

04 December 2024

European Commission, DG FISMA
Rue de Spa 2, 1000
Brussels, Belgium

Submitted online at: https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-functioning-eu-securitisation-framework-2024_en

RE: European Commission targeted consultation on the functioning of the EU securitisation framework

BlackRock¹ is pleased to have the opportunity to provide feedback to the European Commission's (EC) Consultation on the functioning of the EU securitisation framework.

BlackRock supports a regulatory regime that increases transparency, protects investors, and facilitates responsible growth of capital markets while preserving consumer choice and assessing benefits versus implementation costs.

We welcome the opportunity to comment on the issues raised by this consultation and will continue to contribute to the thinking of the European Commission on the Capital Markets Union (CMU) work more broadly.

Yours faithfully,

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¹ BlackRock is one of the world's leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers and other financial institutions, as well as individuals around the world.

BlackRock is strongly supportive of efforts to grow capital markets in Europe and enhance their ability to directly support investment and economic growth. As active securitisation issuers and investors, we see a well-functioning securitisation market as an important driver of this aim.

The regulatory standards put in place following the Global Financial Crisis represented a significant prioritisation of risk management, governance and investor protection in securitisation markets. However, the securitisation market believes that while well intended the regulations ended up being overly prescriptive and rather than reviving the market have ended up restricting it. **BlackRock believes it is important to rehabilitate securitisation as a valuable financing tool for European companies and consumers which enables investors to channel funds directly into the assets essential for future economic growth.** Driving economic growth in Europe and achieving the ambitions of the CMU will require both a strong banking system, and strong capital markets. Scaling up securitisation would generate new balance sheet capacity for banks and non-bank lenders, empowering them to further meet the financing needs of European companies and households.

We welcome the European Commission's initiative to seek stakeholder input on revitalising this market within the context of the Capital Markets Union.

We also support and agree with the views outlined by the Association for Financial Markets in Europe (AFME), the European Fund and Asset Management Association (EFAMA), the International Capital Markets Association (ICMA), the Investment Company Institute (ICI), and the Alternative Investment Management Association (AIMA) and the Investment Association (IA) in their respective responses to this consultation, and take the opportunity here to provide detailed comments on a number of areas we believe would significantly improve the European securitisation market.

Investor due diligence rules

The current investor due diligence rules are overly burdensome and lack proportionality.

Due diligence is central to our investment process, particularly for securitised assets, and embedded in our fiduciary duty to protect the capital of end investors. It is a process BlackRock conducts before deciding to make any investments in this asset class, and one which requires careful, qualitative and quantitative individual judgment. However, the detailed and prescriptive due diligence rules, as laid out in Article 5 of the Securitisation Regulation (SECR) require investors to produce highly detailed reports to evidence compliance, which is costly and slows the investment process to the point of reducing efficiency. This is particularly true for transactions in the secondary market, where the speed of execution effectively precludes European investors from participating due to the time needed to produce such reports (unless the investor had already completed the due diligence when the transaction was first sold in the primary market). The cost and compliance risk of complying with the due diligence requirements deters some potential investors from participating in the market and has effectively become a barrier to entry.

We support reviewing these rules and moving towards a more principles-based approach. This approach would ease the compliance burden under Article 5, potentially encouraging more investors into the market.

Though the SECR refers to the due diligence being commensurate with the investment, we consider that this language does not provide enough legal certainty to facilitate genuine proportionality in the due diligence process. Therefore, in practice, the ambiguity means the

same level of due diligence is effectively mandated by regulation regardless of the level of risk. We would welcome a clarification or additional language in Article 5 to emphasise the ability of investors to apply a proportionate approach that considers the risk and adjusts the due diligence requirements accordingly.

The current provisions on which entity takes the regulatory liability upon the delegation of investment management are unclear. This is where an investor, or 'principal', delegates the investment management of securitisations, to an investment manager (the 'delegate'). There is some uncertainty about whether the liability for conducting due diligence lies with the principal or the delegate, which can in practice mean both parties may end up having to fulfil the requirements, which duplicates the compliance burden and undermines the point of the delegation.

Even for those who receive legal advice, the unclear requirements prompt legal counsel to 'goldplate' these to reduce the risk of potential compliance breaches, but at the cost of increasing the compliance burden on investors, discouraging some from participating in the market.

Specific language permitting delegation and clarifying that it should be left to the contracting parties to determine where liability for compliance lies, would provide regulatory certainty and facilitate more delegation. This should not mean that the liability is automatically transferred to the delegate, but rather that the assignment of responsibility should emanate from the contractual arrangement. Any such delegation will of course come with the governance and oversight requirements in UCITS and AIFMD. More delegation would mean more overall demand for securitisation and ultimately more investment into the real economy.

Overall, we believe a more principles-based, risk-sensitive, and proportionate approach would reduce the burden that due diligence requirements currently impose on investors and help dynamize the securitization market, particularly the secondary markets.

Risk retention requirements

European investors would equally benefit from being allowed to buy securitisations that adhere to the risk retention requirements of other jurisdictions as this would enable them to enhance diversification and potentially improve the returns on their investments, barring in mind that investors would still have to perform their due diligence and ongoing monitoring.

Transparency requirements

The transparency and disclosure requirements under Article 7 SECR are overly prescriptive and burdensome to issuers, without requisite benefit to investors. Transparency is crucial for investors to conduct their due diligence; however, the highly prescriptive disclosures mandated by regulation are often not meaningful to investors and are hence not relied upon. This results in issuers having to produce two different types of disclosures: the one mandated by law and the one requested and used by investors.

While some level of standardisation in reporting is helpful, and the drive to improve transparency is welcome, there also needs to be some flexibility. Currently reporting requirements are so prescriptive that they have become a barrier to entry for issuers wanting to use the securitisation market – meaning there is less issuance and fewer opportunities for investors to channel funding into the assets that will fuel economic growth.

Overall, we believe more principles-based transparency requirements, that ensure investors receive sufficient information to fulfil their due diligence and ongoing monitoring requirements, would maintain high transparency standards whilst also allowing the market to grow.

Prudential and liquidity treatment

Finally, we believe that to revitalize the market, it is necessary to review the current capital requirements for securitisation positions. These are overly conservative and not reflective of actual risk and should be brought more in line with comparable products, such as covered bonds, in order to increase investor demand.

Conclusion

BlackRock's mission is to help more and more people experience financial wellbeing and so we welcome the European Commission's objective to promote the sustainable growth of the European securitisation market, as a part of the broader European capital markets ambitions.

With this in mind, it is imperative that the revised rules reduce the complexity, unnecessary burden and current barriers to entry posed to issuers and investors in the regulatory framework, in order to encourage participation in the market from a broader range of market participants.

We welcome the opportunity to comment on the issues raised by this consultation and to support the development of European securitisation markets, as well as contribute to the thinking of the European Commission on capital markets more broadly.

We welcome further discussion on any of the points that we have raised.