

JOINT WEBINAR ON CMBS AND EU REGULATION

18 SEPTEMBER 2019



C L I F F O R D
C H A N C E

EUROPEAN
DATAWAREHOUSE

AGENDA AND INTRODUCTION

INTRODUCTION

ESMA DISCLOSURE TEMPLATE FOR CMBS

- Peter Cosmetatos, CREFC Europe

IMPLEMENTATION OF SECURITISATION REGULATION AND TRANSATLANTIC ASPECTS

- Emma Matebalavu, Clifford Chance

SOLUTIONS FOR THE SECURITISATION REGULATION

- Marco Angheben, European DataWarehouse

Q&A

ESMA DISCLOSURE TEMPLATE FOR CMBS

PETER COSMETATOS, CREFC EUROPE

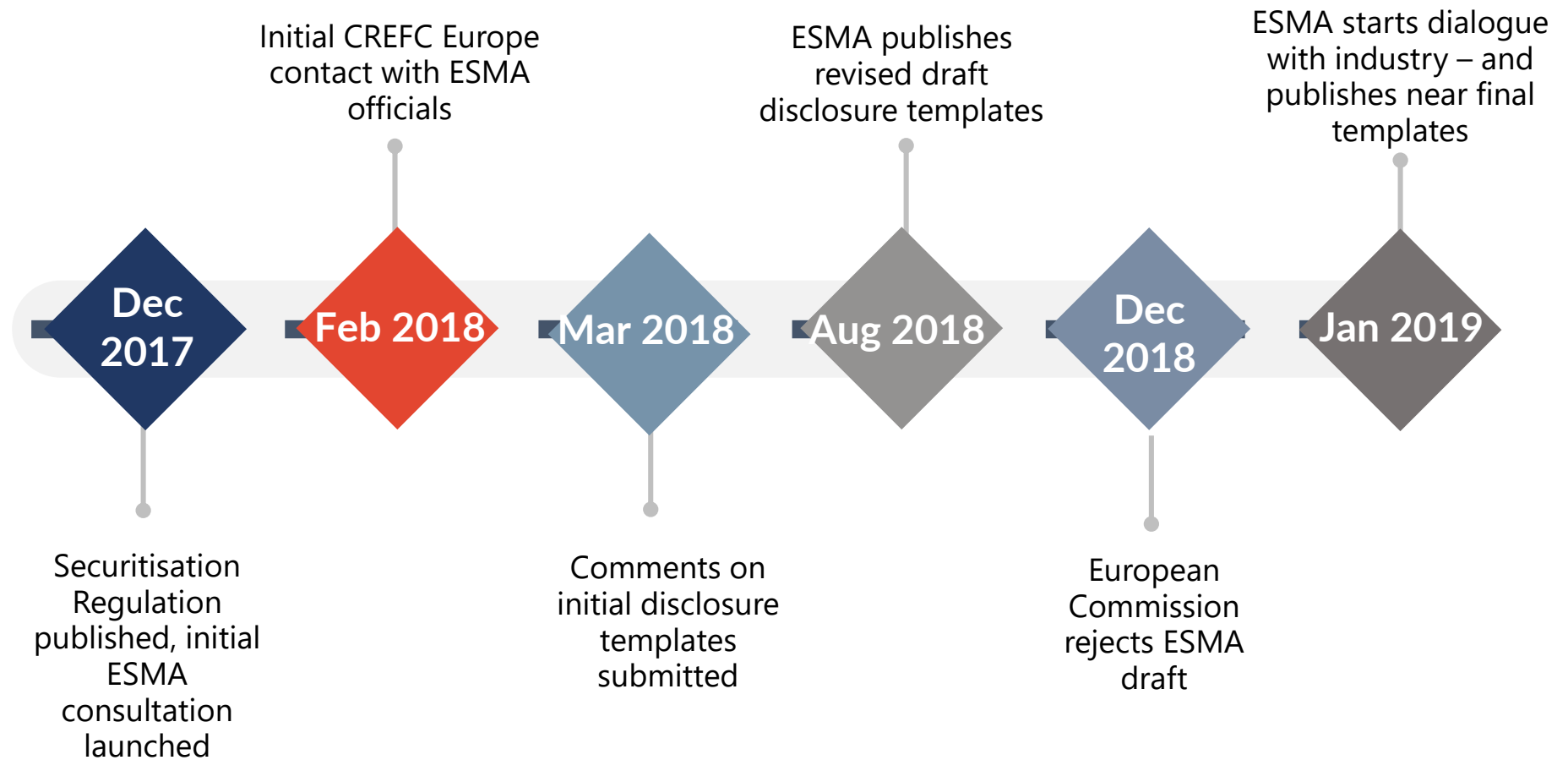
ESMA DISCLOSURE TEMPLATES – HISTORY (1)

- December 2017: Securitisation Regulation published in OJEU, tasking ESMA with designing various reporting requirements, and ESMA issued initial draft disclosure requirements for consultation
- February 2018: CREFC Europe met ESMA officials (on periphery of joint EBA/ESMA hearing in London) and tried to start a dialogue to help them get CRE/CMBS reporting requirements right, as the initial draft was very problematic – without success
- March 2018: CREFC Europe commented on the initially proposed reporting requirements (dubbed “the worst template I have ever come across” by one CREFC Europe member)

ESMA DISCLOSURE TEMPLATES – HISTORY (2)

- August 2018: ESMA published new draft disclosure templates – we provided member feedback in October 2018 noting improvements but many outstanding and significant issues
- December 2018: the European Commission wrote to ESMA insisting on changes to the August proposals, notably around the availability of “No Data” responses
- January 2019: ESMA finally opens real dialogue with trade associations, and almost immediately publishes revised, near-final draft templates (not formally for consultation)
- July 2019: CREFC Europe submitted comments on the revised, near-final templates pursuant to dialogue with ESMA

THE ESMA JOURNEY SO FAR – SUMMARY



AREAS OF FOCUS THROUGH THE ESMA DIALOGUE

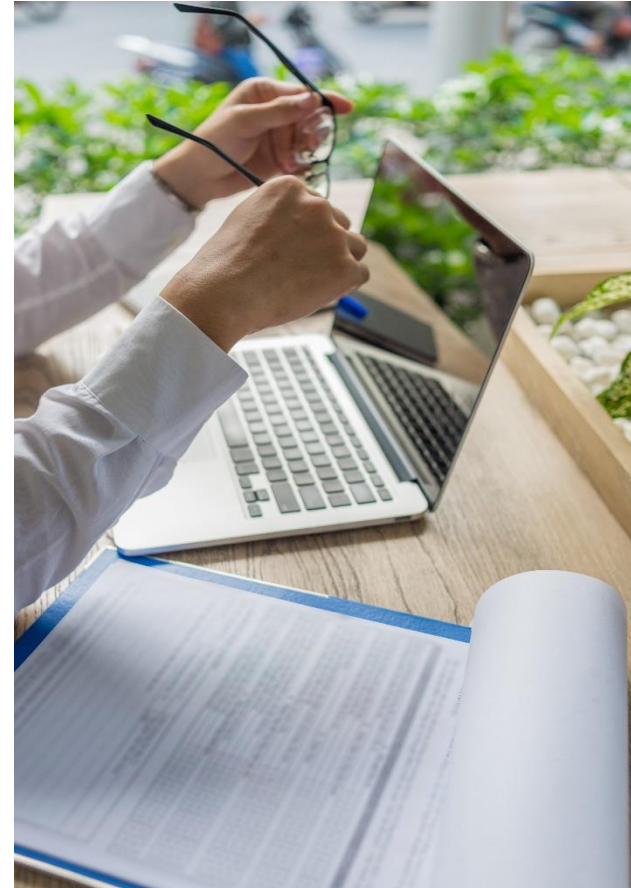
- Errors, ambiguity, lack of clarity, and pointless fields
- Confidentiality concerns
 - In relation to tenants
 - In relation to arranging bank risk models
- Application of disclosure requirements to 'private' transactions
- In our July 2019 submissions, we raised as few points as we could, clearly explaining each problem and our proposed solution
- Note that ESMA's areas of responsibility are limited and do not cover important issues (e.g. STS criteria, territorial scope, etc.)

IMPLEMENTATION OF SECURITISATION REGULATION AND TRANSATLANTIC ASPECTS

EMMA MATEBALAVU, CLIFFORD CHANCE

GENERAL BACKGROUND AND TIMING

- From 1 January 2019, the Securitisation Regulation repealed and replaced the securitisation provisions of the prudential regimes covering banks, insurers and alternative fund managers, as well as the securitisation transparency rules of the Credit Rating Agencies Regulation.
- The rules apply to “securitisations” as defined for EU regulatory purposes. There are significant differences between EU and US definitions of a securitisation.
- The recasting was a key request from industry and eliminates the unhelpful minor differences between the existing sectoral regimes.
- Likewise, the “simple, transparent and standardised” or “STS” regime grows out of an industry initiative to differentiate the market following the financial crisis.



GENERAL BACKGROUND AND TIMING (CONTINUED)

- By and large, deals done before 1 January 2019 are grandfathered, but repeat issuance structures will be caught the first time they issue on or after that date.
- There are significant areas of uncertainty when it comes to the geographic scope of the regulation. The market has developed a number of solutions, but these are not complete or officially endorsed.
- A large number of regulatory technical standards, implementing technical standards and guidelines are needed. These are mostly still outstanding, creating additional disruption and uncertainty in the market.



RISK RETENTION

| Feature | Former Regime | Securitisation Regulation |
|--|--|---|
| Retention Rate | 5% | Unchanged |
| Retention methods | 5 accepted methods, including vertical slice, originator share, random selection, first loss (portfolio) and first loss (each asset) | Unchanged |
| Eligible Retainers | Originator, sponsor, original lender | Originator, sponsor, original lender. “Sole purpose” originators formally banned |
| Adverse selection test | None, although note general CRR rules against adverse selection | Deal lifetime (up to 4 year) test |
| Retention on a consolidated basis | For EU-regulated financial groups | Unchanged |
| Retention obligation on | Investors to check that retention is being done correctly | Originator, sponsor, original lender. Originator in the absence of agreement. Investors required to check |
| Sanctions | Capital penalties, disposal, appropriate remedial measures | Fines (up to 10% of annual net turnover on a consolidated basis), public censure, bans |

TRANSPARENCY

| Feature/Disclosure Item | CRA3 Article 8b | Securitisation Regulation (public and private) |
|--|------------------------------------|---|
| Parties designate a reporting entity as among issuer, sponsor and originator | Yes | Yes |
| Loan level data required | Quarterly | Quarterly (monthly for ABCP) but note outstanding ESMA template |
| Full deal documents required | Without delay following issuance | Before pricing, note “essential for the understanding of the transaction” |
| Deal summary (where no prospectus) | Without delay following issuance | Before pricing |
| STS notification (where applicable) | N/A | Before pricing |
| Investor reports | Quarterly | Quarterly (monthly for ABCP) |
| Event-driven disclosure | Without delay | Without delay, note distinction between public and private transactions |
| Disclosure mechanics | On an ESMA-maintained SFIs website | To a securitisation repository (where available) for public deals. If not available, to a website meeting certain criteria To investors, potential investors and competent authorities for private deals |

DUE DILIGENCE

- Obligations expanded to all “institutional investors”. This will now cover a range of new types of investor.
- The prevailing market view is that it also catches non-EU Alternative Investment Fund Managers (AIFMs) who are registered for marketing in the EU under Article 42 of AIFM Directive. These entities would not previously have been caught. A request for guidance on this point has been put into ESMA.
- Substantive diligence obligations largely replicate existing due diligence rules, and can be broken down into three categories:

1
checking compliance by other parties with their obligations (notably risk retention, disclosure and STS).

2
pre-investment diligence on the deal structure and features, and on the underlying exposures.

3
establishment and execution of ongoing diligence procedures throughout the investment in the securitisation.

- Explicit permission to delegate due diligence obligations to a managing institutional investor.
- No provision for level 2 guidance.

WHERE WE ARE NOW

Securitisation Regulation began to apply on 1 January 2019, but:

- Level 1 text was available but none of the Regulatory Technical Standards, Implementing Technical Standards or guidelines were in place.
- That situation largely persists, with none of the main detailed rules or guidance having been published in the Official Journal. Some national rules on reporting private securitisations have, however, been published.
- For the moment, the market is relying on transitional measures and advanced drafts of the main detailed rules, including:
 - Revised draft disclosure RTS and ITS from ESMA (31 January 2019), together with a Q&A (17 July 2019).
 - Final draft risk retention RTS from EBA (31 July 2018).



WHERE TO GO NEXT

Current expectation is for these key technical standards and guidelines to be published Q1 2020

- Disclosure RTS is expected to be adopted by the Commission in September and published in the OJ as early as January 2020.
- Risk retention RTS are likely to be published in Q1 2020.
- For some strands of work under the CRR amendments, reliance is being placed on legacy work done until new technical standards or guidelines can be developed (e.g. ITS on penal capital charges under Article 270a or CQS mapping under Article 270e).
- Others (under the CRR amendments) remain in the pipeline, some quite far away.



WHAT HAPPENS WHILE WE WAIT

- Acknowledgement by authorities of the awkwardness of some transitional arrangements, especially the CRA3 templates, and some moves to accommodate (30 November 2018 ESAs statement).
- In the meantime, industry is “muddling through”, especially with respect to how disclosure is approached.
 - This depends largely on factors such as asset class, whether the deal is public or private, and whether the deal is listed.
 - This can mean e.g. sticking to previous reporting patterns, adopting the CRA3 templates or adopting the draft Article 7 templates ahead of formal approval and publication in the OJ.
- Deal documents widely acknowledge the need for a change in approach once disclosure templates become effective, but must allow for uncertainty around timing, content and transitional arrangements (or lack thereof) once these are adopted.



LIABILITIES UNDER THE NEW SECURITISATION REGULATION

Regulatory versus contractual

- Who are the in-scope parties? EU sponsors, originators, original lenders, SSPE and institutional investors.
- Primary obligations for EU sponsors, originators, original lenders and SSPE to comply (Article 7, Article 9).
- But is this the end of the story for non-EU sponsors, originators, lenders and SSPE?
- Primary obligations for institutional investors to conduct due diligence (Article 5).
- Article 5 will normally require the investors to bring originators back into the regime generally as a contractual matter.
- The lack of consensus on the allocation of liabilities/risks under the new Securitisation Regulation:
 - Where should the compliance obligations be set out? From which party? Is it an absolute obligation to comply or should it be subject to reasonableness test/carve outs?
 - Should the issuer be found liable under the Regulation, where should the regulatory fines feature in the waterfalls?
 - On the assumption that the issuer delegates most/all of the reporting functions, how are the risks of non-compliance allocated amongst the parties that are involved in the reporting?
 - Impact of non-compliance on investors – how exposed are they?

SOLUTIONS FOR THE SECURITISATION REGULATION

MARCO ANGHEBEN, EUROPEAN DATAWAREHOUSE

A UNIQUE ORGANISATION

ED was created in 2012 as part of the implementation of the European Central Bank ABS Loan Level Initiative. ED became fully operational in January and is funded and owned by a mix of market participants. ED operates as a utility to respond to the need for improved transparency to investors and other market participants in ABS.

SUPERVISORY BOARD: Consists of currently 13 representatives and is responsible for the strategy and monitoring ED's operations as a market initiative.

PRICING COMMITTEE: Consists of currently 8 members from the ABS industry and is responsible for setting the fee structure for ED clients. The fees are set in line with ED's utility approach



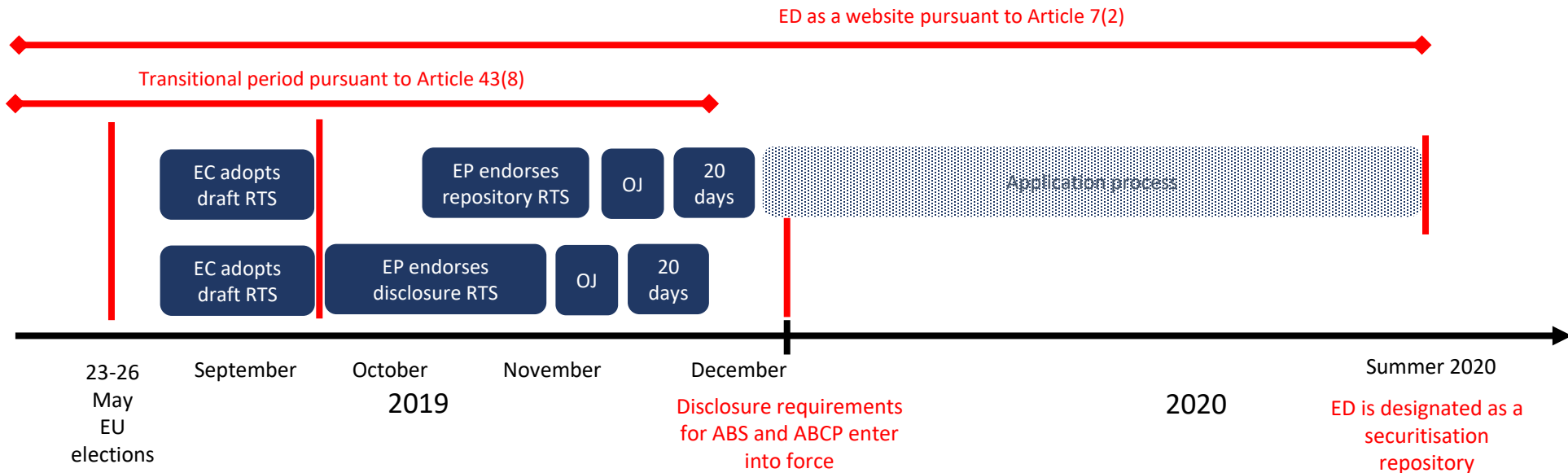
17 SHAREHOLDERS



REGULATORY TIMELINE IN 2019 / 2020

Last updated to reflect regulatory announcement from ESMA on 17 July 2019

Repository & disclosure regime



EC: European Commission

EP: European Parliament

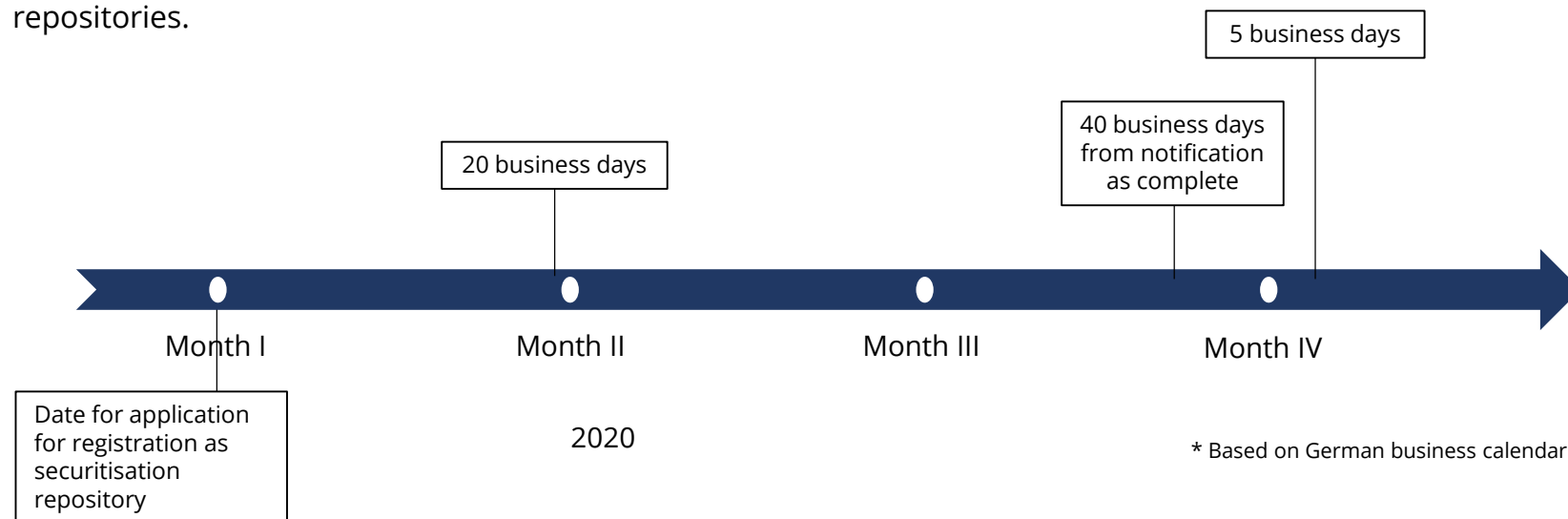
ESMA: European Securities and Markets Authority

OJ: Official Journal of the European Union – potential publication of the Level 2 of the RTS following the translation into the national languages of the European Union

RTS: Regulatory Technical Standards

SECURITISATION REPOSITORY – HYPOTHETICAL ROADMAP IN 2020*

On 12 November 2018, ESMA submitted to the EC the final draft RTS specifying the application procedures for repositories.



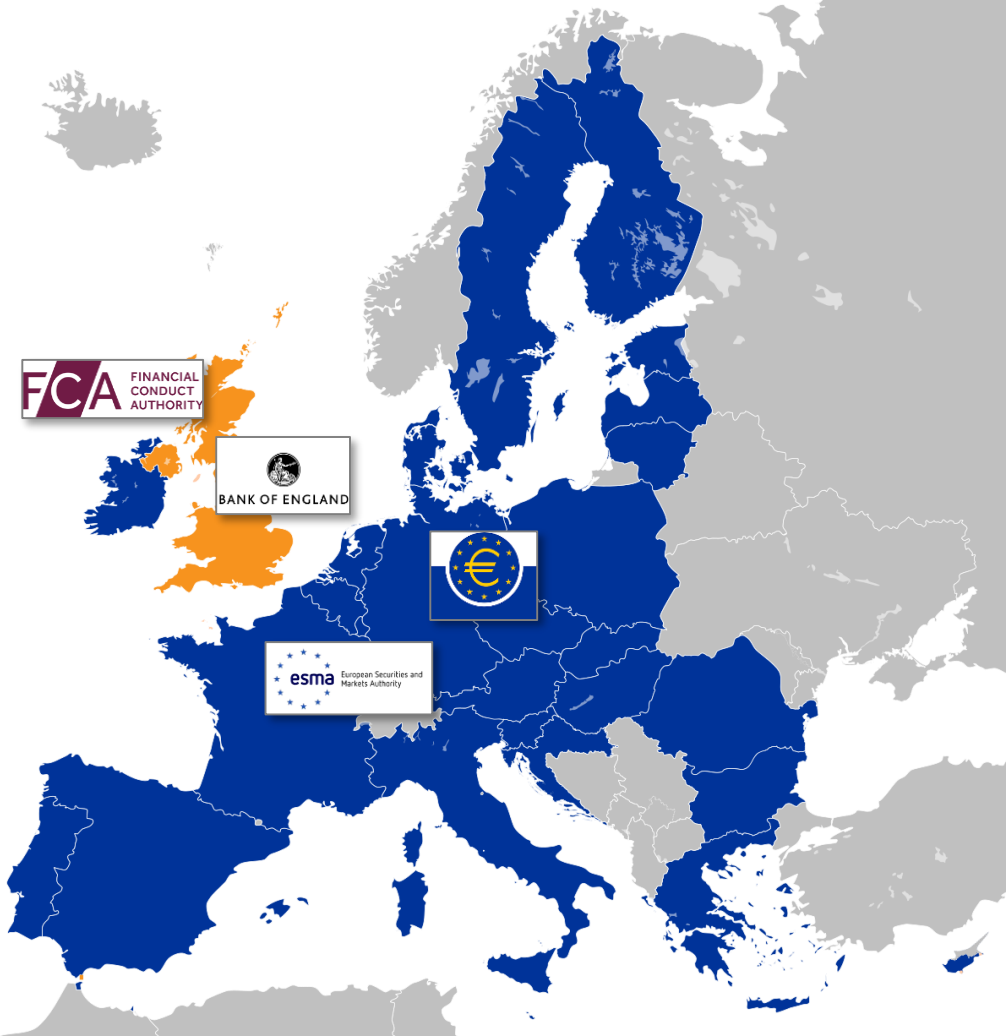
According to Article 7 (2) of the (EU) 2017/2402, **in the absence of an ESMA registered securitisation repository** the information should be made available to a website which meets the following requirements:

- A well-functioning data quality control system
- Appropriate governance standards
- Operational risk evaluation
- Protection and integrity of the information ensured by specific systems
- Record of the information for 5 years

Based on this the reporting entities may already use the ED website, EDITOR (<http://editor.eurowdw.eu>), in order to fulfill their regulatory reporting requirements prior to the ESMA registration.

** The timeline outlines our interpretation of how repositories could be operational in 2019 based on the current legislative text (Articles 10-13) and the political decision making process.*

REPOSITORY SOLUTIONS FOR THE UK AND EUROPE



ESMA PROVIDES UPDATED Q&As, XML SCHEMA AND VALIDATION RULES FOR SECURITISATION REPORTING

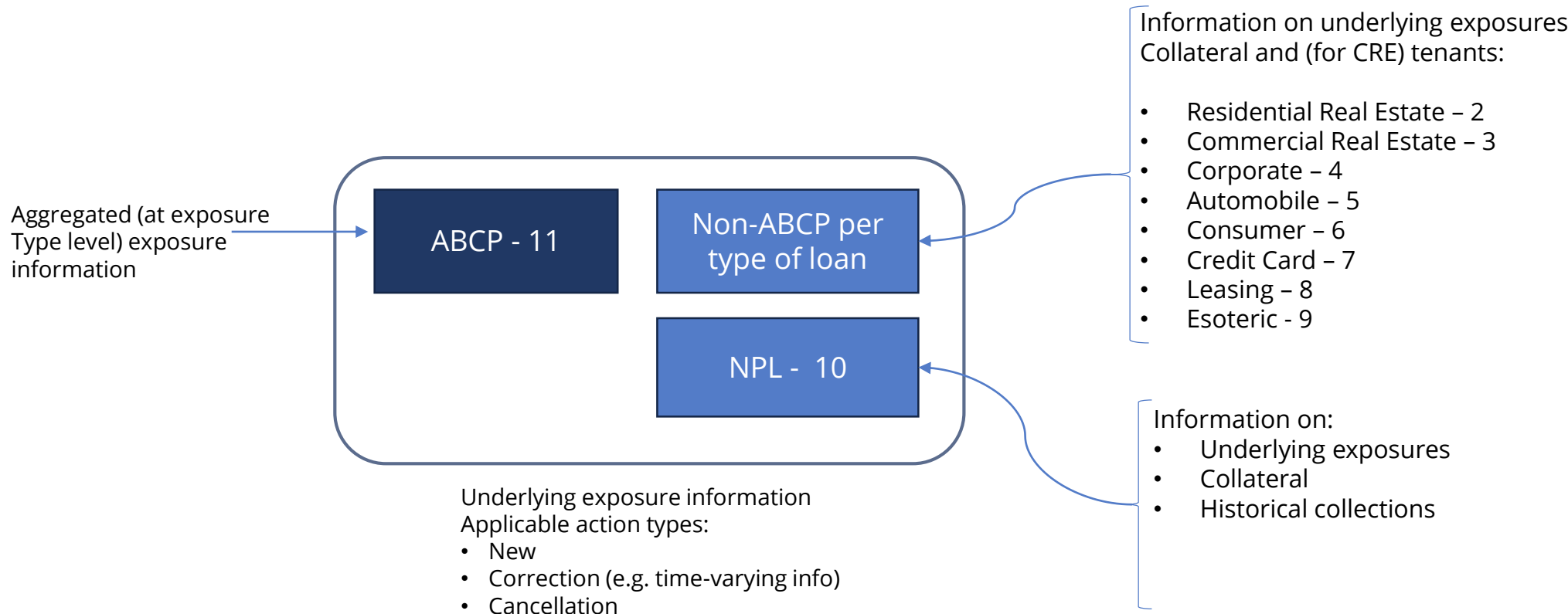
On 17th July 2019, ESMA published additional resources to assist market participants in the implementation of the disclosure requirements for the Securitisation Regulation. This includes...

- an updated set of Q&A clarifying different aspects of the draft disclosure technical standards, including how some specific fields in the templates should be completed.
- a set of reporting instructions and XML schema for the templates. As set out in Article 4 of ESMA's draft disclosure implementing technical standard, reporting of data (i.e. information covered under the templates) for all securitisations must be done using XML. These are an important input for the reporting entities as well as for a prospective securitisation repository.
- a set of validation rules, which prohibit the submission of certain combinations of information that are logically incoherent.



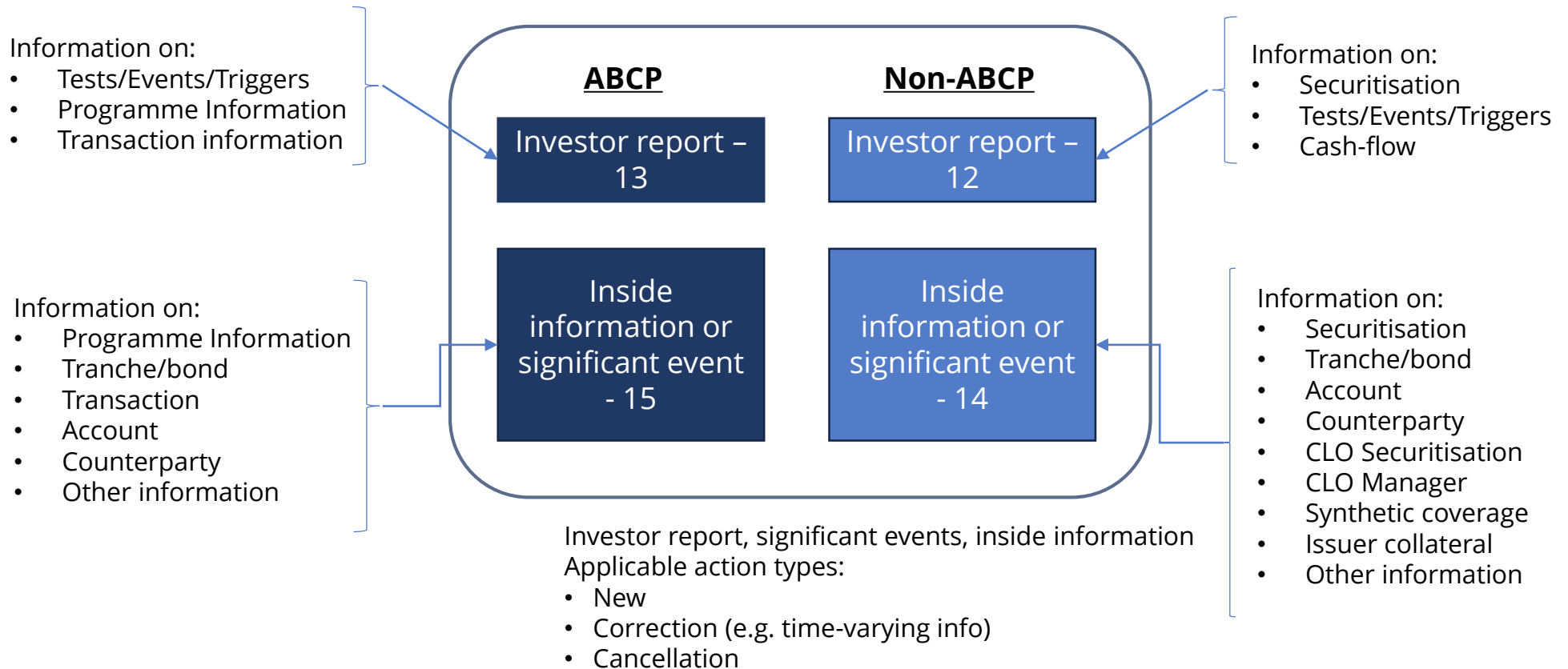
Source: <https://www.esma.europa.eu/press-news/esma-news/esma-provides-updated-qas-xml-schema-and-validation-rules-securitisation>

ESMA UNDERLYING EXPOSURES XML TEMPLATES



Source: https://www.esma.europa.eu/sites/default/files/library/esma65-8-6469_securitisation_disclosure_templates_reporting_instructions.pdf

ESMA INVESTOR REPORT & INSIDE INFORMATION OR SIGNIFICANT EVENTS



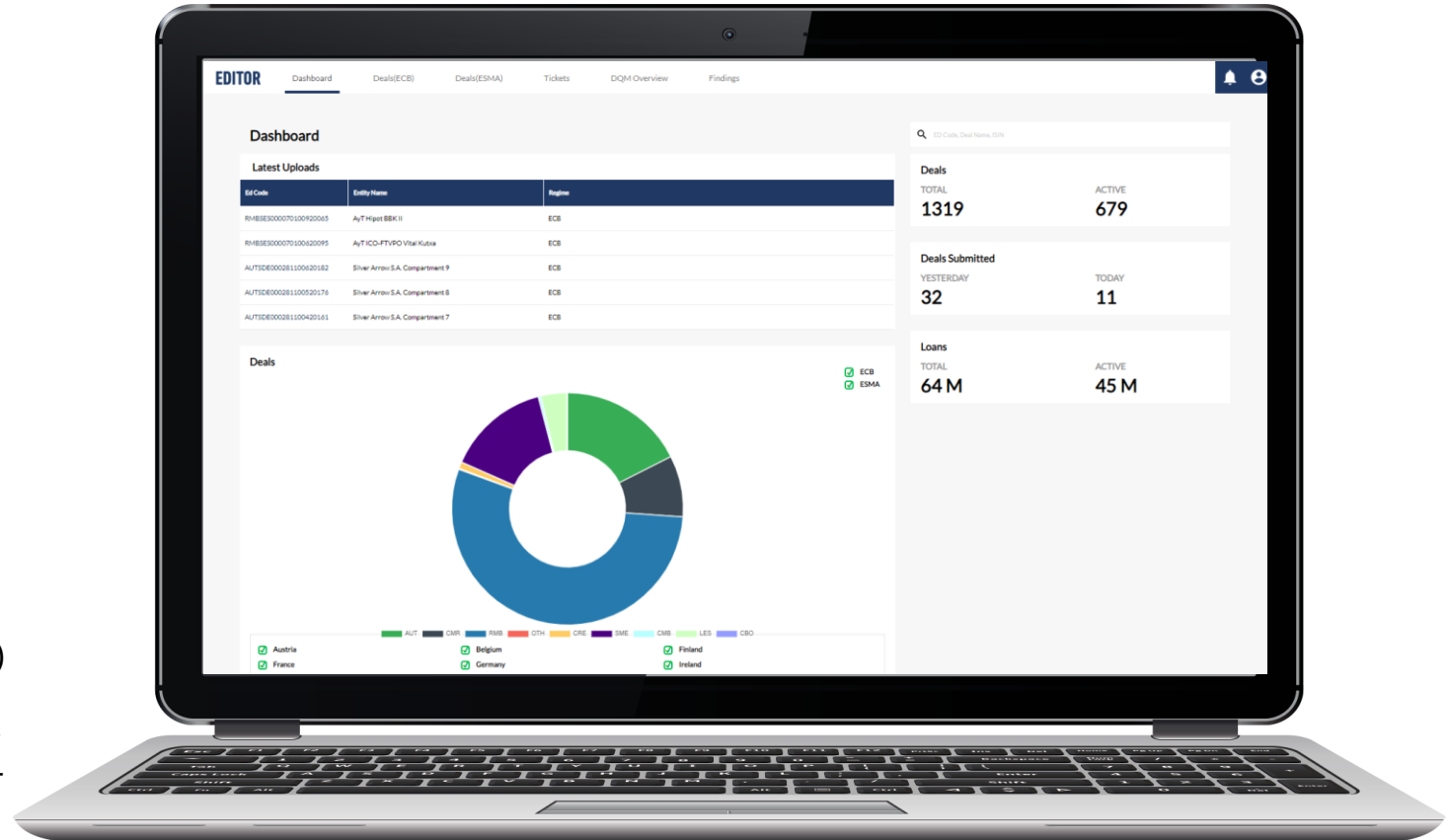
Source: https://www.esma.europa.eu/sites/default/files/library/esma65-8-6469_securitisation_disclosure_templates_reporting_instructions.pdf

EDITOR BENEFITS

EDITOR is an integrated web application for the seamless analysis and upload of the Loan Level Data (LLD)

Key Features:

- Includes both ECB and ESMA Deal Regimes
- Integrated Data Quality Tracking System (DQTS) ensures more direct communication for data quality issues
- Displays Data Quality scores (DQS1 and DQS2) at a glance
- Includes a "Private Area" in which private deals or programmes can be uploaded and accessed only by designated users



UNDERLYING EXPOSURES SUBMISSION EXAMPLE IN ESMA

Selected PCD ⓘ : 29-Nov-2018 ▾

Upload New **Publish** Cancel Submission

Summary Results Download Summary Print

Overview ⓘ

A1 ESMA Score

NA DQS1 ⓘ

PERF - Performing

Quick Statistics ⓘ

Comprehensive Report

| | |
|-----------------------------------|----------------|
| Total Loans | 5 |
| Active Loans | 5.00 (100.00%) |
| Inactive Loans | 0.00 (0.00%) |
| Borrower ID (RREL4) | 1 |
| Sum of Original Balance (RREL29) | 51.05 |
| Sum of Current Balance (RREL30) | 51.05 |
| Total Collaterals (RREC3) | 1 |
| Total Cash-flow items (IVSF2) | 1 |
| Total Test Event Triggers (IVSR2) | 1 |
| Total NPE Loans (NPEL2) | 5 |
| Total NPE Collaterals (NPEC3) | 1 |

Significant Event

| | |
|--------------------------------------|---|
| Total Tranches (SEST1) | 1 |
| Total Accounts (SESA2) | 1 |
| Total Counterparties (SESP4) | 1 |
| Total CLO Managers (SESL2) | 0 |
| Total Protection Instruments (SESV2) | 0 |
| Total Collateral Instruments (SESI3) | 0 |

Submission Status ⓘ

- ✗ LLD+IR
 - ✓ Uploaded
 - ✓ Signature Validation
 - ✓ File Validation
 - ✓ Data Extraction
 - ✗ PCD
 - ✗ Reporting Entity
 - ✓ Quick Statistics Calculation
 - ✓ ESMA Score Calculation
 - ✓ Rule Validation
- ✗ Significant Event
 - ✓ Signature Validation
 - ✓ File Validation
 - ✓ Data Extraction
 - ✗ PCD
 - ✓ ISIN
 - ✓ Quick Statistics Calculation

- Editor performs validation checks. If any validation fails, it will be listed under the "Submission Status" section with the icon ✗
- In the above case, "Publish" will be deactivated, which indicates the affected fields must be corrected and resubmitted
- A single submission related to the below contents can be cancelled if user clicks "Cancel Submission"
 - Underlying Exposure and Investor Report
 - Significant Event
 - Inside Information
- Data submission can be overwritten if re-uploaded with the same pool cut-off date.

ESMA DOCUMENT REPOSITORY

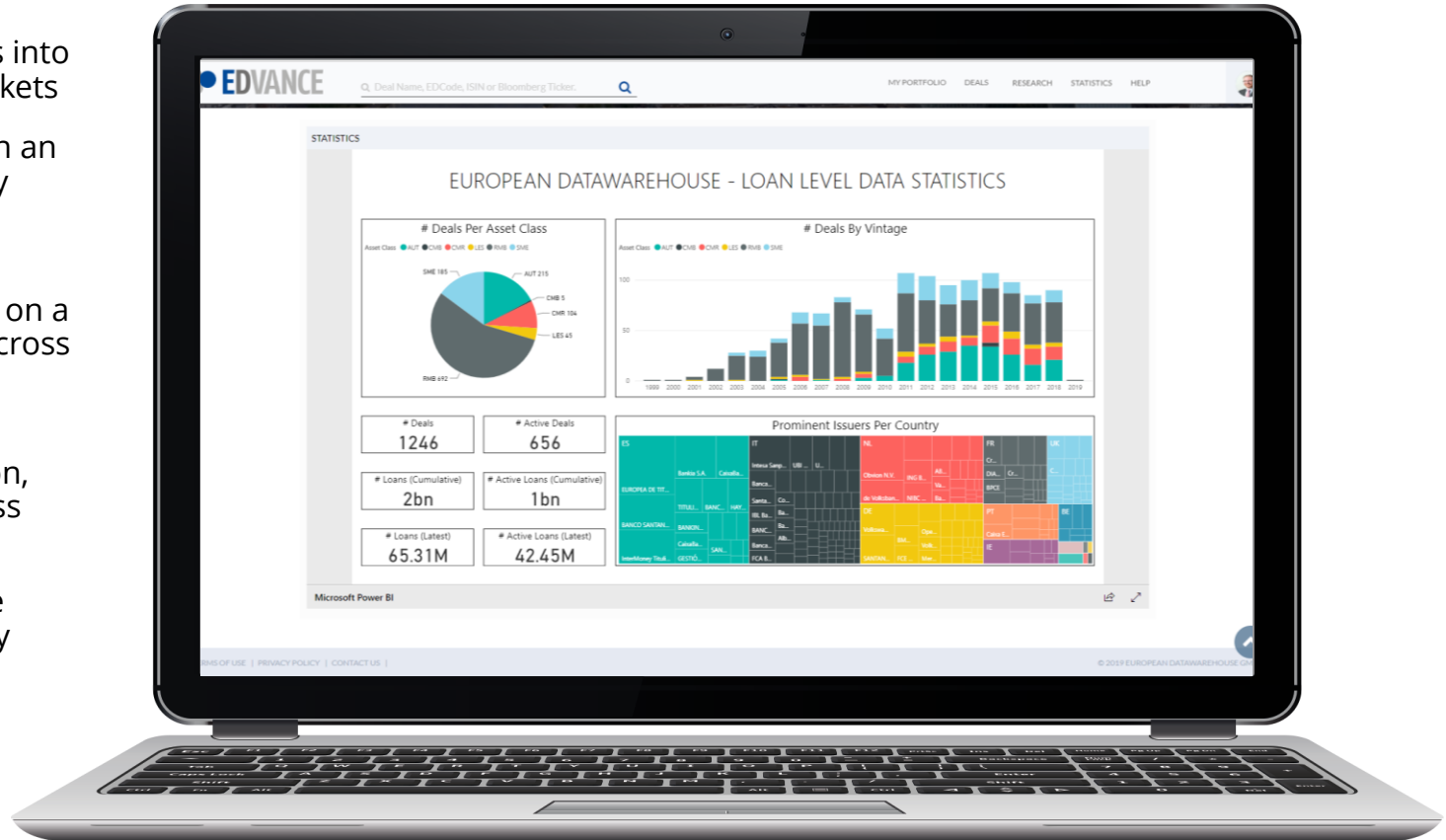
ESMA Regime - Item Types and Codes (only relevant for public deals)

| Item Types & Codes required as part of the STS regulation |
|---|
| 1 – Loan Level Data (Underlying Exposures) |
| 2 – Investor Report |
| 3 – Prospectus |
| 4 – Asset sale agreement; any relevant declaration of trust |
| 5 – Derivatives and guarantees agreements |
| 6 – Servicing; backup servicing; cash management agreements |
| 7 – Trust deed; security deed |
| 8 – Inter-creditor agreements; derivatives documentation |
| 9 – Any other underlying documentation essential for understanding of the transaction |
| 10 – STS Notification |
| 11 – Inside Information |
| 12 – Significant Event |
| 90 – General Private Documents |
| 91 – Cash Flow |

EDVANCE – CONVERT DATA INTO INSIGHT

Dive into the loan level data, make smart and accurate data-driven decisions

- Gain unparalleled access into the European credit markets
- Analyse loan-level data in an easy and convenient way
- Time series analysis, benchmarking and stratification capabilities on a deal-by-deal basis and across portfolios
- Look up Investor Report Data, deal documentation, and loan-level data across submissions
- Directly connect with the dedicated analyst for any deals or data specific questions





Q&A

THANK YOU // CONTACT US

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