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Commission Delegated Regulation (EU) 2015/3 of 30 September 2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2015/3

of 30 September 2014

supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies[(1)], and in particular the third subparagraph of Article 8b(3) thereof,

Whereas:

(1) In accordance with Article 8b of Regulation (EC) No 1060/2009, investors should receive sufficient information on the quality and performance of their underlying assets with a view to enabling them to perform an informed assessment of the creditworthiness of structured finance instruments. This would also reduce investors' dependence on credit ratings and should facilitate the issuance of unsolicited credit ratings.

(2) This Regulation should apply to all financial instruments or other assets resulting from a securitisation transaction or scheme referred to in Article 4(1)(61) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[(2)] on condition that the issuer, originator or sponsor, is established, and for that purpose has its statutory seat, in the Union. Therefore, this Regulation should only cover financial instruments or other assets resulting from any transaction or scheme whereby the credit risk associated with an exposure or pool of exposures is tranched and has the characteristics referred to in that Article. Therefore, in line with that Regulation, an exposure that creates a direct payment obligation for a transaction or scheme used to finance or operate physical assets should not be considered an exposure to a securitisation, even if the transaction or scheme has payment obligations of different seniority.

(3) The scope of this Regulation should not be limited to the issuance of structured finance instruments that qualify as securities, but also should include other financial instruments and assets resulting from a securitisation transaction or scheme, such as money-market instruments, including asset-backed commercial paper programmes. In addition, this Regulation should apply to structured finance instruments with and without credit ratings assigned by a credit rating agency registered in the Union. Private and bilateral

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transactions should also be within the scope of this Regulation, as well as transactions that are not offered to the public or admitted to trading on a regulated market.

(4) This Regulation contains standardised disclosure templates for a number of asset class categories. Without prejudice to the scope of this Regulation and until reporting obligations have been developed by ESMA and adopted by the Commission, those standardised disclosure templates and all reporting obligations under this Regulation should apply only to structured finance instruments that are backed by underlying assets which are included in the list of underlying asset class categories specified in this Regulation and which in addition are not of a private or bilateral nature.

(5) When complying with this Regulation, issuers, originators and sponsors should comply with national and Union legislation governing the protection of confidentiality of information sources or the processing of personal data in order to avoid potential breaches of such legislation.

(6) The issuer, originator and sponsor may designate an entity responsible for reporting the information to the website to be set up by ESMA in accordance with Article 8b(4) of Regulation (EC) No 1060/2009 (the SFIs website). Outsourcing the reporting obligation to another entity, for example a servicer, should also be possible. This should be without prejudice to the responsibility of the issuer, originator and sponsor under this Regulation.

(7) A number of technical reporting instructions concerning, among others, the transmission or the format of the files to be submitted by issuers, originators and sponsors should be communicated by ESMA on its website. ESMA should communicate those technical reporting instructions in due course before the date of application of the reporting obligations laid down in this Regulation, in order to enable issuers, originators, sponsors and other parties involved to be given enough time to develop adequate systems and procedures following the technical instructions provided by ESMA.

(8) The information to be provided pursuant to this Regulation should be compiled in a standard format to allow for automatic processing of the data on the SFIs website. The information should also be published in a format that is easily accessible for any user of the SFIs website. ESMA should ensure that sectoral competent authorities have access to the SFIs website so as to carry out the tasks assigned to them under Regulation (EC) No 1060/2009.

(9) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission in accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(3)].

(10) ESMA has conducted an open public consultation on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

(11) A reasonable time is necessary in order to allow the issuers, the originators and the sponsors of a structured finance instrument established in the Union to adapt and take

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the necessary steps to comply with this Regulation and to allow ESMA to develop the SFIs website on which disclosure of the information required by this Regulation should take place. Therefore, this Regulation should apply from 1 January 2017. However, ESMA should communicate necessary technical reporting instructions in a timely manner before the date of application of this Regulation. This is necessary in order to enable the issuers, the originators and the sponsors of a structured finance instrument established in the Union to be given enough time to develop adequate systems and procedures following those technical instructions with a view to ensuring complete and correct reporting and to take into account further developments in the financial markets in the Union,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation shall apply to structured finance instruments where the issuer, the originator or the sponsor is established in the Union and which are issued after the date of entry into force of this Regulation.

Article 2

Reporting entity

1 The issuer, the originator and the sponsor of a structured finance instrument may designate one or multiple reporting entities that publish the information required pursuant to Articles 3 and 4, and Article 5(3) of this Regulation on the website referred to in Article 8b(4) of Regulation (EC) No 1060/2009 (the SFIs website). Those entities shall publish the required information on the SFIs website in accordance with Articles 4 to 7 of this Regulation.

2 The issuer, the originator and the sponsor of a structured finance instrument that has designated the entity or entities referred to in paragraph 1 shall notify ESMA without undue delay of any entity designated in accordance with that paragraph. That designation shall be without prejudice to the responsibility of the issuer, the originator and the sponsor to comply with Article 8b of Regulation (EC) No 1060/2009.

Article 3

Information to be reported

Where a structured finance instrument is backed by any of the underlying assets referred to in Article 4, the reporting entity shall provide the following information to the SFIs website:

(a) loan level information through the standardised disclosure templates included in Annexes I to VII;

(b) where applicable to a structured finance instrument, the following documents, including a detailed description of the waterfall of payments of the structured finance instrument:

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(i) the final offering document or prospectus, together with the closing transaction documents, including any public documents referenced in the prospectus or which govern the workings of the transaction and excluding legal opinions;

(ii) the asset sale agreement, assignment, novation or transfer agreement and any relevant declaration of trust;

(iii) the servicing, back-up servicing, administration and cash management agreements;

(iv) the trust deed, security deed, agency agreement, account bank agreement, guaranteed investment contract, incorporated terms or master trust framework or master definitions agreement;

(v) any relevant inter-creditor agreements, swap documentation, subordinated loan agreements, start-up loan agreements and liquidity facility agreements;

(vi) any other underlying documentation that is essential for the understanding of the transaction;

(c) where a prospectus has not been drawn up in compliance with Directive 2003/71/EC of the European Parliament and of the Council[4], a transaction summary or overview of the main features of a structured finance instrument, including:

(i) deal structure;

(ii) the asset characteristics, cash flows, credit enhancement and liquidity support features;

(iii) the note holder voting rights, the relationship between note holders and other secured creditors in a transaction;

(iv) a list of all triggers and events referred to in the documents provided to the SFIs website in accordance with point (b) that could have a material impact on the performance of the structured finance instruments;

(v) the structure diagrams containing an overview of the transaction, the cash flows and the ownership structure;

(d) the investor reports, containing the information included in Annex VIII.

Article 4

Underlying assets

The information requirements set out in Article 3 shall apply to structured finance instruments backed by the following underlying assets:

(a) residential mortgages: this class of structured finance instruments includes structured finance instruments backed by prime and non-prime mortgages and home equity loans. For this class of structured finance instruments, the information included in the template in Annex I shall be provided to the SFIs website;

(b) commercial mortgages: this class of structured finance instruments includes structured finance instruments backed by retail or office property loans, hospital loans,

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care residences, storage facilities, hotel loans, nursing facilities, industrial loans, and multifamily properties. For this class of structured finance instruments, the information included in the template in Annex II shall be provided to the SFIs website;

(c) loans to small and medium-sized enterprises: for this class of structured finance instruments, the information included in the template in Annex III shall be provided to the SFIs website;

(d) auto-loans: for this class of structured finance instruments, the information included in the template in Annex IV shall be provided to the SFIs website;

(e) consumer loans: for this class of structured finance instruments, the information included in the template in Annex V shall be provided to the SFIs website;

(f) credit card-loans: for this class of structured finance instruments, the information included in the template in Annex VI shall be provided to the SFIs website;

(g) leases to individuals and/or businesses: for this class of structured finance instruments, the information included in the template in Annex VII shall be provided to the SFIs website.

Article 5

Frequency of reporting

1 The information set out in Article 3(a) and (d) shall be made available on a quarterly basis, no later than one month following the due date for payment of interest on the structured finance instrument concerned.

2 The information set out in Article 3(b) and (c) shall be made available without delay after the issuance of a structured finance instrument.

3 In addition to the requirements set out in paragraphs 1 and 2:

a where the requirements laid down in Article 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council[(5)] on insider dealing and market manipulation (market abuse) apply also in relation to a structured finance instrument, any disclosure of information pursuant to that article shall also subsequently be published without delay on the SFIs website by the reporting entity;

b where point (a) does not apply, the reporting entity shall disclose without delay on the SFIs website any significant change or event in any of the following cases:

(i) a breach of the obligations laid down in the documents provided in accordance with Article 3(b);

(ii) structural features that can materially impact on the performance of the structured finance instrument;

(iii) the risk characteristics of the structured finance instrument and of the underlying assets.