

CREFC Europe submission in response to the ESMA consultation paper on Guidelines on securitisation repository data completeness and consistency thresholds (ESMA 33-128-827, the CP)¹

Submitted on 16 March 2020 via the ESMA consultation response portal

Introduction

The Commercial Real Estate Finance Council (**CREFC**) Europe is a trade association promoting a diversified, sustainable and successful commercial real estate (**CRE**) debt market in Europe that supports the real economy without threatening financial stability. Our core membership includes lenders, including European and non-European banks, institutional and private equity debt funds, and intermediaries who help connect capital seeking the risk and returns of CRE debt with real estate firms seeking finance. Our membership also includes loan servicing firms, law firms and various specialist advisers with an interest in the industry and markets we serve. We also have a number of real estate investors and developers in our membership, broadening our ability to speak for CRE finance markets.

General points

Scope of the Guidelines. We have seen the submissions being made by the Association for Financial Markets in Europe (**AFME**). CREFC Europe supports the general point made in the AFME response on the scope of the Guidelines and their intended application to securitisation repositories and only to “public” securitisations² that are required to report via securitisation repositories. We also strongly agree that the ESMA Guidelines’ limitation on the usage of “no data” options must apply to public securitisation markets only, given the fundamentally different nature of private securitisation markets and for the other reasons cited in the AFME response (e.g. the greater level of investor sophistication and the greater power private market investors have to require appropriate data to be supplied), which are generally relevant from the perspective of wider securitisation markets including CRE finance.

Use of ND1-4 options by non-EU originators. CREFC Europe supports the general comments made in the AFME response with regard to securitisations involving non-EU domiciled originators where compliance with Article 7 template-based reporting becomes applicable. The proposed thresholds will be difficult to comply with in practice due to third country regulatory compliance issues (e.g. bank secrecy laws). We support AFME’s call for the use of ND1-4 options in such scenarios to be unrestricted and, therefore, excluded from the “legacy assets” and “legacy IT systems” field allowances proposed in the CP. Separately, we are sympathetic to the argument made by AFME that ND1 is qualitatively different from ND2-4 and would accordingly warrant different treatment.

Q1: Do you agree with the guiding principles used for developing the thresholds, as discussed in this section (section 3.1)?

CREFC Europe supports the general guiding principles set out in the CP, and would make the following specific comments.

- Guiding principles should be specific to each underlying exposure template and the relevant level of granularity (the latter is particularly important in the context of certain CMBS transactions that may involve a single large loan or a small number of loans being securitised – see also our response to Q2 below).

¹ https://www.esma.europa.eu/sites/default/files/library/esma33-128-827_cp-guidelines_on_securitisation_repository_data_completeness_and_consistency_thresholds.pdf.

² That is, securitisations in relation to which there is an obligation to publish a prospectus under Regulation (EU) 2017/1129.

- Guiding principles should be subject to a formal or informal consultation period. We would encourage ESMA to keep the application of the Guidelines in practice under review and to stand ready to make necessary adjustments in an expedient manner following appropriate consultation, as insight is gained about the commercial realities of deal experiences with the completion of the new loan-level data reporting templates. That is particularly important in the context of CMBS transactions for the following reasons.
 - For some years now, CMBS transactions have not been eligible for the ECB/Eurosystem collateral framework. As a result, the CMBS market does not have the experience of complying with ECB loan-level reporting and tolerance thresholds requirements, meaning that there is no data that could provide a meaningful starting point for calibration of the thresholds applicable to CRE assets under the EU Securitisation Regulation. We note that the CP acknowledges this.³
 - To date (as well as more generally pre-2019), CMBS transactions are largely done as “private securitisations”. As a result, practical issues arising from the application of the “tolerance thresholds” may not become apparent until public CMBS transactions come to the market.
- There should be cross-sectoral cooperation with EBA and EIOPA.
- Proportionality is important, to balance the need for investor protection against other requirements for the efficient operation of securitisation markets.

Q2: Do you agree with the proposed calibration approach and proposal for the percentage threshold, as discussed in this section (section 3.4)?

At this stage, we cannot support the proposed calibration from the perspective of CMBS, given the very limited experience of reporting loan-level data using the new reporting templates and the lack of data from historical ECB/Eurosystem reporting with which CMBS did not have to comply (see also our response to Q1).

We also support the CMBS-related observations made in the AFME response. The proposed calibration does not work well for CMBS transactions involving relatively non-granular portfolios with a small number of underlying loans/exposures. As noted by AFME, the proposed calibration approach and the setting of the “legacy assets” and “legacy IT systems” threshold at 10% means in practice that such transactions do not benefit from the “legacy assets” allowance, since a single asset having an ND1-4 response in respect of a particular field will automatically mean that over 10% of assets are reporting an ND1-4 response. A more nuanced approach is required for calibration of thresholds for non-granular CMBS (or other types of non-granular ABS transactions).

CREFC Europe would support the solution proposed by AFME, of combining the allowances for legacy assets fields and legacy IT systems fields, and applying that aggregated allowance to the number of fields with any ND1-4 responses. Under that approach, for a CMBS transaction with three underlying loans, there would be a single allowance of 100 fields where it is permitted to have ND1-4 responses in respect of any asset (although as a practical matter only 75 fields permit ND1-4 responses at all, so the cap would functionally be 75). CREFC Europe would be pleased to engage further with ESMA on this issue.

³ See para 25 of the CP, which states that “CMBSs... are not included in the sample, due to the small number of data submissions...” and the corresponding footnote, which states that “tolerance thresholds were introduced on 16 October 2013 for RMBSs and SME ABS, and on 1 October 2014 for submissions of information for auto, consumer, leasing, and credit card ABSs. CMBSs were not affected by these thresholds, as there were few securitisations submitting data to the ECB”.

Q3: Do you agree with the proposed calibration approach and proposal for the ‘number of legacy assets fields’ thresholds, as discussed in this section (section 3.5)?

See our response to Q2 above.

Q4: Do you agree with the proposed calibration approach and proposal for the ‘number of legacy IT system fields’ thresholds, as discussed in this section (section 3.6)?

See our response to Q2 above.

Q5: Do you have any comments on the threshold revision process? Are there any other aspects on this topic that are missing in your view and should be taken into consideration?

CREFC Europe agrees with ESMA that *“it appears too early to stipulate how often the thresholds will be revised”* and we agree with the suggestion that thresholds could be adjusted on an ad hoc basis, subject to sufficient advance notice, without the need for defining a threshold revision path at this stage. On that basis, it would be reasonable simply to use a single set of numbers for the time being.

As noted in our response to Q1 above, CREFC Europe would like to encourage ESMA to keep the practical application of the Guidelines under ongoing review and to stand ready to make necessary adjustments in an expedient manner, subject to appropriate consultation, to reflect the commercial realities of deal experiences with the completion of the new loan-level data reporting templates. The latter will be particularly important in the context of CMBS transactions given the very limited experience of reporting loan-level data using the new reporting templates, the lack of data from historical ECB/Eurosystem reporting with which CMBS did not have to comply and the fact that, to date, CMBS transactions are largely done (as has been the case in this market pre-2019) as *“private securitisations”*, meaning that some of the practical issues with the application of the *“tolerance thresholds”* may not become apparent for some time (until *“public”* CMBS transactions come to the market).