

## EuroABS Recommendations to the European Commission on Article 5 of STS

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## 1 Background and Scope

Further to our meeting on the 17<sup>th</sup> November 2015 at the European Commission it was agreed that EuroABS would provide recommendations on the content and disclosure requirements for European Asset Backed Securities ('ABS') issuers under Article 5 of "laying down common rules on securitisation and creating a European framework for simple, transparent and standardised ('STS') securitisation" (the 'Paper') published by DG FISMA on the 30th September 2015.

Whilst this document contains much in the way of general comment across ABS asset classes, it is written with a view to its application in the publicly registered Residential Mortgage Backed Securities market only. EuroABS is happy to discuss the further work and recommendations relating to all other asset classes and aspects of ABS.

## 2 Summary of Recommendations

- EuroABS consider that the inclusion of Loan level data ('LLD') requirements under STS Article 5 are important for accurate, high quality market oversight. Indeed we consider that the Market would see a greater benefit if these data had been a requirement for longer and covered examples of different periods of economic cycles.
- The markets appear to have accepted the LLD requirements of both the Bank of England ('BoE') and the European Central Bank ('ECB'). We suggest that, if possible, a way is found to harmonise these requirements with those of STS as far as possible.
- EuroABS consider that European markets have accepted spreadsheets as the file format for transferring ABS LLD. Whilst this situation is not perfect and there are advantages to be had in the use of XML (or similar), we consider that the spreadsheet format has been shown to work and is more accessible to a greater number of potential users.
- EuroABS consider that the specifications for investor reporting under the ECB template, BoE market notices and Article 8b are broadly sound. A tight and consistent definition of 'arrear' along with the timescales of each instance of arrears to be reported (e.g. 1 month, 3 months, 6 months, etc.) should be agreed. Frequency and deadlines for report and data publication should be consistent. See some further detailed points for consideration in section 4.1
- EuroABS considers liabilities waterfall models ('LWMs') to be an important requirement for issuers under STS. See details of our recommendations for a specification of LWMs in section 5.5.
- All data and documentation should be made available free-of-charge to an accepted list of professional parties on a secure password protected website that is controlled by the data owner/issuer.
- Investor reports not containing loan level information should be considered for full unrestricted publication.
- We consider that ESMA may be able to act as a directory/register of web addresses (URLs) for issues looking to comply with STS. We also consider that ESMA may be best placed to act as focal point of information on STS compliance and act as ultimate arbiter.

## 3 What Does EuroABS Do, Our Experience, etc.

The EuroABS business began in the late 1990s and was originally called 'eWareOnLine'. The website first went live in July 2000. The business was renamed EuroABS in March 2003.

EuroABS has three main business interests:

### 3.1 European ABS Documentation and Reporting Database (EADReD)

EADReD contains all publicly available data, documentation and reports for all public European securitisations issued since 1<sup>st</sup> January 1995. EADReD has been compiled at EuroABS' own expense and effort, is not a core revenue generating business and is available free of charge to active ABS market participants and regulatory authorities. A modest charge is made for use of EADReD by non-trading ABS market professionals (e.g. law firms and rating agencies).

EADReD also produces and provides unrestricted access to new issuance overview reports for all new transactions and EuroABS has recently added unrestricted access to an indices page currently showing average arrears and LTVs across various classes of UK RMBS. Further indices for further asset classes are planned.

### 3.2 Portfolio Mark to Market Service (PMMS)

Live since early 2007, this service receives valuations from all the main European ABS investment bank trading desks – data stored in our database – then makes these data available to approved investor clients of those investment banks. Essentially, EuroABS acts as a hub for this information and facilitates essential data dissemination and receipt in standard, secure formats enabling high levels of automation and easy contribution and consumption.

### 3.3 Issuer and Investor Regulatory Compliance

EuroABS provides a series of products developed in response to regulatory changes made since the financial crisis 2007/2008.

Commercial services aimed at investors include a CRR 406 key data field monitoring service to help investors with their ABS portfolio due diligence work.

Commercial services aimed at issuers include a suite of products to help with central bank eligibility and current trends in regulatory compliance such as:

- Liabilities waterfall model ('LWM') production
- Secure hosting
- Loan level data ('LLD') production, hosting and submission
- LLD vs contemporary investor report reconciliation
- LLD checking vs set of user defined rules
- LLD period dataset to period dataset continuity checking – sanity checking of dynamic fields and tracking of static fields

### 3.4 Further Information

- Please see our list of client testimonials: <https://www.euroabs.com/Testimonials.aspx>
- EuroABS Provenance of Key Staff Members (attached pdf)
- Market Indices: <https://www.euroabs.com/MarketIndices.aspx>

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- Other information at <https://www.euroabs.com>

### 4 Loan Level Data and Reporting

ECB templates are here:

<https://www.ecb.europa.eu/paym/coll/loanlevel/transmission/html/index.en.html>

BoE templates here:

<http://www.bankofengland.co.uk/markets/Pages/money/eligiblecollateral.aspx>

There are also templates that have been released by the US Securities and Exchange Commission and Reserve Bank of Australia. Whilst we have viewed these, we have not had time to give them any serious consideration.

Perhaps in an ideal world, all information relating to a securitisation issue would be made freely and publicly available to all. However, the more information that is made available to all, the more concerned the asset originators become in breaching their customer privacy and data protection responsibilities. Clearly this situation has to be carefully managed.

We consider the LLD requirements set out in the RTS under Article 8b (link below) to be sound and similar to the more detailed specification provided by the ECB and BoE.

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0003&from=EN>

#### 4.1 Feedback from Investors

“Simplicity is better”

For secured lending underlying assets to suffer loss:

1. the borrower stops paying and
2. the underlying asset foreclosure value is less than outstanding loan plus expenses.

On this basis investors are as interested in trends in house prices and unemployment rates as individual transaction pool figures.

Also of interest are current forbearance arrangements/regulations applying to the pool.

Loan to value (‘LTV’) information on the assets in the underlying pool is essential.

- Original
- Current (original valuation versus outstanding loan)
- Indexed (house price index linked valuation versus outstanding loan)

Repayment profile of asset pool – also essential, enabling investors to take a view on the credibility of the issuer’s stated intended bond repayment terms.

Consistency of definition, interpretation and reporting of payment arrears and delinquencies

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Repayment/prepayments – for each investor report issuers must be required to provide either the explicit figures for or the means to accurately calculate the following:

- Expected scheduled repayment
- Actually received scheduled repayment
- Unscheduled prepayment

All the LLD now available is recent and representative of a low interest rate environment. With the benefit of hindsight, it is regrettable that these datasets were not available before providing more historical data and evidence of loan pool performance during different economic cycles and conditions.

### 4.2 Feedback from Issuers

For reasons that are covered elsewhere in this paper and not hard to understand, issuers are generally keen to reduce transparency and disclosure to a minimum. If the positives of issuing stack up against the negatives of transparency they'll go ahead with their transactions, if not they won't.

However, our perception is that current low European ABS issuance levels are mainly down to:

- better alternative sources of funding (various forms of cheaper central bank funding, covered bonds, etc.)
- general levels of economic activity are lower than pre 2007/2008 crisis (fewer assets to securitise)
- Adverse/uncertainty surrounding regulatory capital requirements (e.g. Solvency II)

and NOT particularly transparency and disclosure requirements, although this is likely to be a factor cited by issuers because there is a cost and a probably not insignificant effort factor in meeting them.

One thing that does come through loud and clear from issuers is a request for international regulators and central banks to coordinate their efforts, learn from each other and try to agree on a single set of standards. This will help to prevent:

- Issuers having to do the same or similar work on each transaction multiple times (over-burdensome) and
- Regulatory arbitrage opportunity

both of which are, of course, important to keep to a minimum.

#### 4.2.1 Differences Between European and US Residential Mortgage Law and Practice

There are three major differences between European and US residential mortgage markets:

1. A large percentage of US mortgages are provided by agencies which are government guaranteed (Ginnie Mae, Freddy Mac, etc.). European mortgage lenders, in the main, do not have an explicit government guarantee.
2. In the US the mortgage contract essentially ends when the obligor moves out of the property the loan is secured on and hands back the keys. In Europe, it is normally the case

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that the contract can remain in force allowing the lender to pursue the borrower for any outstanding amount after foreclosure.

3. In the US, non-payment of a mortgage on the agreed terms can mean property repossession within a matter of a few months. In Europe, forbearance rules and laws can vary considerably and it can prove very difficult, expensive and time-consuming for lenders to repossess property.

### ***Why does this matter?***

Clearly the above can affect the performance of a securitisation and its ultimate credit quality, therefore markets and regulators of each may well view European and US RMBS markets differently, making it more difficult to harmonise regulatory requirements and avoid the effects of regulatory arbitrage as would otherwise appear to be highly desirable.

### **4.2.2 Effect of LLD and Reporting Requirements on Issuers' Businesses as a Whole**

Also perhaps worth noting is that, particularly with respect to the disclosure of loan level data to an externally specified template, the businesses of asset originators are likely to be affected across multiple departments, rather than just those concerned with funding and securitisation. Specific demands for data items from securitisation regulators and central banks may require changes all the way through an organisation to sales and underwriting where datasets are originally input into systems. Whilst this may cause upheaval and practice change that is unwelcome, resented and resisted, we consider that such a process is generally healthy and, whilst it can be painful, in the longer-term, it benefits all.

## **4.3 Justifying Loan Level Data as a Requirement**

Our understanding is that loan level data was being provided to Credit Rating Agencies (CRAs) for many years. Such privileged access to information we consider to be unhealthy and not a sustainable model for long-term market stability. EuroABS generally consider that all information disclosed to CRAs should be publicly, or at least more widely, disclosed (more on this in section 7 below).

### **4.3.1 Generating Accurate Indices – Comparison Between Transactions**

Access to finely granular data allows third parties to calculate statistics which are reliably comparable between issues. It also allows the creation of indices by pooling data from multiple issues to calculate statistics across market sectors. These important calculations cannot be done accurately or reliably with sets of previously aggregated data.

### **4.3.2 Detecting and Correcting Errors in Reports – Calculation Differences Have Been Common**

Access to the underlying loan level data allows independent verification of many of the statistics included in investor reports. This not only allows the user of the data to confirm that the reports are correct, but also allows a more nuanced understanding of the statistics – for example, of the extent to which multiple borrower accounts have been aggregated prior to calculation.

Since the availability of LLD over the last few years, our field experiences have shown that inconsistencies and errors in reports versus contemporary LLD are not particularly uncommon and much work still remains to be done across the industry to put this right.

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### 4.3.3 Accurate Calculation of Asset Pool Repayment Profile

For users wishing to model the behaviour of the asset pool cash flows, loan level data facilitates the calculation of the contracted amortisation profile and may also provide inputs to models attempting to estimate prepayment behaviour and losses.

### 4.4 Tension Between Data Protection and Transparency

Over several years we have seen heated debate between asset originators and regulators all over the world relating to the exact detail of individual underlying asset loan level data disclosure requirements. Our understanding is that the primary concern of asset originators is that, as a regulatory requirement of securitisation, they may be forced to disclose loan level information that would allow, perhaps in combination with other available datasets, identification of individual borrowers (or “obligors”). Allowing such data to fall into the wrong hands could be dangerous.

As an example of concerns discussed in the UK, it was demonstrated that if sufficient detail is provided for property post code, it is possible to cross-check publicly available Land Registry data to identify an individual address and specific property (sometimes termed ‘re-identification’). It was argued that if sensitive details of the current state of a mortgage relating to specific property were to fall into the hands of organised criminals, it might leave obligors vulnerable to fraud.

Clearly there is a balance to be struck here and this appears to have been acknowledged by the Bank of England and the ECB in their detailed loan level data template requirements.

- Property location
- Event (such as purchase) date data and
- Exact transaction amount

are the primary concerns considered vulnerable for cross-checking, as these are likely to exist in multiple data sources.

### 4.5 Differences between the ECB and BoE Templates

See reports BoEvSECB.xlsx and ECBOnlyData.xlsx

#### 4.5.1 Some Observations That May Be Of Interest

ECB requires **issue level** and **tranche level** data to be included in the same dataset as LLD.

BoE only requires data at the underlying asset level, but requires similar issue and bond level data in its **standardised reporting** requirements.

Both templates appear to look to address some ‘re-identification’ concerns:

Property location - For BoE the post code of the property is optional and both templates specify only the first few characters. BoE looks to put more emphasis on less precise location ‘regional NUTS codes’ by making these mandatory. ECB requires a different set of NUTS codes, but their inclusion is optional according to the template.

Date formatting – there are quite a few differences here. The ECB in many cases require just month and year for the date, omitting the day of the month, we assume to reduce re-identification risk.



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Purchase price – ECB require rounding of the purchase price. Again, our assumption is to reduce re-identification risk, although this clearly comes at the cost of reduced data accuracy.

### 4.6 Timeliness of Reporting

Over the years EuroABS has noticed that adherence to reporting deadlines has not been consistent across all issuers. We would estimate 50% of issuers are reporting on time and 50% not. 3-4 months late is not unusual. In some cases this appears to go unnoticed by investors and it falls to us at EuroABS to remind issuers to produce the reports. Whilst we acknowledge that the production of comprehensive reports is not a simple process and can be hit with problems and delays, particularly for the first few instances or report production for a new issue, issuers should be under more pressure than they currently appear to be to deliver on time.

### 4.7 EuroABS Recommendations on Reporting and Loan Level Data

#### 4.7.1 Loan Level Data

Whilst we were not party to detailed discussions on the content of the loan level data templates, we can only assume that a lot of work and consultation has gone into their development. We would suggest that the best policy here is to build on existing work rather than taking a fresh approach.

STS standards, like those of central bank eligibility, are optional. The central bank templates and disclosure requirements appear to have been accepted by all. We aren't aware of any legal disputes or problems caused by these.

Building on the work done by the central banks looks to be the way to go. We would suggest a review of these standards and, perhaps, recommend changes/updates, but would not advise wholesale changes unless deemed absolutely necessary.

Perhaps look to negotiate a formal review process for these requirements with the central banks and agree to adopt their standards for STS, ie if a bond is ECB or BoE eligible, its loan level data is automatically accepted as STS compliant. There would need to be a formal focal point and action process for appeals against exclusion and to report non-compliance of accepted issues. Could this logically be a role for ESMA (see 7.4.2 below)?

#### 4.7.2 Loan Level Data Reporting Technology and Format

In standardising the delivery of loan level data, there are two primary considerations; what, and how. The two issues are not entirely independent of each other, in that different delivery formats support different technologies for formatting and validating content. The two primary technologies being used for LLD transfer are spreadsheets and XML. XML is the modern *de facto* standard for electronic data exchange. Spreadsheets are the *de facto* standard for finance professionals. Spreadsheets have the advantage of being easily created, read and understood by people who are not Information Technology professionals. The applications which produce them (Microsoft Excel, for example) provide rich features to acquire, manipulate and display data.

Spreadsheets have the disadvantage that they can be rather inexact; the underlying data storage is abstracted away from the user interface, and what is actually recorded may not be immediately obvious. They are also weakly typed, without a clear distinction made between the underlying data type of the (opaque) storage medium and the formatting of the content on screen. This can cause issues during automatic processing of spreadsheet data when data processing tools attempt to infer

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spreadsheet data types. XML, conversely, has no such user interface abstraction because it is a text based, human-readable raw file format rather than an application. It also comes with a set of companion technologies which make the specification of the allowable content for each data item configurable and verifiable – it is possible to specify the acceptable representation of each data item using a standard non-proprietary syntax, and for any given file to determine whether it complies with this specification and where deviations occur. Although it is possible to write validation systems for spreadsheets, it is not baked into the technology.

Spreadsheets assume that data are tabular in nature. Much of the typical Loan Level Data structure does indeed fit this model, however certain aspects of it do not. There are items in many of the regulatory LLD templates which specify an arbitrary length list of comma separated items as content; this is indicative of a data structure which does not fit the tabular model. An example would be a cell containing a comma separated list of the dates upon which further advances were granted to a borrower and a second cell containing a comma separated list of the amounts of further advances. Another example of a workaround for an inherently non-tabular data structure is the use of multiple cells for several instances of the same thing; for example, margin revision 1, margin revision 2, and final margin. This is similar to the comma separated approach, but makes an assumption about the maximum number of items to be allowed. XML allows these items to be precisely specified; to say, for example, that a further advance consists of exactly one date and one amount, that the date has a given format and the amount has another, that the amount is a positive number and the date is after the origination date, and that the allowed number of advances is any, including 0.

From the point of view of an Information Technology professional, clearly XML is the favourable format. It is concise, prescriptive, and unambiguous. It is based on open standards and it comes with a wide range of tools and technologies to manipulate it. It has a precise language for specifying document structure, and that specification can be applied to a given document programmatically in order to validate compliance with the standard. It allows for rules like “This item must be a valid number, or else it must be the text ‘ND,’ followed by a single digit between zero and six”, and such data can be machine read without the parser assuming that because the first data item is “ND,5” the rest of the column must be text rather than numbers. There is no room for subjectivity in such a specification, a file either passes or fails.

While these attributes are extremely attractive to an IT professional or to a data processing organisation, the technology is fundamentally unfriendly to the finance professionals who generate and consume the data. A spreadsheet is a well understood piece of desktop technology. An investor can download a spreadsheet and immediately open it and make use of the data. An XML file is not easily readable in a useful way: although the content can easily be viewed in a browser or text editor, it needs to be extracted and formatted to become useful. One can provide bespoke programs to open an XML file and export the content to a useful spreadsheet format, but this is clearly less convenient than simply receiving an Excel file.

EuroABS is of the opinion that while in an ideal world XML is by far the superior mechanism for data interchange, pragmatically, spreadsheets set the technical bar for participation at a level far more comfortable for market participants.

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### 4.7.3 Standardised Reporting

EuroABS generally agrees with the BoE specification of reporting requirements in Annex A:

<http://www.bankofengland.co.uk/markets/Pages/money/eligiblecollateral.aspx>

EuroABS agrees with the detail of the feedback from investors above in 4.1, particularly on repayment and prepayment figures.

#### 4.7.3.1 *Consistency of Definition and Reporting of Arrears*

We would advise as far as is possible the setting of a consistent definition, interpretation and reporting of payment arrears.

We have observed that the definition of arrears has generally become accepted by market convention as: “the amount of money overdue divided by the amount of money due to be paid this month”. It perhaps needs to be considered within the definition whether any incurred fees should be included in the overdue figure.

Arrears should be reported consistently. Perhaps:  $\geq 1$  month  $< 3$  months,  $\geq 3$  months  $< 6$  months,  $\geq 6$  months  $< 9$  months,  $\geq 9$  months and  $< 12$  months and  $\geq 12$  months.

Transactions with triggers fired by threshold breaches of any additional data points should also report the status of those data points (e.g. if there is a 2 month arrears trigger).

Example of Arrears definition from a UK RMBS prospectus:

“Arrears are calculated in accordance with standard market practice in the UK. A mortgage is identified as being in arrears when, on any due date, the overdue amounts which were due on previous due dates equal, in the aggregate, one or more full monthly payments. In making an arrears determination, the servicer calculates as of the date of determination the difference between the sum of all monthly payments that were due and payable by a borrower on any due date up to that date of determination and the sum of all payments actually made by that borrower up to that date of determination. The resulting number of months in arrears is arrived at by dividing that difference (if any) by the amount of the required monthly payment.”

#### 4.7.3.2 *Consistent Deadlines for Report and Data Publication*

Issuers should be required to report in a timely fashion. Perhaps within one month of the most recent payment/pool cut-off date.

We consider that it should be possible for late reporting to be reported to ESMA leading to the potential opportunity for the review of the status of the security as STS eligible.

## 5 Liabilities Waterfall Modelling

### 5.1 What a LWM Is and Is Not – What It’s For and What It’s Not For

A liabilities waterfall model (LWM) is a formal mathematical or computer code representation of the text describing the liabilities waterfall in the official documentation of the transaction.

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A LWM does not provide any unknown or subjective data. Any future performance or predicted behaviour of the asset pool is out of scope, and is the responsibility of the user of the LWM and their inputs to the LWM.

The purpose of a LWM is to demonstrate to the user, given a set or sets of user defined inputs, how the liabilities waterfall behaves in those circumstances - who gets paid, or doesn't get paid, what and when.

The issuer, or provider of the model, does not take any responsibility for the preparation of or help with the inputs, neither does a LWM contain any assumptions or approximations. A LWM is therefore not intended to be used in a similar way to a commercially supplied cash flow model for a transaction such as those provided by well-known specialist providers (e.g. Intex and Bloomberg).

See: What exactly do we mean by Liabilities Waterfall Model.pdf

### 5.2 Why Disclosure of LWMs is Important

See: **ISLWM Meeting Report.pdf** for Report on the Seminar to discuss: Should issuer-supplied Liabilities Waterfall Models be a transparency requirement for 'qualifying' securitisations? Held at Laytons Solicitors, 2 More London Riverside, London SE1 2AP at 2pm on Monday 27 April 2015. Attended by interested global securitisation industry participants under the Chatham House Rule.

#### 5.2.1 As a Mechanism to Both Discourage Complexity but Also Give Licence to Issuers Where Complexity is Necessary

The process of conversion of a pool of granular assets to provide a smoothed cash flow for an investable security is often a complex process. A multitude of financial devices often need to be employed to achieve this. This can lead to an essential introduction of complexity of transaction structure and an increase in the number of suppliers providing services (e.g. swap counterparties, etc.). All of this will affect the priority of payments to the transaction beneficiaries, note holders, etc.

With the exception of banning the reversal of the priority of payments, high quality securitisation standards suggested by regulators have been silent on limitations on structural complexity. As has been discussed in open hearing meetings, this type of restriction could create cliff effects. Instead, the requirement for issuers to provide a LWM for each of their transactions allows the issuer to structure as they feel necessary, but to procure or produce a model demonstrating exactly how the transaction performs in all possible circumstances that the liabilities waterfall documentation states consequences for. So issuers have a free hand to do what is necessary with their transactions, but must provide mathematical/computer code models that show how they work and must stand behind them.

#### 5.2.2 Mistakes Have Occurred and Do Occur in the Liabilities Waterfall Documentation

It is common for ABS documentation to be voluminous, complex and drafted in a high-pressure situation. There are many examples in these texts where the exact intended meaning is ambiguous. The formal process, overseen by the issuer, of the production of a LWM requires an experienced third party with no prior involvement in the drafting of the documentation to examine the text and give an opinion as to its exact meaning in the form of its mathematical/computer code meaning. This typically involves a dialogue between the modelling team and the issuer with a series of positive

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feedback iterations resulting in multiple experienced expert parties agreeing that the documentation and at least one LWM representation of it match. Both are then made available for inspection by the Market.

### 5.3 Why Models Should Be Provided By Issuers

The LWM needs to be presented to the Market on the same terms as all other regulatory required disclosure on a fair and equal basis. This logically means that charging a commercial fee for access would not be acceptable and the burden of expense of production would need to be met by the issuer.

These transactions are brought to the Market by the issuer and it is hard to see how ultimate responsibility for regulatory required LWM production could be met by any third party.

N.B. The production and availability of a LWM by the issuer does not obviate the requirements of other investment regulations which may state that investors need to understand the transactions they are entering into and, perhaps, check that the modelling has been performed correctly by using their own model or procuring one from a commercial modelling service such as those provided by e.g. Bloomberg or Intex

### 5.4 BoE Liabilities Waterfall Models

See BoE LWM specification in Annex B here:

<http://www.bankofengland.co.uk/markets/Documents/marketnotice121002abs.pdf>

### 5.5 EuroABS Recommendations on LWM Specification

EuroABS broadly agrees with the LWM specification provided by the BoE (example in the above link), however we would also recommend the inclusion of the following:-

- Fresh pair of eyes - LWM work must be done by someone who was not involved in the documentation drafting
- LWMs to be made available free of charge to the user and at the expense of the issuer
- The LWM itself contains no subjectivity and makes no projections or assumptions as to the performance of the transaction's underlying asset pool. Instead these elements are inputs to the LWM which are the full responsibility of the user
- The LWM must provide the user with input opportunities for every variable the liabilities waterfall documentation states consequences for
- Total transparency – all code and logic used must be available for inspection by the user with full disclosure of the contents of any plug-ins or components used
- The LWM must be a full and complete model providing logic for every eventuality the liabilities waterfall documentation states consequences for. The LWM would therefore not be expected to change during the life of the transaction unless the liabilities waterfall documentation changes

## 6 Disclosure of Documentation

In our experience with working with transactions looking to achieve BoE eligibility, we have seen some differences in opinion as to whether some documents should be disclosed or not. The

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confusion appears to be caused by the word 'public' in paragraph 17 on page 3 of the BoE Market Notice document:

<http://www.bankofengland.co.uk/markets/Documents/marketnotice121002abs.pdf>

### 6.1 EuroABS Recommendations

EuroABS considers that the BoE Market Notice is broadly correct, but would recommend the deletion of the word 'public' from paragraph 17, below:-

“17. The prospectus, together with the closing transaction documents, including any **public** documents referenced in the prospectus or which govern the workings of the transaction (excluding legal opinions), will be required to be made available to investors, potential investors and certain other market professionals acting on their behalf. Where applicable these will include, but not be limited to: the asset sale agreement (and any relevant declaration of trust), servicing, back-up servicing, administration and cash management agreements, trust deed, security deed, agency agreement, account bank agreement, guaranteed investment contract, incorporated terms or master”

## 7 How the Data Should Be Made Available and To Whom

### 7.1 ECB Public Consultation

The ECB held a public consultation on the provision of ABS loan-level information in the Eurosystem collateral framework in February 2010

<https://www.ecb.europa.eu/paym/cons/previous/html/abs.en.html>

This included section 3 and Question 5:

#### **“Data-handling infrastructure**

In order to provide the ABS loan-by-loan information, a data-handling infrastructure would be needed to collect, store, handle and process the information and to distribute it to the market.

Two different scenarios could be considered that would leverage existing market solutions. In scenario 1, a single data portal would be created to perform the envisaged tasks. In scenario 2, several eligible data portals would compete to offer the service to the market. These two models can be seen as two opposite extremes. Between these, other combinations could also be possible. In whichever case, the Eurosystem would like to rely on market solutions and would therefore neither take part in the implementation of the solution nor in its operation.

In scenario 1, originators/servicers would have a clear single entry point for submitting the data. The single data portal could be selected from among existing market data platforms that are willing to take up the role of portal provider. The portal would need to ensure that the data are made available to other data providers and that the users of the portal services would be charged an appropriate price.

In scenario 2, originators/servicers would have the option to choose from a set of registered portal providers. A list of registered data portal providers would be established using a set of broad criteria against which the potential portal providers would be evaluated and selected. In

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this scenario, the registered portal providers would compete to provide the best service at the lowest cost to their users.

**Which of the scenarios presented, or combination thereof, would provide the best solution to the market, taking into account considerations such as data consistency and quality, competition, governance, cost, ease of data transmission, etc.?”**

Whilst we accept that this is a fairly crude measure, the ECB's Results documentation shows that 14 preferred option 1 (single portal) and 19 preferred option 2 (multiple portals with choice).

Clearly there is support for both options, with a larger group preferring multiple portals with consumer choice.

### 7.2 US SEC – EDGAR

For all regulatory filings required by the US SEC a publicly owned repository called EDGAR is used. There is no firewall or password protection of EDGAR content and it is free-of-charge and internationally publicly available.

See the final rules on ABS LLD disclosure released in September 2014 here:

<https://www.sec.gov/rules/final/2014/33-9638.pdf>

It appears that these rules are predicated on full public disclosure via EDGAR which, because of fears of 're-identification' of obligors (see section 4.4, above) lead to the data requirement specification being changed and resulting in, in our opinion, a less useful dataset. In particular the requirement to provide the exact purchase price for the property/transaction appears to have been dropped, which reduces the ability of users of the data to be able to accurately calculate e.g. loan-to-value ratios. This, in turn, perpetuates the problem of information asymmetry between market participants and the rating agencies and reduces the ability of other independent third parties to provide market oversight, innovation, competition and consumer choice in these markets.

### 7.3 BoE Example

The BoE requires issuers to disclose all qualifying regulatory disclosures on a password protected website at the expense of the issuer. The data and documentation must be made available to the following types of users:

- a) Banks and other recognised financial institutions
- b) Any person or institution that has invested in asset backed securities and covered bonds
- c) Organisations or individuals compiling research to be distributed to financial institutions and other wholesale investors
- d) Market data or cash flow model providers to the investor community
- e) Governmental bodies, regulatory authorities and central banks
- f) Recognised rating agencies
- g) Any other party which would normally be considered to be a market professional and is a potential investor in asset backed securities and covered bonds
- h) Professional advisers representing any of the above.

### 7.4 EuroABS Recommendations

- Because of LLD sensitivity we agree with the BoE that LLD should be kept on a website behind a password protected firewall and we agree with their list of required access users (in 7.3, above). We also agree that this access should be controlled by the data owner (issuer).
- In addition to the list of eligible users in 7.3 we consider also provision should be made for use by academia.
- Authorised users of such websites should be required to register their name, company name and contact details.
- Password information must be stored using one-way encryption and not in clear text nor in any form that can be decoded.
- The data controller responsible for the website must register the required details with the local data protection office (in the UK the Information Commissioner's Office).
- Access logs should be kept as to which users have accessed and downloaded which files or data sets and when and from which IP address.
- We consider that investor reports do not carry the same risks of re-identification and therefore should be made freely and publicly available with no password protection or restriction to access.

As an erstwhile start-up business in these markets, we at EuroABS know how difficult it can be to be taken seriously and given access to these datasets. As has been discussed above, there are good reasons to restrict access to these data, but they must never be used to prevent fair competition, new market entrants, innovation and consumer choice that will drive up quality and intensity of market oversight and drive down costs. We would therefore strongly recommend that restrictions on access come with a health warning that they should not prevent competition, although all those that access the data should be required to agree to a reasonable 'acceptable use policy'.

#### 7.4.1 Some Thoughts on Acceptable Use Policy Criteria

- Data receivers must not pass on any loan level data to any third party
- Access to the loan level data must only be provided to those with the receiving organisation that need to access it for the purposes permitted, and each of these people must be made aware of the acceptable use policy and adhere to it
- All reasonable efforts must be made by the receiving party to prevent any form of unauthorised access to the data
- Only aggregated versions of the data may be made available to third parties unless the explicit permission is received from the data owner

N.B. Clearly this is more of a consideration for data owners/issuers and may or may not be something that regulators want to provide guidance on.

#### 7.4.2 The Role of ESMA

At our meeting on 17<sup>th</sup> November at the European Commission, it was explained that ESMA does not currently have a budget that covers the construction and maintenance of a website that could manage the hosting of all the data and documentation requirements for STS.



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We consider that under these circumstances and due to the fact that many issuers have made a variety of arrangements for the secure hosting of their data and documentation, ESMA's efforts may be better employed acting as a directory for all this information. i.e that ESMA should run a website that lists all STS qualifying ABS issues and provides links to the web location of all the transparency information. Publication by ESMA of the URL for a transaction would be a prerequisite to STS compliance.

We also consider that ESMA may be well placed (better than any other organisation) to act as a focal point for information on compliance (or non-compliance) of ABS issuers. ESMA could act as the ultimate arbiter as to whether an issue complies or does not comply, receiving requests and reports from all and any interested parties.