19 July 2016

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By Post and by Email

Dear Sir

The Draft Report of the Committee on Economic and Monetary Affairs dated 6 June 2016.

Introduction

The Loan Syndications & Trading Association[1] (LSTA) is a U.S. trade organization representing firms that engage in loan syndication and trading activities.

We are writing in connection with your Draft Report" dated 6 June 2016 containing draft amendments (the "**Proposed Amendments**") to the proposed securitisation regulation (the "**Proposed Regulation**"[2]) upon which we have commented below.

The reason why the LSTA is writing regarding these proposals is because of their potential impact on the international securitisation market. We would highlight that securitisation transactions frequently involve both US and EU elements.

We also refer to the letter to you of today's date from the Loan Market Association ("**LMA**"). We are in overall agreement with the points made by the LMA, some of which we have reiterated here. We also wish to emphasise certain of those points from a US perspective, particularly those regarding risk retention and maintaining the openness of the EU securitisation market.

Our concerns with the Proposed Amendments

We have some concerns that certain of the proposed measures could unnecessarily restrict access to the EU by non-EU market participants – in particular, those from the US. There is a risk that some of these measures could be construed as protectionist by non-EU jurisdictions. It is of course important that the EU and US do not engage in protectionist measures against each other.

1 Please see the description in Appendix 1.

2 Proposal for a Regulation of the European Parliament and of the Council laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

We very much consider that the openness of both the US and EU markets to be in our mutual interests.

We are pleased that the EU intend using the Proposed Regulation to develop EU securitisation markets, but we do have concerns about certain aspects of the Proposed Amendments that we feel may hinder this process.

Risk Retention level

We are concerned about the proposal to increase the risk retention level to 20%. The Proposed Regulation is intended to help revive securitisation in Europe. Imposing such a high level of retention will act to hamstring, not revive, securitisation.

In addition to retention, we would note that there are significant incentives imposed on a CLO manager to ensure that it carries out prudent asset selection and management. Not only does buying and holding a substantial interest mean that the manager losing its investment if the portfolio underperforms, but the deferred compensation structure of a CLO means that the majority of a CLO manager's fees are foregone if the manager underperforms. This remuneration structure incentivises an alignment of interests, whatever the level of risk retention.

Our view is therefore that the proposal to increase the risk retention level to 20% is unnecessary to achieve the stated objectives of such a proposal and would risk significantly damaging both the EU and the international securitisation market.

The Originator, Sponsor or Original Lender needs to be a "Regulated Entity"

The Proposed Amendments provide that the originator, sponsor or original lender in a securitisation will need to be a "regulated entity"

"Originator, sponsor or original lender" to be "regulated entities"

Although the Proposed Amendments state that the "originator, sponsor or original lender" in a securitisation needs to be a "regulated entity", we assume that the intention is that the retention holder will need to be such a regulated entity.

If so, this provision could effectively exclude institutions that fund themselves through the securitisation market, but are not regulated. It could exclude many types of finance companies which are not "regulated entities" within the prescribed definitions from securitising assets (auto loans etc.). There are also many corporates who use the securitisation market to securitise their trade receivables. These entities would effectively be prohibited from participating in the securitisation market, thus closing off a very important source of financing.

If, as we understand, the intention of this provision is that only EU regulated entities[3] can act as retention holders, this provision could exclude a wide range of institutions that fund themselves through securitisation. In addition, it would have the effect of blocking the access of non-EU institutions to the EU capital markets.

[3] i.e. that the reference is to the definition in the original unamended Financial Conglomerates Directive.

A key component of growth for European capital markets will be investment from countries outside the EU, such as the US. If the retention holder needs to be an EU regulated entity, this will make it very difficult for entities regulated outside of Europe (e.g. in the US), to comply with the current retention regime. Restricting retention holders to EU regulated entities could have the effect of dis-incentivising participants from outside the EU investing into the EU. Restricting the ability of participants outside the EU to issue into the EU could have a detrimental effect on the in-flow of capital to Europe from the US.

Loss of diversification

This could also prevent EU investors from diversifying their portfolios of investments - portfolios would be wholly European concentrated. Diversification is an important factor in reducing volatility in the financial markets. EU companies, pension funds and other EU investors would effectively be unable to diversify their portfolios based on geography. This could create unnecessary risk for EU investors.

Risk of protectionism

In addition, it may encourage other jurisdictions, such as the US, to view this as a protectionist measure and so make it more difficult for EU entities to raise capital from other markets.

We would strongly recommend that the EU securitisation market be open to securitisations organised outside the EU provided such entities comply with the EU risk retention rules. This has been the case since the rules came into effect in 2011 and should continue.

Only Regulated Institutional Investors are to be able to Invest in Securitisations

A Proposed Amendment provides that investors in securitisation need to be "institutional investors", which term refers to specific types of EU regulated entities.

The intention appears to be the exclusion of investors in securitisations other than such EU regulated entities. The intention also appears to be the exclusion of non-EU investors, such as US investors, from investing in the EU securitisation market. This would also have the effect of concentrating securitisation risk in the EU.

If access by non-EU investors to the EU securitisation market is restricted, then the market will limit access to capital from outside the EU. We think that such a move would not be in the interests of the EU economy and would be contrary to the overall aims of developing EU capital markets through the Capital Markets Union project. It would also run the risk of being construed as a protectionist measure.

Restrictions on Entities that can be SPVs

The Proposed Amendments provide that SSPEs cannot be established in non-EU countries which: (a) are tax havens (i.e. a country that "promotes itself as an off-shore financial centre or one in which there are no or nominal taxes"); (b) lack effective exchange of information with foreign tax authorities; (c) lack legislative, judicial or administrative transparency; (d) have no

requirement for a substantive local presence; (e) are listed as a "Non-Cooperative Country and Territory"; or (f) have not signed an agreement to share tax information.

While most EU securitisations do not use SSPEs organised outside the EU, many other jurisdictions outside the EU use SSPEs in offshore jurisdictions, such as the Cayman Islands.

This is not to create tax avoidance, but rather to ensure that that the SSPE is tax neutral thus ensuring investors are only exposed to the performance of the underlying securitised assets. If the intention is to severely restrict the jurisdictions in which SSPEs can be established, this may have the effect of deterring US market participants who use structures with SPVs based in jurisdictions such as the Cayman Islands, from entering the EU securitisation market.

Many US securitisations use the Cayman Islands as a jurisdiction for SPVs. We have noted at Appendix 2 why we consider that the Cayman Islands do not contravene any of these conditions. We note, for example, that the Cayman Islands have regulations in place to ensure the disclosure of tax information.

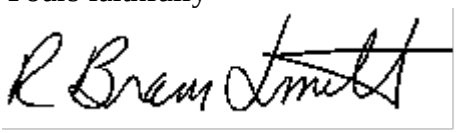
Further Discussions

We feel that it is in the mutual interests of the US and EU to ensure that the Proposed Regulation does not create undue restrictions on US investors accessing the EU securitisation market.

We would like to thank you for engaging on these issues and would be pleased to answer any questions you may have. We would welcome the opportunity to discuss the Proposed Regulation with you to discuss these points.

If you would like to do so, please contact Meredith Coffey of the LSTA (mcoffey@lsta.org), Elliot Ganz of the LSTA (eganz@lsta.org) or David Quirolo (david.quirolo@cwt.com) of Cadwalader, Wickersham & Taft LLP.

Yours faithfully



R. Bram Smith
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APPENDIX 1

Loan Syndications & Trading Association ("LSTA")

The LSTA is a not-for-profit trade association that is made up of a broad and diverse membership involved in the origination, syndication and trading of commercial loans. The nearly 400 members of the LSTA include commercial banks, investment banks, broker-dealers, hedge funds, mutual funds, insurance companies, fund managers and other institutional lenders, as well as law firms, service providers and vendors.

The LSTA undertakes a wide variety of activities to foster the development of policies and market practices designed to promote just and equitable marketplace principles and to encourage cooperation and coordination with firms facilitating transactions in loans. Since 1995, the LSTA has developed standardized practices, procedures and documentation to enhance market efficiency, transparency and certainty.

APPENDIX 2

The Cayman Islands as a suitable jurisdiction for SSPEs

1. Would the Cayman Islands be considered a tax haven (i.e. a country that "promotes itself as an off-shore financial centre or one in which there are no or nominal taxes")?

1.1 There is no legal definition for a "tax haven". It is more a term of art. If the issue being addressed is tax evasion, then the only relevant objective standard is whether a jurisdiction has effective tax information exchange measures in place.

1.2 The UK Prime Minister made a statement to the House of Commons in September 2013 in response to a question on whether the overseas territories including Cayman had signed up to the Multilateral Tax Convention[4]:

> "*I do not think it is fair any longer to refer to any of the overseas territories or Crown dependencies as tax havens. They have taken action to make sure that they have fair and open tax systems*."

1.3 Referring to the phrase "a country that "promotes itself as an off-shore financial centre".

(a) The official Cayman Government website provides:

> "*The Cayman Islands is one of the world's leading providers of institutionally focused, specialised financial services and a preferred destination for the structuring and domiciling of sophisticated financial services products*".

(b) Luxembourg's equivalent website provides:

> "*Luxembourg is the premier private banking centre in the Eurozone and the second largest fund centre in the world. Due to its stability as well as its innovative and international orientation, the Luxembourg financial centre is an ideal hub for private and institutional investors from all over the world*."

(c) The Cayman Islands are essentially an international financial centre in the same way that Ireland, Luxembourg, Holland and many other EU jurisdictions, are.

1.4 "[a country] in which there are no or nominal taxes".

(a) The Cayman Islands do in fact have substantive taxes, but choose to use a consumption based taxation model that utilises various indirect taxes such as import taxes (as a group of islands, substantially all material goods need to be

[4] See further paragraph 3.10 below in relation to the Cayman Islands having become party to this convention.

imported), stamp duty (in particular on the purchase of land) work permit fees, tourism taxes and company and financial services fees.

(b) The choice of the Cayman Islands to utilise such a tax system fact has been expressly recognised by the OECD[5].

(c) The fact that all applicable taxes in the Cayman Islands apply equally to all companies and other forms of business enterprise, irrespective of whether the entity is 'domestic' or 'international' means that the Cayman Islands are in compliance with Article 24 of the OECD Convention (non-discrimination).

(d) It should also be noted that the Cayman Islands only have a population of 60,000 people and that the total revenue needs of the Government are only approximately US$1 billion on an annualised basis, a relatively small amount on which to impose a direct tax system with the relatively high cost required to impose a direct taxation infrastructure (i.e. tax assessors, inspectors, legislation and other enforcement and adjudication costs).

(e) It is also worth noting that with respect to securitisation vehicles many EU jurisdictions effectively impose “no or nominal taxes” by virtue of their tax regime, e.g. the Section 110 regime in Ireland.

2. Does the Cayman Islands lack effective exchange of information with foreign tax authorities?

2.1 The Cayman Islands have a long history of being a transparent and co-operative jurisdiction as evidenced by their long record in relation to the exchange of tax information.

2.2 The Cayman Islands has consistently been an early adopter in relation to OECD initiatives on the exchange of tax information and signed an advance commitment to the OECD's project on harmful tax competition in May 2000.

2.3 This was then followed by Cayman signing one of the earliest OECD model tax information exchange agreements with the United States in November 2001.

2.4 Cayman currently has 36 signed TIEAs including with respect to the EU: (a) Belgium; (b) Czech Republic; (c) Denmark; (d) Finland; (e) France; (f) Germany; (g) Ireland; (h) Italy; (i) Netherlands; (j) Poland; (k) Portugal; (l) Sweden; and (m) United Kingdom.

2.5 In addition it has entered into negotiations with the following EU countries: (a) Austria; (b) Greece; (c) Slovak Republic; and (d) Spain.

2.6 In addition, the Cayman Islands agreed to implement measures equivalent to the European Savings Directive and have been reporting payments to EU member states since 2005.

[5] The OECD Peer Review Report, page 10 found at http://www.oecd.org/tax/transparency/46103187.pdf

2.7 The Cayman Islands have been fully assessed by the OECD to be compliant with the practical implementation of the tax information exchange regime, i.e. whether the regime works in practice. This "Phase 2 Peer Review Report" was released in April 2013[6].

2.8 The Phase 2 report followed the earlier "Phase 1 Peer Review Report" from September 2010 in which the OECD Global Forum recognised the Cayman Islands as having a "well-developed legal and regulatory framework" that promotes access to information by ensuring its legal authorities are "invested with broad powers to gather relevant information".

2.9 The Cayman Islands have also been an early adopter with respect to the automatic exchange of tax information and were one of the first countries to sign a "Model 1" intergovernmental agreement with the United States with respect to US FATCA, - as well as with the United Kingdom with respect to UK FATCA, in November 2013. Both have been fully implemented and reporting for the initial 1 July to 31 December 2014 period under US FATCA has been completed.

2.10 As the OECD developed its own version of "FATCA", namely the Common Reporting Standard ("CRS"), Cayman again was an early adopter and all relevant legislation to ensure compliance has been implemented and reporting is under way. In that respect, the Cayman Islands has also signed the OECD Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information.

2.11 Accordingly, in light of all of the foregoing, it is evident that the Cayman Islands have consistently demonstrated their commitment to, and in practice have effective exchange of tax information with foreign tax authorities.

3. Do the Cayman Islands lack legislative, judicial or administrative transparency?

3.1 The Cayman Islands are an overseas territory of the United Kingdom of Great Britain and Northern Ireland. As such, Cayman is governed by a Constitution[7] enacted by the UK and maintains a legislative assembly, that is run on similar lines to the UK House of Commons, with a separate executive branch (the cabinet) and a judiciary that is independent of government.

3.2 All laws enacted by the legislative assembly (the "LA") can be found on the web at https://www.judicial.ky/laws and transcripts of the business of the LA ('Hansard') can be found at http://www.legislativeassembly.ky/portal/page/portal/lglhome/business/publications/indexes

3.3 Both the legislative and executive branches of government are subject to various transparency legislation including, the Freedom of Information Law[8], the Anti-Corruption Law[9] and the Standards in Public Life Law[10].

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6 http://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews-cayman-islands-2013_9789264192089-en

7 http://www.legislation.gov.uk/uksi/2009/1379/pdfs/uksi_20091379_en.pdf

8 http://www.foi.gov.ky/portal/page/portal/foihome/doclibrary/legislation

3.4 The Cayman Islands judicial system is essentially based on the legal system in England and Wales and much of the common law of England and Wales applies to the Cayman Islands. The judiciary branch is headed up by a Chief Justice and the court system comprises magistrates courts, the Grand Court (the main court of first instance), the Court of Appeal and ultimately litigants are able to appeal to the Privy Council in the United Kingdom. The Cayman Islands Law Reports are again available online and are often cited in other cases in other jurisdictions.

3.5 There is no bank secrecy law that specifically prohibits banks providing personal and account information about their customers to authorities. Information is, however, subject to common law duties of confidentiality that have been imported from England[11].

3.6 While the Confidential Relationships (Preservation) Law provides for a criminal offence for a breach of confidentiality, importantly it contains various "gateways" that permit the disclosure of information to foreign regulators, tax authorities and law enforcement agencies in accordance with the various international tax, legal and regulatory agreements which the Cayman Islands have signed. It should also be noted that the criminal offence provision is about to be repealed.

3.7 The Monetary Authority Law ("MAL") lists the provision of assistance to overseas regulatory authorities as one of the principal functions of the Cayman Islands Monetary Authority ("CIMA"), being the financial services regulator for the jurisdiction. Such international cooperation takes place through the exchange of information, as provided for in this law and facilitated through memoranda of understanding and similar agreements with overseas governments and regulators.

3.8 CIMA currently has 58 memoranda of understanding with various other national regulators, including in the EU: (a) Germany; (b) Austria; (c) Hungary; (d) Bulgaria; (e) Czech Republic; (f) Denmark; (g) Estonia; (h) Finland; (i) France; (j) Greece; (k) Lithuania; (l) Ireland; (m) Latvia; (n) Luxembourg; (o) Malta; (p) Netherlands; (q) Poland; (r) Portugal; (s) Romania; (t) Slovak Republic; (u) Sweden; (v) Cyprus; (w) United Kingdom; and (x) Belgium.

3.9 In addition, CIMA is a member of the International Organization of Securities Commissions ("IOSCO") and, as such, is a party to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information, and has been since March 2009.

3.10 Under the MAL, CIMA may require or direct a person to provide specific information or produce specific documentation either at CIMA's own request, or at the request of a recognised overseas regulatory authority ("ORA") (i.e. an authority that exercises regulatory functions corresponding with those exercised by CIMA), to enable the ORA to

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9 http://www.gov.ky/portal/pls/portal/docs/1/11529028.PDF

10 http://www.gov.ky/portal/pls/portal/docs/1/11526001.PDF and http://www.gov.ky/portal/pls/portal/docs/1/12294429.PDF

11 Tournier v National Provincial and Union Bank of England [1924] 1 KB 461

exercise regulatory functions, including the conduct of civil and administrative proceedings to enforce laws, regulations and rules administered by the ORA.

3.11 In relation to confidential information required in foreign proceedings, the Cayman courts and relevant competent authorities have powers of requiring disclosure under the following laws;

(a) Criminal Justice (International Cooperation) Law

This Law gives effect to the mutual legal assistance provisions of the 1988 U.N. Vienna Convention in narcotics and related money laundering matters. The Central Authority for receipt of requests for assistance from foreign courts is the Attorney-General. The Attorney-General applies to the Grand Court of the Cayman Islands for an order granting the required assistance, e.g., taking of testimony, production of documents, search of premises etc.

(b) Evidence (Proceedings in other Jurisdictions) (Cayman Islands) Order, 1978

The Cayman Islands are party to the 1970 Hague Convention on the taking of evidence abroad in civil or commercial matters. Under the Evidence (Proceedings in other Jurisdictions) (Cayman Islands) Order, 1978 (extended by Statutory Instrument from the UK) the Grand Court of the Cayman Islands has jurisdiction to make orders requiring Cayman entities and their employees to produce documents and give oral testimony in civil or criminal proceedings before a foreign court or tribunal (and whether or not in a Convention country).

(c) Mutual Legal Assistance (United States of America) Law

Since 1990, the Cayman Islands have had a mutual legal assistance treaty in effect with the US. Requests from the US investigative and enforcement authorities in relation to serious crimes are submitted to and reviewed by the Cayman Mutual Legal Assistance Authority (being a judge of the Grand Court sitting in an administrative capacity). The Authority then issues a direction to the local person to comply with the disclosure request.

3.12 In 2008, at the request of the US Congress, the US Government Accountability Office (the "GAO") visited the Cayman Islands and in July 2008 published its report[12] where it stated:

"*Officials from Treasury and the SEC reported that the Cayman Islands has been cooperative in sharing information and SEC reported that several of the SARs have led to U.S. investigations*." (pg 43/44)

"*A senior official from DOJ's Office of International Affairs indicated that the Cayman Islands is the busiest United Kingdom overseas territory with regard to requests for information, but also the most cooperative. She also said that the*

[12] http://www.gao.gov/new.items/d08778.pdf

Cayman Islands is one of DOJ's "best partners" among offshore jurisdictions." (pg 46)

3.13 The Financial Stability Board ("FSB") in December 2013 confirmed its designation of the Cayman Islands as a jurisdiction which demonstrates sufficiently strong adherence to international standards on cooperation and information exchange.[13]

3.14 The Cayman Islands continued commitment to transparency has also been seen very recently, when in response to the UK's initiative with respect to exchange of beneficial ownership, the Cayman Islands agreed an exchange of notes with the UK Government to permit UK law enforcement agencies access to such information. They furthermore expressed a willingness to commence discussions with those jurisdictions who are participating in the G5 initiative (for the exchange of beneficial ownership information with law enforcement agencies) on entering into bilateral agreements with the Cayman Islands, similar to the exchange of notes agreed with the UK.

3.15 Accordingly, the Cayman Islands do not lack legislative, judicial or administrative transparency.

4. Do the Cayman Islands have a requirement for a substantive local presence?

4.1 Although there is no legal requirement to have Cayman Islands resident directors, in practice all Cayman SPVs that are securitisation issuers have Cayman resident directors and service providers.

4.2 Unlike many other jurisdictions, both EU and non-EU, the provision of director and related services is a regulated activity in the Cayman Islands, which is overseen by CIMA.

4.3 It is also common practice for Cayman based service providers to provide registered office services, banking services, the provision of a company secretary and other officers, FATCA services, share trustee services, liquidation services and general SPV administration services.

4.4 In addition, it is also common for Cayman based service providers to provide accounting services, corporate secretarial services, audit services and paying agency and registrar services to Cayman incorporated entities from within the Cayman Islands.

5. Are the Cayman Islands listed as a "Non-Cooperative Country and Territory"?

5.1 The Cayman Islands are not listed on the OECD black list of uncooperative tax havens or FATF black list for money laundering.

6. Have the Cayman Islands failed to sign an agreement to share tax information?

6.1 As noted above, this is not the case.

[13] http://www.fsb.org/wp-content/uploads/r_131218.pdf

7. General Observations

7.1 The Cayman Islands have had a long history as a preferred jurisdiction for the location of SPVs for both on and off-balance sheet securitisation and structured finance transactions. This is based on numerous key factors. In particular, the robust and flexible legal system, stable political environment and creditor friendly insolvency regime give investors, rating agencies and other participants comfort that their investments will be secure.

7.2 In many ways it is very difficult to distinguish between many EU SPV jurisdictions (such as Ireland, Holland, Luxembourg, Malta and the UK) in terms of tax transparency, effective tax rates and anti-money laundering regimes and we can see no logical or legal basis to distinguish the Cayman Islands from these jurisdictions.

7.3 The Cayman Islands play a key role in international capital markets facilitating the investment of funds and the structuring of securitisation and financing transactions globally in a way which leads to significant inward investment into areas such as the EU and US. International investors, including pension funds, insurance companies, and other institutional investors, are able to utilise Cayman SPVs in an efficient way to access international capital markets, which is critical to international trade and business.

7.4 AIMA's briefing note entitled "Transparent, Sophisticated, Tax Neutral – The Truth about Offshore Funds", sets out in more detail many of the reasons why a significant proportion of the world's alternative investment funds are set up in the Cayman Islands. Much of what is said in the briefing note applies equally to securitisation vehicles.

7.5 Furthermore, with Cayman being one of the leading jurisdictions in relation to tax transparency and reporting. Investors and stakeholders in Cayman SPVs are taxed on any gains in their home jurisdictions and/or the SPV itself is taxed on the underlying assets it buys and sells.