European Securities and Markets Authority

10 April 2014

European Securities and Markets Authority (ESMA)

Consultation paper on CRA3 implementation

Dear Sirs,

The Investment Management Association (IMA) is the trade body for the UK asset management industry, representing around EUR5 trillion of funds under management. Its member firms include managers of a wide range of asset classes for a wide range of clients, including institutional funds, authorised unit trusts and open ended investment companies.

We welcome the opportunity to comment on the latest consultation.

Key messages

The IMA supports ESMA's objectives of providing investors with sufficient information on creditworthiness, reducing reliance on external credit ratings, promoting competition in the credit ratings agency market and avoiding the duplication of disclosures.

We believe that as much disclosure as practicable will assist risk management and prudent risk taking, especially as the shift from bank to non-bank finance progresses.

Our interest stems particularly from the fact that many of our members operating Alternative Investment Funds (AIFs). The Alternative Investment Fund Managers Directive (AIFMD) requires Alternative Investment Fund Managers (AIFMs) to obtain information, including at loan level, cash flow on at least a quarterly basis and details of the pre-payment of underlying loans as (soon as) they happen, so that the AIFMs can stress test the AIF regularly.

Further to the management of AIFs, we urge ESMA and the European Banking Authority (EBA) to work together and ensure that AIFMs are able to obtain confirmation on an on-going basis that, as per the Capital Requirements Directive (CRD), originators or sponsors retain 5% of the credit risk (also known as "skin in the game", i.e. the alignment of investor and originator interests) and details of the underlying transactions, so that AIFs can be stress tested. Pool level and cash flow data, the latter on an annual basis, are not sufficient for AIFMs to meet their obligations.

It should be acceptable for the frequency of reporting to coincide with the frequency of payment under the bonds (e.g. if the bonds pay monthly, the reporting should be monthly, and if the bonds pay quarterly, the reporting should be quarterly etc.).

65 Kingsway London WC2B 6TD
Tel:+44(0)20 7831 0898

www.investmentuk.org

Loan level data is not necessary for highly granular transactions (such as trade receivables, credit cards, auto loan/leases or residential mortgage backed securities (RMBS)). Detailed pool stratifications should always be disclosed so that investors can decide for themselves if loan level disclosure is appropriate. For revolving transactions investors mainly have to rely on pool eligibility criteria, and the representations and warranties which are already disclosed in the transaction documents (i.e. loan level disclosure is largely meaningless when the underlying loans can change over time).

The disclosure of cash-flow models should not be necessary if these are already available on a platform readily available to institutional investors such as Intex, ABSnet or Bloomberg. We do not believe (the claim) that the scope of the proposals, which includes the third country branches and subsidiaries of EU firms, to be a problem (i.e. that of extra-territoriality). There should be no loopholes in the standards. Our members invest cross border, in search of diversification and to mitigate risk, and will gain confidence from ESMA's stance.

In addition, we do not believe (the claim) that ESMA's reforms mischaracterise the role of credit ratings agencies (CRAs) (as that of a policeman and in receipt of regulatory backing, i.e. a moral hazard), reduce them to being distributors of information and blur their roles in capital markets. The CRAs can put up appropriate disclaimers to protect themselves.

Conclusion

The IMA looks forward to working with the international standard setters to develop a framework that is appropriate and effective for all stakeholders.

Annex 1 to our letter contains our formal response to the consultation, and further specific observations and questions arising from the proposals.

We hope that you will find our comments useful. Please contact me by way of e-mail (ihenry@investmentuk.org) or telephone on (00 44) (0) 20 7831 0898 should you require further information.

Yours faithfully,

Irving Henry

Prudential Specialist

Investment Management Association

Annex 1

Q1) Do you agree that issuers, originators or sponsors of a structured finance instrument established in the EU shall jointly agree upon and designate the entity responsible for providing the information to ESMA?

We agree that issuers, originators or sponsors of a structured finance instrument established in the EU shall jointly agree upon and designate the entity responsible for providing the information to ESMA. The trio of participants should also be jointly and severally liable for failure to do so, and for information that is late, inaccurate etc.

Q2) Do you consider that national laws on protection of personal data could impact the publication of the information contained in this draft Regulation?

There are variations in the regulation of confidentiality/privacy, so some alignment may well be necessary. We do not consider these differences to be insurmountable and a "deal breaker" for ESMA to realise the above mentioned objectives.

Q3) Do you consider the list of information requested pursuant to Article 4 as appropriate?

We consider the information appropriate and sufficient for investors.

Q4) Do you consider the frequency of the information to be reported pursuant to Article 6 as adequate?

As above and with regard to AIFMs, we believe that cash flow should be reported on a quarterly basis, not at issuance and when there has been a material event. The interpretation of materiality may differ, so more regular reporting will overcome any difference.

As above and with regard to AIFMs, details of the pre-payment of underlying loans should be reported as (soon as) they happen.

For any transactions that are publically rated, the disclosure requirements should be to publish whatever the originator-sponsor has disclosed to the rating agencies (both on the closing of the transaction and on an on-going basis). This should supersede whatever the regulations require, so in some cases this could be more disclosure than the regulations require and in other areas it could be less).

For unrated transactions, the disclosure of information should be on a "comply or explain" basis (i.e. it should not be mandatory, but there needs to be a publically disclosed explanation for any data field prescribed in the regulations that is missing – investors can then make up their own minds if this is acceptable). This would prevent the duplication of data (e.g. for some asset classes and in some jurisdictions the publication of 60 + delinquency data is common, but the publication of 90 + delinquency data is rare. This level of disclosure is fine. It would impose costs on the industry to force the publication of 90 + delinquency data just to comply with the regulations).

Q1: Do you agree with the chosen frequency of reporting?

As above, we believe that cash flow should be reported at least on a quarterly basis, not at issuance and when there has been a material event. The interpretation of materiality may differ, so more regular reporting will overcome any difference.

As above, details of the pre-payment of underlying loans should be reported as (soon as) they happen.

It should be acceptable for the frequency of reporting to coincide with the frequency of payment under the bonds (e.g. if the bonds pay monthly, the reporting should be monthly, and if the bonds pay quarterly, the reporting should be quarterly etc.).

Loan level data is not necessary for highly granular transactions (such as trade receivables, credit cards, auto loan/leases or residential mortgage backed securities (RMBS)). Detailed pool stratifications should always be disclosed, so that investors can decide for themselves if loan level disclosure is appropriate. For revolving transactions, investors mainly have to rely on pool eligibility criteria, and the representations and warranties which are already disclosed in the transaction documents (i.e. loan level disclosure is largely meaningless when the underlying loans can change over time).

The disclosure of cash-flow models should not be necessary if these are already available on a platform readily available to institutional investors such as Intex, ABSnet or Bloomberg.

Q2: Do you agree with the choice of including also press releases and sovereign rating reports in the ERP and why?

We agree.

Q1. Do you agree with the proposed approach? If not, and given the existing legal framework, please suggest an alternative or alternatives, giving reasons.

We agree.

Q2. Do you agree with the proposed tables and information required? Please explain and should you not agree with any of the fields, please suggest alternatives, giving reasons for the suggestions.

We agree.