

04/12/2024

European Commission
DG-FISMA
General affairs, Policy definition and coordination

Submitted electronically

Re: Targeted consultation on the functioning of the EU securitization framework

SIFMA's Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms – both independent and broker-dealer affiliated – whose combined assets under management exceed \$62 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

SIFMA AMG welcomes the opportunity to respond to the European Commission's (EC) targeted consultation seeking views regarding the current EU securitization framework and its subsequent amendments.

Securitization allows banks and other lenders to provide more credit to consumers and businesses, and at a lower cost, than would be possible if they instead held the loans on their balance sheets. This allows for a more efficient cycling of lending capital through the financial system.

SIFMA AMG members are significant participants in U.S. markets for mortgage-backed securities and other securitized products. According to SIFMA data, in 2022 over \$1.5 trillion in *mortgage-backed* securities were issued in the U.S., and over \$200 billion in *asset-backed* securities were issued. While it varies year to year, recently 70% or more of residential mortgage loans in the U.S. have been funded by securitization, and studies have quantified how securitization has materially lowered the cost of obtaining a mortgage. As you are aware, this contrasts with Europe, where bank lending is a far greater component of consumer and commercial lending than securitization, and hence, the cost of consumer credit is generally higher.

With limited access to securitized products, the EU securitization market is stalled, leading to low investor demand and perpetuating a cycle that hinders the growth of the EU market.

Facilitating better access to global markets will be crucial in fostering a more robust and competitive financial environment in the EU. SIFMA AMG would like to emphasize critical cross-border aspects of the securitization framework and how addressing these issues can reduce barriers and frictions to deepening EU markets.

Due Diligence

The EC asks in its consultation: *“For EU investors investing in securitisations where the originator, sponsor or original lender is established in the Union and is the responsible entity for complying with those requirements, should certain due diligence verification requirements be removed as the compliance with these requirements is already subject to supervision elsewhere?”*

SIFMA AMG agrees with the points covered in the submission by the Investment Company Institute¹ on this issue. While it is sensible to require investors to check that risk retention is complied with where the risk retainer is not itself subject to a risk retention obligation, requiring the investors to check this even where the risk retainer is subject to similar requirements in other markets is excessive. **So, this issue is particularly pertinent for non-EU securitizations.**

In 2022, the EC concluded that EU institutional investors in non-EU securitizations were not meeting their verification obligations under the Securitization Regulation in instances where reporting requirements stipulated by the Securitization Regulation - European Securities and Markets Authority templates - were not complied with. This created an obstacle for many EU investors who have considered themselves unable to invest in U.S. securitizations that do not provide for full Article 7 reporting (i.e., including use of the prescribed templates). This is because an originator, sponsor, or original lender located outside of the EU is not subject to the requirements of the existing Securitization Regulation and the excessive level of regulatory complexity it creates compared to investing in other asset classes with similar risk profiles.

As a solution, reference could rather be made to similar and/or equivalent information gathered from third-country originators, sponsors, or original lenders as part of the investor’s due diligence approach. The templates should not be required for non-EU issuers, as they are not mandated to report under this regime. Market practice indicates that these issuers already provide relevant information in their Prospectuses or are prepared to offer it to investors during the due diligence process and to make further

¹ See Investment Company Institute (ICI) comment letter in response to the European Commission’s targeted consultation on the functioning of the EU securitization framework, dated 3 December 2024.

information available on an ongoing basis. This will include factors like deal characteristics, industry standards, and information on the underlying exposures relevant to assessing credit and deal cash flows.

Given these existing materials, and the protections they provide to investors, non-EU issuers have no incentive to duplicate their reporting under these cumbersome templates. Consequently, multiple issuers, particularly from the US, are excluded from EU investment products. This exclusion leads to a less diversified market and fewer opportunities for institutional investors.

Given that enhancing the competitiveness of the EU capital markets is a primary EU objective and how other jurisdictions, such as the UK, have opted to delete the requirement for templates for institutional investors and adopt a more principles-based and proportionate approach, consideration needs to be taken in respect of not rendering EU capital markets less attractive in terms of investing in securitised assets.

Single issuer limits

SIFMA AMG recommends EU policymakers include a targeted exemption from the provisions in the UCITS Directive that limits the acquisition to no more than 10% of debt securities by a single securitization issuer. This rule, as currently drafted, hampers UCITS funds from effectively investing in securitization products, particularly affecting individual investors who typically gain market exposure through these funds. As a result, EU investors are significantly disadvantaged compared to their global peers due to frameworks that discourage or prohibit investment in certain asset classes.

Securitization issuances are generally smaller than corporate debt instruments, making it easier to trigger the 10% threshold when investing in securitized products. The rule was intended to prevent excessive exposure to a single issuer and was originally designed for corporate debt securities. In practice, it is counterproductive for inherently diversified securitizations, making it misaligned with securitization issuance. This misalignment undermines the overall diversification of UCITS, which is meant for investor protection, and puts them at a disadvantage to funds in other jurisdictions.

Within the context of the securitization market, this rule unfairly penalizes securitization investments, pushing UCITS funds towards other assets that can have higher default risks, less protection, and lower returns compared to securitization products. UCITS should play a larger role in the securitization market to contribute to Europe's economic growth. Exempting investment in securitization products from Article 56 (2)(b) of the UCITS Directive would allow UCITS funds to invest more effectively in securitizations, unlocking benefits such as higher returns and diversified liquidity, which are crucial during periods of market stress. The suggested exception would be accompanied by sufficient safeguards to ensure that it would only enhance and not undermine the diversification of the fund.

Conclusion

We hope this letter provides helpful insight from the perspective of asset management firms operating on a cross-border basis. We would be delighted to follow up this letter with further discussions at your convenience.

Sincerely,

A handwritten signature in blue ink, reading "LKeljo". The signature is stylized with a large, looping initial "L" and a cursive "Keljo".

**Lindsey Weber Keljo, Esq. Head – Asset Management Group
Securities Industry and Financial Markets Association**