

Submitted online: www.esma.europa.eu

European Securities and Markets Authority
103 rue de Grenelle
75345 Paris
France

Re: Consultation paper on CRA3 implementation – Draft regulatory technical standards on information on structured finance instruments (SFIs)

The Securities Industry & Financial Markets Association (SIFMA)¹ welcomes the opportunity to comment on the proposals set out in the consultative document regarding the implementation under CRA3 of draft technical standards (RTS) for structured finance instruments. SIFMA members are active in the global financial markets, including those for structured finance instruments, as sponsors, underwriters, originators and issuers. **We write to express support for the comments submitted by the Association for Financial Markets in Europe (AFME), and in particular, their concerns regarding the potential for extra-territorial application of standards implemented under this rule and conflicts of law or regulation that may arise.**

In our understanding of the proposed RTS, if a transaction is considered a securitisation as defined, and there is relevant EU entity connection, then the issuer, originator and sponsor will be required to comply – regardless of where the deal/underlying asset pool is originated, whether or not the deal is offered/placed in the EU and whether or not the other relevant entities are EU established. So, for example, if an EU established entity (including via a branch) acted as sponsor in respect of a U.S. securitisation with a U.S. issuer and U.S. originator, then it would appear under ESMA's proposals that the requirements would apply to the sponsor, issuer and originator in respect of that deal. As noted in the AFME response, the jurisdictional basis for the application of the requirements to non-EU established entities is not clear and is inconsistent with provisions of the CRA Regulation itself.

As ESMA surely knows, in the U.S. the Securities and Exchange Commission (SEC) has established a thorough body of regulation for the offering and disclosure of structured finance products in the U.S., including through the application of general securities regulation in addition to tailored rules for structured finance transactions included in Regulation AB². The SEC is currently revising Regulation AB, and is expected to finalize changes to the rule in 2014. SIFMA members are concerned that the disclosure requirements, and other required actions, of the final RTS may not align with the obligations of U.S. entities under the current, or the revised, Regulation AB and other securities laws. Indeed, U.S. securities laws provide for a distinct regulatory regime for non-

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

² 17 CFR PART 229, SUBPART 229.1100



registered (private) transactions, whereas the draft RTS appear to treat registered and unregistered deals in a similar manner.

We are concerned that the final RTS may not comport with, or may directly conflict with, the obligations of entities under U.S. law and regulation (e.g., disclosure regulation under the current and revised Regulation AB, data protection laws related to asset-level disclosure³). We strongly favor a mutual recognition process with respect to any rules with a cross-border reach related to securitization because we regard such a process as necessary to preserve the global nature of the securitization markets and to enhance global liquidity. Conflicting standards would create a compliance burden on market participants that is neither justified (given that each effort would be to meet the same goal) nor supportive of issuance in these markets which are so important for funding credit for consumers and businesses.

As the International Organization of Securities Commissions (IOSCO) noted in its final report on *Global Developments in Securitisation Regulation* published in November 2012, “Cross border activity creates opportunities to broaden and deepen markets and amplify the economic benefits securitisation markets offer ... the potential impact of differences in regulatory requirements across jurisdictions in impeding cross-border activity are issues of concern.”⁴ We also note recent reports that the Basel Committee and IOSCO are working to begin a new project to review the functioning of securitization markets from a global perspective.⁵ Global regulators have recognized the value of securitization, and the need for a coordinated review of how markets function and how they should be regulated. We agree with this view.

We appreciate the opportunity to submit these comments, and we reiterate our support for AFME’s comments. Please do not hesitate to contact me with further questions or for more information at +1-212-313-1126 or ckillian@sifma.org.

Sincerely,

Christopher B. Killian
Managing Director
Head of Securitization

³ For more information on issues in the U.S., please see SIFMA’s March 28, 2014 letter to the SEC on data protection issues related to proposed asset-level disclosure framework under proposed revisions to Regulation AB: <http://www.sec.gov/comments/s7-08-10/s70810-281.pdf>

⁴ The report is available here: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD394.pdf>

⁵ See, e.g.: <http://uk.reuters.com/article/2014/03/17/markets-securitisation-idUKL6N0ME3PZ20140317>