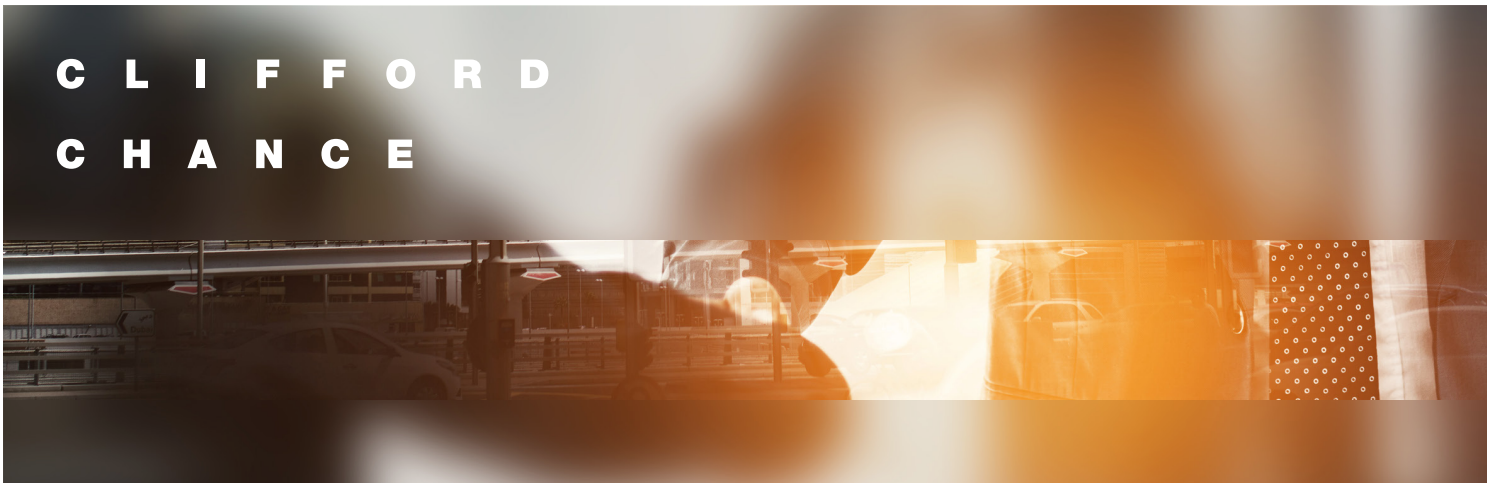

POLITICAL AGREEMENT REACHED ON THE SECURITISATION REGULATION

On 30 May 2017 political agreement was reached among the European Commission, the Council and the Parliament on the EU Securitisation Regulation. This is a major milestone in the legislative process begun by the European Commission on 30 September 2015. For general background, see our *client briefing* on the Securitisation Regulation describing the proposal. With political agreement reached, the danger that the Securitisation Regulation may not materialise now recedes. But have we got what we were expecting?

While the detailed content of the political agreement is still filtering out, a few headline items are already apparent:

- **Headline risk retention levels to stay at 5% for all methodologies.** There had been proposals from the Parliament to increase these to as high as 20%, but those have not been adopted. There is, however, likely to be a review clause of some kind relating to retention levels, as part of a mandate given to the European Systemic Risk Board for ongoing monitoring of risk build-ups in the securitisation markets.
- **Investor restrictions to be imposed.** The Parliament had proposed a closed list of types of entity permitted to invest in securitisations. That has been replaced by a requirement that investors should either be (a) "professional clients" as defined in MiFID2; or (b) retail clients investing within certain limits and have passed suitability tests. This is a much more workable outcome.
- **Data repositories to be created.** The political agreement involves the creation of securitisation data repositories that would collect data on securitisations across the EU in one place. Industry has always been in favour of data transparency, but this particular method of making data available was not something industry was requesting. Note, however, that reporting is not required for private securitisations – an important improvement to the regime. There has been a serious risk in this area ever since blanket reporting obligations for securitisations were imposed under the Credit Rating Agencies Regulation in 2013. It also appears that the "investor name give-up" provisions proposed by Parliament have been dropped.
- **A ban on resecuritisations to be imposed.** The details of this will be important, but it appears that specific provision has been made to avoid causing problems for ABCP transactions to the extent they would otherwise be caught, which is encouraging.
- **No third country provisions for STS securitisations.** A major debate had arisen late in the political process around the ability of entities based outside the EU to take advantage of the new "simple, transparent and standardised" securitisation regime that would lead to more benign regulatory treatment in the hands of investors. It now appears that STS treatment will be restricted to transactions where the originator, sponsor and issuer are all established in the EU – which may be problematic for UK deals following Brexit unless a political solution can be found before implementation.
- **Light touch authorisation for third party verifiers.** Provision has been made for authorised third party verifiers to check compliance with the STS criteria. Even where third party verifiers are used, liability for compliance is to remain completely with originators, sponsors, original lenders and issuers.

Press releases have been issued by the European **Commission**, the **Council** and the **Parliament**.

Next Steps

The political agreement reached last night is an important milestone, but the process still has some way to go before it is complete. The technical discussions will carry on for several more weeks and will be followed by approval of the final text in both the Council and the Parliament. A number of important issues remain outstanding, not least of which are the transitional provisions and the implementation timetable. The texts available going into the trilogues all had problematic transitional provisions and none was clear about the date of application. In addition, the Securitisation Regulation calls for the drafting of a significant number of level 2 technical standards, a number of which are required before compliance with the level 1 regulation is possible. Accordingly, industry will need to pay close attention to the outcome of these technical talks, as their outcome will make the difference between a helpful, orderly transition to the new legislative framework and a chaotic, disruptive one.

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