

June 30, 2020

Via EUSurvey portal to the European Commission
Feedback on the Capital Markets Union High Level Forum Final Report

Re: Recommendation 5g - Differentiating between disclosure and due diligence requirements for public and private securitisations

The Structured Finance Association (SFA) welcomes the opportunity to provide feedback on the final report¹ of the High Level Forum (HLF) on the Capital Markets Union (CMU). In particular, SFA strongly supports the Recommendation 5g from the perspective of securitisations that do not involve EU originators, sponsors or SSPEs (referred to in the final report as “third-country securitisations”). SFA supports the recommendation that compliance should be approached on the basis of the principle of proportionality. We also refer in this regard to SFA’s request for guidance from 15 July 2019 submitted to the European Commission (linked [here](#)), which contains further details that support the Recommendation 5g and the call of the HLF (on page 64 of the final report) for a clarification that Article 5(1)(e) of the Regulation (EU) 2017/2402 (“Securitisation Regulation”) does not apply to any third country originator, sponsor or SSPE and that rather such third-country securitisations *“must ensure that the EU-regulated investor has received sufficient information to meet the requirements for due diligence proportionate to the risk profile of the securitisation exposure.”*

SFA also strongly supports the HLF invitation² for the European Commission to address the issue at hand in the medium-term and the HLF comments on the delivery timetable on page 58 that note that *“some measures can be effected very quickly as they need regulatory authorities guidance.”* In this regard, SFA strongly encourages and requests the European Commission’s support with delivering clarification on the interpretation of Article 5(1)(e) as a regulatory guidance/policy statement as soon as possible, but in any case (and at the very least) at the same time, or around the same time, as the technical standards on Article 7 transparency requirements of the Securitisation Regulation prescribing the new standardised templates for loan-level and investor reporting enter into force and become applicable (which is expected in Q3 2020, possibly as early as July 2020). This much needed clarity is an urgent matter for all market players, including designated national competent authorities in the EU that supervise compliance of the relevant EU institutional investors with their due diligence requirements under the Securitisation Regulation, and it will help to promote consistent interpretation by all parties involved, thus removing any potential regulatory compliance risk and encouraging more

¹https://ec.europa.eu/info/sites/info/files/business_economy_euro/growth_and_investment/documents/200610-cmu-high-level-forum-final-report_en.pdf

² This is set out in paragraph 7 on page 54 of the final report, where the HLF invites the Commission in the medium-term to *“allow an EU-regulated investor in third-country securitisations to determine whether it has received sufficient information to meet the requirements of Article 5 to carry out its due diligence obligation proportionate to the risk profile of such securitisation”*.

liquidity and diversification in the securitisation markets.

SFA appreciates your consideration of these comments and welcomes the opportunity, if needed, to engage in further dialogue on this issue with the European Commission or any other relevant EU regulatory body. If you have any questions about this matter, please contact Kristi Leo, President, at (917) 415-8999 or Kristi.Leo@structuredfinance.org.

Very truly yours,

A handwritten signature in black ink, appearing to be 'K. Leo', with a stylized, cursive script.

Kristi Leo
President
Structured Finance Association