

European Securities and Markets Authority
103 rue de Grenelle
75007 Paris

19th March, 2018

Dear Sir or Madam

PCS response to the ESMA consultation on the content and format of the STS notification under the Securitisation Regulation

PCS welcomes the opportunity to respond to the European Securities and Markets Authority's consultation on the content and format of the STS notification under the STS Regulation.

Q1 Do you agree that some general information elements will facilitate the identification of the securitisation and are thus needed to be included in the STS notification?

PCS agrees with this approach.

Q2 Do you agree that the list of items in paragraph 13 should be included in the STS notification? Do you have any further proposals? If yes, please also state the reasons.

Generally, the list appears sensible. We would have only two comments.

First, "the type of underlying exposures as defined in the Securitisation Regulation" may be too limiting. The list of underlying exposures set out in the Regulation is very limited. PCS believes that for assets that do not fall within that list, a catch-all provision of "other" may be unnecessarily uninformative. It might be preferable to have a provision stating that (i) where the assets securitised fall into one of the listed categories, the relevant category should be specified and (ii) when the assets do not fall into a listed category, the originator/sponsor should provide a descriptive name for those assets.

Secondly, PCS' understanding of the certification process is that it is done once when the originator/sponsor elects to have a securitisation be treated as STS. Admittedly, there are provisions in the legislation for informing ESMA of any changes or new facts which would make the securitisation no longer STS. However, such notifications are not, to our understanding, a new certification. Therefore, we are not sure we understand what is referred to as "the date of the latest update of the STS notification".

As a corollary to the previous paragraph, we also understand the role of the authorised third party verification agent to be a day-one, single verification of the original and single originator/sponsor certification. (This is without prejudice to any on-going work such a verification agent may do, if any, regarding compliance with the continuing obligations under the STS rules. This is a matter that has yet to be determined.) Therefore, we are also not clear what is being referred to in the penultimate paragraph as the "date of the latest update" by the authorised third party.

Q3 Do you agree that the proposed list of items in paragraph 15 should be published on ESMA public website?

PCS agrees with the list in paragraph 15.

Q4 Do you agree with the proposal to have three different explanation types in the STS notification, depending on the nature of the criteria?

Depending on its interpretation, this approach may be problematic.

The purposes of the STS certification are multiple. Three of the key purposes are (i) to allow an investor to place "appropriate reliance" on the certification without doing so "mechanistically", (ii) to allow authorised third parties to verify the certification efficiently and (iii) to allow the originator/sponsor an opportunity to demonstrate it has not approached such certification in a negligent manner and thus is not exposed to potential sanctions.

Although the tripartite division of criteria proposed by ESMA is sensible for the majority of cases, securitisations display a very wide range of structures, legal frameworks and asset classes. Therefore, it is entirely possible that an STS criterion that is, in the great majority of cases, very straightforward and only warranting a "confirmation" could, in some cases, be quite complex and deserving of a longer explanation. To prevent the originator from providing such longer explanation when needed would deprive all three groups referred to in the preceding paragraph of the benefit of the certification document.

PCS accepts that this problem is attenuated if the confirmation consists of a cross-reference to a longer explanation in the prospectus. However, this approach would also make the tripartite division almost entirely illusory.

Therefore, although PCS sees great benefit in the guidance provided by ESMA's tripartite division, it strongly suggests that the first "confirmation" category is not a mandatory approach. In other words, the criteria listed in that category may be the subject of a confirmation only if the originator/sponsor so wishes but the originator/sponsor is always at liberty to provide more information if it feels this is required.

We accept that this may have been ESMA's intent but clear words to that effect would be helpful.

Q5 Do you agree with the proposal of cross-referring in a STS notification between the STS elements and those from Prospectus, where available, or otherwise other securitisation documentation? If not, please also state the reasons.

PCS strongly supports the cross-reference to the prospectus.

In addition, we strongly suspect that cross-reference to underlying documents will not be relevant. To the extent that the STS status of a securitisation is important and price sensitive to the investors, it follows that all the information that makes a securitisation STS is relevant to the investors since this is the only way they could make an independent assessment of the veracity of this important and price sensitive fact. Therefore, we believe that, pursuant to the existing and general rules of disclosure, the prospectus will need to contain all the necessary elements allowing an investor or prospective investor to determine the STS status of the securitisation.

Q6 Do you agree that for the list of items in table 2 only a confirmation should be required in the STS notification, accompanied by the cross reference to the relevant section in prospectus or other securitisation documentation? If not, please state your reasons and any further suggestion.

See our response to Question 4.

Q7 Do you agree that for the list of items in Table 3 a concise explanation shall be required in the STS notification, accompanied by the cross reference to the relevant section in prospectus or other securitisation documentation? If not, please state your reason and any further suggestion.

See our response to Question 4.

Q8 Do you agree that for the list of items in table 4 a detailed explanation shall be required in the STS notification, accompanied by the cross reference to the relevant section in prospectus or other securitisation documentation? If not, please state your reason and any further suggestion.

See our response to Question 4.

Q9 Do you agree with the proposal to require the use of XML templates for the STS notification notified to the ESMA?

We agree that the provision for a single format for certifications seems appropriate. However, PCS does not have the requisite knowledge of the costs and difficulties of using XML for the originator/sponsor community and therefore has no view of this issue.

Q10 Do you agree with the format of the proposed notification templates as described in Annexes I and II of the draft ITS?

The general approach of breaking down the legislative texts into individual criteria and providing for a criterion by criterion response seems to us very much the correct one. The discussion of the exact breakdown is a highly technical one and not one that has a single correct answer. Broadly, the breakdown is sensible although we may, if that is acceptable, come back to ESMA with some small suggestions.

One request for clarification relates to ABCP. Although ESMA's consultation seems, quite rightly, to envisage that both an ABCP conduit and a single transaction within an ABCP conduit may be certified as STS, the inclusion of both in a single table has led some market stakeholders to be concerned that it would not be possible to certify only a single transaction within an ABCP conduit without being compelled to certify the whole conduit. This is not the intention of the STS Regulation. A short clarification of this point by ESMA would be welcome.

As tiny lexicographical point on page 37, in the asset class breakdown: the STS criteria do not allow non-homogenous pools and so the catch-all for those assets that do not fall into one of the listed categories should probably be "other" rather than "mixed".

Q11 Do you agree with the arguments set out in the preliminary CBA? Do you think that other items should be factored into the CBA and if so, for what reasons?

The issue of costs is one PCS has little sense of and we leave this matter to the originators/sponsors and, to some extent, the investor community.

PCS stands ready to assist in any way ESMA may wish and we look forward to a continued dialogue on this technical matter.

Yours faithfully

Prime Collateralised Securities (PCS) UK Ltd