



Brussels, 30.9.2014  
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**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 30.9.2014**

**supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Article 8b(3) of Regulation (EU) No 1060/2009 (“the Regulation”) empowers the Commission to adopt, following submission of draft standards by the European Securities Markets Authority (ESMA), and in accordance with Article 10 of Regulation (EU) No 1095/2010 delegated act specifying: (i) the information that the issuer, originator and sponsor of a structured finance instrument (“SFI”) established in the Union must publish; (ii) the frequency with which this information is to be updated; (iii) the presentation of the information by means of a standardised disclosure template.

In accordance with Articles 10 to 14 of the Regulation (EU) No 1095/2010 establishing ESMA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, the ESMA has carried out an open public consultation on the draft technical standards submitted to the Commission.

ESMA consulted stakeholders by means of a Discussion Paper and Consultation Paper (ESMA/2013/891 and ESMA/2014/150), published on 10 July 2013 and 11 February 2014 respectively. The Consultation Paper included the draft regulatory technical standard (“RTS”), as well as an initial cost-benefit analysis. The consultation period was open until 11 April 2014. ESMA also held two public hearings, on 25 July 2013 and 14 March 2014, as well as bilateral meetings upon individual requests from stakeholders. National competent authorities’ experts were actively involved during the drafting of the Discussion Paper, the Consultation Paper and the final draft RTS via the CRA Technical Committee. In addition, ESMA sought the views of the Securities and Markets Stakeholders Group (SMSG) set up in accordance with article 37 of the Regulation (EU) No1095/2010.

Together with the draft RTS, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, the ESMA has submitted its Impact Assessment, including its analysis of the costs and benefits related to the draft technical standards submitted to the Commission. This analysis is available at [http://www.esma.europa.eu/system/files/2014-685\\_draft\\_rts\\_under\\_cra3\\_regulation.pdf](http://www.esma.europa.eu/system/files/2014-685_draft_rts_under_cra3_regulation.pdf), pages [177-191].

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

All the provisions in this delegated act relate to the issuer, the originator and the sponsor of a SFI established in the Union and the requirements under their joint responsibility to publish information on the credit quality and performance of the underlying assets of the SFI, the structure of the securitisation transaction, the cash flows and any collateral supporting a securitisation exposure as well as any information that is necessary to conduct comprehensive and well-informed stress tests on the cash flows and collateral values supporting the underlying exposures.

The delegated act specifies: (i) the information that the issuer, originator and sponsor of a SFI established in the Union must publish; (ii) the frequency with which this information is to be

updated; and (iii) the presentation of the information by means of standardised disclosure templates.

The delegated act applies to all SFIs that fall under the definition of Article 3(1) of the Regulation: a financial instrument or other assets resulting from a transaction or scheme, whereby the credit risk associated with an exposure or pool of exposures is tranced, having both of the following characteristics: (a) payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures; and (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme.

The delegated act applies to all SFIs on condition that one of the three entities mentioned in Article 8b of the Regulation, i.e. the issuer, originator or sponsor, is established in the Union. The issuer, originator, and sponsor are responsible for complying with the requirements of the delegated act. However, the issuer, originator and sponsor will be able to designate one or multiple entities that shall submit the information or outsource this task to a third party, without prejudice to their responsibility under this delegated act.

Without prejudice to the scope of the delegated act, the disclosure obligations of the delegated act will initially only apply if a SFI is backed by underlying asset class categories specified in the delegated act. The standardised disclosure templates and all reporting obligations of the delegated act will initially not apply to structured finance instruments that are backed by underlying assets which are not included in the list of underlying asset class categories specified in the delegated act (e.g. structured finance instruments backed by underlying assets such as trade receivables, store cards, corporates loans etc.). As soon as technically possible, ESMA shall develop standardised disclosure templates and associated reporting obligations for such structured finance instruments. Such new templates will then have to be adopted by the European Commission through an amendment of the delegated act.

This phase-in approach of reporting obligations should also be applied to asset-backed commercial paper programmes, synthetic structured finance instruments and to structured finance instruments where the underlying assets comprise other structured finance instruments, such as re-securitisation. Other examples are structured finance instruments where the underlying assets are heterogeneous as they cannot be disclosed using a single template for the specific asset class categories identified in the delegated act. As soon as technically possible, following a phase-in approach, ESMA shall develop standardised disclosure templates and associated reporting obligations that are suitable to such structured finance instruments. Such new templates will then have to be adopted by the European Commission through an amendment of the delegated act.

With regard to private and bilateral SFIs, as it is not yet possible to say to what extent the standardised disclosure templates included in this delegated act are suitable to such SFIs, a phase-in approach also applies. To this end, as soon as technically possible, ESMA will cooperate with all relevant stakeholders to: (i) specify to which private and bilateral SFIs the standardised disclosure templates apply; (ii) develop new standardised disclosure templates and associated reporting obligations for such structured finance instruments that are suitable to the specific nature or features of the remaining private and bilateral SFIs. ESMA will propose to the Commission an amendment to this Regulation regarding reporting obligations applying to such instruments.

Increased transparency concerning the credit quality and performance of the assets backing SFIs will enhance investors' ability to conduct an internal risk assessment. The implementation of a mandatory disclosure requirement may thereby reduce the over-reliance on external credit ratings by investors in SFIs and will contribute to foster competition in the

SFIs market by enabling registered CRAs to have access to sufficient information on such products to issue unsolicited credit ratings.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies<sup>1</sup>, and in particular the third subparagraph of Article 8b(3) thereof,

Whereas:

- (1) In accordance with Article 8b of Regulation (EC) No 1060/2009, investors should receive sufficient information on the quality and performance of their underlying assets with a view to enabling them to perform an informed assessment of the creditworthiness of structured finance instruments. This would also reduce investors' dependence on credit ratings and should facilitate the issuance of unsolicited credit ratings.
- (2) This Regulation should apply to all financial instruments or other assets resulting from a securitisation transaction or scheme referred to in Article 4(61) of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>2</sup> on condition that the issuer, originator or sponsor, is established, and for that purpose has its statutory seat, in the Union. Therefore, this Regulation should only cover financial instruments or other assets resulting from any transaction or scheme whereby the credit risk associated with an exposure or pool of exposures is tranching and has the characteristics referred to in that Article. Therefore, in line with that Regulation, an exposure that creates a direct payment obligation for a transaction or scheme used to finance or operate physical assets should not be considered an exposure to a securitisation, even if the transaction or scheme has payment obligations of different seniority.
- (3) The scope of this Regulation should not be limited to the issuance of structured finance instruments that qualify as securities, but also should include other financial instruments and assets resulting from a securitisation transaction or scheme, such as money-market instruments, including asset-backed commercial paper programmes. In addition, this Regulation should apply to structured finance instruments with and without credit ratings assigned by a credit rating agency registered in the Union. Private and bilateral transactions should also be within the scope of this Regulation, as

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<sup>1</sup> OJ L 302, 17.11.2009, p. 1.

<sup>2</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

well as transactions that are not offered to the public or admitted to trading on a regulated market.

- (4) This Regulation contains standardised disclosure templates for a number of asset class categories. Without prejudice to the scope of this Regulation and until reporting obligations have been developed by ESMA and adopted by the Commission, those standardised disclosure templates and all reporting obligations under this Regulation should apply only to structured finance instruments that are backed by underlying assets which are included in the list of underlying asset class categories specified in this Regulation and which in addition are not of a private or bilateral nature.
- (5) When complying with this Regulation, issuers, originators and sponsors should comply with national and Union legislation governing the protection of confidentiality of information sources or the processing of personal data in order to avoid potential breaches of such legislation.
- (6) The issuer, originator and sponsor may designate an entity responsible for reporting the information to the website to be set up by ESMA in accordance with Article 8b(4) of Regulation (EC) No 1060/2009 ('the SFIs website'). Outsourcing the reporting obligation to another entity, for example a servicer, should also be possible. This should be without prejudice to the responsibility of the issuer, originator and sponsor under this Regulation.
- (7) A number of technical reporting instructions concerning, among others, the transmission or the format of the files to be submitted by issuers, originators and sponsors should be communicated by ESMA on its website. ESMA should communicate those technical reporting instructions in due course before the date of application of the reporting obligations laid down in this Regulation, in order to enable issuers, originators, sponsors and other parties involved to be given enough time to develop adequate systems and procedures following the technical instructions provided by ESMA.
- (8) The information to be provided pursuant to this Regulation should be compiled in a standard format to allow for automatic processing of the data on the SFIs website. The information should also be published in a format that is easily accessible for any user of the SFIs website. ESMA should ensure that sectoral competent authorities have access to the SFIs website so as to carry out the tasks assigned to them under Regulation (EC) No 1060/2009.
- (9) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission in accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>3</sup>.
- (10) ESMA has conducted an open public consultation on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.
- (11) A reasonable time is necessary in order to allow the issuers, the originators and the sponsors of a structured finance instrument established in the Union to adapt and take the necessary steps to comply with this Regulation and to allow ESMA to develop the

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<sup>3</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

SFIs website on which disclosure of the information required by this Regulation should take place. Therefore, this Regulation should apply from 1 January 2017. However, ESMA should communicate necessary technical reporting instructions in a timely manner before the date of application of this Regulation. This is necessary in order to enable the issuers, the originators and the sponsors of a structured finance instrument established in the Union to be given enough time to develop adequate systems and procedures following those technical instructions with a view to ensuring complete and correct reporting and to take into account further developments in the financial markets in the Union,

HAS ADOPTED THIS REGULATION:

*Article 1*  
*Scope*

This Regulation shall apply to structured finance instruments where the issuer, the originator or the sponsor is established in the Union and which are issued after the date of entry into force of this Regulation.

*Article 2*  
*Reporting entity*

1. The issuer, the originator and the sponsor of a structured finance instrument may designate one or multiple reporting entities that publish the information required pursuant to Articles 3 and 4, and Article 5(3) of this Regulation on the website referred to in Article 8b(4) of Regulation (EC) No 1060/2009 ('the SFIs website'). Those entities shall publish the required information on the SFIs website in accordance with Articles 4 to 7 of this Regulation.
2. The issuer, the originator and the sponsor of a structured finance instrument that has designated the entity or entities referred to in paragraph 1 shall notify ESMA without undue delay of any entity designated in accordance with that paragraph. That designation shall be without prejudice to the responsibility of the issuer, the originator and the sponsor to comply with Article 8b of Regulation (EC) No 1060/2009.

*Article 3*  
*Information to be reported*

Where a structured finance instrument is backed by any of the underlying assets referred to in Article 4, the reporting entity shall provide the following information to the SFIs website:

- (a) loan level information through the standardised disclosure templates included in Annexes I to VII;
- (b) where applicable to a structured finance instrument, the following documents, including a detailed description of the waterfall of payments of the structured finance instrument:
  - (i) the final offering document or prospectus, together with the closing transaction documents, including any public documents referenced in the prospectus or which govern the workings of the transaction and excluding legal opinions;

- (ii) the asset sale agreement, assignment, novation or transfer agreement and any relevant declaration of trust;
  - (iii) the servicing, back-up servicing, administration and cash management agreements;
  - (iv) the trust deed, security deed, agency agreement, account bank agreement, guaranteed investment contract, incorporated terms or master trust framework or master definitions agreement;
  - (v) any relevant inter-creditor agreements, swap documentation, subordinated loan agreements, start-up loan agreements and liquidity facility agreements;
  - (vi) any other underlying documentation that is essential for the understanding of the transaction;
- (c) where a prospectus has not been drawn up in compliance with Directive 2003/71/EC of the European Parliament and of the Council<sup>4</sup>, a transaction summary or overview of the main features of a structured finance instrument, including:
- (i) deal structure;
  - (ii) the asset characteristics, cash flows, credit enhancement and liquidity support features;
  - (iii) the note holder voting rights, the relationship between note holders and other secured creditors in a transaction;
  - (iv) a list of all triggers and events referred to in the documents provided to the SFIs website in accordance with point (b) that could have a material impact on the performance of the structured finance instruments;
  - (v) the structure diagrams containing an overview of the transaction, the cash flows and the ownership structure;
- (d) the investor reports, containing the information included in Annex VIII.

*Article 4*  
*Underlying assets*

The information requirements set out in Article 3 shall apply to structured finance instruments backed by the following underlying assets

- (a) residential mortgages: this class of structured finance instruments includes structured finance instruments backed by prime and non-prime mortgages and home equity loans. For this class of structured finance instruments, the information included in the template in Annex I shall be provided to the SFIs website;
- (b) commercial mortgages: this class of structured finance instruments includes structured finance instruments backed by retail or office property loans, hospital loans, care residences, storage facilities, hotel loans, nursing facilities, industrial loans, and multifamily properties. For this class of structured finance

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<sup>4</sup> Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

- instruments, the information included in the template in Annex II shall be provided to the SFIs website;
- (c) loans to small and medium-sized enterprises: for this class of structured finance instruments, the information included in the template in Annex III shall be provided to the SFIs website;
  - (d) auto-loans: for this class of structured finance instruments, the information included in the template in Annex IV shall be provided to the SFIs website;
  - (e) consumer loans: for this class of structured finance instruments, the information included in the template in Annex V shall be provided to the SFIs website;
  - (f) credit card-loans: for this class of structured finance instruments, the information included in the template in Annex VI shall be provided to the SFIs website;
  - (g) leases to individuals and/or businesses: for this class of structured finance instruments, the information included in the template in Annex VII shall be provided to the SFIs website.

*Article 5*  
*Frequency of reporting*

1. The information set out in Article 3(a) and (d) shall be made available on a quarterly basis, no later than one month following the due date for payment of interest on the structured finance instrument concerned.
2. The information set out in Article 3(b) and (c) shall be made available without delay after the issuance of a structured finance instrument.
3. In addition to the requirements set out in paragraphs 1 and 2:
  - (a) where the requirements laid down in Article 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council<sup>5</sup> on insider dealing and market manipulation (market abuse) apply also in relation to a structured finance instrument, any disclosure of information pursuant to that article shall also subsequently be published without delay on the SFIs website by the reporting entity;
  - (b) where point (a) does not apply, the reporting entity shall disclose without delay on the SFIs website any significant change or event in any of the following cases:
    - (i) a breach of the obligations laid down in the documents provided in accordance with Article 3(b);
    - (ii) structural features that can materially impact on the performance of the structured finance instrument;
    - (iii) the risk characteristics of the structured finance instrument and of the underlying assets.

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<sup>5</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

*Article 6*  
*Reporting procedures*

1. The reporting entity shall submit data files in accordance with the reporting system of the SFIs website and the technical instructions to be provided by ESMA on its website.
2. ESMA shall publish those technical instructions on its website at the latest on 1 July 2016.
3. The reporting entity shall store the files sent to and received by the SFIs website in electronic form for at least five years. Upon request, those files shall be made available by the reporting entity or the issuer, the originator or the sponsor to the sectoral competent authorities as defined in Article 3(1)(r) of Regulation (EC) No 1060/2009.
4. Where the reporting entity or the issuer, the originator or the sponsor, identifies factual errors in the data that has been provided to the SFIs website they shall correct the relevant data without undue delay.

*Article 7*  
*Reporting between the date of entry into force and the date of application*

1. With respect to the structured finance instruments issued in the time period between the date of entry into force and the date of application of this Regulation, the issuer, the originator and the sponsor shall comply with the reporting requirements laid down in this Regulation only in relation to the structured finance instruments which are still outstanding at the date of application of this Regulation.
2. The issuer, the originator and the sponsor shall not be required to keep a backlog of the information required pursuant to this Regulation between the date of entry into force and the date of application of this Regulation.

*Article 8*  
*Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2017.

However, Article 6(2) shall apply from the date of entry into force of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30.9.2014

*For the Commission*  
*The President*  
*José Manuel BARROSO*