

## Consolidated CREFC Europe member feedback on 31 Jan 2019 ESMA disclosure templates and associated documents

This document sets out consolidated comments, questions and suggestions from CREFC Europe members. Our focus is on matters specifically relevant from the perspective of commercial real estate (CRE) debt securitisation and commercial mortgage backed securities (CMBS). We are aware of more general comments made by AFME; we endorse those comments, many of which are also relevant to CRE debt and CMBS, but in the interests of simplicity and brevity have not repeated them here. We have considered all of the more specifically CRE-related comments made by AFME and addressed below those that we believe merit discussion in the way we consider most appropriate, following consultation with a broad range of CRE debt securitisation specialists across our membership. Also excluded from this document are concerns raised by our members that (however significant) do not specifically relate to the disclosure templates.

We have tried to be both targeted and comprehensive, but it is important to remember that the history of CRE debt securitisation and CMBS in Europe is short, with modest levels of activity following the global financial crisis. In the light of that, and of the fact that this is a complex and diverse part of the wholesale market with limited standardisation to date, we would emphasise that, as CRE debt securitisation and CMBS markets recover and innovate, more issues may well emerge.

Our comments are set out in three different categories. The first category covers fields on which we consider that a clarification from ESMA is required for the effective and consistent operation of its disclosure templates for CRE debt securitisation and CMBS transactions (CREL2, 4 and 12; CREL165; CREL172; and CREC28-30). The second category covers fields where ESMA should consider changes because the data sought by the templates are a poor fit for CRE debt securitisation and CMBS (CREL42; CREL 82, IVSS22; IVSS24; IVSS 27; and IVSS38-44). The third category covers fields where we are recommending the use of an additional clarificatory submission in a standard format to address the risk that the ‘best fit’ responses permitted by the template risk confusing or misleading users (CREL41; CREL42; CREL43; CREL54; CREL70; CREL73; CREL74; CREL88; CREL102; CREL105; CREL115; CREL119; CREL127; CREL132; and CREL139; CREC8; CREC36; CREC37 and 41; IVSS11; and IVSS12); some of the issues identified in this third category would ideally be addressed in due course by changes to the template or to the availability of ND5.

### Contents

|    |   |   |
|----|---|---|
| 1. | Matters on which CREFC Europe members seek clarification from ESMA.....         | 2 |
| 2. | Matters on which CREFC Europe members would like ESMA to consider changes ..... | 3 |
| 3. | Explanatory Memorandum approach.....  | 5 |

## 1. Matters on which CREFC Europe members seek clarification from ESMA

| Annex 3 (Underlying exposure information – commercial real estate) |   |  |   |
|--|---|--|---|
| Ref  | Description   | Why comment is being raised  | Recommended solution/clarification from ESMA  |
| CREL2, 4 and 12  | Original Obligor and Underlying Exposure Identifiers, and Geographical Region (Obligor) | CRE loans will typically have multiple obligors and multiple jurisdictions, and a single ‘loan’ in commercial terms may legally comprise multiple loans to different borrowers (and may not map neatly). <sup>1</sup> The preferred outcome would be to stop at the “commercial loan” (the “loan”) rather than to provide reporting on the basis of all “legal loans”. From investors’ due diligence perspective, investors would want reporting to be done on the commercial “loan” and not the individual “legal loans”, as otherwise, from a credit risk assessment point of view, if individual legal loan reporting is provided, investors would have to go through and aggregate the reporting on all legal loans back to the commercial loan to get anything that would be useful.<br><br>(We do not consider that the concept of “loan parts” is relevant in this context; it seems rather to describe cases (such as A/B loans) where a single loan is divided into parts.) | In cases where there are a number of obligors located in different geographical regions, or where a single loan in commercial terms comprises different underlying exposures, it is acceptable for reasonable judgment to be exercised in selecting an appropriate obligor and underlying exposure for the purposes of completing these fields.                                     |
| CREL165  | Obligor Must Pay Breakage On Swap   | Not every transaction will include swaps. That appears to be recognised by the existence of an ND5 option on all the other swap-related fields (CREL154-164 and CREL166-171), but not in the case of this field. ESMA should make ND5 available for this field as well in due course (if possible, before Article 7 RTS/ITS are finalised).  | In the absence of an ND5 option, in cases where there is no swap, “NOPE” (No Indemnification from obligor) should be used.  |
| CREL172  | Sponsor   | It is not clear how this field should be completed where the “sponsor” is a joint venture, or an externally managed fund. Which entity or entities should be named here?   | The meaning of “sponsor” in this field is the same as defined in the EU Securitisation Regulation Article 2(5). Where this is a joint venture comprising a number of substantive entities, or a fund with an external manager and multiple investors), it is appropriate for judgment to be exercised to identify the sponsor in a way that is practical and commercially sensible. |
| CREC28-30  | Net Square Metres Commercial Area Residential Area                                      | The field descriptions are wrong because they refer to {CURRENCYCODE_3} whereas the fields in fact require surface area in square metres (the corresponding fields of Annex 3 in the ITS correctly refer to a numerical field {INTEGER-n}).  | The references to currency code in these field descriptions are in error and will be corrected in due course. These fields should be completed with a numerical code as set out in the ITS.   |

<sup>1</sup> We agree with the further explanation and elaboration of this issue in a paper from the BDB that ESMA shared with us.

## 2. Matters on which CREFC Europe members would like ESMA to consider changes

| Annex 3 (Underlying exposure information – commercial real estate) |   |   |                  |              |   |
|--|---|---|------------------|--------------|---|
| FIELD CODE   | FIELD NAME  | CONTENT TO REPORT   | ND1-ND4 allowed? | ND5 allowed? | Comments  |
| CREL42   | Do Non-Payments On Equal Ranking Underlying Exposures Constitute Default Of Property? | Do Non-payments on Equal Ranking underlying exposures Constitute Default of Property?   | NO               | YES          | The references to “Default of Property” seems to be an error, as that is a meaningless concept. ESMA should amend the description of this field in due course. In the meantime, the confusion which may arise can be addressed using the Explanatory Memorandum approach (see section 1.3 below). |
| CREL82   | Properties Collateralised To The Underlying Exposure                                  | Enter the unique collateral identifiers (CREC4) of the properties that serve as security for the underlying exposure at the data cut-off date. If multiple properties enter all of the identifiers as set out in the XML schema.  | NO               | NO           | The purpose of this field is unclear given that properties are also required to be listed at CREC6. Unless there is a reason for the duplication, we would recommend removing it in due course.   |
| Annex 12 (Investor report information – non-ABCP securitisation)   |   |   |                  |              |   |
| FIELD CODE   | FIELD NAME  | CONTENT TO REPORT   | ND1-ND4 allowed? | ND5 allowed? | Comments  |
| IVSS22   | Annualised Constant Prepayment Rate   | The annualised Constant Prepayment Rate (CPR) of the underlying exposures based upon the most recent periodic CPR. Periodic CPR is equal to the [(total unscheduled principal received at the end of the most recent collection period) / (the total principal balance at the start of the collection period)]. The Periodic CPR is then annualised as follows:<br>$1 - ((1 - \text{Periodic CPR})^{\text{number of collection periods in a year}})$<br>‘Periodic CPR’ refers to the CPR during the last collection period i.e. for a securitisation with quarterly paying bonds this will usually be the prior three month period. | NO               | NO           | This concept is not used in the CMBS market. ND5 (which would therefore be appropriate) is not available. It will be possible to calculate a number, but it will be meaningless and uninformative for users. ESMA might usefully consider allowing the use of ND5 for this field.                 |
| IVSS24   | Gross Charge Offs In The Period   | Total amount of gross principal charge-offs (i.e. before recoveries) for the period. Charge-off is as per securitisation definition, or alternatively per lender's usual practice. Include the currency in which the amount is denominated, using {CURRENCYCODE_3} format.  | NO               | NO           | This concept is not used in the CMBS market. The response will generally be 0 until final recoveries are complete. ESMA might usefully consider allowing the use of ND5 for this field.   |

|        |                                  |   |    |    |   |
|--------|----------------------------------|---|----|----|---|
| IVSS27 | Annualised Constant Default Rate | The annualised Constant Default Rate (CDR) for the underlying exposures based on the periodic CDR. Periodic CDR is equal to the [(total current balance of underlying exposures classified as defaulted during the period) / (total current balance of non-defaulted underlying exposures at the beginning of the period)] * 100. This value is then annualised as follows: $1 - (1 - \text{Periodic CDR})^{\text{number of collection periods in a year}}$<br>"Periodic CDR" refers to the CDR during the last collection period, i.e. for a securitisation with quarterly paying bonds this will usually be the prior three month period. | NO | NO | This concept is not used in the CMBS market. ND5 (which would therefore be appropriate) is not available. It will be possible to calculate a number, but it will be meaningless and uninformative for users. ESMA might usefully consider allowing the use of ND5 for this field.                   |
| IVSS38 | Arrears 1-29 Days                | The percentage of exposures of this type in arrears on principal and/or interest due for a period between [...] and [...] days (inclusive) as at the data cut-off date. The percentage shall be calculated as the total outstanding principal amount as at the data cut-off date of the exposures of this type and in this category of arrears, relative to the total outstanding principal amount of all exposures of this type as at the data cut-off date.   | NO | NO | It is not market practice (or useful) to report arrears in this way in the context of non-granular CRE debt securitisation, but in the absence of the ND5 option, it is possible to calculate numbers (however meaningless). ESMA might usefully consider allowing the use of ND5 for these fields. |
| IVSS39 | Arrears 30-59 Days               |   | NO | NO |   |
| IVSS40 | Arrears 60-89 Days               |   | NO | NO |   |
| IVSS41 | Arrears 90-119 Days              |   | NO | NO |   |
| IVSS42 | Arrears 120-149 Days             |   | NO | NO |   |
| IVSS43 | Arrears 150-179 Days             |   | NO | NO |   |
| IVSS44 | Arrears 180+ Days                |   | NO | NO |   |

### 3. Explanatory Memorandum approach

This section sets out matters on which CREFC Europe recommends the use of an explanatory memorandum in a standard format, to be treated as a document “essential to understand the transaction” for the purposes of Article 7(1)(b)) and made available to investors and competent authorities (and, upon request, to potential investors) alongside completed loan-level and investor reporting templates. The purpose of this approach is to provide an explanation with regard to why certain fields have been completed in certain way, providing additional transparency regarding the completion of certain fields in areas where different interpretations are possible, including in relation to fields that may not work well in practice, with some of which, when completed within the constraints of the applicable technical standards (and in the absence of further clarification from ESMA), there is a risk of misleading or confusing users of the information provided. For ease of reference, the matters set out below are presented in our proposed Explanatory Memorandum format, whereby the full detail from the relevant field is set out, accompanied by an explanation in the “Comments” column which reporters might use in appropriate cases.

| Explanatory memo to the completion of certain fields of Annex 3 (Underlying exposure information – commercial real estate) |  |  |                  |              |   |
|--|--|--|------------------|--------------|---|
| FIELD CODE   | FIELD NAME   | CONTENT TO REPORT  | ND1-ND4 allowed? | ND5 allowed? | COMMENTS  |
| CREL41   | Do Non-Payments On Prior Ranking Claims Constitute A Default Of The Underlying Exposure? | Do Non-payments on Prior Ranking Claims Constitute a Default of the underlying exposure?   | NO               | YES          | The term “Prior Ranking Claims” is not a defined term for the purposes of the EU Securitisation Regulation, so the term is given a legal meaning having regard to what constitutes a “Prior Ranking Claim” for the purposes of the relevant underlying exposure, given its legal nature and jurisdictional nexus, with a focus on claims with prior legal ranking to that securing the underlying exposure. |
| CREL42   | Do Non-Payments On Equal Ranking Underlying Exposures Constitute Default Of Property?    | Do Non-payments on Equal Ranking underlying exposures Constitute Default of Property?  | NO               | YES          | The concept of a “Default of Property” is meaningless, so the field has been completed by reference to whether non-payments on equal ranking underlying exposures constitute a default of such underlying exposures (with the term “equal ranking” given its legal meaning).  |
| CREL43   | Noteholder Consent   | Is Noteholder consent needed in any restructuring? Restructuring includes changes in the securitised underlying exposure’s payment terms (including interest rate, fees, penalties, maturity, repayment schedule, and/or other generally-accepted measures of payment terms)   | YES              | NO           | “YES” is used to signify that some form of Noteholder consent is needed in at least certain restructuring contexts. It does not mean that the consent of all Noteholders is required in all restructuring contexts.   |
| CREL54   | Collection of Other Reserves   | Are any amounts other than ground rents taxes or insurance held in reserve accounts as required under the terms of the underlying exposure agreement for tenant improvements, leasing commissions and similar items in respect of the related property or for purpose of providing additional collateral for such underlying exposure? | NO               | NO           | Notwithstanding that all the examples given in the field description relate to reserves for operating expenditure, the field has been completed to include reserves relating to capital expenditure as well, as these are not covered elsewhere.  |

| Explanatory memo to the completion of certain fields of Annex 3 (Underlying exposure information – commercial real estate) |  |  |                  |              |  |
|--|--|--|------------------|--------------|--|
| FIELD CODE   | FIELD NAME   | CONTENT TO REPORT  | ND1-ND4 allowed? | ND5 allowed? | COMMENTS   |
| CREL70   | Debt Service Coverage Ratio Method                     | Define the calculation of the Debt Service Coverage Ratio financial covenant requirement, the inferred method of calculation. If the calculation method differs between the whole loan and the A-loan, then enter in the A-loan method.<br>Current Period (CRRP)<br>Projection - 6 month forward calculation (PRSF)<br>Projection - 12 month forward calculation (PRTF)<br>Combo 6 - Current period and a 6 month forward calculation (CMSF)<br>Combo 12 - Current period and a 6 month forward calculation (CMTF)<br>Historical - 6 month forward calculation (HISF)<br>Historical - 12 month forward calculation (HITF)<br>Modified - Includes a reserve injection or a percentage rental income probability calculation (MODI)<br>Multiple Period - Consecutive period calculation (MLTP)<br>Other (OTHR) | YES              | NO           | A DSCR calculation method has not been defined in the transaction documentation because of the absence of a DSCR covenant in the transaction, but (unlike for CREL71-72) the ND5 option is not available for this field. This field has therefore been completed with “OTHR” to indicate that there is no DSCR financial covenant and therefore no DSCR calculation method in the transaction documentation. |
| CREL73   | Debt Service Coverage Ratio At The Securitisation Date | The Debt Service Coverage Ratio calculation for the securitised underlying exposure, at the Securitisation Date, based on the underlying exposure documentation.   | YES              | NO           | DSCR is not required to be calculated because of the absence of a DSCR covenant in the transaction, but (unlike for CREL71-72) the ND5 option is not available for this field. This field has therefore been completed with with 0/zero percent.   |
| CREL74   | Current Debt Service Coverage Ratio                    | Current Debt Service Coverage Ratio calculation for the securitised underlying exposure, based on the underlying exposure documentation.   | YES              | NO           | DSCR is not required to be calculated because of the absence of a DSCR covenant in the transaction, but (unlike for CREL71-72) the ND5 option is not available for this field. This field has therefore been completed with with 0/zero percent.   |
| CREL88   | Principal Grace Period End Date                        | If applicable as at the data cut-off date, indicate the principal grace period end date.   | NO               | YES          | The transaction contemplates grace periods in particular circumstances, but no grace period is currently running, so the field has been completed using ND5. <sup>2</sup>  |

<sup>2</sup> We note updated ESMA Q&A 5.1.5.16, but nevertheless consider that this is the most appropriate approach for this field.

| Explanatory memo to the completion of certain fields of Annex 3 (Underlying exposure information – commercial real estate) |  |   |                  |              |  |
|--|--|---|------------------|--------------|--|
| FIELD CODE   | FIELD NAME   | CONTENT TO REPORT   | ND1-ND4 allowed? | ND5 allowed? | COMMENTS   |
| CREL102  | Payment Date   | The most recent date principal and interest is paid to the SSPE as at the data cut-off date, this would normally be the interest payment date of the underlying exposure.   | NO               | YES          | The field has been completed to give the most recent contractual interest payment due date regardless of whether principal was also payable on that date (the wording of the field description could be interpreted as referring to a date when both principal and interest are paid). |
| CREL105  | Payment Due  | This is the next contractual payment due by the obligor according to the payment frequency of the underlying exposure. Include the currency in which the amount is denominated, using {CURRENCYCODE_3} format.  | NO               | YES          | This field has been completed to give the scheduled contractual payment due, as that amount (unlike, for example, the amount that may be due under contractual cash sweep provisions) is known   |
| CREL115  | Current Index Rate                                   | The index rate used to determine the current securitised underlying exposure interest rate. The interest rate (before margin) used to calculate the interest paid on the securitised underlying exposure payment date in field CREL102.   | NO               | YES          | Where the applicable index rate is in negative territory and a contractual floor applies, this field is completed with the applicable floor rather than the lower current index rate.  |
| CREL119  | Interest Rate Floor                                  | Minimum rate that the obligor must pay on a floating rate underlying exposure as required under the terms of the underlying exposure agreement.   | NO               | YES          | This field is completed by reference to the sum of contractual floor plus margin (as the floor applies to the underlying reference/index rate).  |
| CREL127  | Total Shortfalls In Principal & Interest Outstanding | Cumulative outstanding principal and interest amounts due on the entire lending arrangement (i.e. not just the securitised underlying exposure) as at the data cut-off date.<br>Include the currency in which the amount is denominated, using {CURRENCYCODE_3} format.   | NO               | YES          | This field is completed to give the amount due but not yet paid (i.e. overdue).  |
| CREL132  | Default Amount                                       | Total gross default amount before the application of sale proceeds and recoveries and inclusive of any capitalised fees/penalties/etc. If not in default, enter 0. Include the currency in which the amount is denominated, using {CURRENCYCODE_3} format.  | NO               | YES          | The amount given in this field in respect of “capitalised fees/penalties/etc.” does not include any fees that may be anticipated but have not yet been billed or accrued.  |
| CREL139  | Liquidation Expenses                                 | Expenses associated with the liquidation to be netted from the other assets of issuer to determine loss per the Securitisation Documents. Amount of any liquidation expenses that will be paid out of the net sales proceeds to determine whether there will be any loss. Include the currency in which the amount is denominated, using {CURRENCYCODE_3} format. | NO               | YES          | The amount given in this field reflects expenses billed and therefore known as at the relevant reporting date (without including any estimate of amounts that may arise but are not yet known).  |

| <b>Explanatory memo to the completion of certain fields of Annex 3 (Underlying exposure information – commercial real estate)</b> |  |   |                         |                     |   |
|---|--|---|-------------------------|---------------------|---|
| <b>FIELD CODE</b>   | <b>FIELD NAME</b>                      | <b>CONTENT TO REPORT</b>  | <b>ND1-ND4 allowed?</b> | <b>ND5 allowed?</b> | <b>COMMENTS</b>   |
| CREC8   | Geographical Region - Collateral       | The geographic region (NUTS3 classification) where the physical collateral is located. Where no NUTS3 classification has been produced by Eurostat (e.g. a non-EU jurisdiction), enter the two-digit country code in {COUNTRYCODE_2} format followed by ‘ZZZ’.  | YES                     | YES                 | If the physical collateral is located in a number of geographic regions, judgment has been used to select one with which to complete this field. Further information may be provided here.  |
| CREC36  | Date of Financials at Securitisation   | The end date of the financials for the information used in the Offering Circular (e.g. year to date, annual, quarterly or trailing 12 months).  | YES                     | YES                 | This field has been completed with the date of the operating statements (rather than borrower financials as reported in the Offering Circular).   |
| CREC37  | Net Operating Income at Securitisation | Revenue less Operating Expenses at Securitisation Date. Include the currency in which the amount is denominated, using {CURRENCYCODE_3} format.   | YES                     | YES                 | While revenue and certain operating expenses may be known in relation to each property forming part of the physical collateral, where there is more than one property it is likely that certain costs will be overheads and not allocated to individual properties. For this reason, ND5 may be used for CREC37, and only direct, property level operating expenses given for CREC41. |
| CREC41  | Most Recent Operating Expenses         | Total operating expenses for the period covered by the most recent financial operating statement (e.g. Monthly, Quarterly, Year to Date or Trailing 12 months) for the property. These may include real estate taxes, insurance, management, utilities, maintenance and repairs and direct property costs to the landlord; capital expenditures and leasing commissions are excluded. Include the currency in which the amount is denominated, using {CURRENCYCODE_3} format. | YES                     | YES                 |   |

| <b>Explanatory memo to the completion of certain fields of Annex 12 (Investor report information – non-ABCP securitisation)</b> |                              |   |                         |                     |   |
|---|------------------------------|---|-------------------------|---------------------|---|
| <b>FIELD CODE</b>   | <b>FIELD NAME</b>            | <b>CONTENT TO REPORT</b>  | <b>ND1-ND4 allowed?</b> | <b>ND5 allowed?</b> | <b>COMMENTS</b>   |
| IVSS11  | Risk transfer method         | In accordance with Article 242(10) and (11) of Regulation (EU) No 575/2013, the securitisation risk transfer method is 'true sale'.   | NO                      | NO                  | On an agency (secured loan structure) CMBS, no risk transfer is involved. In the absence of an ND5 option, this field has been completed with “N” (no). |
| IVSS12  | Trigger Measurements/ Ratios | Has any underlying exposure-related trigger event occurred? These include any delinquency, dilution, default, loss, stop substitution, stop-revolving, or similar exposure related events which impact the securitisation, as at the data cut-off date. This also includes if there is a debit balance on any PDL or an asset deficiency. | NO                      | NO                  | Where the transaction does not include trigger measurements or ratios, in the absence of an ND5 option, the field has been completed with “N” (no).     |