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EU SECURITISATION REGULATION – A SOLUTION FOR SELF-CERTIFIED MORTGAGES

The text of the Securitisation Regulation that will go to the European Parliament for a final vote (scheduled for 26 October 2017) was released on 18 October. This version is very similar in substance to the provisionally agreed text we reported on in mid-July, but the problems relating to self-certified residential loan securitisations and acquired portfolios have been addressed in part.

SELF-CERTIFIED RESIDENTIAL MORTGAGES – A SOLUTION

The biggest substantive change in the new text is that the ban on securitising self-certified residential mortgage loans we described in July has largely been addressed. It now applies, in broad terms, only to self-certified residential mortgage loans made after 20 March 2014, being the date of entry into force of the EU Mortgage Credit Directive (the "**MCD**"). The MCD brought in underwriting requirements that effectively banned self-certified mortgage loans anyway, so the logic is that self-certified loans should not have been originated after it came into force. Market participants should note, however, that the MCD did not have to be implemented in national law by EU Member States until 21 March 2016 so it is possible that some legally originated self-certified mortgages would still be caught.

Note, however, that the UK banned self-certified mortgages in 2014. Since the lion's share of EU self-certified residential mortgages were originated in the UK, it seems likely that the vast majority of the EU legacy stocks of self-certified mortgages will be able to benefit from this grandfathering relief.

ACQUIRED PORTFOLIOS – A SOLUTION?

Another area of concern for market participants in the provisionally agreed text was a combination of two provisions that risk making it difficult for acquirers of portfolios to securitise them. The first of these provisions imposes familiar requirements (historically applied only to banks) with respect to credit-granting standards on all originators, sponsors and original lenders (regardless of who they are or whether they are otherwise regulated) wishing to securitise their assets. The second of them requires that an acquirer of a portfolio who wishes to securitise that portfolio must verify that the asset creator complied with the requirements in relation to credit-granting. In particular, the acquirer must verify that the asset creator applied "*the same sound and well-defined criteria*

for credit granting which they apply to non-securitised exposures" (emphasis added) (the "**acquirer DD requirement**").

The acquired portfolio provisions have also been modified to apply a grandfathering test, but the logic of it is far less clear – and it seems far less helpful, especially given that the portfolio acquisition issues will presumably be ongoing and not strictly legacy matters.

The relief provided in respect of acquired portfolios has two conditions. The first is that that loans be originated before 20 March 2014 (the date the MCD came into force), a date that appears to be arbitrary since the acquirer DD requirement does not only apply to residential mortgages, but to all assets.

The second condition to relief is that the acquirer (regardless of who it is) has met due diligence requirements under existing CRR rules (normally applicable only to banks) requiring that they "obtain all the necessary information to assess whether the criteria applied in the credit-granting…*are as sound and well-defined as the criteria* applied to non-securitised exposures".

Given how similar (note the subtle differences emphasised in each provision) the conditions to relief are to the acquirer DD requirement, it is not clear that these new changes will be of much assistance. Moreover, many portfolio acquirers will not be banks and would historically have been free to do diligence tailored to their own requirements (rather than tailored to meet bank regulatory requirements).

CONCLUSION AND NEXT STEPS

Other than the two issues described above, the version of the Securitisation Regulation expected to be approved by the European Parliament on 26 October is substantively very similar, with most of the changes being tidy-ups to correct cross-references, clarify ambiguous wording, or harmonise language used throughout the document. In particular, the issues we identified in our July briefing relating to grandfathering, suitability tests, disclosure and the ban on resecuritisation all remain and the struggle to address these by other means continues.

While the end of the primary legislative process is an important milestone, it is nowhere near being the end of the story. Over the course of the coming year or two, the market should expect a raft of secondary legislation and guidance, including Guidelines on the interpretation of the STS criteria, and regulatory and implementing technical standards dealing with a wide variety of matters including risk retention, the meaning of homogeneity, transparency requirements and data templates, the STS notification template, the use of the top down approach for IRBA capital calculations, and the authorisation of third party verifiers for STS. Watch this space.

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