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Finance for Europe

8TH JANUARY 2019

JOINT TRADE ASSOCIATIONS ("JTAs") CALL WITH ESMA RE SECURITISATION DISCLOSURE TECHNICAL STANDARDS TO BE HELD ON 9th January 2019 1500-1700 CET (1400-1600 GMT)

List of observations and further questions

General observations and initial reaction

The JTAs welcome the opportunity to review the papers circulated by ESMA on 19th December 2018 (including the draft summary of adjustments, "Summary") and to take part in the conference call organised for 9th January. Given the holiday season there has been limited opportunity to gather detailed feedback from our members. We have done the best we can in the very limited time available.

The key change that has been made is an expansion in the use of ND fields.

Broadly speaking, for ABCP securitisations the proposal to increase the number of ND fields is helpful and goes some way to addressing some of the industry's concerns.

However, not many additional ND fields have been granted to non-ABCP (i.e. term) securitisations, or for private securitisations that are not ABCP securitisations. These sectors, and certain asset classes, will continue to face challenges and questions of interpretation which are listed below.

Also there remain general concerns about the disclosure regime as a whole that remain unaddressed.

Unless otherwise stated references to Articles are to Articles of Regulation 2017/2402 (the "Securitisation Regulation").

General points

- **The absence of a sensible and proportionate grandfathering, transitioning and implementation process:** while we note paragraph 12 of the Summary we comment that this is simply insufficient. With regard to the statement by the Joint Committee of ESAs, the industry has already experienced considerable difficulty in obtaining meaningful feedback, and even in finding an individual within certain CAs able and willing to provide guidance. In addition this statement gives no comfort at all to the position of investors and their obligations under Article 5 of the level 1 text. This creates serious compliance uncertainty and regulatory risk for market participants. We refer ESMA to the proposals in the AFME Position Paper of October 2018 (from page 6) for constructive suggestions on how this could be better addressed. IT work to implement changes is still needed, will take many months and cannot even begin

until the requirements are finalised. For example, it would be very helpful to understand when ESMA intends to publish the final XML templates. The industry will need some time to prepare the internal IT systems to be ready to report in the correct data format once the new disclosure regime will finally be in force. Hence the earlier this information is available the better.

- **Private securitisations which are not ABCP securitisations:** while the expanded use of ND fields for ABCP securitisations is helpful, there are private securitisations which are not ABCP securitisations but structured in exactly the same way as ABCP securitisations (especially with trade receivables, equipment leasing or auto loan receivables), with the only difference that the SPV purchasing the receivables is refinanced only by one bank loan. We therefore ask that the same approach (of an expanded use of ND fields) is taken for these transactions to ensure the level playing field to ABCP transactions.

- **ABCP Securitisation:** We accept that some relief has been granted by the expanded use of ND fields in the proposed ABCP templates; however there still remains considerable confusion among industry participants concerning several essential features of the proposed regulation. This includes issues such as upon whom the reporting requirements fall upon and whether fields are intended to refer to either programme or transaction level characteristics. In order to prevent a disorderly and inconsistent implementation we would strongly request ESMA consider giving these templates the benefit of the full public consultation process that the other public securitisation asset classes benefited from in 2018.

- **Extended use of ND fields:** given the proposed (and encouraged) reliance on ND fields, please can you provide some assurance regarding the supervisory treatment of originators or sponsors who rely on this approach? Market participants are already experiencing difficulty in obtaining feedback from their CAs (see above).

- **Tolerance thresholds:** we note this concept previously discussed privately with ESMA in October 2018. This was of course limited to public transactions reporting to a repository. Could you please provide an update of your thinking with regard to this approach? In any event as we have previously pointed out, this does not change the legal liability for market participants subject to the regulation so provides little by way of meaningful relief.

- **Geographic scope:** we note paragraph 11 of the Q&A paper and would strongly encourage the swift development of a common understanding of the application of the requirements of Regulation 2017/2402 (the "Securitisation Regulation"). This is especially important for EU banks who sponsor US conduits.

- **Technical and practical points which require clarification:** we have included in Annex 1 more points which require clarification but which may be too detailed for discussion on this call. We therefore urge ESMA and CAs to continue the process of engagement with the industry, perhaps by publishing on their websites as soon as possible Q&As on the key fields of the new underlying

reporting templates to help and provide guidance as to the compilation of the templates. Some issues may be complex to resolve, so a working group with industry experts could assist in finding solutions acceptable to the authorities which work for the industry.

- **Double reporting regime in 2019:** sponsors, SSPEs and originators will have a double reporting regime in 2019 due to the differences between the current ESMA proposals and the ECB/Bank of England eligibility requirements (Bank of England and ECB reporting requirements are similar and generally speaking the industry is familiar with such differences).
  - The whole point of the new Securitisation regulation is to create incentives to use securitisation as a funding tool, rather than create new costs and complexities; and
  - this is even more relevant for first time issuers as the complexity of the compliance with the new regulation plus the existing reporting regime makes securitisation a costly funding tool compared with alternatives such as whole loan sales and covered bonds.

- **Timing:** please can you confirm when the 6- week period referred to in the letter from the Commission to ESMA will end and whether you expect to use it in full? Please can you also confirm that your revised proposals will be made public and what the expected timing will be after that for finalisation of the regime?

- **Transition Period:** For banks and other CRR firms with exposure to non-compliant deals, Article 270a of the CRR states that "competent authorities shall impose a proportionate additional risk weight of no less than 250 %" where the investing institution fails to meet the conditions of Article 5 (including verifying that the issuer has made the disclosure required by Article 7), "by reason of negligence or omission". We would strongly request that the ESAs confirm that a considered decision to invest, where the issuer has exhibited partial compliance based on the issues noted in the Joint Statement, does not constitute "negligence or omission" and therefore the 250% surcharge need not be applied. Without such clarification, it is difficult to see how a bank or CRR firm could accept any exposure to such a transaction, and to that extent the Joint Statement may be of little practical assistance even if fully implemented by CAs.

Questions for specific asset classes

ABCP securitisations

ABCP general questions

We refer to the paper dated 3rd January 2019 submitted on behalf of the TSI, in particular:

- **Private bilateral securitisations:** these are similar to ABCP securitisations but are funded by way of bilateral bank loans rather than the issuance of ABCP: please provide clarity on which template should apply (the application of the Annex 9 "esoteric" template would be highly problematic). We would note that according to the mandate in Article 7.3, the RTS should "take into account the usefulness of the information for the holder". Investors in private securitisations do not generally consider it useful to have mandatory disclosure fields specified in regulation, as they are well placed to demand the information they need in any specific case, so according to this mandate we believe it should be appropriate that ND fields should generally be permitted in private deals (and investors can demand the actual data via bilateral negotiation if they consider it useful).
- **Co-funding structures:** these are securitisations funded partly via ABCP conduits and partly via bank lending: please provide clarity regarding which template should be used. We recommend that to avoid confusion, complexity and excessive administration the simplest approach should be for the ABCP templates to be used across the entire transaction.

and in addition, make the following points:

- **Originator Reporting Requirements**; Can ESMA confirm what reporting requirement fall upon Originators of ABCP transactions? Is the answer to this question affected by whether the Sponsor of the ABCP Programme is itself complying with ESMA's reporting requirements, for example if the Sponsor and ABCP Programme are not required to comply as they are located outside the EU? Are there any exposure-by-exposure reporting required at an ABCP Transaction level and if so, to whom?

- **Sponsor Reporting Requirements:** Art. 4, paragraph (2)(b) of the Final ESMA RTS report requires the reporting entity to make information available on "each ABCP programme which is funding the ABCP transactions". Can ESMA confirm how to fulfill this granularity requirement when an ABCP transaction is syndicated and funded via multiple ABCP Programmes, each managed by a different bank Sponsor? Is there a requirement for each ABCP Programme Sponsor to report on the programme level details of other ABCP Programmes funding the transaction?

ABCP Securitisation: Can ESMA please clarify the definition of "ABCP Securitisation" for the purpose of application of the RTS templates? This term is undefined within both the CRR and the level 1 text, which refer to "ABCP Transaction" and "ABCP Programme" definitions separately leading to substantial ambiguity. For example, the Sponsor at the ABCP Programme

- **Fully supported ABCP securitisations** (i.e. where the Sponsor would protect the ABCP investor from any deterioration in the performance of the underlying exposures): can ESMA confirm that ABCP issuance at a programme level remains a form of 'Securitisation'?
- **ABCP Conduits as "Originators":** do they fall under the definition of an 'Originator' with respect to the ABCP they issue?
- **Risk Retention**; assuming all entities are established within the EU, does the regulation require ABCP Programmes, ABCP Transactions or both to be risk retention compliant?
- **Article 7(1)(f):** please can ESMA confirm that this does not apply to private securitisations?
- **Article 7(1)(g):** given the lack of an applicable template, can ESMA confirm what actions (if any) do private ABCP securitisations need to take to comply?
- **ABCP Programmes that contain transactions that are not securitisations:** how should these be treated? For example, some contain transactions backed by Diversified Payment Rights which are structured transactions that do not involve the tranching of a pool of exposures and hence do not fall within the regulatory definition of "securitisation".

<u>ABCP field-specific questions</u>

- **ND1:** Sponsors act as underwriters of each ABCP transaction within their ABCP Conduit. On this basis, if a Sponsor is reporting on the underlying exposure template (Annex 11) and has not collected certain data fields as part of its underwriting process, is ND1 an acceptable entry for these fields?
- **ND2-ND4:** Similarly, can ESMA confirm that the same logic can apply to ND2-4 entries? For example, we believe ND2 can be entered in cases where the Sponsor collected the information initially but did not load in into their own reporting system.
- Unique Identifiers: Given lack of guidance under the RTS Article 11, are reporting entities free to come up with their own methodologies to generate unique identifiers for fields IVAL3, IVAL4, IVAR2 and IVAR3?
- **IVAL11:** Does this field refer to the current principal balance of receivables in the ABCP transaction or alternatively the principal balance of the ABCP Programme's exposure to that ABCP transaction?
- **IVAL12:** We note that field IVAL12, number of underlying exposures in the pool, for each exposure type, is still proposed to be mandatory (i.e. ND not allowed). It is questionable whether this field has any value in certain asset classes, e.g. trade receivable facilities. As a result, this information is frequently not collected in legacy transactions and sponsors may have no contractual right to obtain it from originators. Hence, if this field remains mandatory, it may be impossible for Sponsors to comply. Can ESMA reconsider whether ND options should be possible for this field? Additionally, can ESMA clarify in the context of a trade

receivable transaction whether an number of ‘exposures’ refers to the number of invoices or number of obligors in the pool?

- **IVAL21:** In our view the purpose and wording of IVAL21 is still unclear. For the avoidance of doubt, we would interpret the current text to require the reporting entity to calculate the value of exposures whose amortisation schedule is <u>not</u> French, German or Fixed, is this also ESMA’s interpretation? If so can ESMA explain the reasoning to requiring reporting of this field?
- **IVAL25:** Can ESMA clarify how this field should be calculated in the context of (i) facilities financed by multiple ABCP Programmes, (ii) facilities where ABCP Programmes use both commercial paper and other forms of funding (e.g. liquidity facilities) to finance their investments? Additionally, can ESMA explain whether the reference to ‘between the previous data cut-off date and the data cut-off date of the present data submission’ refers to the amount of exposures or the amount of commercial paper?
- **IVAL 27:** in some legacy transactions, it may not be possible to distinguish repurchases from amortisation in a consistent manner in the data which originators are contractually obliged to supply to sponsors, and because ND is still not allowed, it might be impossible for an ABCP Sponsor to comply. Can ESMA reconsider whether ND options should be possible for this field?
- **IVAS10:** As an example of the broader question of risk retention implementation raised earlier in this paper, would it be acceptable to report ND5 for IVAS10 if risk retention is complied with at the level of each ABCP transaction?
- **IVAN5:** Similarly, as an example of the broader question of risk retention implementation raised earlier in this paper, would it be acceptable to report ND5 for IVAN5 if risk retention is complied with at the level of the ABCP Programme?
- **IVAN6**: who does ESMA imagine could be a Seller (SELL) in the context of an ABCP Programme?
- **IVAR1:** In a fully supported conduit, events which trigger changes in the priority of payments or replacement of counterparties within individual ABCP transactions within the programme, are highly unlikely to be material to the position of investors in the programme, who generally rely principally upon the support provided by the Sponsor, and do not generally analyse the credit risk of underlying transactions at all. In such a context, we would understand the obligation in Article 7(1)(e)(ii) to refer only to events which trigger changes in the programme-level priority of payments and programme-level counterparties. Consequently, in order to implement we believe IVAR1 should refer to IVAN1 (the ABCP Programme as whole) not IVAN2 (the underlying ABCP transactions).
- **IVAR6:** regardless of the interpretation of IVAR1, IVAR6 currently refers to other breach consequences (“OTHR”) however we do not believe this option is necessary or even appropriate given that ABCP Conduits are not required under Article 7(e)(ii) to report on triggers that do not result in changes in the priority of payments or replacement of counterparties. We are concerned that including this option would suggest that all triggers in a deal would need to be listed, regardless of materiality, which would be unnecessarily onerous for the reporting entity.

Prime Dutch RMBS (stand-alone issues)

The main Concerns remain for this asset class and are partly reflected in the General Points above, specifically:

- Uncertainty about the (level, timing etc. of the) the tolerance thresholds;
- The missing ND1-4 option for many fields that are either entirely new, have new definitions or used to be optional in the ECB templates; while for the some of those fields data sources can be disclosed at relatively short notice, there are (for the Dutch RMBS issuers) at least 7 fields that confront us with serious sourcing issues (all not allowing ND1-4), namely:

    - RREL 63: Prepayment date (optional under ECB)
    - RREL 64: Cumulative Prepayments (optional under ECB)
    - RREL 65: Date of restructuring (not required under ECB)
    - RREL 69: Account status (very complicated change in the definition)
    - RREL 70: Reason for Default (not required under ECB), and
    - RREC 19: Date of Sale (optional under ECB), and
    - IVSS 29: Defaulted exposures CRR

Getting the sourcing for all these fields right may require up to 12 months of implementation work.

RMBS master trusts – tranche specific information

Master trust structures are a common feature of the UK RMBS market.

Annexes 12 and 16 seem to require versions for each tranche. This will lead to a huge duplication of data (approaching 100% for Annex 12, less but still a lot for Annex 16).

One approach could be to produce a single version for each Annex for each reporting period / submission. This would require repeating certain fields that are designed to hold tranche specific information; however, the fields would not identify which tranches were which, and the disassociation of information from tranches would confuse data users who would then struggle to benefit.

Instead we recommend that to avoid confusion, complexity and excessive administration the simplest approach would be for tranche specific fields to allow the Tranche Identifier to be populated along with the information sought by the field definition, perhaps separated by a particular character.

Please could ESMA clarify if this suggestion is viable? It is important for originators to receive guidance on this so that the required IT development can be actioned in reliance upon it.

CMBS

- **Can confirmation be provided that customer confidentiality constraints are a sufficient justification for the use of ND5?** It is unclear in some instances how the ND responses can be used, especially ND5. Confidentiality issues can arise in providing tenant level information (particularly in the instances where there is a large "anchor" tenant in a shopping centre where an individual tenant will have agreed a specific rental amount which may differ from that of another tenant in the same shopping centre or indeed another shopping centre). Would ND5 be an acceptable entry if information is not available on grounds of confidentiality? Commercial sensitivity and confidentiality could also impact updated property valuations (especially where the business plan is more of a portfolio disposal).

- **The tolerance test is unreasonably inflexible for CMBS transactions.** In CMBS a large loan count pool is 3 and in many cases the pool loan count is 1. We do not believe it will ever be possible for every single loan-level field required for CMBS to be completed. That would mean that 100% of the loans in a CMBS will fail the tolerance test, whatever number is chosen for x in the formula. Even if all of the fields required could in principle be completed, in the one loan case all it would take is for one data point to be missing and the tolerance test would not be met. The proposed approach should either be varied significantly or simply disapplied for CMBS.

- **A data dictionary is required to minimize the risk of inconsistency in how terms used in the template are interpreted and understood.** One example relates to net operating income (NOI) and interest cover ratios (ICR). Questions that would always arise relate to the treatment of particular expenses. For example, expenditure on the property might be capital (and ignored) or operating (and therefore relevant); and asset management fees might be treated as overheads of the property-owning business (and ignored) or costs of owning the property (and therefore relevant). In Europe, where (unlike in the US) ICR covenants are often forward looking, additional questions arise – for example, how to project income and expenditure relating to a lease that is due to expire within the next few months; or how to project interest rates.
  Please refer to the annotated template emailed to ESMA by CREFC Europe on 23 October 2018, where the fields most in need of clarification as to what is sought were identified. A workshop bringing together ESMA officials with industry experts might be the best way to bring clarity. If terms and fields are to be left open to interpretation, that will create an audit headache for those submitting data, as well as compromising the usefulness of the disclosures actually made.

Autos and operational leasing

Transitional Period: in the attachments, reference is made to the following sentence in the final RTS report of ESMA: "In ESMA's view, and given these considerations, the present reporting arrangements could potentially apply with a gradually-increasing degree of compliance (with full compliance being expected by the end of the transitional period). As regards the duration of the transition period, ESMA considers that 15-18 months appear necessary as a transition period."

- We would like the emphasize that, given the last minute changes being made to the templates, we will need a considerable amount of time to be fully compliant with the ESMA templates. Feedback is appreciated on what exactly is considered to be "a gradually increasing degree of compliance" over the course of 15-18 months and how e.g. grandfathering would be applied for information requested in relation to existing contracts

Annex 5: a general comment on this template would be that it contains numerous fields which are applicable to underlying exposures for mortgages, but are irrelevant for (operating) leases. To be more specific:

- AUTL19: Primary Income Verification – how should this field be interpreted for Corporates?
- AUTL20: Revenue – how should this field be interpreted vis-à-vis the revised version of AUTL16 which states: "Where the primary obligor is a legal person/entity, enter in that obligor's annual revenue."
- AUTL48-AUTL52 relate to prepayment information – this is not applicable to operating leases.
- AUTL57: Energy Performance Certificate Value – seems to relate to the energy certificate for home owners? We are not aware of any such classifications for cars.

Reporting Frequency: ESMA reiterates that the reporting frequency for non-ABCP securitisation will be on a quarterly basis. We are working under the assumptions that a higher frequency (i.e. monthly) will be deemed acceptable also. For a number of companies their reporting framework is based on monthly reporting, and it will be extremely costly to change this process to quarterly reporting.

Rounding: ESMA states that rounding of numeric fields will not be allowed. In the ECB templates, we are used to round to the nearest e.g. "EUR 1,000" for information that is commercially very sensitive (i.e. Estimated Residual Values). Will this still be allowed? This is in particular relevant, as a lot of the information that needs to be shared can be considered business sensitive information, of which sharing in too much detail could be considered violations of internal and external competitive information sharing regulations

CLOs

We refer to the letters sent to ESMA and the Commission from the Loan Market Association of March and October 2018 and January 2019, and also to the letter from ACC and AIMA sent in November 2018.

NPLs

Please can you clarify when the EBA templates have to be used vs. the ESMA templates and also which templates need to be used for UTP, the GACS etc.

Annex 1 - technical and practical points which also require clarification

ABCP securitisations

Practical issues arising out of interaction between different Member State regimes

The UK FCA and PRA are the only CAs we are aware of which have published draft guidelines. However unfortunately these raise as many issues as they resolve.

Example 1: a French bank could have UK receivables in its European conduit, which means there will be UK SSPEs and UK originators. Some of these transactions are purely UK, some part of EU-wide pools. Some are purely financed by one French bank, some may be co-financed with other EU27 banks.

Who needs to report what? And what is grandfathered? A French conduit (with a French sponsor bank) is not grandfathered, but its UK SSPE may be grandfathered if it does not re-issue in 2019. The EU27 conduit can report its share of the portfolio but not the whole transaction. If the SSPE needs to report, does it report only the UK part of the whole pool?

Example 2: in France, assume the SSPE (a French "FCT") is managed by a French bank owned entity. One of the transactions is financed by 5 entities, including two conduits, one EU bank and two non-EU banks (on their balance sheets).

Who decides who needs to do the reporting and which reporting? The client? The FCT manager? The conduit can only report the information on its own share of the pool.

Non-ABCP securitisations

Change in methodology of calculation of "arrears balance"

A small change of methodology in the calculation of "arrears balance" in the templates has been identified that could result in unnecessary dual reporting.

The latest version (December 19th) is proposing:
Current balance of arrears = Total payments due to date PLUS any amounts capitalised PLUS any fees applied to the account LESS total payments received to date.

The previous version (August 22nd) is proposing:
Current balance of arrears = Total payments due to date LESS Total payments received to date LESS any amounts capitalised.

ECB Calculation so far (for RMBS):
Current balance of arrears = Total payments due to date LESS Total payments received to date LESS any amounts capitalised. This should not include any fees applied to the account.

ESMA justifies this new approach in the document "Summary of adjustments under consideration" as "following market feedback received that the initial calculation

approach (which involved providing the arrears balance excluding fees applied to the account) would lead to greater changes to their reporting systems than anticipated during the consultation stage."

However, the new ESMA approach could in turn lead to more work. The calculation proposed by ESMA on August 22nd is following the calculation used so far under the ABS loan-level-initiative of the ECB. Therefore, for entities that will have to report under the ESMA and the ECB regimes, they will have to report the calculation of the arrears balance in two different ways. It would streamline the process to keep the approach of August 22nd.

Autos

AUTL1: which EU regulation [...] is ESMA referring to? Assumption is to use CRA3 template (i.e. ECB template) AA2-Pool identifier;
SESP6: there are very detailed rating requirements for different counterparties, where ALPHANUM-100 would be too limited to display all information
SESP7: same question as SESP6

4	TEM	SE	FIELD CODE	Infoobjekt	FIELD NAME (Before)	CONTENT TO REPORT (Before)	CONTENT TO REPORT (After)	ND1-ND4 allowed?	ND1-ND4 allowed?	ND5 allowed?	ND5 allowed?	FORMAT (Before)	FORMAT (After)
5	ANNEX 5: A	Underlying expo	AUTL1	UTL1	Unique Identifier	The unique identifier assigned by the reporting entity.	The unique identifier assigned by the reporting entity according to Article 11(1) of the Commission Delegated Regulation (EU) …/… [include full reference to the disclosure RTS].	NO		NO		{ALPHANUM-1000}	{ALPHANUM-28}
232	ANNEX 16	Counterparty	SESP6	ESP6	Counterparty Rating Threshold	If there is a ratings-based threshold specified for the service performed by this counterparty in the securitisation, enter in the counterparty rating threshold as at the data cut-off date.		NO		YES		{ALPHANUM-100}	
233	ANNEX 16: NON-AB	Counterparty information se	SESP7	ESP7	Counterparty Rating	If there is a ratings-based threshold specified for the service performed by this counterparty in the securitisation, enter in the counterparty rating as at the data cut-off date. In the event of multiple rating thresholds, all rating thresholds shall be provided as per the XML schema. If there is no such ratings-based threshold, enter ND5.		NO		YES		{ALPHANUM-100}	

Offering circular (summary):

Key minimum required rating during the term of the transaction		
	Short-term ratings	**Long-term ratings**
Account Bank Required Rating	"L2" from Creditreform ***or***	"A" from Creditreform ***and***
		"A" from DBRS ***or*** DBRS Critical Obligations Rating of "A (high)" ***and***
	"A-1" from S&P Global ***and***	"A" from S&P Global ***or*** "A+" from S&P Global
Eligible Swap Counterparty (without collateral)		"A" from DBRS ***or*** DBRS Critical Obligations Rating of "A"

Offering circular (page 175)

23.2 If (a) Volkswagen Financial Services AG is rated no longer a short-term rating for unsecured and unguaranteed debt of at least "A-2" from S&P Global and a long-term rating for unsecured and unguaranteed debt of at least "BBB" from S&P Global, or (b) Volkswagen AG is rated no longer "BBB" or higher by DBRS, or (c) Volkswagen Financial Services AG no longer has a long-term rating of at least "BBB+" from Creditreform, or (d) if a public rating from Creditreform is not available, Volkswagen Financial Services AG receives notification from Creditreform that Creditreform has determined Volkswagen Financial Services AG's capacity for timely payment of financial commitments would no longer equal a long-term rating of at least "BBB+" from Creditreform, or (e) an Insolvency Event has occurred to VWL; or (f) the profit and loss sharing agreement (*Gewinnabführungsvertrag*) between Volkswagen AG and Volkswagen Financial Services AG or between Volkswagen Financial Services AG and VWL is no longer in place, VWL is obliged on the immediately following Payment Date, to post collateral in an amount equal to the Kilometre Settlement Reserve. The Kilometre Settlement Reserve is exclusively reserved to cover losses resulting from (i) the Lease Contracts being qualified as contracts providing for financial assistance against consideration within the meaning of section 506 of the German Civil Code by the German Federal Supreme Court and the respective Lessee having refused to pay the Lease Receivables due to the Lease Contracts violating the consumer credit rules set forth in section 506 para. 1 of the German Civil Code and (ii) VWL not having honoured its obligations under of the Receivables Purchase Agreement to settle the respective Purchased Lease Receivable.