

ESMA Consults on Implementation of CRA3 Disclosure Requirements

On 11 February 2014, the European Securities and Markets Authority (**ESMA**) published a consultation paper and first draft regulatory technical standard (**RTS**) on CRA3 implementation. CRA3 introduced a number of new obligations on issuers, originators and sponsors, including broad disclosure obligations in respect of so-called "structured finance instruments" (**SFI**). The document just published contains the first specific proposals and views from ESMA on how to implement the disclosure requirements imposed in general terms by CRA3 (for more detail on CRA3 generally, please see our client briefing from May 2013).

Despite industry having responded carefully and in full to the discussion paper on this topic in the second half of 2013, ESMA has produced a draft RTS that brings an exceptionally wide range of financial products into the scope of its disclosure requirements, excluding only those SFI issued prior to the RTS coming into force. Provided that an SFI (i.e. a financial instrument resulting from a "securitisation" within the meaning of the Capital Requirements Regulation) is present, the draft RTS would apply disclosure requirements:

- if any of the issuer, originator or sponsor is established (has its statutory seat) in the EU;
- regardless of whether the deal is public – private and bilateral transactions are explicitly in scope, and presumably intragroup transactions would be covered as well;
- regardless of whether the deal has a credit rating – unrated transactions are also explicitly in scope; and
- regardless of whether there is a "security" – money market instruments are expressly included and loans that are part

of a securitisation would presumably be included as well.

The data required to be provided under the draft RTS is extensive, highly prescribed and contains a number of categories of data such as default and delinquency rates that are likely to be commercially sensitive. A number of the requirements also appear likely to be unworkable in practice, including a requirement for loan level data to be provided quarterly for every asset class, including highly granular, revolving asset classes with high pool turnover, such as credit card receivables and trade finance receivables.

In addition to loan-by-loan data, the draft RTS also requires transaction documentation (potentially including sensitive documents such as subscription or dealer agreements), a transaction summary, investor reports (to be provided monthly in all cases) and a cash flow model to be disclosed.

All data provided under the RTS would be published on a website established by ESMA and would be made publicly available. No further details of the website are available at this time.

Key issues

- Public and private instruments (including loans) proposed to be subject to disclosure rules.
- Proposed rules would apply if any of the issuer, originator or sponsor is established in the EU.
- Disclosed information would be generally available to the public.

In the event that an SFI is caught, the issuer, originator and sponsor would have to designate one of their number to submit the information required, but would remain jointly responsible for compliance with the disclosure requirements, including the timeliness, accuracy and completeness of the data provided.

Clifford Chance is closely reviewing the consultation paper and the draft RTS and will publish a more detailed analysis of the potential impact of the draft RTS in due course.

Parties wishing to respond to the consultation paper must do so no later than 11 April 2014.

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