Norman Pepe

From: European Banking Authority <EBA-Website@eba.europa.eu> on behalf of European Banking Authority <no-reply@eba.europa.eu>
Sent: 28 September 2021 17:25
To: Norman Pepe
Subject: Your response has been received

Dear user,

Thank you very much for your interest in the European Banking Authority (EBA) and for submitting your comments to one of our consultations. Your response has been received and will be taken into account by the EBA. Please find below, for your records, the response you have submitted.

Please note that this email address is not monitored and does not accept replies. If there is something wrong or missing in your response to the consultation, please contact us at info@eba.europa.eu.

Kind regards,

European Banking Authority

Your answers are:

Question 1: Do you agree with the provisions in this Article with respect to the application of the retention options on the NPE securitisations, and the "net value" regime of the NPE securitisations? Are the retention options specified under Articles 4 to 8 sufficiently clear using the net value regime? Are there any other aspects of NPE securitisation and the net value regime that should be clarified in the RTS?:

Comment 1 - Multiple originators/original lenders Article 9(1) sets out a key interpretation rule intended to ensure automatic adaptation of certain RTS to the specificities of NPE Securitisations. However, given that only Articles 4 to 8 fall within the scope of Article 9(1), this interpretation rule does not capture the allocation principles set out in Articles 2(2) and 2(3). We are of the view that Articles 2(2) and 2(3) should be amended to make it clear that, in case of NPE Securitisations, the pro rata allocation is based on the net value of the securitised exposures for which the relevant party is the originator or original lender. For example, we propose that Article 2(2) is amended as follows: "Where multiple originators fulfil the retention requirement, it shall be fulfilled by each originator on a pro rata basis by reference to the nominal value, or, in case of NPE Securitisations, the net value of the securitised exposures for which it is the originator." Based on our experience in Italian "GACS" multi-originator transaction, we believe that this clarification would be extremely useful and welcome. Comment 2 - Nominal value of issued tranches versus net value of the non-performing exposures Article 9(1) provides that any reference in relation to the nominal value of the issued tranches should be interpreted as a reference to the net value of the non-performing exposures. This rule seems to be intended to apply to the retention method set out in Article 4(c). In our view, however, this new interpretation rule may create confusion and distortions (*) in the application of the "vertical tranche" method (which, in our experience, is by far the method used in NPE Securitisations). (*) The nominal amount of the notes in NPE Securitisation, similarly to securitisations of performing exposures, does not only reflect the net value of the underlying securitised exposures, but also factors initial costs, reserves, etc. Comment 3 – Determination of Non-Refundable Purchase Price Discount Article 9(1)(4) seems to assume that the originator will sell tranches to third

parties in once single trade simultaneously with the sale of the portfolio. This assumption, however, does not take into account that the originator in practice may proceed with the disposal of the notes in separate trades to different investors, at different times and economic terms during a placement phase. This situation could be exacerbated in multi-originators NPE securitisations. If the regulator would intend to refer only to the situation where a single trade is consummated at the onset of the transaction, we feel that this should be better clarified in the RTS. Should this not be the regulator's view, we feel that the RTS should contemplate the implications of a more flexible approach (e.g., maximum period in which trades are relevant; ongoing adjustment of the retention requirement). Comment 4 – Nominal value vs. outstanding value According to the Securitisation Regulation, the non-refundable purchase price discount shall be deducted either from the exposure's nominal value or, where applicable, its outstanding value at the time of origination. As it is not crystal clear to us what is the intended difference between "nominal value" and "outstanding value", we feel that the market would appreciate it if the regulator could provide guidance in the RTS.

Question 2: Do you agree with the provisions with respect to the synthetic excess spread? Are there any aspects relating to the synthetic excess spread being considered in the measurement of the material net economic interest that should be clarified in these RTS, taking into account that separate RTS will be developed that will determine the exposure value of the synthetic excess spread? :

NA

Question 3: Do you agree with the provisions set out in this Article on fees payable to the retainer?:

Comment 1 – Up-front fees In our experience in Italian "GACS" transactions, arrangers and servicers play a key role in structuring and implementing highly structured transactions. This valuable activity, carried out in the weeks/months preceding the closing of the transaction, attracts fees which are normally paid upfront. In light of the above and considering that arrangers and servicers may act also as sponsors/retainers in the context of securitisation transactions, we are not sure whether the last proviso of Article 15(2) is reasonable. In our opinion, upfront fees should not be deemed to be, by default, a mechanism accelerating the decline of the retained interest, and, therefore, should be subject to the conditions set out in limbs (a) and (b) of Article 15(2).

Question 4: Do you agree with the provisions with respect to securitisations of own issued debt instruments? :

NA

Question 5: Do you agree with the provisions with respect to resecuritisations? :

NA

Question 6: Do you agree with the provisions in this Article with respect to assets transferred to SSPE? Are there any additional aspects that should be further specified in these RTS, taking into account that no clarification is provided with respect to Recital 11 of the Securitisation Regulation (for example, do you see any specific implications for the securitisations of NPE securitisations and how these should be tackled)?:

NA

Question 7: Do you agree with the provisions set out in this Article with respect to expertise of the servicer of a traditional NPE securitisation?:

Comment 1 – Additional requirement for special servicers acting as retainers In Italian NPE securitisations, it is customary for the servicing to be implemented via a so-called “double-decker” structure. In this type of structure, a regulated entity will play the role of so-called “master servicer” which not only is the person entrusted with the recovery activity of the securitised exposures, but it is also responsible for ensuring the compliance of the transaction with the law and the prospectus and for certain reporting requirements to the Bank of Italy. In turn, the master servicer will then delegate the day-to-day active management of the exposures to one or more “special servicers” (generally, unregulated debt collection companies). The above is also reflected in the fee structure: master servicers are generally entitled to a flat annual fee, while special” servicers’ fee are mainly dependant on their recovery performance. Considering that, in light of the above, in this kind of structure the “skin in the game” (required for alignment of interests) is to be found in the special servicers rather than the master servicers, we expect (in accordance with the definition of “servicer” set out in the Securitisation Regulation) the former to be better suited to act as retainers. In this case, however, we believe that an additional requirement should be attached to the role, that is that, under the delegation arrangement, the special servicer is sufficiently independent from the master servicer in determining how to carry out the day-to-day management activity.

Question 8: Do you have any comments on the remaining Articles of these draft RTS? :

Comment to Article 2(6) : Limb (b) contemplates the only option to allocate the requirement by the number of servicers. Based on our experience, the retention requirement would be better allocated pro rata on the basis of the net value of the exposures managed by each servicer at origination. In our view, this approach will ensure a more effective alignment of interest and will be consistent with the approach suggested above for multi-originator NPE securitisations. Comment to Article 2(7): In its essence, the ‘sole purpose test’ seems intended to capture situations where the retainers do not own significant assets other than its exposures to the relevant securitisation. If this genuinely reflect the regulator’s perspective, we believe that Article 2(7) should refer to this criterion as the key principle for the ‘sole purpose test’. This would provide the straight-forward guidance long needed to help the market navigate the complexities of the retention analysis. Comment to Article 10(1): For consistency purposes, we feel that the criteria in limb (b) should provide for an express carve out for NPE securitisations.

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