

## EU Securitisation Regulation disclosure in times of Covid-19

### In brief

The financial markets are experiencing a significant amount of disruption for which there is no precedent. However, in these difficult times it is important that originators, sponsors and securitisation special purpose entities ("**SSPEs**") do not lose sight of their regulatory obligations under Regulation (EU) 2017/2402 (the "**Securitisation Regulation**"). This short briefing focuses on the requirement (under Article 7(1)(f) and (g) of the Securitisation Regulation) to disclose:

- inside information in accordance with Regulation (EU) 596/2014 ("**MAR**"); and
- information relating to certain significant events.

The impact of the Covid-19 pandemic on existing securitisation transactions, as well as certain measures adopted to address the impact of Covid-19, may trigger the reporting obligations under Article 7(1)(f) and (g).

Failure to disclose inside information or significant events as required under the Securitisation Regulation may result in a breach of regulatory obligations and could potentially cause the relevant entities to breach representations, warranties and undertakings under the relevant transaction documentation.

### Recommended action

SSPEs, originators and sponsors should carefully assess the impact of the Covid-19 pandemic on existing transactions, identify the steps taken to address such impact and consider whether any disclosure requirements under the Securitisation Regulation arise.

Particular consideration should be given to any contingency plans implemented, material breaches of obligations under the transaction documentation (including any waivers or consents required to be provided in connection therewith) and any material changes to the transaction documentation.

### In depth

Under the Securitisation Regulation (Article 7(1)(f) and (g)), the originator, sponsor and SSPE of a securitisation are required to disclose to holders of a securitisation position, the competent authorities and, upon request, to potential investors:

- any inside information relating to the securitisation that the originator, sponsor or SSPE is obliged to make public in accordance with MAR; and
- where the previous point does not apply, any significant event such as:
  - a material breach of the obligations provided for in the key underlying documentation (made available in accordance with Article 7(1)(b) of the Securitisation Regulation), including any remedy, waiver or consent subsequently provided in relation to such a breach;
  - a change in the structural features that can materially impact the performance of the securitisation;
  - a change in the risk characteristics of the securitisation or of the underlying exposures that can materially impact the performance of the securitisation;

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- in the case of STS securitisations, where the securitisation ceases to meet the STS requirements or where competent authorities have taken remedial or administrative actions; and
- any material amendment to transaction documents.

The information described above is required to be made available without delay (without prejudice to any exceptions set out in MAR).

For public transactions (i.e. where a prospectus is required to be produced in accordance with the applicable rules), the above disclosure:

- should be made by the entity designated by the originator, sponsor and SSPE of a securitisation to comply with the requirements (as set out in Article 7(2) of the Securitisation Regulation);
- should be made using the templates set out in the regulatory technical standards on disclosure requirements under the Securitisation Regulation ("**RTS**"), once the RTS come into force; and
- should be available by means of a securitisation repository or, until such time as a securitisation repository is registered with ESMA, by means of a website that complies with the requirements set out in Article 7(2) of the Securitisation Regulation.

Although the Covid-19 pandemic is impacting the global financial markets in their entirety - and the disclosure of Covid-19 as a risk could be considered to have a general, rather than specific, application - some entities will find that the requirement to make a disclosure under MAR might arise, if, for instance, there are any projected measures or contingency plans in response to the pandemic that are likely to constitute inside information.

Additionally, even if no disclosure under MAR is required, the Covid-19 pandemic may, in some cases, produce "a change in the risk characteristics of the securitisation or of the underlying exposures that can materially impact the performance of the securitisation". While it is expected that most transactions will be impacted by the current economic climate (in particular, the deferral of payments as a result of government-led Covid-19 relief measures will impact a number of transactions), the fact that some transactions may be more significantly or even permanently affected may justify additional consideration.

It should also be noted that material breaches of obligations under the transaction documents (including any remedy, waiver or consent subsequently provided in relation to such a breach) and any material amendments to transaction documents or changes in the structural features that can materially impact the performance of the securitisation may constitute significant events for disclosure purposes.

Although we note that, at this stage:

- there are multiple competing priorities demanding the attention of market participants;
- the scope and extent of the required disclosure is uncertain due to the constant shift in events; and
- there is lack of guidance and consolidated market practice,

originators, sponsors and SSPEs will need to carefully assess their disclosure requirements in light of the specific actions adopted in the context of the Covid-19 pandemic.

Please contact us if you would like to discuss your disclosure obligations in more detail.