



Setting the standard
for securitisation

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PCS response to the ESMA consultation on information provision by firms seeking authorisation to be third party certification agents

PCS would like to thank the European Securities and Markets Authority for the opportunity to respond to this consultative process. PCS has been quite open as to its intention to apply to provide verification services under the Securitisation Regulation. As such, we have a direct interest in the technical standard the subject matter of this consultation.

As a general matter, we believe that ESMA's proposals and approach, as set out in the consultative paper, are sound and broadly reflect the requirements of the new regime. In particular, we note in paragraph 7 of the Consultation, that ESMA has sought inspiration in the regulatory regimes framing the activities of credit rating agencies and auditing firms. We also note that the reason for this seems to be the identification of the conflict of interest inherent in an institution being paid by the entity whose work it verifies but whose work product (rating, audit or STS certification) is to be used by others as most acute regulatory issue. We agree with this analysis. As a result, we also agree with ESMA's focus on issues flowing from this analytical premise.

As a minor - but important - matter, PCS notes that this activity is an entirely new one. In fact, it is an activity that cannot ever have been performed previously and will not be able to be performed until January 1st 2019. As such, we are not dealing, as with credit rating agencies, with the regulation of existing actors whose heretofore unregulated activity will now fall under a regulatory regime. As a result, it is quite likely that a number and maybe even a majority of entities that will seek authorisation will be new entities set up for this purpose. The clear rules against entities providing any ancillary services to the originator, sponsor or SSPE in a securitisation strengthen the likelihood that this will be a field for new

players. It is therefore important that the proposed informational requirement do not require items to be produced that simply cannot be provided by new companies. We note, for example, in the proposed article 8(3) that there is an absolute requirement for providing information covering a three year period.

Q 1: Do you agree with the proposed general information to be required from applicants to provide third-party STS verification services? Are there any other items that should be considered?

Generally, PCS agrees with the proposed general information to be required subject to the following comment.

As third party certification agents are not entering into credit or derivative contracts as part of their activity, we are not entirely convinced of the need for them to acquire a “legal entity identifier” (“LEI”). However, we understand the policy background for encouraging the use of LEI’s and so have no strong objection.

We are not convinced by the statements in paragraphs 11 and 12 suggesting that the complexities and differences between securitisations in different jurisdictions and/or containing different asset classes should lead the prospective third party certification agent to provide information as to which Member States it wishes to operate in and which asset classes it wishes to certify.

Since 2012, PCS has conducted an activity very similar to the verification of the STS status of securitisations: the PCS Labels. As with the verification of the STS status of a securitisation, the PCS Labels require checking a securitisation transaction against a voluminous set of explicit criteria to determine whether all those criteria have been met. We have now completed around 200 such exercises. In addition, we have already started to compare transactions against the STS criteria.

From our experience, we can conclude that the verification of the STS status of securitisations will require a deep knowledge of securitisation structures and documents. However, it is fundamentally different from a rating process. The rating process does require a deep knowledge of the asset being securitised and the jurisdictional rules governing that asset. STS verification does not.

As such, we do not believe it makes sense to seek to gauge the likely competency of an STS third party certification agent by jurisdiction and asset class. The same is true of the difference between ABCP and non-ABCP transactions. Without disagreeing that the articulation of the criteria for the two is different, we do not believe that difference drive any material difference in the work that needs to be performed by a third party certification agent or the skill set that it needs to bring to bear. Our own work so far very much supports this conclusion.

Q 2: Do you agree with the proposed information required from applicants on their pricing policies? Are there any other items that should be considered to determine that fees are non-discriminatory and cost-based, and not differentiated depending on the results of the applicant's STS assessment?

We agree with the proposals. We cannot think of any additional requirements.

Q 3: Do you agree with the proposed information required to assess the independence of a firm seeking authorisation to provide STS verification services? Are there other items that should be considered for this assessment?

We agree with the proposals. We cannot think of any additional requirements.

Q 4: Do you agree with the proposed information required to assess the applicant's management body, as well as the independent directors? Are there other items that should be considered for this assessment?

We agree with the proposals. We cannot think of any additional requirements.

Q 5: Do you agree with the proposed information required to assess the presence of existing or potential conflicts of interest? Are there other items that should be considered for this assessment?

We agree with the proposals. We cannot think of any additional requirements.

Q 6: Do you agree with the proposed information required to assess the third party firm's operational safeguards and internal processes for assessing STS compliance? Are there other items that should be required in the application?

We note the language in paragraph 37 referring to a “summary of methodologies to be used for [the] STS verification” differentiated by asset classes. This wording seems to be directly taken from the CRA regulatory regime. As such, and as set out in our response to Question 1, we think this misunderstands the work of a third party certification agent. The third party certification agent will certainly have “processes” and “procedures” which should be disclosed as part of its regulatory application. But the work of a third party certification agent is like that of an auditor – it verifies the originator/sponsors' existing certification. Also, the work of a third party certification agent, to the contrary of that of rating agencies, is objective. The third party certification agent does not create the STS criteria. So there is no “methodology” as such.

Although this lexicographical point may appear minor, it is not. The complex and necessary requirements for overseeing CRA “methodologies” should not be imported into the third party certification regime as they are logically unnecessary and burdensome.

Therefore, we strongly recommend the proposed recital 8 be amended by replacing “methodologies” with “processes and procedures” and removing the suggestion that different securitisation types be treated differently.

PCS stands ready to meet with ESMA and take it through the work we have been doing on the PCS Labels, as well as the work we currently are performing, to illustrate fully our point.

Questions to stakeholders regarding the preliminary cost-benefits analysis:

Q 7: Do you agree with the ESMA’s preliminary analysis on the main costs and benefits of (i) the information to be submitted to the respective competent authorities and, specifically (ii) the information on the extent of outsourcing of the activities of the applicant applying for providing the STS verification services.

We generally agree with ESMA’s approach. In particular, we strongly believe that information on any outsourcing would be an essential part of any information to be provided prior to the granting of authorisation.

Q 8: Please provide quantitative estimates of the magnitude of expected one-off and ongoing costs of complying with the proposed RTS requirements (both at the time of application and thereafter)? When specifying and quantifying the costs please refer to the individual cost types as a percentage of applicant’s current/budgeted operational costs.

At this stage it is very difficult to assess those costs