Securitisation European Commission Call for Evidence

[Securities and markets – review of the Securitisation Framework]

Deadline: March 26

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MFA (Managed Funds Association) supports targeted reforms of the EU's securitisation regulatory framework by reducing burdens that deter securitisation investment and thereby create difficulties for banks seeking to derisk. The reforms should seek to achieve the full potential of EU securitisation markets by allowing the financial services sector to serve the needs of the European economy and contribute to the development of a Savings and Investments Union. The alternative investment fund management industry sees value in these reforms, both as potential investors in EU securitisations but also to afford global institutional investors the ability to invest in securitisations on a cross-border basis.

MFA commends the publication of the Call for Evidence to reassess the effectiveness of the EU Securitisation Regulation (SECR). MFA recommends three primary reforms:

1) Narrow the definition of securitisation

The SECR definition of "securitisation" is broad. It defines transactions as securitisations for EU purposes, which results in costly analyses for market participants (both sell-side and buy-side) to determine whether the SECR applies. The breadth and vagueness of the securitisation definition has left firms reluctant to assume the compliance risk to participate in this "grey area," as a contrary regulatory determination would create risk of considerable regulatory penalties. We recommend that the SECR definition be revised to mirror the US definition, with which firms are accustomed to working. Harmonised definitions would create regulatory certainty among non-US issuers and investors.

For example, the definition of "asset-backed security" (ABS) introduced in US Securities Exchange Act of 1934 after the Great Financial Crisis, serves as a potential model for a more refined securitisation definition under the SECR. This definition includes examples of transactions that would fall within scope of the definition. If the EU adopts a similar definition of securitisation under the SECR, it would create greater industry certainty of the scope of SECR, and decrease compliance barriers by aligning more closely with the largest global securitisation market.

2) Remove duplicative due diligence requirements

The due diligence requirements in the SECR are disproportionate to the risks associated with securitisations and fail to recognise the distinct nature of the categories of institutional investors that invest in securitisations. The SECR's due diligence requirements operate as a significant, unnecessary impediment to AIFMs and would-be securitisation investors.

A more proportionate and principles-based due diligence approach would help the market reach its full potential. For AIFMs, this would involve deferring to existing risk management requirements under the AIFM Directive and removing the SECR due diligence requirements altogether for AIFMs, particularly for private securitisations.

3) Permit AIFMs to sponsor securitisations

We recommend expanding the sponsor definition to accommodate situations where an AIFM would otherwise fall within the meaning of sponsor. AIFMs are generally well-equipped to satisfy related sponsor obligations under the SECR. For example, AIFMs pursue a stated business strategy and maintain governance arrangements to implement their strategy, with access to a range of economic resources. Accordingly, they typically have sufficient involvement and substance to fulfil the requirements of the SECR (such as risk-retention and transparency requirements).

If AIFMs were included in the sponsor definition, they would have direct access to the securitisation markets and could lead to the development of a new range of investment strategies, enabling AIFMs to structure and manage securitisations. AIFMs could use the securitisation structure to develop tailor-made investment structures to meet the needs of their investors. Accordingly, we support measures to provide market participants with more flexibility to structure their businesses in a risk-managed and logical manner.

Together, these targeted reforms to the SECR will improve the appeal and competitiveness of EU securitisation markets. Securitisation offers the benefits of reducing banks' risks, increasing the capital available to borrowers and for investments, and diversifying AIF investment portfolios.