

# ESMA uncertainties delay disclosure obligations

On 27 April 2016, ESMA published an update making clear that market participants are unlikely to have to start complying with the detailed disclosure requirements imposed on them under Article 8b of the Credit Rating Agencies Regulation on 1 January 2017 as previously stated.

In June of 2013 amendments to the Credit Rating Agencies Regulation introduced, among other things, new disclosure requirements on issuers, originators and sponsors of securitisation transactions (described in [our briefing from May 2013](#)). The process of implementing these new requirements has advanced very significantly, with ESMA issuing detailed technical standards specifying the type and frequency of information to be disclosed following extensive public consultation (see [our briefing from June 2014](#) and the article on these obligations in [A Never Ending Road](#) from June 2015). It now appears that the rules have stumbled on the final hurdle, with ESMA announcing they do not have the legal basis for funding to put together the website (the "SFI website") on which all the information relating to so-called "structured finance instruments" was to be published.

In [an announcement](#) on their website, ESMA has confirmed rumours that had been circulating for some time. According to the announcement "it is unlikely that the SFI website will be available to reporting entities by 1 January 2017. Similarly, it is unlikely that ESMA will be in a position to publish the

technical instructions by 1 July 2016. Given these issues, ESMA does not expect to be in a position to receive the information related to SFI from reporting entities from 1 January 2017."

This puts issuers, originators and sponsors in the potentially awkward position of being subject to disclosure obligations that are impossible to comply with. This situation will persist until the SFI website is established, or Article 8b of the Credit Rating Agencies Regulation is repealed. We understand that the relevant European authorities are aware of the situation and are hoping to resolve the situation with the introduction of the Securitisation Regulation (more detail available in [our briefing from September 2015](#)). The initial expectation was that the Securitisation Regulation would be approved by the end of 2016, thereby resolving the difficulty. However, the progress of the Securitisation Regulation through the EU legislative process has been slowed substantially at the EU Parliament stage, so it now seems unlikely to be fully approved before the first quarter of 2017 at the earliest.

The awkwardness of the situation notwithstanding, it seems very likely

## Key issues

- CRA3 introduced a new disclosure regime for structured finance in 2013
- Detailed rules for implementing this regime were published in 2014
- The CRA3 regime requires the creation of a centralised website by ESMA
- ESMA has announced that it has no legal basis for funding to put together the centralised website
- It seems likely that it will be impossible to begin reporting on 1 January 2017 as required
- CRA3-style detailed disclosure will likely now wait for the Securitisation Regulation

that – for so long as there is no SFI website – issuers, originators and sponsors are, functionally speaking at least, relieved of their obligations under Article 8b.

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