Response to ESMA's call for evidence dated 20 March 2015 (ESMA/2015/558) on the extension of the disclosure requirements to private and bilateral transactions for Structured Finance Instruments

CREFC Europe is grateful for the opportunity to respond to this call for evidence.

CREFC Europe is a trade association promoting a diversified, sustainable and successful commercial real estate ("**CRE**") debt market in Europe. Our core membership includes commercial as well as investment banks, as well as other lenders and intermediaries who help connect capital seeking the risk and returns of CRE debt with real estate firms seeking finance. Some of our members act as investors in the market. More broadly, we seek constructive and effective dialogue not only with banks, but also with non-originating investors, borrowers and regulators in promoting CRE debt markets that are transparent, diverse and liquid, supporting the real economy without compromising financial stability.

As a trade association, we neither issue/structure nor invest in structured finance instruments ("**SFIs**"). Our membership is predominantly weighted towards issuers and originators rather than investors in the traditional sense. However, in one of our main areas of concern (relating to loan-on-loan financings, discussed below) the "investor" is, in fact a bank advancing a loan (which may be in loan or bond format). Accordingly, we respond to both the "questions for issuers, originators and sponsors" and the "questions for investors".

Questions for Issuers, Originators and Sponsors

Q1. Please provide the name of your organisation.

Commercial Real Estate Finance Council (CREFC) Europe.

Q2. Please explain whether you issue/structure SFIs on a private and/or bilateral basis.

If yes, please indicate:

What are the main categories/types of SFIs you usually issue/structure; and

What is your motivation for issuing such instruments?

As a trade association, CREFC Europe does not issue, structure or invest in SFIs, but we are interested in, and represent businesses active across, the CRE finance market in Europe. As regards the issuance and structuring of SFIs, our members are involved in those activities in relation to both (public) commercial mortgage-backed securities ("**CMBS**") and private and/or bilateral CRE related SFIs.

Main categories/types of SFIs

There are potentially two categories of SFIs for CRE finance.

One of those categories involves private note issuance involving a small group of investors ("**Private Notes**"). The structures for Private Notes can vary, but are often similar to a public CMBS structure. These transactions may or may not be rated. They typically have a smaller principal balance than a standard, publicly listed CMBS.

The other potentially relevant type of arrangement is "loan-on-loan" finance, comprising a loan (the "**Loan-on-Loan**") that is secured against another, underlying loan or portfolio of underlying loans. A

Loan-on-Loan may take the form of a loan agreement or a loan note, depending on investor preference. The underlying loan or portfolio of loans is typically secured over CRE. In many cases, the Loan-on-Loan is tranched, with the financing comprising a senior loan from a balance sheet lender and junior debt from the holder of the equity in the portfolio of loans. This is also similar to any mezzanine financing in the loan market.

While we do not believe Loan-on-Loan transactions should fall to be treated as SFIs, there has been some uncertainty in the market as to whether tranching in the context of a Loan-on-Loan transaction might technically lead such transaction to be categorised as a "securitisation" under the EU Capital Requirements Regulation (Regulation (EU) No 575/2013) ("**CRR**") and thus within the SFI definition. This uncertainty has arisen because is not clear whether ESMA considers that loans can constitute SFIs. In paragraphs 10-11 of the RTS, for example, ESMA refers to SFIs including financial instruments referred to in MIFID as well as other "assets" resulting from a securitisation (such as money market instruments or asset backed commercial paper). In our view, the loan finance market is distinct from the securitisation market and accordingly should attract different treatment from MiFID financial instruments. To the extent that any Loan-on-Loan would be treated as an SFI, it would be appropriate and important, for the continued viability of this market, that such loans benefit from a more flexible disclosure standard under Article 8b (or are otherwise subject to alternative, less demanding, disclosure requirements).

Motivation for Issuance of Private Notes

There can be a range of reasons for issuing private or bilateral Private Notes. In our view, the two most common reasons are:

- Confidentiality: In this situation, there will be confidentiality provisions in the underlying facility agreement(s), preventing the originator or original lender from arranging a public, listed transaction. This can be for a variety of reasons, such as the concern by the borrower(s) of the underlying loans about certain information relating to their CRE investments being widely disseminated into the market. An example here would be sensitivities involving rents on the leases for the properties that secure the underlying loans.

- Capital Markets Investor: Here, the transaction is structured as a capital markets transaction in order to meet formal requirements of the investor. While the borrower and the arranger of the note issuance might have been happy with a simple real estate loan under a standard facility agreement, a prospective investor is subject to constraints in its mandate, requiring that it its investment be held in a capital markets instrument.

Motivation behind Loan-on-Loan financings

As regards the drivers behind Loan-on-Loan finance, see our response to Q3. It should be emphasised that in the context of Loan-on-Loan financings, the borrower (e.g. the entity that is partly funding its acquisition of a loan portfolio with debt, or leveraging its own loan investments by borrowing) is simply taking out a loan. It is only the tranching of the Loan-on-Loan that has caused some to argue that what is, commercially, an ordinary private loan may fall within the definition of a "securitisation"; but for that quirk of the regulatory definitions, one would not speak in such a case of the borrower "issuing" an "instrument".

Q3. Please indicate whether you intend to make greater or lesser use of private and/or bilateral transactions in SFIs and outline the main reasons.

The issuance of Private Notes has increased since the credit crisis as an alternative means for borrowers to raise capital in the markets. It has been a useful means of raising capital by borrowers in certain

scenarios, particularly where the capital markets offer more competitive pricing than the bank lending market. While it is not clear whether issuance will continue to increase, it is useful to have this additional means of raising capital, particularly with the uncertainties that remain in the credit markets generally.

As for Loan-on-Loan finance, the main reason why the commercial need for it is not likely to diminish for some time is the continuing need for European banks to dispose of large volumes of pre-crisis loans from their balance sheets. Loan-on-Loan financings are also required by non-bank lenders wishing to leverage (or potentially refinance) an existing investment in CRE loans. Such transactions are usually funded by portfolio purchasers using a mixture of equity and debt, so Loan-on-Loan arrangements will continue to arise. Such transactions are fundamentally private in nature, so if they are viewed as involving a SFI subject to CRA3 disclosure requirements, that would likely have an impact on the viability of such finance and thus on the whole deleveraging process that Europe's banks are undergoing. In some circumstances, Loan-on-Loan financing may involve the issuance of notes, usually because of lender/investor preferences or constraints (e.g. a prohibition on investing in loans).

Q4. In your opinion, how should private and/or bilateral transactions in SFIs be defined for the purpose of applying the above indicated CRA3 RTS and/or developing additional templates?

Bilateral transactions are a sub-set of private transactions. In a bilateral arrangement for Private Notes, there will only be a single investor. The principal amount under these transactions is often relatively small (in the context of CRE lending).

Arguably, a bilateral arrangement should automatically fall outside the CRR definition of "securitisation" and not constitute a SFI, as it would most likely involve a single tranche.

Q5. Which are in your opinion the key elements that should be used as a basis to identify private and bilateral SFIs:

The type of procedure used for the placement of the SFIs (e.g. private placement or public offer by reference to article 3 of the Prospectus Directive)?

The transferability of the SFIs?

The nature and/or the number of parties involved in the transaction?

Other elements?

In the CRE context, the key elements for identifying private SFIs are:

- Confidentiality: It is typical for both Private Notes and Loan-on-Loan transactions to contain express confidentiality provisions that would restrict wide dissemination of information relating to the arrangements. Frequently, the confidentiality provisions require that any investor or potential investor sign up to a confidentiality agreement for the benefit of the borrower(s) on the underlying loan(s).

- Intention of the Parties: With respect to Private Notes, the parties will have made it clearly evident in the transaction documents that the notes are privately issued. Typically, the notes will be listed on an unregulated market where disclosure requirements will be limited.

  For a Loan-on-Loan transaction, the documentation will typically be in the format of a standard loan facility with market standard confidentiality provisions. As with such standard facility arrangements, the documents limit the dissemination of information to transaction parties or to potential transferees of the transaction parties.

- Reference to article 3 of the Prospectus Directive: For Private Notes, the documentation will explicitly state that the notes are being issued pursuant to the private placement exemption under the Prospectus Directive.

  For Loan-on-Loan transactions, there would normally be no reference to the Prospectus Directive. This is because (save in those cases where the provider of the Loan-on-Loan is a non-bank and is subject to formal restrictions relating to its debt investments) there are usually no securities (or similar instruments) being issued. A typical Loan-on-Loan transaction is in the form of a standard loan facility.

- Listing on Unregulated Market: If the case of Private Notes, listing will typically be on an unregulated market, such as the Channel Islands or the Irish GEMS Exchange.

- Contractual Limitations of Investor: In many Private Note transactions, one or more investors are restricted in their ability to invest in loans, being permitted to invest only in notes that have ISINs and that can be cleared through the clearing system. That can lead to the issuance of Private Notes in circumstances where the underlying borrower may have been satisfied with borrowing under a standard loan facility. It is not always easy to identify this investor requirement in the transaction documentation, but it is nevertheless a key factor for many private transactions.

Q6. Do you think private transactions in SFIs should be defined separately from bilateral transactions in SFIs? If yes, please provide reasons.

CREFC Europe believes that a distinction might be helpful, particularly if it is the basis for whether a transaction is an SFI or subject to different regulatory requirements.

Q7. Are you aware of differences with respect to the definitions of terms used in private and bilateral transactions in SFIs or with respect to the data provided for such transactions (e.g. Loan-to-Value date is provided for certain transactions while Loan-to-Foreclosure data is provided for others)? Please provide examples.

We are not aware of "market standard" terms for private or bilateral SFI transactions as distinct from traditional transactions. CRE, and thus CRE debt, is a heterogeneous asset class with limited scope for standardisation of definitions and terms. In that context, private transactions may be more bespoke than those marketed publicly, often incorporating specifically negotiated, new or different covenants or other terms that would not be picked up by the proposed ESMA reporting fields for the CRA3 RTS.

Q8. Do you consider that intra-group transactions should be treated as a separate sub-category of private and/or bilateral transactions? If yes, please provide a detailed justification/explanation.

We would support a separate sub-category for intra-group transactions. It is difficult to justify imposing mandatory reporting requirements on intra-group lending arrangements. Such arrangements are very different in nature and purpose from financings (even of a bilateral or private nature) involving third party investors. We do not believe it is the intention of the CRA regulation to regulate or mandate the publication of information relating to transactions taking place within a corporate group. For these purposes, a group should probably be defined by reference to generally accepted accounting practice.

Q9. Do you consider that the disclosure requirements as outlined in the CRA3 RTS with respect to issuers, originators and sponsors of SFIs established in the Union can be used in full and with the same level of detail for private and/or bilateral transactions in SFIs? If yes, please explain what would be the advantage of this option.

No, we do not believe that the disclosure requirements as outlined in the CRA3 RTS should be used without modification in typical private or bilateral SFI transactions. We believe the market well understands the difference between public transactions and private transactions, and prospective investors in private transactions either do not want public disclosure or understand that it is not available.

In a typical private transaction, the investors negotiate the form of reporting and disclosure to ensure that they will receive all material information they require relating to their investment. For a Loan-on-Loan transaction, the reporting package will be very specific to this asset class and is unlikely to resemble the reporting package outlined in the CRA3 RTS. As a general matter, investors conduct more detailed due diligence for a private or bilateral SFI than for a truly public CRE debt securitisation. See also our answer to Q.16 below.

We are, therefore, not convinced that any disclosure requirements need to be imposed to satisfy the overarching objective of Article 8b. Recognising ESMA's view that full exemption is not possible, we would support an approach that gave the maximum possible flexibility, and imposed the lightest possible burden, on private and bilateral transactions.

Most importantly, there should be no requirement for full public disclosure, as that could be very damaging for what is fundamentally a private market. Only controlled disclosure subject to appropriate non-disclosure or confidentiality restrictions should be imposed. The main effect of a disproportionate disclosure burden on such transaction will be not to help investors, but rather to reduce the flow of credit, and thus the viability of broader investment activity, where disclosure is unacceptable to the parties (including in cases involving the transfer of pre-crisis loan portfolios out of Europe's banks).

Q10. If your answer to question 9 is no, please provide detailed answers to the following additional questions.

What specific types/categories of information among those listed in the CRA3 RTS could be problematic in the context of private and bilateral transactions in SFIs?

There are a number of categories of information that may be problematic in the context of CRE transactions:

- Information about the properties forming the underlying security for the investments, for example regarding rents, valuations and other commercially sensitive details relating to the properties.

- The pricing of the underlying loans may be a sensitive issue for the originating lender. Such information would allow competitors to see how a particular transaction was priced and structured. If the originator has spent significant resources trying to build a platform, it may not want its competitors to be able to benefit from that work to make sales to other potential clients.

In addition, resource will be necessary to compile the data and prepare the necessary reports. Since all material information for a private or bilateral deal would be delivered to investors (or in the case of a Loan-on-Loan finance, the original lenders) in the format agreed with them as appropriate for the

specific transaction, the resources spent on the preparation and dissemination of additional reporting will be wasted.

Additional disclosure requirements would be unnecessary for Loan-on-Loan finance, which would always reflect the due diligence and information requirements of the originating lender and its loan syndication partners, whose internal credit committees require such due diligence as a condition of entering into the loan facility agreement. Any CRA3 reporting requirements would fall on the borrower/loan portfolio owner and would be an onerous and costly additional obligation on them. Such borrowers are often private investors or relatively small investment vehicles.

Most importantly, any kind of public reporting could be extremely damaging, potentially undermining the market in non-performing and/or sub-performing loans ("**NPLs**"/"**SPLs**") altogether. The credit analysis of the Loan-on-Loan involves the borrower laying out its business plan for the loan portfolio it is seeking to acquire. This is likely to go right down to the level of specific workout plans and timetables for individual NPLs/SPLs. The ongoing reporting that a Loan-on-Loan lender will demand involves a comparison of actual cash flows generated against that business plan.

Forcing public disclosure of this kind of information under CRA3 would deeply compromise the borrower's competitiveness and ability to operate effectively, potentially rendering NPL/SPL transactions commercially unviable. Borrowers in respect of the underlying NPLs/SPLs would know the recovery expectations of the entity that had stepped into the position of their creditor. The NPL/SPL purchaser's competitors in future NPL/SPL auctions would have insight into its strategy and workout costs.

Europe's banks need a functioning NPL/SPL market for the foreseeable future in order to continue rebuilding their balance sheets and recycling their capital – and that market will not be viable if competitive Loan-on-Loan finance is unavailable. More generally, a functioning Loan-on-Loan market, which is by its nature specialist and private, can support a more efficient, liquid and diverse CRE debt market for Europe, benefiting both real economy borrowers and investors. A very clear and compelling public policy justification would be needed to undermine those positive contributions by burdening Loan-on-Loan finance with public disclosure requirements designed for very different kinds of transaction. We see no such public policy justification.

Please provide some examples as to why disclosure of specific data fields would be problematic with respect to private and bilateral SFIs, indicating in particular:

Which data fields are most likely to be problematic;

For what reason (e.g. protection of trade secrets) and under what circumstances;

For which asset classes and/or for what type or group of private and bilateral transactions in SFIs would the application of the disclosure requirements laid out in CRA3 RTS be problematic?

In respect of the issuance of Private Notes, the following requirements are likely to be problematic:

- Rental and leasing information relating to the underlying properties: Either the landlord or the tenants (or both) may be very reluctant for the terms of those leases (which would normally be confidential) to be made public when the financing being put in place is private or bilateral.

- Interest rate and other pricing terms for the underlying loan or SFI: Either the borrower or the lender (or both) may be very reluctant for those terms (which would normally be confidential) to be made public without anyone having agreed to enter into a public financing.

- Commercial terms of the transaction: Either the borrower or the lender (or both) may not want their counterparties to be aware of what terms they have agreed on other transactions. Otherwise, it will be difficult to negotiate better terms for themselves in these other transactions.

For Loan-on-Loan transactions, which are in substance private loans financings, any public disclosure at all would, in our view, be completely inappropriate. By analogy, there is no requirement for public disclosure on loans secured over CRE assets, or on leveraged finance loans.

Please indicate what kind of safeguards (e.g. use of ranges instead of specific figures) could be put in place in order to address the above concerns, while still ensuring an appropriate level of information for investors, in line with the requirements of article 8b of the CRA Regulation.

The most promising way forward would in our view be to allow alternative disclosure arrangements put in place for specific private or bilateral transactions with the agreement of investors to be treated as satisfying Article 8b, or at least to allow CRA3 disclosure in such transactions to be made solely to prospective and actual investors, subject to appropriate confidentiality / non-disclosure agreements, and not more widely.

For example, a formal process might be put in place for transaction documents where investors in the initial offering for the private transaction are given the opportunity to request CRA3 reporting. If they required such reporting, then it would be provided to them, without being published more widely. However, if the investors did not require such reporting, the transaction would be treated as satisfying Article 8b through the alternative reporting format agreed to by the investors in the initial offering.

Q11. Please provide an estimate of the likely costs to your business of complying with article 8b in the event that the current disclosure requirements of the CRA3 RTS were to be extended to private and bilateral transactions in SFIs. Please provide some detailed information on the types of costs involved and indicate whether these costs are likely to be particularly high for specific categories of assets.

It is difficult, at this stage, to determine the actual costs of article 8b compliance. First of all, the full reporting requirements are not yet finalised. Further, in order to comply, these transactions would need to create a role for a new entity that will need to compile and calculate the data. Currently, it is difficult to identify a transaction party that would be willing and able to take on such a role. However, if we assume that a servicer for a typical CMBS transaction were appointed to perform this task, the cost for compliance might be approximately 2.5 to 5 bps per annum.

As mentioned elsewhere in these submissions, however, cost is not the primary issue. The real issues are (a) the loss of valuable confidentiality for no valuable benefit to investors in private and bilateral transactions, and (b) the broader threat to credit flow and transactional activity if it effectively ceased to be possible to transact privately.

As also discussed in Q11, for Loan-on-Loan transactions, the obligation, cost and burden will fall on the borrower/owner of the loans, and not the Loan-on-Loan lender. We are of the view that this disclosure obligation would serve no purpose and provide no benefit, and is therefore not appropriate for such transactions.

Questions for Investors

Q12. Please provide the name of your organisation.

Commercial Real Estate Finance Council (CREFC) Europe

Q13. Please explain whether you invest in private and bilateral transactions in SFIs and if so, in which type/categories of SFIs.

As a trade association, CREFC Europe does not issue, structure or invest in SFIs, but we are interested in, and represent businesses active across, the CRE finance market in Europe. As regards investment in SFIs, a number of our members invest in both (public) CMBS and private and/or bilateral CRE related SFIs. In relation to one of our two main areas of concern, Loan-on-Loan financings, the "investor" in CRA3 terms is usually a lending bank, rather than an investor in the more traditional capital markets sense. Our membership includes a number of such banks.

Q14. In your opinion, how should private and bilateral transactions in SFIs be defined for the purpose of applying the above indicated CRA3 RTS and/or developing additional templates?

Please refer to our answer to Q4.

Q15. In your opinion, what are the key elements that should be used as a basis for identifying private and bilateral SFIs:

The type of procedure used for the placement of the SFIs (e.g. private placement or public offer by reference to article 3 of the Prospectus Directive);

The transferability of the SFIs;

The nature and/or the number of parties involved in the transaction (e.g. the presence of professional investors and/or retail investors);

Other elements? Please provide details.

Please refer to our answer to Q5.

Q16. Please explain the due diligence process you follow and the types of information you consider in order to decide whether to invest in private or bilateral transactions in SFIs.

A key point to understand is that both investors in Private Notes and Loan-on-Loan lenders to NPL/SPL purchasers/owners appreciate that there is no meaningful secondary market in these products.

Particularly in the context of a Loan-on-Loan transaction, the CRA3 "investor" is in fact the senior and/or mezzanine lender providing finance to the borrower (which borrows to finance ta portfolio of NPLs/SPLs it is acquiring or already owns). No-one would enter into such transactions in the belief that if things go wrong they will be able to sell their position. As a result, there is a very strong focus on initial due diligence and on the loan documentation, particularly as regards ongoing rights to step in and structure a workout. This focus is typically a direct, private negotiation, because there is often only one senior Loan-on-Loan lender (or at most a very small number of investors/lenders) for the relevant borrower to deal with (as indeed would usually be the case in the case of a Private Note issue). The level of engagement and the detailed due diligence conducted around documentation, disclosure and reporting is therefore generally greater for such transactions than for public asset-backed securities.

Subject to those fundamental points, the due diligence process for an investment in a private or bilateral SFI transaction is broadly similar to that when participating in a loan syndication.

In addition to a review of all loan documentation, the investor also typically reviews any related note documentation where relevant, all related due diligence reports, including legal due diligence reports, as well as all valuations for the underlying properties.

Typically, the investor in the private or bilateral SFI will conduct an analysis of the contracted periodic income generated or expected to be generated by the relevant real estate constituting security for the investment pursuant to the terms of the relevant leases, having regard to the nature, diversity and covenant strength of the tenants. Other property-level factors likely to be considered include lease expiries and break rights, rental levels among comparable properties, and the resilience of the property's income and capital value, having regard to the ease with which existing tenants might be replaced and the capital expenditure that may be required to fill vacancies. A detailed valuation report and other professional reports (for example covering structural or environmental matters) will also be used to support this analysis.

It is also usual for the investor to consider, with its legal advisers, the legal and tax environment in the relevant jurisdictions for the investment and its security and the implications for its ability to recover interest and principal, particularly in the event of a default in respect of the underlying loans. The plans and strategy for the use of the relevant real estate, as well as the real estate investment and management experience and expertise of the borrower's sponsors and property managers, both generally and within the context of relevant CRE sub-sectors or jurisdictions, are also likely to be factors which the investor will consider when deciding whether to make its investment.

In considering the income generated by the real estate collateral, the investor will also examine the expenses to be incurred in respect of such collateral and how such expenses are funded. Relevant expenses include property taxes, ground rent in respect of leasehold properties and service charge expenses, as well as capital expenditure required to maintain or enhance the physical condition and thus also the value of the property. Private or bilateral CRE lending is normally non-recourse, so the cash flow available to a borrower is typically limited to that which is generated by the relevant real estate. As a result, the investor will usually seek to confirm, as part of its investment process, that all necessary expenses can be met out of that cash flow without the borrower's ability to pay interest on or repay the principal of its borrowings being compromised.

Following the approval in principle by the investor of its investment in the SFI, certain legal due diligence procedures are followed before its investment is actually advanced. Typically, duly qualified and experienced legal advisers will be appointed to assist in the origination of the underlying loan and will undertake due diligence with respect to certain matters relating to the underlying loan. These matters include the background of each underlying borrower and its exposure to other liabilities, actual or contingent, the structure of each underlying loan and related security package, the title of each underlying borrower or other relevant entity to the relevant real estate and the occupational leases relating to the real estate.

The title verification process will typically involve the legal advisers undertaking or, in certain jurisdictions, procuring from a notary public or advisers to the borrower, searches of various public records relating to the relevant real estate, reviewing documents relating to the ownership of the real estate and raising appropriate enquiries relating to it.

Q17 Do you think that the extension of the current disclosure requirements laid down under CRA3 RTS with the same level of detail to private and bilateral transactions in SFIs would bring additional value to your due diligence? Please provide a detailed explanation.

No. We believe that this information would not generally be helpful to investors in private or bilateral CRE SFIs. For such transactions, the investor typically receives its due diligence materials in the same format as it would under a standard loan syndication or origination, unless otherwise agreed. The investor then conducts its due diligence in the usual way, using the primary information rather than relying on any additional layer of preparation, compilation and reporting and the risk of errors that might entail. Specifically in relation to Loan-on-Loan financings, see our comments above, and especially in response to Q10 and Q16.

Q18. If your answer to question 17 is no, do you think that the current disclosure requirements laid down under CRA3 RTS could be simplified with respect to private and bilateral SFIs without impairing your due diligence process, and while still guaranteeing an adequate level of investor protection in line with the requirements of Article 8b of the CRA Regulation? In particular:

What specific data fields of the current Disclosure Requirements are essential or most helpful to investors?

Which categories of information in the current disclosure requirements could be provided in less detail (e.g., providing ranges instead of specific figures) or in a redacted form (e.g., without reference to information that may constitute a trade secret)?

As described above, we believe that in the overwhelming majority of CRE related private or bilateral SFI transactions, the information requirements under CRA3 RTS would simply be redundant. They would add nothing to the process undertaken by the investor in the origination or syndication of the private or bilateral SFI. For all practical purposes, these instruments are an SFI in form only. In commercial substance, these investments are treated by the investor the same as any standard bilateral or private loan facility. The investors have their own requirements and processes for receiving and reviewing information for such investments that go with the grain of this part of the market. There is no problem for CRA3 RTS disclosure requirements to address.

Specifically in relation to Loan-on-Loan financings, see our comments above, and especially in response to Q10 and Q16.

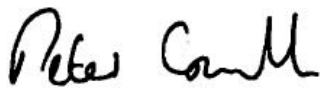
Conclusion

We believe that the existing disclosure practices and processes for private and bilateral CRE related SFIs are effective and sufficiently detailed and extensive. Investors in primary issuance are directly involved in the negotiation of the reporting requirements for the SFI. We do not see any need for additional reporting requirements pursuant to CRA3 RTS and view certain of the requirements as likely to discourage investors from participating in the market.

Indeed, we are concerned that due to the confidential nature of most private and bilateral SFIs, any reporting requirements under the CRA3 RTS could have a material adverse impact on the availability of finance for those parts of the market that currently find such SFI transactions attractive. Both borrowers in the real economy (Private Notes) and banks seeking to dispose of pre-crisis loan portfolios (Loan-on-Loans) could lose a valuable option for achieving their objectives through a relatively small and specialist market that is working well as it is.

We hope our comments are helpful and would be delighted to discuss them with you in further detail at your convenience.

Yours faithfully



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