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12. August 2003

Mr. Fabrice Demarigny
Secretary General
Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
France

Re: Comments on Draft Advice on Level 2 Implementing Measures for the Proposed Prospectus Directive June 2003

Dear Mr. Demarigny,

The European Securitisation Forum¹ ("ESF" or "Forum") welcomes this opportunity to comment on the CESR's Advice on Level 2 Implementing Measures for the Proposed Prospectus Directive released in June together with the Feedback Statement and the Annexes to the Technical Advice released in July 2003.

We refer to a letter dated 18. June 2003² containing comments on Level 2 Proposals for Asset-Backed Securities under the proposed EU Prospectus Directive. Those comments were produced after consultation with our members which include investors as well as banks, issuers, arrangers, trustees, servicers, legal and accounting firms, rating agencies and other service providers participating in the European securitisation markets. Having again consulted with our members in relation to the securitisation portion of the disclosure requirements under the proposed Prospectus Directive, we have identified some key areas where important issues remain to be resolved. Also a number of issues raised in the previous letters have not been addressed by CESR in its feedback statements. We would encourage CESR to continue to be active with the industry in providing clarification on how these issues will be addressed.

In summary the areas are:

1. definition of asset-backed securities;
2. application of the Road Map to schedules and building blocks;
3. general requirements in relation to the Prospectus; and
4. information required to be disclosed in relation to obligors.

¹ The European Securitisation Forum is an organisation, which brings together securitisation market participants throughout Europe in order to promote the efficient growth and continued development of securitisation. Membership of the ESF comprises over 100 firms from across Europe, including Germany and Austria, France, Italy, England, Scotland, Spain, Ireland, Holland, Belgium, Switzerland, Luxemburg, Sweden, Norway and Portugal. Participants include securities firms, banks, issuers and arrangers, investors and asset managers, trustees, servicers, legal and accounting firms, rating agencies, financial guarantors, stock exchanges and industry utilities and other participants in the European securitisation markets.

² The letter is available on the ESF website at www.europeansecuritisation.com.



1 Definition of asset backed securities

The ESF welcomes the clarification on the definition of asset backed securities as indicated in paragraph 150 and paragraph 347 of the Feedback Statement published in July. We understand that the definition of asset backed securities is to be applied to all asset backed transactions and it has not been further amended since April. However, the Forum continues to support the view that the disclosure requirements of the Asset Backed Securities Note (SN) and Registration Document (RD) also cover synthetic securitisation. The Forum recommends that either in the Technical Advice or in a Feedback Statement it is fully clarified that the disclosure requirements for asset backed securities also apply to synthetic securitisation³.

The Forum supports the view that the disclosure requirements for asset backed securities are to be applied also to synthetic securitisation, and would also seek clarification on the meaning of the word “assets” under the existing definition of asset backed securities. Should the meaning of the word assets also include credit default swaps, this would pose an issue as to the applicability of some of the disclosure requirements, particularly with respect to the cash flows, as indicated in section 3.4.1. of the Minimum Disclosure Requirements for Asset Backed Securities Securities Note Building Block (the “ABS SN Building Block”). It should be recognised that in a synthetic securitisation the underlying assets are often principally genuine collateral or security rather than the direct source of the cash flows with respect to the securities. Accordingly the Forum proposes that paragraph 3.4.1. refers to assets “on which the issue is secured or by reference to which payments are made”.

In order to improve the application of the disclosure requirements to synthetic securitisation, the Forum also suggests the inclusion of an indication regarding the potential difference of risks among the securities under section 3.4.3. of the ABS SN Building Block. Hence the ESF proposes that the following text should be added: “and indication if one or more classes of securities bear greater risks than the others”.

Finally, consistent with the previous amendment, the Forum proposes the introduction under section 3.6. of the ABS SN Building Block of the following sentence to define the occurrence of an event of default for credit linked issues: “In addition, a description of the circumstances in which the performance of the underlying credit will be regarded as having failed or where a default or credit event with respect to the underlying credit would be regarded as having occurred which would affect the return to investors and the expected impact of such failure, default or credit event on the securities”.

2 Applicability of the Road Map to schedules and building blocks

The Forum welcomes the introduction of the Road Map and in particular the combination of the Wholesale or Retail Debt SN schedule together with the SN and the Registration Document for asset backed securities.

Although, the Road Map provides clear guidance as to which registration document and securities note is to be applied, there are still some issues which remain to be resolved regarding the disclosure requirements for some specific types of securities such as credit linked notes. Given the intrinsic nature of these types of securities, either the derivatives or asset backed securities disclosure requirements could be applied. The Forum encourages CESR to provide clear guidance about the appropriate disclosure requirements in the Technical Advice or in a Feedback Statement.

3 General requirements in relation to the Prospectus

The Forum suggests that the general statement under 2.1. of the ABS SN Building Block be amended to reflect that the focus of the information provided in the Prospectus in a traditional non-synthetic securitisation should be on the nature and characteristics of the securitised assets and on their capacity to generate timely payments and payments in full. Based on these elements, investors and market participants would be able to assess properly and continue to monitor the risks associated with the securitised assets without resulting in a potentially misleading impression being given on the performance of the assets, as the current text seems to indicate. Therefore the Forum suggests that the current wording of the first limb of 2.1. is amended as follows:

³ The ESF Synthetic Securitisation Task Force, which comprises senior market experts dealing with synthetic securitisation issues, fully supports this point.

"The Prospectus must provide information on the securitised assets backing the issue and their capacity to produce funds to service any payment due and payable on the securities".

Related to this, the Forum considers the wording in paragraph 3.4.1. should also be amended so that it refers to how cash flows are "intended to meet" as opposed to "will meet" the issuer's obligations as this tends to imply some kind of guarantee that payments will be met.

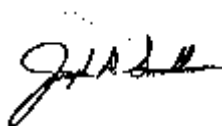
4 Information required to be disclosed in relation to obligors

The Forum welcomes the revised wording of section 2.2.2. (a). However, in relation to the wording in section 2.2.2. (b), the ESF continues to support the view that more precise terminology should be used otherwise the resultant disclosure may be too general and not relevant for investors and market participants. The Forum reiterates that the wording under section 2.2.2. (b): "economic environment, as well as global statistical data" should be deleted and replaced by "relevant economic risk factors" as indicated in the previous letter filed on 18. June 2003.

In addition, the Forum would seek a clarification on whether the specific number of obligors as indicated in section 2.2.11. is also to be applied to section 2.2.2. This suggestion derives from the fact that if the specific number of obligors is not consistent in the two sections this is likely to generate confusion on the application of the requirements.

Given the specific nature of the comments provided and their importance to the continued viability of the securitisation markets in Europe, we would welcome discussing any questions or issues you would like to raise in a meeting with senior market participants either at our offices in London or at CESR's offices in Paris.

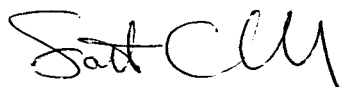
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