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RESPONSE TO THE EUROPEAN COMMISSION'S TERGETED CONSULTATION ON THE FUNCTIONING OF THE EU SECURITISATION FRAMEWORK

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SUMMARY

Objectives of the framework. While the single EU securitisation market is a meaningful objective in the context of building the EU Capital Markets Union (CMU), securitisation is by no means a tool to help banks grow their capacity to lend to the economy – contrary to what was stated in the CMU Action plan. The EU economy does not suffer from a lack of bank lending capacity and there are other major obstacles to cross-border and SME financing in the EU such as fragmented national insolvency and debt enforcement regimes and the lack of harmonized credit information across the EU. The same factors raise the cost of securitization issuance and limit the investor base for securitization transactions.

Given the systemic risk inherent in the securitisation product, we emphasize that the primary principle and goal of the securitisation framework should be to provide adequate standards to ensure sound market practices, transparency, investor protection and financial stability. To achieve this, improvements are required to the current framework, as outlined below.

Transparency. The current reporting regime for private securitisations does not ensure sufficient information is available to supervisors to oversee the systemic risks inherent in these transactions, which is particularly relevant given the growth and relative size of the private securitisation market compared to the public one. We therefore emphasize the need to improve access to data for supervisors while guaranteeing commercial confidentiality, which should be ensured and should not be used as an excuse to create non-transparent markets. Further, proportionality requirement for investor due diligence purposes requires clarification for investors to effectively implement due diligence procedures proportionate to "the risk profile of the securitisation position and, where relevant, to the institutional investor's trading and non-trading book". Importantly, the level of due diligence should not depend on the tranche the investor is investing in, but on the overall structure of the transaction – its type, instruments used, structural features such as call options, amortisation structure, early termination clauses etc.

Supervision. Supervision of the securitisation rules requires significant strengthening and harmonisation across the National Competent Authorities (NCA). This is due to a combination of factors such as relative novelty of the securitisation framework combined with high complexity of certain provisions, lack of clarity and guidance on certain provisions, lack of expertise and resources of the NCAs combined with a very limited number of transactions in many of the EU jurisdictions. In particular, certain criteria for simple, transparent and standardised (STS) securitisations make practically impossible for supervisors to execute their supervisory duties without an in-depth review of the underlying transactions, whereas others require additional guidance to interpret and implement in practice. Examples of the latter include requirements on investors´ due diligence and its proportionality, structural features in significant risk transfer, jurisdictional

application of legal provisions where third-country entities are involved. Therefore, we see a clear need for a centralised supervision of securitisation transactions by the European Supervisory Authorities (ESAs), which would bring advantages in terms of building expertise, access to data and market monitoring, as well as economies of scale. The fact that securitisation transactions are by nature cross-border, i.e. include pulling of risks and selling these to investors across Member States, offers an additional argument in favour of the centralised supervision.

Jurisdictional application and equivalence. The current securitisation framework requires enhancements on numerous aspects related to the jurisdictional scope of requirement application, which were highlighted in the ESAs Joint Committee opinion from 25 March 2021. In order to facilitate supervision of transactions, in which third-country entities are involved, the Securitisation Regulation should require that sell-side entities (originators, sponsors and original lenders) located in the EU should be responsible/liable for compliance with the EU securitisation rules, including requirements on risk retention, disclosure and credit-granting standards. No third-country securitisations should be eligible for the STS label, as equivalence of any third-country securitisation framework cannot be effectively achieved given the complexity of the EU securitisation rules and the already mentioned supervision challenges.

Capital and liquidity treatment. We recommend that the capital and liquidity treatment of securitisation exposures be carefully reconsidered. On the capital side, the current treatment of senior securitisation positions assumes large diversification benefits, which have been demonstrated to evaporate once market conditions tightened and asset correlations increase. Also, the current capital requirements do not take into account the systemic risk component inherent in securitisations, which results from interconnectedness of securitisation market participants and moral hazard problems leading to under-pricing of underlying risks (inflation of underlying asset prices). Furthermore, supervisors need to strengthen their review of significant risk transfer for more complex transactions, where structural features might render risk transfer ineffective and capital relief for the originator unjustified. In any case, such process should be based on defined quantitative criteria and a harmonised set of documents/information, and it should be executed ex ante for complex transactions.

From a liquidity perspective, the combination of interconnectedness and underlying asset price inflation can quickly lead to securitisations becoming illiquid during times of market stress, as was the case in 2008. Thus, the classification of securitisations as high quality liquid assets (HQLA) for the purpose of liquidity coverage ratio (LCR) calculations should be questioned.

Sustainability disclosures. Recognising the climate change-related urgency to act and the need for regulatory consistency, we advise that sustainability disclosures of securitised transactions should be in line with the requirements of the Regulation on sustainability-related disclosures in the financial services sector (SFDR), the EU Taxonomy and the EU Green Bond standard. Information on both – environmental performance and on adverse impacts – of the underlying assets should be published, as both are indispensable from a double materiality perspective – to assess impact of securitisation transactions on the environment and their sustainability-related risks.