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European Commission
DG-FISMA
General affairs, Policy definition and coordination
Submitted electronically via online questionnaire

Re: Targeted consultation on the functioning of the EU Securitisation Framework

The Investment Company Institute (ICI)[1] appreciates the opportunity to share our views on the European Commission's targeted consultation on the functioning of the EU Securitisation Framework[2]. ICI welcomes the Commission's efforts to seek industry feedback on improving the securitisation regulatory framework, including the Securitisation Regulation (SECR)[3]. As the trade association representing the global asset management industry, our mission is to promote regulatory policies that can improve asset managers' ability to efficiently manage investment products, such as UCITS, for the benefit of long-term individual investors. Our members have extensive experience investing in securitised asset classes globally and are well-positioned to evaluate and provide feedback to the EU securitisation framework consultation.

To advance the goal of strengthening the securitisation framework for the benefit of both investors and the EU economy, we recommend modifications to the SECR reporting and investor due diligence requirements, including recalibrating capital treatment. Additionally, we propose establishing a recognition regime for non-EU market participants to issue EU securitisation products that will enhance choices for EU investors. We strongly encourage the adoption of a principles-based, proportionate and risk-based approach to these recommendations, ensuring that the framework remains flexible and robust while reducing unnecessary complexity.

ICI looks forward to working collaboratively with the European Commission and engaging in a comprehensive discussion on strengthening the securitisation market to support the creation

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[1] The Investment Company Institute (ICI) is the leading association representing the global asset management industry in service of individual investors. ICI members are located in Europe, North America and Asia and manage fund assets of €44.5 trillion, including UCITS, mutual funds, exchange-traded funds (ETFs), closed-end funds, unit investment trusts (UITs) and similar funds in these different jurisdictions. ICI has offices in Brussels, London, and Washington, DC.

[2] European Commission Targeted consultation on the functioning of the EU Securitisation Framework, available at https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-functioning-eu-securitisation-framework-2024_en.

[3] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012, available at: https://eur-lex.europa.eu/eli/reg/2017/2402/oj.

of deeper capital markets, building the European Savings and Investments Union and increasing the EU's competitiveness.

I. Reducing barriers for originators, issuers and investors

ICI strongly agrees with the consultation premise that the securitisation market can play a positive role in the EU economy as a tool for attracting new investor money and for transferring credit risk from banks to a broader set of institutional investors. For borrowers in the real economy, including small and medium-sized enterprises (SMEs), it provides enhanced access to capital, enabling them to secure loans and financing more easily. Additionally, securitisation promotes financial transparency and stability by converting illiquid assets into tradable securities, thereby improving market efficiency and resilience.

Securitisation offers several significant benefits to participants in the capital markets and is a key element for the development of the European Savings and Investments Union. It allows investors, like asset managers, to diversify their portfolios, spreading risk across various asset classes. This diversification helps mitigate potential losses by reducing exposure to any single asset or sector. Additionally, securitisation provides investors with access to a broader range of investment opportunities. By enhancing liquidity and enabling better risk management, securitisation contributes to a more robust and resilient investment environment. In this respect, it is essential that EU asset managers have access to a diverse and broad range of securitised underlying assets and relevant issuers. This diversity is crucial for achieving both goals of enhancing risk protection and investment outcomes.

Unfortunately, the EU has not fully realised the benefits of a well-developed securitisation market as certain regulatory burdens present significant challenges for securitisation investments to act as an effective credit channel in the EU. The initiatives taken after the great financial crisis have been successful in reducing risks by addressing the shortcomings of the previous bank-centric securitisation model and, consequently, the quality of underlying loans has improved, defaults have declined, and the banking system has strengthened. However, despite these positive outcomes, the EU market has not experienced the same growth in securitisation issuances as other jurisdictions. This disparity is largely attributed to unnecessary regulatory burdens.

Current constraints in the EU securitisation framework deprive market participants and end investors from the benefits of a developed securitisation market. In particular, the SECR fails to strike the right balance between ensuring high quality safeguards, and access for EU investors to a wide range of opportunities that are constrained by these safeguards. Consequently, the regime includes disproportionate constraints, including burdensome due diligence and reporting requirements that narrow investment opportunities without substantially enhancing the level of investor protection.

Bureaucratic barriers are apparent when securitisation products are compared with other asset classes of similar risk and return profiles, such as corporate and covered bonds, and even alternative assets. Due to these barriers, potential originators and issuers avoid developing securitisation products in the EU, and investors are left with limited choices among securitised products. This hinders the more effective use of this instrument and diminishes the EU securitisation market. While all firms face challenges in allocating compliance resources without diverting attention from higher-risk areas, smaller market participants are most affected. Their ability to compete or enter the market is impeded, ultimately limiting investor choice and resulting in higher costs for investors to access the securitisation market.

Notably, the SECR imposes rules that are disproportionately more burdensome than those in other jurisdictions. This discourages non-EU issuers from entering the EU market, thereby limiting EU investors' access to global markets and reducing the attractiveness of the EU securisation market. The limited liquidity within the EU and constrained investible opportunities further dampens investor interest in securitisation products. Consequently, EU investors are confined to a narrower range of opportunities potentially leading to adverse outcomes. As a result, other regions have outpaced Europe in the growing market of securitisations.

ICI therefore welcomes the fundamental rethink of the framework, including the reporting and due diligence requirements. Reducing regulatory burdens on market participants would help to deliver the benefits of securitisation to the economy and enhance the EU's competitiveness. Reducing barriers and fostering a deeper and more liquid securitisation market in the EU will also attract more investment from outside Europe into EU-issued securitisation products, without impeding the goals of investor protection, origination procedures, and transparency standards. In fact, an appropriately calibrated regulatory framework will achieve these goals and contribute to the growth of the EU securitisation market.

ICI looks forward to continuing the ongoing dialogue with the European Commission focusing on the interests of investors, as the discussion on the SECR review evolves. Our recommendations below reflect some key observations within the themes of the consultation: (i) streamline and simplify due diligence requirements; (ii) tailor reporting requirements to be more effective; (iii) calibrate capital requirements; (iv) facilitate EU investors' access to global securitisation markets; and (v) enhance investment in securitisation products through other sectoral legislation.

II. ICI Recommendations

A. Streamline and simplify due diligence requirements for investors

ICI recommends deferring to the existing due diligence obligations under the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive and Alternative Investment Fund Managers Directive (AIFMD), rather than layering additional or duplicative due diligence obligations within the SECR. To enhance competitiveness and ensure a level playing field, it is crucial to reduce unnecessary burdens and avoid duplicative requirements that can create significant compliance challenges for EU investors, particularly for SMEs.

The EU's regulatory obligations for investment funds already impose rigorous due diligence requirements on all investments, including securitisation investments. The UCITS Directive and AIFMD mandate comprehensive due diligence for all investments, covering aspects such as strategy, objectives, credit, liquidity, operational risks, valuation, and pricing. Additionally, the UCITS Directive also introduces further requirements, including suitability and diversification.

Rather than placing an unnecessary additional layer of due diligence obligations on these highly regulated investors in securitised products, the SECR should refer directly to the due diligence obligations found in these existing frameworks and permit market participants covered by these other regimes to fulfil the due diligence obligations of the SECR by complying with their existing obligations. By recognising and leveraging these existing frameworks as well as reducing the complexity of due diligence tools proportionate to risk profiles, the SECR can prevent unnecessary duplication and undue regulatory burdens. This not only streamlines compliance processes but also mitigates the risk of deterring investment in the securitisation market. Smaller market participants would particularly benefit from this streamlined approach.

We firmly believe that deferring to existing regulations would not only maintain the same level of transparency but also incentivise investors' participation in the EU securitisation market. Alternatively, we strongly advocate for reducing the complexity of the SECR due diligence obligations. The SECR Article 5 imposes an excessive level of regulatory complexity compared to investing in other asset classes with similar risk profiles.

At a minimum, the detailed provisions in Article 5(3)(a)-(c) should be replaced with proportionate and principles-based requirements for investors. This approach would enable investors to carry out due diligence assessments of the appropriate risks involved in each investment, taking into account the underlying exposures and the structural features of the securitisation. A more qualitative due diligence process would also reflect the very diverse nature of securitisations and reduce the need for investors to document data that is not relevant to a particular transaction. Tailoring due diligence obligations to meaningful information would, in turn, improve transparency for regulators and auditors.

Furthermore, ICI recommends confirming that in delegation arrangements, the involved parties may determine where the due diligence responsibilities rest. Uncertainty surrounding the current rule limits the ability of market participants to leverage these beneficial arrangements. Providing assurance on this matter would provide much needed clarity to market participants and significantly benefit the securitisation market.

B. Tailor reporting requirements for issuers of securitisation products to be more effective

ICI recommends eliminating unnecessary granular reporting, which offers little to no value for investors and places an undue burden on smaller market participants, thereby resulting in a more effective framework. Transparency obligations imposed by Article 7 SECR, alongside the different standards and partially duplicative reporting obligations from various authorities, bring a disproportionate degree of complexity without improving transparency. In our view, a comprehensive review of the SECR reporting requirements is needed to fully align the reporting requirements with the needs of investors in securitisation products.

Most importantly, much of the information reported under the current framework in generic templates has no meaningful benefit for investors. Investors often seek transparency regarding the composition of collateral as part of their due diligence process, and are focused on information critical to understanding the risks related to the underlying assets. However, they do not require the extensive detailed reporting mandated by Article 7 of SECR. These requirements impose significant regulatory burdens and excessive costs on issuers, eliminating incentives for market participants to issue securitisation products to EU investors.

For reporting to be effective it must capture relevant data for specific assets (such as credit history of borrowers, employment status or loan to value distributions) instead of reporting general points (such as 50,000 rows and 150 columns for securitised loans). Tailored qualitative reporting would greatly enhance transparency by providing meaningful information to investors. Currently, the SECR does not adequately differentiate between data and transparency requirements for complex and low-ranking securitisation products and standard senior rankings ones.

A principles-based approach would enable investors to concentrate on meaningful information for risk analysis, resulting in lower transaction costs and enhanced market stability. This rethink of the reporting requirements will ensure that the data that is reported is decision-useful and consistent with investors' due diligence assessments.

C. Appropriately calibrate capital requirements

ICI recommends carefully calibrating capital requirements for securitisations found in sectoral legislation to appropriately reflect the risk associated with different asset classes and credit profiles. This proportionate risk-based approach would ensure that the financial system remains resilient while also encouraging greater participation in the securitisation market.

Securitisation deals are structured in tranches, each offering different levels of credit risk and return, allowing risk-averse investors to choose lower-risk, lower-return senior tranches, while more sophisticated investors can opt for higher-risk, higher-return subordinated tranches. This structure facilitates a more efficient transfer of risk. Therefore, senior tranches, which are designed to withstand considerable stress and are the last in line to face losses, should be subject to lower capital requirements.

The current EU prudential framework does not properly reflect these different levels of risk in the secuitisation market. In certain circumstances, 10-year duration non-STS bonds, regardless of seniority in the capital structure, have a 100% capital charge. These charges are also considerably higher than those imposed by other regulatory frameworks, placing EU market participants at a competitive disadvantage. These barriers discourage potential originators and issuers from developing securitised products and reduce the market for securitised investments. Appropriately calibrated capital requirements would make these high-quality assets more attractive to investors, fostering market growth without compromising investor protections.

As part of this calibration, ICI recommends enhancing the STS (Simple, Transparent, and Standardised) framework, which has not achieved its intended uptake, partly due to its burdensome capital requirements. For example, non-STS securitisations currently constitute 75% of the securitisation portfolios of insurance investors. Incorporating clear advantages to the STS framework, such as preferred capital treatment under the Capital Requirements Regulation (CRR) and Solvency II, would encourage use and help distribute risk more evenly across various lenders in the economy, rather than concentrating it within banks. Enhancing the STS standard with more proportionate advantages to boost market participation and support economic growth would also open a vital channel for growth finance, benefiting EU companies and SMEs.

ICI suggests a risk-based approach to capital requirements which aligns regulatory measures with actual risk while maintaining a robust level of resilience. Tailoring capital requirements to the real risk of assets can promote a more efficient and inclusive financial market, ultimately benefiting the broader economy.

D. Facilitate EU investors' access to global securitisation markets

ICI recommends facilitating EU investors' access to global securitisation markets by deferring to sector-specific due diligence frameworks under the UCITS Directive and AIFMD, such as UCITS or AIFMD, as mentioned in our first recommendation. Without the additional layer of due diligence, investors would have more flexibility to select the securitisation products that best align with their investor base.

Alternatively, we strongly recommend recognising the robustness of the risk retention standards of securitisations issued in countries outside of the EU, alongside a principles-based approach to the transparency and due diligence requirements. This approach would prioritise meaningful due diligence over generic reporting templates that would ensure access to and understanding of relevant information provided by non-EU market participants.

The current due diligence requirements limit investment opportunities based on whether third country issuers provide specified information about a securitisation, rather than focusing on the more crucial aspects of the securitisation itself. Restricting EU investors' access to global originators and issuers on the sole basis of utilizing a standard EU reporting template is counter-effective and contradicts the Commission's objective of enhancing EU competitiveness.

With limited access to securitised products, the EU securitisation market is stalled, leading to low investor demand and perpetuating a cycle that hinders the growth of the EU market. Facilitating better access to global markets will foster a more robust and competitive financial environment in the EU. It is critical to enhance access to global markets, improve EU demand for securitisation products, diversify portfolios, and boost the global competitiveness of EU-based institutional investors and asset managers.

In this context, we acknowledge that the European Securities and Markets Authority (ESMA) is currently reviewing feedback from its recent consultation on disclosure templates for securitisation transactions. This process presents a valuable opportunity to refine and simplify the existing stringent disclosure requirements for investments in non-EU securitisations. We encourage ESMA to consider adjustments that could alleviate the negative impacts on EU investors and the securitisation market.

E. Enhance investment in securitisation products through other sectoral legislation

In addition to proposing changes to the SECR, it could be beneficial for the Commission to explore the interplay between the SECR and other sectoral legislation, such as the UCITS Directive. ICI supports facilitating investment in securitisation products and believes that UCITS could play a more significant role in fostering Europe's economic growth. Additionally, we aim to ensure that EU investment funds are not disadvantaged compared to their global peers due to frameworks that discourage investment in certain asset classes.

For instance, there could be potential in evaluating the existing provision in the UCITS Directive that limits a UCITS's acquisition to no more than 10% of the debt securities of a single issuing body – in this case a single securitisation issuance. Securitisation issuances are generally smaller than corporate debt instruments, making it easier in some cases to trigger the 10% threshold when investing in securitised products. In these instances, the rule could be counterproductive for inherently diversified securitisations, making it misaligned with securitisation issuance in practice. Therefore, it could be beneficial to revisit this in the broader discussion of building more robust capital markets.

Exploring the interplay between the SECR and the UCITS Directive could facilitate investments in securitsation products and unlock benefits for the EU capital markets such as higher returns and diversified liquidity, which are crucial during periods of market stress.

III. Conclusion

For the reasons discussed above, ICI strongly believes that the European Commission should take this opportunity to revive the EU securitisation market by reducing unnecessary regulatory burdens for originators, issuers, and investors.

The current securitisation EU framework imposes disproportionate constraints on issuers and investors, which limit investment opportunities without significantly enhancing investor protection. These bureaucratic obstacles make securitisation products less attractive compared to other asset classes with similar risk and return profiles. The SECR's rules are also significantly more burdensome than those in other jurisdictions, discouraging non-EU issuers from entering the EU market and limiting EU investors' access to global opportunities. These constraints discourage potential originators and issuers from developing securitisation products within the EU, leading to a limited range of investment opportunities for investors.

Reducing these barriers would unlock significant benefits such as enhancing access to capital for borrowers, including SMEs, enabling them to secure loans and financing more easily. It would promote financial transparency and stability by converting illiquid assets into tradable securities, thereby improving market efficiency and resilience. Investors would benefit from greater portfolio diversification and access to a broader range of investment opportunities, contributing to a more robust and resilient investment environment.

ICI looks forward to working collaboratively with the European Commission and engaging in a comprehensive discussion on strengthening the securitisation market to support deeper capital markets, building the European Savings and Investments Union and increasing the EU's competitiveness.

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We appreciate your consideration of our comments. If you have any questions or would like to discuss our comments further, please contact me at Anke.Klein@ici.org or Claudia Grau at Claudia.Grau@ici.org.

Sincerely,

/s/ Anke Klein

Anke Klein
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