receivables payable in a single instalment.)
- The repayment (of the securitisation, rather than the exposures) does not depend substantially on the sale of assets securing the underlying exposures (this does not prevent assets being rolled-over or refinanced.)
- The originator, sponsor or original lender must satisfy the risk-retention requirement under Article 4.
- Interest rate and currency risks must be appropriately mitigated and documented, with only derivatives used to hedge currency risk and interest rate risk allowed to be included alongside the underlying exposures.
- Any referenced interest payments must be based on generally used market interest rates and must not reference complex formulae or derivatives. (This provision does not apply to ABCP - see below.)
- In transactions with no revolving period (or where the revolving period has terminated) and where an

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enforcement notice has been delivered, principal receipts from the exposures are passed to the investors via sequential amortisation and no substantial amount of cash is trapped in the SSPE on the payment date. Payment of investors in "reverse" priority is not foreseen and performance-related triggers should be present in deals with non-sequential priority of payments. There must be no provisions requiring automatic liquidation of the underlying exposures at market value. (These provisions do not apply to ABCP - see below.)

- Transactions that *do* feature revolving periods should include provisions for appropriate early amortisation events and/or triggers for termination of the revolving period, which include at a minimum all of: deterioration in the credit quality of the underlying exposures to below a pre-determined threshold; the occurrence of an insolvency-related event with regard to the originator or servicer; the value of the underlying exposures held by the SSPE falls below a pre-determined threshold; and a failure to acquire sufficient new underlying exposures. (These provisions do not apply to ABCP - see below.)
- The transaction documentation must clearly specify the contractual obligations, duties and responsibilities of the servicer and (where applicable) the trustee and other ancillary service providers, and provide for replacement of counterparties (to avoid, e.g., termination of servicing). (Again, this provision does not apply to ABCP - see below.)
- The transaction documentation must clearly provide definitions, remedies and actions relating to delinquency and default of debtors, debt restructuring or forgiveness, forbearance, payment holidays, losses, charge-offs, recoveries and other asset performance remedies. The documentation must specify payment priorities, triggers, changes in priority following trigger breaches, and the obligation to report such breaches. Any change in payment priority must be reported when it occurs.
- The transaction documentation must include clear provisions that facilitate the timely resolution of conflicts between different classes of investors, voting rights must be clearly defined and allocated to investors, and the trustee's and others' fiduciary duties and responsibilities must be clearly defined. (This provision does not apply to ABCP - see below.)
- The investors must be provided with access to data on static and dynamic default history and loss performance for substantially similar assets to those being securitised, covering a period of at least seven years for non-retail exposures and five years for retail exposures.
- A sample of the underlying exposures should be subject to external, third-party verification prior to issuance (to a confidence level of 95%.)
- The originator or sponsor must provide a liability cash-flow model to investors, both prior to pricing and on an ongoing basis.
- The originator, sponsor and SSPE must comply with the transparency provisions of Article 5 and make all the information required by Article 5(1) (credit quality and performance information, loan-level information and the key transaction documents) available to investors before pricing at least in draft or initial form, with final documentation to be provided to investors at the latest 15 days after closing of the transaction.

Part 2 - the STS Criteria - Articles 12 and 13 (ABCP)

- For ABCP, a note references the various provisions of Articles 8, 9 and 10 (above) that do not apply, or apply differently (as noted above where relevant). The risk-retention, due diligence and transparency rules all apply in largely the same way, the ABCP programme must not be a resecuritisation and the credit enhancement must not effect tranching at the programme level. Additional provisions for ABCP are set out separately at both the transaction level and programme level (and for ABCP issued at the programme level to be eligible, the programme must be eligible, as must every transaction in the programme). For ABCP issued at the transaction level, the Criteria include: the underlying exposures must again be homogenous, but they must have a remaining maturity of no more than two years (and none with a residual maturity of longer than three years); and they must not be loans secured by residential or commercial mortgages or fully-guaranteed residential loans. For programmes, the Criteria include: the sponsor must be a credit institution (i.e. a bank) supervised under CRD IV; the issued securities must not include call options, extension clauses or any other provisions that would have an effect on final maturity; and the final documentation must be made available to investors 15 days after close of the transaction (at the latest). Since the ABCP provisions appear to have been drafted in at a late stage, these may be subject to lengthy negotiations amongst the European authorities and additional amendments may be made prior to their finalisation.

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The Regulation Amending CRR

The draft proposed Regulation Amending CRR makes clear that it proposes amending the regulatory capital requirements for (all) securitisations in line with the Basel Committee's Final Revisions to the Securitisation Framework and then adding the "recalibration" of that framework suggested by the EBA in its recent Advice and Opinion to the Commission, for STS securitisations. The Commission's view is that differentiating the capital requirements for STS and non-STS deals will bring several benefits, including a more risk-sensitive framework, incentivising banks to issue STS securitisations and encouraging investors back to the EU market. How this will be done is as follows (please note that these may be among the most heavily negotiated aspects of this legislative package and may well be subject to amendment prior to publication of the final legislation):

- **The hierarchy:** as you may recall, the Final Revisions to the Securitisation Framework set out a three-tier hierarchy of capital treatment, the (most risk-sensitive) "Securitisation Internal Ratings-Based Approach" (SEC-IRBA), the "Securitisation External Ratings-Based Approach" (SEC-ERBA), and the (least risk-sensitive) "Securitisation Standardised Approach" (SEC-SA), and the proposal sets out the revised framework implementing this new hierarchy. However, the proposal would also provide a more risk-sensitive approach for STS securitisation under all three of the new approaches. This is done by adjusting the 'p' (supervisory) parameter in the calculations for SEC-IRBA and SEC-SA, and by adjusting (downwards) the risk-weights in the relevant look-up table under the SEC-ERBA (using the new look-up tables from the Final Revisions to the Securitisation Framework and then adjusting them for STS deals - such that, e.g. the risk-weight for a non-STS AAA-rated 5-year deal is 20%, but is 15% for an STS deal (compare with a BBB-rated deal which is 90% for non-STS and 65% under the STS framework)).
- **The risk-weight floor:** the Final Revisions to the Securitisation Framework set a minimum 15% risk-weight floor (compared to 7% under the existing rules). STS deals would benefit from a new 10% floor under the proposals.
- **The risk-weight cap:** in line with the Final Revisions to the Securitisation Framework, it is proposed that the "look-through" approach (whereby the maximum risk-weight on the securitisation position is equal to the average risk-weight on the underlying exposures) only be allowed for senior securitisation positions and will apply regardless of whether the position is rated or not and regardless of whether the bank uses the Standardised or Internal Ratings-Based (IRB) Approach. This ensures that risk-weights on securitisation positions are no higher than those that would be applied to the underlying assets were they to be held directly.
- **Maximum capital requirements (overall cap):** helpfully, the approach that allows banks that use the most risk-sensitive approach (SEC-IRBA) to apply the maximum capital equal to the amount of capital that would have been held had the exposures not been securitised is being extended to banks using the "lower" of the approaches (SEC-ERBA and SEC-SA.)
- **Removal of some special treatments:** the treatment for second-loss or better positions in ABCP programmes, the treatment of unrated liquidity facilities and the treatment of additional own funds securitisation of revolving exposures with early amortisation features will be removed, to ensure simplicity.
- **Resecuritisations:** it is proposed these would be subject to even higher capital requirements than under the Final Revisions to the Securitisation Framework, by way of a revised calculation under the SEC-SA (the only approach available to these structures), which results in a higher capital charge, and a higher (100%) risk-weight floor will apply.
- **SME deals:** a new, more risk-sensitive treatment for the senior tranches of certain synthetic SME securitisations (that are retained by originators) would be applied, despite their not being "traditional" securitisations to which the STS framework is limited. The Commission defines an SME deal as a securitisation "backed by an underlying pool of loans to small- and medium-sized enterprises".
- **SRT and external credit assessments:** the proposal makes clear that only essential changes are being made to CRR (principally to replace the entire Title 2, Part 3, Chapter 5 of CRR - "Securitisation", in Articles 242 - 270), but the existing provisions on Significant Risk Transfer (SRT) and on the use of external credit assessments within that section are not amended by this proposal. In addition, the existing risk-retention rules in Articles 405-410 are being repealed in their entirety and will be replaced by the new provisions noted above under the Securitisation Regulation.
- **Solvency II (insurance company) capital:** the punitive capital charges for insurance company investors in

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ABS, currently set out in the Solvency II Delegated Act (Regulation 2015/35 - see the Feature Piece in Edition 12 of this SCM Briefing for a detailed overview) will be substantially amended under a new calibration that will significantly lower those charges for both senior and non-senior tranches. In addition, various definitions will be aligned with the Securitisation Regulation and the risk-retention provisions repealed to allow for the direct applicability of the new provisions. This will be achieved through a separate proposal to amend that Delegated Act that will be released at a later stage once the present legislative proposals have been finalised.

- **LCR Delegated Regulation:** this will also be amended (again, at a later stage) to align the requirements (in Article 13) of the LCR Delegated Regulation (Regulation 2015/61 Supplementing CRR) for "Level 2B" securitisations within the definition of "High Quality Liquid Assets" with the STS Criteria once they are finalised (see the Feature Piece in Edition 12 of this SCM Briefing for detailed background on this point.)

Other key aspects of the framework (referencing both the Securitisation Regulation and the Regulation Amending CRR) include the following:

- **Compliance:** regarding compliance, supervisory oversight for the STS framework will be carried out by various designated national competent authorities (and according to the supervisory authorities for originators, sponsors and original lenders) that will cooperate with the ESAs, leaving investors free to seek optional third-party assessments of a deal's compliance with the Criteria. Individual Member States will set and impose administrative sanctions, remedial measures and even criminal sanctions for infringements of the legislation. Provisions dealing with incorrect or disputed assessments of compliance are also included. In terms of monitoring, the ESAs are required to prepare a Report for the Commission on the implementation of the STS requirements and their impact, and the Commission in turn is required to report within two years of the ESAs' Report on the functioning of the Securitisation Regulation four years after its entry into force (as to which, see below), in order to provide a complete evaluation of the efficacy of the legislation in achieving its objectives. The functioning of the legislation will be measured according to STS products, prices and levels of issuance. The Regulation Amending CRR also provides that its proposed approach to capital requirements for securitisations will be reviewed no later than three years after its entry into force.
- **Date in force:** the proposals (currently) remain blank as to their date in force (although the application of the existing / harmonised aspects of the legislation is back-dated to when the original provisions took effect (e.g. risk-retention is applied to deals closed since 1 January 2011 when those provisions took effect, or to which new exposures have been added or substituted after 31 December 2014)). However, the Prudential Regulation appears to provide for a transitional period allowing institutions to use the existing set of capital rules to calculate their capital requirements until 1 January 2019 (there is no reason they would, if capital is much lower for STS deals under the "new" framework). The brand new provisions in terms of the STS Criteria will effectively only apply to new transactions issued after the legislation's date in force and will not be retrospectively applied (although the Commission does anticipate that outstanding deals may be designated as STS, providing all of the relevant Criteria are met). Given that the proposed legislation will now be subject to negotiation prior to its finalisation, it is not expected that the final legislation will take effect before the end of 2017. However since both pieces of legislation take the form of Regulations, there will be no transposition period and it is expected that, once finalised, there will only be a short period until they become directly applicable.
- **Other points to note:** the Securitisation Regulation also sets out the notification requirements (originators, sponsors and SSPEs are to notify ESMA of their verification of an STS deal by means of the template referenced in Article 14(5)), states what happens when the originator or original lender is not a credit institution (additional confirmations are required), provides for ESMA to maintain an official website for notifications and document storage, notes that additional Guidance and RTS/ITS will follow from the various ESAs, sets out the supervision and sanctioning arrangements, and explains how the ESAs and competent authorities will cooperate under the legislation. It also specifies the fairly minor amendments that it effects to other EU legislation, specifically the UCITS Directive, Solvency II, CRA III, AIFMD and EMIR to refer to (and harmonise) the new definitions, risk-retention and due diligence provisions.
- **Level 2 and 3 measures:** the EBA is to develop Guidelines on interpreting the Criteria, and, as mentioned above, a further set of RTS and ITS will need to be drafted (and others amended) to provide further detail on various aspects of the framework, including the requirements to be met by the website on which information should be made available to investors, the template for STS notifications, "further modalities" of the risk-retention framework, the information to be provided under Article 5 on transparency, and information exchange between competent authorities (and between competent authorities and the ESAs.)

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Consultation Document on Covered Bonds in the EU

The Consultation Document on Covered Bonds in the EU seeks views on a reform agenda for the European covered bond market that would promote a more integrated EU framework for covered bonds based on high quality standards and best market practices (taking into account an EBA Report of July 2014 on EU Covered Bond Frameworks and Capital Treatment), with the ultimate aim of improving funding conditions and facilitating cross-border investment and issuance. Two possible options for the introduction of an EU-wide covered bond regime are provided:

- Voluntary convergence of Member States' existing covered bond laws in accordance with non-legislative coordination measures (such as a Commission Recommendation based on EBA best practices); or
- The introduction of EU-wide product legislation on covered bonds that would either harmonise existing frameworks or provide an alternative, "29th" framework (encompassing a definition of "covered bond" and establishing standards for issuer models and licensing requirements, ongoing supervision and cover pool monitoring, the dual-recourse principle, segregation of the cover pool and its administration, issuer insolvency issues, eligible cover pool assets, the coverage requirement and over-collateralisation, risk mitigation and transparency requirements, as well as setting out the interaction between covered bonds and the Single Supervisory Mechanism.)

The Consultation Document goes even further by setting out a hypothetical yet comprehensive EU-wide covered bond framework based on the EBA's Report, that includes a new definition of "covered bond" that would expand on the current definition in the UCITS Directive, revised prudential requirements, the identification (and, crucially, recognition) of "equivalent covered bonds" from third countries, a system of public supervision, licensing requirements, the use of special purpose vehicles (SPVs) to ring-fence cover pools, a new dual-recourse principle, the incorporation of the cover pool as a regulated entity, the appointment of a cover pool special administrator, the ranking of cover pool liabilities, insolvency rules, and qualifying criteria for eligible cover pool assets. Highlighting the challenge posed by the increasing encumbrance of assets on bank balance sheets, the Commission notes that a more integrated EU framework could help mitigate asset encumbrance, partly through a narrowly-drafted definition of eligible cover pool assets that a single, EU framework could deliver.

Providing a useful, in-depth analysis of covered bond market data from across the EU and considering the disparity between legal frameworks and supervisory practices, the Consultation Document seeks input on questions relating to pricing conditions, operational costs, whether there is misalignment of the regulatory treatment between covered bonds and other collateralised instruments (such as asset-backed securities), whether there are legal or practical obstacles to cross-border investment in covered bonds, the benefits of an integrated framework, the efficacy of the existing (voluntary) covered bond "Label", whether a Commission Recommendation would be sufficient to achieve the aims of the consultation, whether the Commission's list of areas to be covered by an alternative framework are sufficient, the merits overall of developing an EU-wide framework (given that national regimes differ considerably in some ways), how legacy transactions should best be dealt with, the most appropriate approach to pooling and segregation, supervision issues, specific issues with regard to the definition of certain assets as cover pool assets, the inclusion of other assets (such as aircraft, ship and SME loans) in cover pools and whether mixed pools should be allowed, how the coverage requirement should work, whether a mandatory level of over-collateralisation should be introduced and at what level, whether the proposals would sufficiently mitigate market and liquidity risks, and whether more detailed transparency and disclosure requirements should be introduced for covered bonds. Responses to the Consultation Document (via an online questionnaire) are requested by 6 January 2016. There is a great deal of material on which to respond, and market participants are expected to provide comprehensive responses to the Consultation Document, not least since detailed, national covered bond frameworks have been long-established in some EU jurisdictions.

Call for Evidence - Regulatory Framework for Financial Services

The Commission's Call for Evidence on the EU regulatory framework for financial services requests comment (by 6 January 2016) on the benefits, unintended effects, consistency and coherence of the package of (over 40 pieces of) EU legislation that has been adopted in direct response to the global financial crisis, so that it can assess the cumulative impact of those regulatory reforms. In particular, the Commission is seeking evidence and concrete feedback on any rules which affect the ability of the economy to finance itself and grow, unnecessary regulatory burdens, inconsistencies and gaps in how the legislation interacts, and rules that give rise to unintended consequences. Given that (at least some of) the legislative responses to the broad range of issues highlighted by the global financial crisis have been driven somewhat by political expediency and have not all been viewed as considered reactions to discrete (or even acknowledged) concerns, the opportunity for market participants to

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provide constructive feedback is enormously valuable and should not be missed. In any event, the Commission notes that many of these legislative measures contain review clauses that require an assessment of their efficacy with a few years of their having taken effect, and that the results of the Call for Evidence will assist with those reviews, as well as developing new approaches (such as the regulatory model for covered bonds). The Call for Evidence also presents an opportunity for respondents to consider holistically the last six or so years of European law-making across the financial services market and provide feedback accordingly. The Commission will report on the findings from its review of the responses by mid-2016. This may prove to be one of the areas of the CMU Action Plan that elicits a deluge of responses and it will be interesting to see how the structured finance market in particular responds to this opportunity and the overall outcome of the review.

The proposed legislative package and consultative material accompanying the CMU Action Plan is extremely detailed (500+ pages in total) and complex, but (in particular) the explanatory material and preambles provide excellent background to the STS initiative, and summarise the numerous steps taken to regulate the securitisation market in the aftermath of the global financial crisis. The Securitisation Regulation and the Regulation Amending CRR are currently subject to the co-decision legislative process and must now be approved by the European Parliament as the next stage in the process, prior to trialogue negotiations on the text (in this regard, it is worth noting that the legislative texts are now subject to negotiation and (potentially heavy) amendment and do not represent the final texts). We expect that negotiations will continue to take place well into 2016, with final texts not expected before the end of 2016, which means that the likely implementation date will probably not be before the end of 2017. The SCM Briefing will provide further updates as the texts are negotiated, further proposals are released (including the forthcoming consultation on the modernisation of the Prospectus Directive and a Green Paper on retail financial services), as the Commission moves towards finalising these important legislative provisions. With a 2019 deadline set by the Commission for completing CMU, it is to be expected that work on these projects will be intensive over the coming few years.

Useful links:
European Commission Press Release (containing all links), CMU Webpages and CMU Action Plan
Securitisation Regulation
Regulation Amending CRR
Consultation Document on Covered Bonds in the EU
Call for Evidence on the EU regulatory framework for financial services

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Features

Key EU Legislative Developments - Status Update Table

Our European Legislative Developments Status Update, in the form of a short table, outlines some of the key new and proposed European legislative measures affecting participants in securitisation and structured finance transactions, provides links to the underlying legislative texts, and highlights any progress in their development. The refreshed and revamped version of the Table focuses on showing the key Level 1-3 measures along with the latest developments in relation to each measure. Please click here to view this month's Status Update.

Key developments

European Commission's CMU Action Plan sets out ambitious raft of legislative proposals

As widely anticipated, the European Commission has published the draft legislative proposals implementing those aspects of the Capital Markets Union (CMU) Action Plan that harmonise and simplify existing rules on due diligence, risk-retention and transparency, and establish a new European framework for Simple, Transparent and Standardised (STS) securitisation, in the form of a Securitisation Regulation (amending the Capital Requirements Directive IV (CRD IV), the Regulation on Credit Rating Agencies, as amended (CRA III), Solvency II, The European Market Infrastructure Regulation (EMIR), and the Markets in Financial Instruments Directive (MiFID), as well as several Delegated Acts under those pieces of legislation) and a Regulation Amending the Capital Requirements Regulation (CRR), which proposes a revised prudential treatment for all securitisations, including those designated as STS. Both proposals (together, the "securitisation proposals") are summarised in detail in our Feature Piece in this Edition of the SCM Briefing. A Consultation Document on an EU framework for Covered Bonds also forms part of the CMU Action Plan and is also outlined further in our Feature. The CMU Action Plan also notes that detailed amendments to the Prospectus Directive (which were expected to be released at the same time as the CMU Action Plan) will now be released at a later stage, but before the end of 2015. Other aspects of the CMU Action Plan focus on venture capital and establishing new rules on the Solvency II treatment of infrastructure projects (which are outside the scope of our present Feature). In conjunction, the Commission has also released a Call for Evidence on the EU regulatory framework for financial services, which is intended to gather views on the appropriateness and efficacy of the EU post-global financial reforms introduced to date within the EU, and which may result in additional future legislative proposals. The securitisation proposals will now be subject to trialogue negotiations (amongst the European Commission, Council and Parliament), with a general approach expected to be agreed by early 2016 and the final legislative texts to be issued by the third or fourth quarter of 2016.

Useful links:
European Commission CMU Webpage (containing links to the CMU Action Plan and all accompanying legislative proposals and consultative material)

Basel Committee and IOSCO issue final Criteria for identifying "Simple, Transparent and Comparable" securitisations

Further to the release of a Consultative Document in December 2014 which proposed a set of Criteria for identifying "simple, transparent and comparable" (STC) securitisations (see Edition 14 of this SCM Briefing for a detailed summary), the Basel Committee and International Organisation of Securities Commissions (IOSCO) have taken into account the feedback received during the consultation process and in July 2015 released their final set of global Criteria for identifying STC securitisations. The STC Criteria apply only to term transactions and are non-exhaustive and non-binding (with additional Criteria to be added over time where necessary, possibly considering short-term instruments such as asset-backed commercial paper (ABCP)). Setting out the objectives of simple, transparent and comparable securitisations, the Criteria are intended to help transaction parties evaluate the risks of a particular securitisation across similar products, and assist investors with their due diligence (although they are not a substitute for that due diligence). Based on feedback to the Consultative Document, some technical amendments have been made to the 14 Criteria, such that the final Criteria (which are "mapped" to the three key types of risk in the securitisation process - asset risk, structural risk and fiduciary and servicer risk) are less prescriptive and more clearly articulated than originally proposed. The European Commission's proposed legislative framework for "Simple, Transparent and Standardised" (STS) securitisations under the Capital Markets Union (CMU) Action Plan (for detail on which, please see the Feature Piece in this Edition of the SCM Briefing) build on the Basel Committee / IOSCO Criteria, although the CMU legislative proposals go further in terms of extending the STS legislative framework to encompass short-term (ABCP) transactions. Both the STC Criteria and the STS legislative framework envisage that a more risk-sensitive prudential treatment could be applied to these transactions in future. The Basel Committee is currently exploring how the STC Criteria could be incorporated into its already-finalised Revisions to the Securitisation Framework which take effect from 1 January 2018 (and which we summarised at length in Edition 14 of this SCM Briefing), and the Commission's framework to some extent anticipates that work-stream by proposing an accompanying legislative proposal amending the Capital Requirements Regulation to adjust the regulatory capital requirements for (all) securitisations and then "recalibrate" that framework for STS deals.

Useful links:
Basel Committee and IOSCO Criteria for Identifying Simple, Transparent and Comparable Securitisations

Key developments

European Central Bank makes further amendments to the "General Documentation"

Edition 15 of this SCM Briefing noted that the European Central Bank (ECB) had issued a helpful consolidation of the "General Documentation" (as Guideline 2015/510 (ECB/2014/60)) earlier in 2015, which sets out the collateral eligibility rules for asset-backed securities (ABS) such that the applicable rules for ABS were then all in one place. However, as we outlined, that Guideline was subsequently amended, by (what became) Guideline 2015/732 of the ECB, as regards coupon structures, such that the General Documentation is (very unhelpfully) no longer all in one place. Now, a further amendment is being made to the General Documentation, by way of Guideline ECB/2015/27, which makes the following changes:

- To revise the provisions on the eligibility of Eurosystem "counterparties" (i.e. those institutions submitting assets as collateral for funding) such that the ECB can take into account in its eligibility assessment quarterly information on the capital, leverage and liquidity ratios of individual institutions, as reported in accordance with the Capital Requirements Regulation (CRR) (see the new Article 55a of the General Documentation, which sets out the information that the Eurosystem may take into account, which may be prudential information of a "standard comparable" to that reported under CRR). The new provision also clarifies that asset management vehicles resulting from a resolution action (e.g. under the Bank Recovery and Resolution Directive) are not eligible to access Eurosystem monetary policy operations.
- To introduce a new class of eligible assets - "non-marketable debt instruments backed (directly or indirectly) by eligible credit claims" ("DECCs"). These are essentially debt instruments that are: (a) backed by credit claims that are also eligible as collateral within the Eurosystem on an individual basis; and (b) that have a dual recourse feature to: (i) the credit institution that is the originator of the underlying claims; and to (ii) the underlying credit claims themselves; and (c) for which there is no tranching of risk. Only the use of domestic DECCs is envisaged (i.e. debt instruments backed by credit claims issued and held in the issuer's home country), until a cross-border framework for the use of DECCs has been fully developed. The Guideline sets out how the General Documentation will be amended to incorporate the eligibility criteria for DECCs (see Article 99), which include provisions requiring legal verification of the credit claims (in terms of verification, validity, enforcement and lack of restrictions on perfection and enforcement and banking secrecy), and eligibility criteria for DECCs, which cover similar aspects to the ABS eligibility criteria, including rules on coupon structure, denomination of the underlying credit claims in Euro, the SPV issuer must be based in a Member State whose currency is the Euro, the governing law is where the issuer is established, there must be no subordination, and compliance with credit quality and transparency requirements (including the provision of loan-level data, with the same quality requirements as apply to ABS). The underlying credit claims must comply with the existing eligibility for credit claims set out in Section 1, Chapter 1 of Title III (Part 4) of the General Documentation, subject to a series of modifications which include the legal verification procedures mentioned above, one-off verification (and then subsequent checks) of the procedures used to submit the information on the underlying credit claims by the relevant National Central Bank (NCB) in accordance with a fairly strict set of steps, and the completion of all legal formalities (including any notification to debtors about the transfer of their credit claims to the issuer) to ensure the validity of the agreements and transfer mechanisms. While the DECCs themselves do not require a rating, the underlying credit claims do, and that rating must be at least "Credit Quality Step 3" (i.e. BBB+ to BBB-). Provisions for valuation haircuts are also set out, and other tweaks across the General Documentation are made which allow the Eurosystem/ECB greater discretion in allowing counterparties to access its various monetary policy operations going forward.

The Guideline will be published in the Official Journal of the EU in due course, and it is due to take effect from 2 November 2015. It will be interesting to see whether banks (that would typically submit ABS as collateral) would alternatively submit DECCs, as this gives banks an alternative by using bundles of loans as collateral without the structuring required to complete an ABS issue.

Useful links:
ECB Guideline 2015/510 (ECB/2014/60) (the General Documentation)
ECB Guideline 2015/732 of the ECB
ECB Guideline ECB/2015/27

Our recent alerts

Banking Newsletter - Edition 13

The 13th Edition of Baker & McKenzie's Banking Newsletter features articles examining market trends in the European funds finance market and the continued evolution of capital call facilities, the development of Bitcoin, a virtual, decentralised and relatively anonymous currency and its possible future regulation, and the emergence of capital markets funding for renewable energy projects in South Africa. | Read more |

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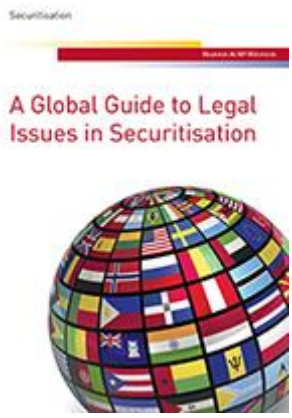
Download our Securitisation eBook, "*A Global Guide to Legal Issues in Securitisation*" by clicking on the image below:



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Key EU Legislative Developments - Status Update

As at October 2015 (updates in red)

Name	Level 1 Legislative Measure(s) / Level 2 Measures / Level 3 Q&As, Guidelines, etc.		Latest News
Alternative Investment Fund Managers Directive (AIFMD)	Regulating managers of "Alternative Investment Funds" (broadly, hedge funds with over €100 million under management and private equity firms with over €500 million under management).		ESMA's **updated Questions and Answers on the application of the AIFMD** (dated as at 1 October 2015). ESMA's **Opinion and Advice** to the European Commission on the application of the AIFMD "passport", considering six countries: Jersey; Guernsey; Switzerland; Hong Kong, Singapore and the US (August 2015). CMU proposals would amend AIFMD (see below under CMU Action Plan).
	1	**Directive 2011/61/EU** on Alternative Investment Fund Managers (implemented by 22 July 2013 subject to a one year transitional period, so new rules took effect from 22 July 2014).	
	2	European Commission **website** with Delegated and Implementing Regulation. European Commission **Q&As on AIFMD** (April 2013).	
	3	ESMA updated **Q&As on AIFMD** (latest version as of 1 October 2015). ESMA **webpage** containing guidelines, consultations, call for evidence, Q&As etc.	
Capital Markets Union (CMU) Action Plan	The European Commission has released a comprehensive Capital Markets Union (CMU) Action Plan which contains a series of legislative proposals amending existing European legislation, introducing new proposals and consulting on the possible introduction of new legislative measures, all with the aim of promoting stronger EU capital markets, enhancing EMU and supporting economic convergence.		The overall **CMU Action Plan** sets out the framework for the various legislative proposals and consultative documents (all released 30 September 2015). Amendments proposed to other (existing) pieces of EU legislation are noted where
	1	Proposal for a **Securitisation Regulation** introducing a harmonised EU framework for securitisation and establishing Criteria for "Simple, Transparent and Standardised" (STS) securitisation (amending CRD IV, CRA III, Solvency II, EMIR and AIFMD). Proposal for a **Regulation amending CRR** to establish prudential requirements for STS securitisations. **Consultation Document on Covered Bonds** (responses by 6 January 2016).	

Name		Level 1 Legislative Measure(s) / Level 2 Measures / Level 3 Q&As, Guidelines, etc.	Latest News
		Consultation Document on Venture Capital (responses by 6 January 2016). Proposal for a **Delegated Regulation amending Delegated Regulation 2015/35** (establishing new rules on the Solvency II treatment of infrastructure projects). **Call for Evidence** on the EU regulatory framework for financial services (responses by 6 January 2016).	relevant.
	2	European Commission **Questions and Answers** on the CMU (September 2015). European Commission **webpages on CMU**.	
	3	Each of the proposals contain numerous references to the development of Regulatory Technical Standards, Implementing Technical Standards and Guidance by the ESAs in due course.	
Credit Rating Agencies (CRA III)		Further amending the EU Regulation on CRAs by enhancing the regulatory framework for CRAs; placing new disclosure requirements on participants in structured finance transactions; requiring 'rotation' in relation to re-securitisations; introducing a new civil liability regime for CRAs and specifically removing references to credit ratings from EU legislation.	
	1	CRA III **Regulation 462/2013** (in force 21 June 2013) and **Directive 2013/14/EU** (requiring transposition by 21 December 2014).	ESMA's **Technical Advice on Competition, Choice and Conflicts of Interest in the CRA Industry**, **Technical Advice on Reducing Sole and Mechanistic Reliance on External Credit Ratings** and a **Report on the Possibility of Establishing one or more Mappings of Credit Ratings Published on the European Rating Platform** (all published 2 October 2015) now to be considered by the European Commission. CMU Proposals would amend CRA III (see above under CMU Action Plan).
	2	European Commission **FAQs** (18 June 2013). European Commission **webpage** containing the text of the Regulation, Delegated Regulations, FAQs, reports, implementing decisions etc.	
	3	ESMA **Q&A** on the Implementation of the CRA Regulation (2 June 2014). ESMA **webpage** containing all consultations, guidelines, recommendations, calls for evidence, press releases, reports etc. ESAs **Final Report** on removing mechanistic reliance on credit ratings (6 February 2014).	

Name	Level 1 Legislative Measure(s) / Level 2 Measures / Level 3 Q&As, Guidelines, etc.		Latest News
CRD IV and Regulation (CRR)	Implementing Basel III (Liquidity standards; definition of capital; leverage ratio; counterparty credit risk; capital buffers). Plus, enhanced governance/supervision and sanctions; removal of national options/discretions; introducing the "single rulebook"; CRD IV supersedes CRD II (**Directive 2009/111**) and CRD III (**Directive 2010/76**) previously in place.		
	1	**Directive 2013/36/EU** (CRD IV) (in force on 17 July 2013) and **Regulation 575/2013** (CRR) (in force on 28 June 2013) (with **CRD Corrigendum** and **CRR Corrigendum**) (2 August 2013) and the final **CRR Corrigendum** (30 November 2013)).	EBA **Consultation Paper** on the definition of "default" under the CRR (September 2015). EU Capital Markets Union (CMU) **CMU Action Plan**, containing legislative proposals for a **Securitisation Regulation** (amending CRD IV / CRR, and others) and a **Regulation amending CRR** have been released (30 September 2015). See above under CMU Action Plan for further details.
	2	European Council CRD IV / CRR **FAQs** (16 July 2013). European Commission **webpage** with links to various RTS and ITS, Commission Delegated Acts and Commission Implementing Acts issued to date under CRD IV / CRR, and webpage with **Reports and Consultations**, including **state of play table**. European Parliament **Background Note** on CRD IV / CRR (15 April 2013).	
	3	EBA **webpage** with links to various Consultation Papers, Final Guidance, the Single Rule Book, Opinions etc. Further EBA **updated Single Rulebook Q&A** (June 2015). ESMA's **Overview of its Guidelines and Technical Standards,** which provide, from a single page, links to all of the relevant Guidelines currently under consultation, final Guidelines, Technical Standards under public consultation, Technical Standards submitted to the European Commission, and Technical Standards currently in force (organised according to which piece of Level 1 legislation they relate to).	
European Market Infrastructure Regulation (EMIR)	EU Regulation on OTC derivatives, central counterparties and trade repositories. Introducing, amongst other things, mandatory clearing of certain OTC derivative contracts (the "Clearing Obligation") through an authorised central counterparty (CCP), risk mitigation techniques, requirement to report derivative transactions to a trade repository (the "Reporting Obligation"), organisational, conduct of business and prudential requirements for CCPs and organisational, conduct of business and record keeping requirements for Trade Repositories.		
	1	**Regulation (EU) No 648/2012** (EMIR) (in force on 16 August 2012).	European Commission adopts draft

Name		Level 1 Legislative Measure(s) / Level 2 Measures / Level 3 Q&As, Guidelines, etc.	Latest News
	2	ESMA **webpage** containing key EMIR documents, such as setting out the current regulatory framework (on Trade Reporting, Trade repositories, OTC derivatives and clearing obligation and CCPs), Third countries equivalence, draft technical standards, consultations and discussion papers, practical guidance and Memorandums of Understanding, correspondence and reports, and a further webpage containing and providing the latest ESMA Q&A and European Commission EMIR FAQ.	**Delegated Regulation** governing the clearing obligation for the over-the-counter interest rate derivatives classes. The classes include interest rate swaps (fixed-to-floating, basis, forward-rate agreements and overnight indexed swaps) denominated in euro, sterling, Japanese yen and US dollars (August 2015). ESMA issues **four Reports** which make various recommendations to the European Commission to amend the EMIR framework (three under Article 85 of EMIR, covering non-financial counterparties (NFCs), pro-cyclicality and segregation and portability for central counterparties (CCPs) and a fourth which responds to the Commission's EMIR review and makes recommendations on amending EMIR in relation to streamlining the process for determining clearing obligations, to entirely rethink the recognition of third country CCPs, and improving the supervision and enforcement procedures for trade repositories) (August 2015). ESMA publishes a **Discussion Paper** on a review of Article 26 of the Regulatory Technical Standard (No. 153/2013) under EMIR dealing with Central Counterparties' (CCPs') client accounts (August 2015). European System of Central Banks' **Report** on the need for measures
	3	ESMA **webpage** for list of Central Counterparties authorised to offer services and activities in the Union (updated **List of Central Counterparties** as at 18 September 2015). ESMA's **helpful webpage** available which provides links to the website of each of the Trade Repositories on which their aggregate public data is published. ESMA's **full list** of registered TRs under EMIR (28 November 2013).	
	4	BCBS / IOSCO **Margin Requirements for Non-Centrally Cleared Derivatives** (March 2015).	

Name	Level 1 Legislative Measure(s) / Level 2 Measures / Level 3 Q&As, Guidelines, etc.	Latest News
		facilitating the access of CCPs to central bank liquidity facilities under EMIR (August 2015). ECB **Response** to the European Commission's Consultation on EMIR (2 September 2015). ESMA's **final draft Regulatory Technical Standards on the Clearing Obligation for Credit Derivatives** (2 October 2015). ESMA's **updated version of its Questions and Answers on EMIR** (dated as at 1 October 2015). CMU proposals would make minor amendments to EMIR (see above under CMU Action Plan).
Market Abuse Directive and Regulation (MAD II / MAR II)	Addressing gaps in the regulation of certain instruments (such as commodity derivatives) and in relation to new markets and technologies (such as Multilateral Trading Facilities, Organised Trading Facilities as well as over-the-counter markets) and strategies such as high frequency trading, which have the potential to help facilitate abusive practices.	
	1 **Market Abuse Directive** and **Regulation** (published in the Official Journal 12 June 2014), and must be transposed into national law by participating member states by 3 July 2016.	ESMA has published its **Final Report** on a set of RTS and ITS required under MAR which strengthen the existing market abuse framework by extending its scope to new markets, platforms and behaviours (September 2015).
	2 **FAQs** on MAD II (4 February 2014).	
	3 ESMA **webpage** with Discussion Paper, Consultation Paper, Reports, Q&As etc.	
Markets in Financial Instruments	Imposing a stricter regime on the provision of investment services in financial instruments by banks and investment firms, more heavily regulating the operation of stock exchanges and alternative trading venues within the EU, introducing greater transparency in the OTC derivatives market, and interacting with the "EMIR" legislation on clearing and central counterparties.	

Name		Level 1 Legislative Measure(s) / Level 2 Measures / Level 3 Q&As, Guidelines, etc.	Latest News
Directive II and Regulation (MiFID II / MiFIR)	1	Final publication of **MiFID 2014/65/EU** and **MiFIR 600/2014** in the Official Journal of the EU on 15 May 2014 (recasting **Directive 2004/39/EC** and amending **Regulation 648/2012**). Regulation took effect on 21 June 2013; Directive requiring transposition by 3 July 2016, with those measures to be applied from 3 January 2017 (save for provisions transposing Article 65(2) which applies from 3 September 2018).	**Speech** by Steven Maijoor, Chair of ESMA, delivered to the European Parliament at MiFID II/MiFIR Scrutiny Hearing, provides a helpful update on ESMA's work in developing the MiFID II / MIFIR implementing measures (15 July 2015). ESMA **Consultation Paper** on the remaining draft ITS required under the MiFID II legislation on which ESMA has not yet consulted. These cover: the suspension and removal of financial instruments from trading; the notification and provision of information for data reporting services providers; and the weekly aggregated position reports for commodity derivatives, emission allowances and derivatives thereof. Comments are required by 30 October 2015 (31 August 2015). ESMA's detailed **Final Report** setting out 28 **draft final Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS)** on some of the key areas under MiFID including measures to increase market transparency, efficiency and safety, introduce greater pre- and post-trade transparency for non-equity instruments including bonds, derivatives, "structured finance products" and emissions allowances, and establish stronger investor protection measures (September 2015).
	2	European Commission **Frequently Asked Questions** (15 April 2014).	
	3	European Commission **webpage** and ESMA **webpage** with Consultation Papers, Technical Advice, FAQs etc.	

Name	Level 1 Legislative Measure(s) / Level 2 Measures / Level 3 Q&As, Guidelines, etc.	Latest News
Solvency II	Setting prudential rules for the insurance and reinsurance sector; setting new capital requirements for insurance companies; setting risk-retention provisions for insurance company investors in securitisation; re-casting several existing legislative measures in the area of insurance and reinsurance.	
	1 **Directive 2009/138/EC** (expected to take effect from 1 January 2016). **Corrigendum** (10 June 2014). Further **Corrigendum** (1 July 2014). Further **Corrigendum** (25 July 2014). Text of the **Omnibus II Directive** published in the OJ (16 April 2014). Council **final text of the draft Directive amending Solvency II** (29 November 2013) postponing the application date of Solvency II to 1 January 2016. European Council **announced** (5 December 2013) that it has adopted the Directive at first reading, and EIOPA **confirms** Solvency II timeline.	CMU proposals would amend Solvency II (see above under CMU Action Plan), in particular the Proposal for a **Delegated Regulation amending Delegated Regulation 2015/35** (establishing new rules on the Solvency II treatment of infrastructure projects).
	2 EIOPA **webpage** with Delegated Regulation, Implementing Regulations, Guidelines, Milestones and Consultations.	
	3 TBC	
Directive on Recovery and Resolution (RRD)	Establishing an EU-wide framework for the recovery and resolution of credit institutions and investment firms based on preparatory and preventative measures, early intervention powers and resolution tools and powers; including proposals to introduce a tool to write-down certain liabilities of a failing bank and/or impose requirements for institutions to issue a statutory amount of "bail-in-able" liabilities.	
	1 **Recovery and Resolution Directive** (must be transposed by 31 December 2014 and in effect from 1 January 2015 (with the bail-in provisions not expected to take effect until nearer 2016)). Related provisions under planned amendments to the **Directive on Deposit Guarantee Schemes** (DGS) have been published in the Official Journal (12 June 2014).	EBA **Opinion** (in response to a request for advice from the European Commission),on how to define what arrangements should be protected in a partial property transfer in resolution under the RRD (August 2015).
	2 European Commission **website** on Recovery and Resolution Directive and **website** on Deposit Guarantee Schemes containing Delegated Acts, Consultations, FAQs, Reports etc. **Frequently Asked Questions** on the RRD (15 April 2014). European Commission **Deposit Guarantee Schemes – FAQs** (15 April 2014).	

Name	Level 1 Legislative Measure(s) / Level 2 Measures / Level 3 Q&As, Guidelines, etc.	Latest News
	3 EBA **webpage** containing Technical Standards, Guidelines, Recommendations, Consultation Papers, Opinions, Reports and other Publications.	
Single Supervisory Mechanism (SSM) and Single Resolution Mechanism (SRM)	Establishing the European Central Bank (ECB) as single bank regulator for Eurozone banks and for Eurozone financial stability generally, conferring specific powers on the ECB and granting specific, additional powers over bank supervision to the European Banking Authority (EBA). The accompanying SRM measures would establish a single bank resolution mechanism for Eurozone banks and a Single Bank Resolution Fund.	
	1 SSM: **EBA Regulation** (15 October 2013) and **SSM Regulation** (22 October 2013) (in force from 4 November and 30 October respectively, with the ECB assuming full powers from 4 November 2014). **Corrigendum** to Regulation 469/2014 to clarify that the ECB can only impose non-supervisory penalties under Regulation 2157/1999, but can impose administrative penalties in the exercise of its supervisory tasks under the SSM. SRM: Final **text** of the SRM legislation (15 July 2014, in force 19 August 2014).	
	Related measure: The European Commission has now released a **Proposal for a Regulation on Structural Measures Improving The Resilience of EU Credit Institutions**, which would apply to the largest and most complex EU banks with significant trading activities (i.e. those that are "too big to fail"), and would ban them from "proprietary trading" in financial instruments and commodities (replicating the US 'Volcker Rule' across the EU), grants supervisors power to separate banks' trading activities from their lending and deposit-taking activities where risks exceed certain thresholds, requires banks to submit a "separation plan" to competent authorities, who must then cooperate to ensure that banks' activities are separated across the whole EU where necessary (29 January 2014). How this would interrelate with the SSM / SRM measures is not clear at this stage. On 26 May 2015, the European Parliament's Committee on Economic and Monetary Affairs (ECON) voted (30 to 29) to reject the proposed Regulation, leaving the next steps uncertain in terms of whether the Commission will re-propose the measure. In June 2015, the Commission **announced** that EU Finance Ministers have agreed a revised version of the	

Name		Level 1 Legislative Measure(s) / Level 2 Measures / Level 3 Q&As, Guidelines, etc.	Latest News
		draft Regulation (the revised text is available **here**).	
	2	European Commission SSM **webpage** and SRM **webpage** containing Implementing and Delegated Regulation, Consultations etc. The European Council updated **General Approach** document (6 December 2013). European Commission **FAQs on the SSM** (12 September 2013). European Commission **Frequently Asked Questions on SRM** (15 April 2014).	
	3	ECB **webpage** containing SSM Framework Regulation, Regulation on Supervisory Fees, Rules of Procedure of the Supervisory Board, Memorandum of Understanding, Public Consultations, inter-institutional agreement etc.	
Financial Transaction Tax (FTT)		Imposing a new tax on all transactions involving the purchase, sale or supply of, or exchange between financial institutions of, shares and bonds (taxed at 0.1%) and derivatives (taxed at 0.01%)). The FTT would apply to transactions with an established link to the FTT-zone (at least one transaction party is established in a participating Member State), and the latest proposal applies the tax to transactions based on where the shares, bonds or derivatives were issued, even if the transaction takes place outside the FTT zone.	
	1	**Proposed Directive** implementing enhanced cooperation in the area of financial transaction tax (24 June 2013).	Discussions ongoing as at October 2015.
	2	European Commission Financial Transaction Tax - **FAQs (technical)** and **(non-technical)**.	
	3	European Commission **webpage** with proposal, impact assessment, background information, status update etc.	
Transparency Obligations Directive		As part of a new package of "responsible business" measures, the proposed amendments to the Transparency Obligations Directive (and Prospectus Directive) in this proposal would reduce some of the reporting burdens on listed companies (but would also increase transparency in other ways). Minimal impact on "wholesale" issuers.	
	1	**Transparency Directive** (22 October 2013) (in force 27 November 2013), following which Member States have 24 months in which to implement its provisions, and **Corrigendum** (18 January 2014) Original **Transparency Directive** (24 November 2010).	

Name	Level 1 Legislative Measure(s) / Level 2 Measures / Level 3 Q&As, Guidelines, etc.		Latest News
	2	TBC	
	3	ESMA **consultation** on RTS on major shareholdings and indicative list of financial instruments subject to notification requirements (20 March 2014).	
Directive on Credit Agreements relating to Residential Property	Establishing an authorisation, registration and supervision framework for mortgage credit providers and intermediaries (including non-banks), setting high conduct of business standards, requiring the provision of key, detailed, pre- and post-sale information to borrowers, establishing requirements for responsible lending and borrowing and generally providing better consumer protection for mortgage borrowers.		
	1	**Final text** of the Directive on Credit Agreements Relating to Residential Property (the Mortgage Credit Directive) (4 February 2014) (in force 24 February 2014 and applies to mortgage credit agreements from 21 March 2016).	Minor **Corrigendum to the MCD** published 8 September 2015.
	2	European Commission **FAQs** (10 December 2013).	
	3	EBA **Consultation Paper** (relating to Articles 18 and 20(1) of the MCD) on developing a set of Guidelines relating to the creditworthiness assessment (12 December 2014).	
Shadow Banking	Developing a series of policy recommendations and legislative measures to address the risks in "shadow banking" and mitigate the spill-over effect between the regular banking system and the shadow banking system, defined as "*credit intermediation involving entities and activities outside the regular banking system*", extending to repos and securities lending, money market funds, securitisation and other shadow banking entities.		
	1	The two legislative measures proposed to date are subject to trialogue negotiations before finalisation.	
	2	European Commission **Roadmap** (January 2012). European Commission **Green Paper on Shadow Banking** (19 March 2012). European Parliament's **Report** on the draft Regulation (April 2015) sets out its proposed amendments to the text in advance of its first reading and negotiation, which is now scheduled for 8 September 2015. European Commission **Communication** on Shadow Banking setting out the roadmap for	

Name		Level 1 Legislative Measure(s) / Level 2 Measures / Level 3 Q&As, Guidelines, etc.	Latest News
		future work which includes as the first measure a **Proposal for a Regulation on Money Market Funds** (4 September 2013). ECON's **Report** on the Proposed Regulation (March 2015) sets out Parliament's proposed amendments to the text and confirms that the European Parliament will vote on the Regulation during its plenary session to be held between 27-30 April 2015. ECON) **announced** that it had voted (on 29 April 2015) to approve the Regulation on Money Market Funds. The second measure to be introduced under the Commissions Shadow Banking workstream is a **Proposal for a Regulation on Reporting and Transparency of Securities Financing Transactions** and **FAQs** (29 January 2014). MEPs have now **voted to approve** the draft Regulation such that Member State negotiations on the text can begin in April 2015 (March 2015). European Commission adopted the latest version of the **Proposed Regulation on Reporting and Transparency of Securities Financing Transactions** in January 2015, setting a 27 January 2014 deadline for amendments. European Parliament's Committee on Economic and Monetary Affairs (ECON) released **detailed amendments** to the proposed Regulation on Reporting and Transparency of Securities Financing Transactions (February 2015), for ECON discussion on 23 February 2015 (and vote due 23 March 2015).	
	3	Financial Stability Board **Recommendations** to the G20 (27 October 2011). Financial Stability Board **Regulatory Framework** for haircuts on non-centrally cleared securities financing transactions (October 2014).	
Miscellaneous		There are several other ongoing legislative measures which are of importance to the operation and functioning of the international capital markets, relating to payments, settlement, depository safekeeping and oversight. Some (aspects) of these measures are interrelated with the legislation listed above, even if they do not appear to directly affect structured finance markets or participants.	
	1	**SEPA Regulation** 260/2012 (14 March 2012) establishes a single payment area for the Eurozone and facilitates the cross-border use of a single European bank account. ENTERED into force on 31 March 2012. The Single Euro Payments Area (SEPA) became fully operational in all Eurozone countries as from 1 August 2014 – **Press Release** (1 August 2014). European Commission **FAQs** on Single Euro Payments Area (SEPA) (31 July 2014).	

Name		Level 1 Legislative Measure(s) / Level 2 Measures / Level 3 Q&As, Guidelines, etc.	Latest News
	1	Proposed revised **Payment Services Directive** (PSD2) and proposed **Regulation on Multilateral Interchange Fees** package modernises the rules for all payment services in Europe, enhances consumer protection against fraud, promotes competition, removes barriers between national payment systems, caps interchange fees, and provides the necessary legal platform for SEPA. European Commission **Frequently Asked Questions on the PSD** (8 October 2015).	European Parliament has **announced** that it has approved the PSD2 (see **revised version of PSD2 here**) (8 October 2015). Commission **FAQs** on PSD (dated 8 October 2015).
	1	Final **UCITS V Directive ("UCITS V")**, which introduces safekeeping and oversight duties for depositories, rules for remuneration policies and lays down administrative sanctions, published in the Official Journal of the EU (28 August 2014). European Commission **Discussion Paper** on calculation of counterparty risk by UCITS for OTC financial derivative transactions subject to clearing obligations (22 July 2014). ESMA **Guidelines** on ETFs and other UCITS issues (1 August 2014).	
	1	A proposal for a for a **Regulation on financial benchmarks** was issued in September 2013, to contribute to the accuracy and integrity of benchmarks used in financial instruments and financial contracts, by ensuring contributors are subject to prior authorisation and ongoing supervision, improving governance and requiring greater transparency about how benchmarks are produced, and ensuring the appropriate supervision of key benchmarks such as LIBOR / EURIBOR.	
	1	The final text of the **CSD Regulation**, which aims to harmonise the timing and conduct of securities settlement within the EU, and update the rules governing Central Securities Depositories (CSDs) (and amends the Settlement Finality Directive, Directive 98/26/EC), was published in the Official Journal of the EU (28 August 2014). **Regulation** enters into force 20 days after OJ publication (17 September 2014) but it does not apply until 1 January 2023 to transferable securities issued after that date and from 1 January 2025 to all other transferable securities. Other measures will apply according to Delegated Acts that have yet to be finalised.	ESMA has published its **Final Report** setting out its technical advice to the European Commission on possible delegated acts required under the CSD Regulation (August 2015). ESMA's **Final Report** on draft technical standards (RTS and ITS) required under

Name	Level 1 Legislative Measure(s) / Level 2 Measures / Level 3 Q&As, Guidelines, etc.		Latest News
	2	European Commission **FAQs** on the CSD Regulation (16 April 2014).	the CSD Regulation (September 2015).
	3	Three ESMA Consultation Papers published on the CSD Regulation: **Technical Standards under the CSD Regulation** (covering proposed rules on settlement discipline, CSD requirements and internalised settlement); on **Technical Advice under the CSD Regulation** (setting out proposed penalties for settlement fails, and arrangements to identify the substantial importance of a CSD); and on **Guidelines on the Access to a CCP or a Trading Venue by a CSD** (dealing with the risks to be taken into account by a CCP or trading venue when carrying out a comprehensive risk assessment following a request for access by a CSD, and when assessing the reasons for refusal to grant access to a CSD by a CCP or the trading venue) (18 December 2014). EBA **Consultation Paper** on prudential requirements for CSDs under the Regulation, proposing a set of Regulatory Technical Standards covering capital requirements for CSDs (February 2015).	

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The following abbreviations are used in this table:

CCP	Central Counterparty
COREPER	European Council's Permanent Representatives Committee

CRA	Credit Rating Agency
CSD	Central Securities Depository
EBA	European Banking Authority
ECB	European Central Bank
EIOPA	European Insurance and Occupational Pensions Authority
ECON	European Parliament's Committee on Economic and Monetary Affairs
ESAs	European Supervisory Authorities
ESMA	European Securities and Markets Authority
FAQs	Frequently Asked Questions
ITS	Implementing Technical Standards
OTC	Over-the-counter
TR	Trade Repository
PSD	Payment Services Directive
RTS	Regulatory Technical Standards
SEPA	Single Euro Payments Area
UCITS	Undertakings for Collective Investment in Transferable Securities

The following key is used to denote the status of the relevant Legislative Technical Advice:

Level	Measure
1	Level 1 Directive and Regulations,
2	Level 2 Delegated Acts (RTS/ITS), EU Institutions FAQs
3	ESAs Guidance, Consultations etc.

4 Related Global Developments