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From:	General Secretariat of the Council
To:	Working Party on Financial Services - Securitisation
Subject:	Letter from ESMA regarding the Commission proposal for a Regulation on STS securitisation

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European Securities and  
Markets Authority

ESMA REGULAR USE

The Chair

Date: 13 January 2016  
ESMA/2016/22

SECRÉTARIAT GÉNÉRAL DU  
CONSEIL DE L'UNION EUROPÉENNE

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M. PILLATH

**Mr Roberto Gualtieri MEP**  
**Chair**  
**Committee on Economic and Monetary**  
**Affairs**

**Mr Paul Tang MEP**  
**Rapporteur**

**European Parliament**  
**B-1047 Brussels**  
**Belgium**

**Ref: ESMA's remarks to the Commission Proposal regarding simple, transparent and standardised securitisation**

Dear Mr Gualtieri and Mr Tang,

*Drac Roberto and Paul,*

I am writing to you in relation to some of the transparency requirements for securitisation instruments as included by the European Commission in the proposed Regulation on Standardised, Transparent and Simple (STS) Securitisation released on 30 September 2015 (hereafter "COM's proposal").

ESMA is of the view that transparency is key in the process of decision-making by (potential) investors and effective access to information on securitisation is essential in enabling them to perform their due diligence obligations. This requires that investors have easy access to information on a range of securitisations, both in terms of finding the information and being able to compare it effectively.

In this regard, ESMA welcomes the proposal in Article 5 of the latest Council compromise<sup>1</sup> which requires that all investors - including potential investors - could have access to the information. Although there may be cases where a proportionate application of the disclosure requirements might apply<sup>2</sup>, we believe that the right balance has to be achieved between the

<sup>1</sup> Council of the European Union, Interinstitutional File 2015/0226 (COD), Proposal for a Regulation of the European Parliament and of the Council laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation", - Presidency compromise, 30 November 2015.

<sup>2</sup> While developing the draft Regulatory Technical Standard on information on Structured Finance Instruments (Commission Delegated Regulation (EU) 2015/03 published on Official Journal of the European Union on 6 January 2015) ESMA found that a proportionate application of the disclosure requirements might be justified in the case of private and bilateral securitisation (Call

option to use private and/or bilateral placements for securitisation products and providing access to information for investors. Should the information be accessible only upon request, the terms of access should be clearly defined so as to ensure equal access for investors.

As regards asset-backed commercial paper (ABCP), the transparency requirements should ensure access to all relevant information needed to perform a comprehensive and well-informed analysis of the risks arising from the securitisation. However, given the specific features of ABCP, we welcome the proposal in Article 5 (1) of the latest Council compromise to allow disclosure of the information in aggregate form to investors provided that the loan level data is made available to the sponsor and to competent authorities.

Regarding the practical way of disclosing information, the COM's proposal (Article 5) requires the securitising parties to make available information needed for investment decision-making by means of a website which shall comply with technical standards to be specified by ESMA.

In this regard, we welcome the proposal in the latest Council compromise to repeal Article 8b of the Credit Rating Agencies Regulation<sup>3</sup> which would have required ESMA to set up a centralised website (hereafter the "SFI website"). This change would address the concerns previously raised by ESMA which can be summarised as follows:

- Maintaining Article 8b would create confusion for investors and would result in overlapping information from the SFI website and multiple decentralised websites (established based on Article 5 of the COM's proposal). Taken together, this would also raise the overall costs of building and maintaining websites at different levels.
- As the CRA Regulation was not accompanied by a financial fiche providing the necessary budget for the operating costs or the legal mandate to charge corresponding fees to users or reporting entities, ESMA would not be in a position to set up the SFI website. ESMA has explored alternative options such as using existing service providers, however, none of the alternatives identified was regarded as permissible under the current wording of the CRA Regulation.

Finally, ESMA is concerned that we would not be able to deliver the requested technical standards in the quality required within a timeframe of six months or less. Against this background, ESMA invites the co-legislators to consider, in the current negotiations on the Securitisation Regulation, to set a period of twelve months to allow for the development of good quality and properly consulted draft technical standards.

We believe that the elements included above constitute relevant factors for the analysis of your Committee and we hope they will be taken into account during the legislative procedure regarding the COM's proposal.

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for evidence on the extension of the disclosure requirements to private and bilateral transactions for structured finance instruments, 20 March 2015, (ESMA/2015/558)).

<sup>3</sup> Regulation (EC) n°1060/2009 on Credit Rating Agencies.



Should you need any further information concerning these matters, please do not hesitate to contact me or Verena Ross, Executive Director.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'S Maijoor', is written over the printed name.

Steven Maijoor

cc: Jeroen Dijsselbloem, President of the Economic and Financial Affairs Council,  
Council of the European Union

Jeppe Tranholm-Mikkelsen, Secretary-General of the Council of the European Union

Jonathan Hill, Commissioner for Financial Stability, Financial Services and Capital  
Markets Union, European Commission

Olivier Guersent, Director-General, DG Financial Stability, Financial Services and  
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