



MAPLES
GROUP

A CLOser

LOOK AT REGULATORY
DEVELOPMENTS

OCTOBER 2021

INTRODUCTION

Over the past few months, there have been several new regulatory developments in the Cayman Islands, Luxembourg and Ireland that may impact CLO transactions. The Maples Group is proactively monitoring and addressing these regulatory developments to ensure that our clients' CLO transactions are compliant with any new requirements. This CLOser Look focuses on the implications of recent regulatory developments on the CLO market in particular, and provides a gateway to the more general updates that have been issued by the Maples Group.

CAYMAN ISLANDS

EU AML LIST

On 9 April 2021, an amendment to the EU Securitisation Regulation came into effect. For Cayman Islands CLO issuers, the key issue arising from that amendment is the change to Article 4 of the Securitisation Regulation, which now prevents the use of SPVs from countries on the EU AML high-risk third country list (previously this referred to the FATF black list). At this time, the Cayman Islands has not been added to the EU AML list as a "high-risk third country". In the event that the Cayman Islands should be added to such list, the Maples Group has been proactively developing solutions for clients who may be impacted. With our network of offices in various global financial centres, the Maples Group is well-placed to tailor solutions to fit all clients' particular requirements.

ECONOMIC SUBSTANCE

At the end of June 2021, new regulations were published that added partnerships to the definition of "relevant entity" under the Cayman Islands Economic Substance Regime. The categories of relevant activities and exempted activities remain unchanged. In general, CLO issuers fall outside of the requirement to file an ES Return. The Maples Group takes care of the annual ES classification notifications for CLO Issuers administered by the Maples Group. Where a CLO issuer is structured as a partnership, the Maples Group will ensure that the required notification filing is made

[Cayman Islands: Economic Substance Regime Extended to Partnerships](#)

THE REGULATORY 15/15

The Reg 15/15 is a periodic 15-minute webcast released by our Cayman Islands Regulatory team, around the 15th day of each month, providing timely updates on current regulatory developments. The September webcast covered the following topics:

- CRS and FAR / FRE
- Beneficial Ownership Regime Consultation
- Economic Substance - Key points from Town Hall Meeting
- COVID-19 Vaccination Policies

The webcast can be accessed on demand [here](#).

BENEFICIAL OWNERSHIP

The Cayman Islands Government has issued a Consultation Paper regarding Enhancement of the Beneficial Ownership Framework. This follows a commitment made by the government for a public register of beneficial ownership information. The Maples Group is actively engaged with the consultation process and has submitted comments, both directly and through industry groups. To the extent that the proposed legislative changes impact CLO issuers, we do not anticipate that any action will need to be taken by the vast majority of CLO issuers other than updating certain filings, which we anticipate would be processed by the Maples Group with information already in our possession. To the extent that there are Cayman Islands partnerships within a CLO transaction structure, an analysis of the beneficial ownership may be required as we anticipate that partnerships will be added to the Beneficial Ownership Regime. The Maples Group will proactively engage with clients where it is determined that further analysis or information is necessary.

AML REGULATIONS AND GUIDANCE NOTES

There have been no recent material changes to the Cayman Islands Anti-Money Laundering Regulations. Most CLO issuers administered by the Maples Group also benefit from our AML compliance services as we are familiar with the AML requirements and can advise clients of any action required.

FATCA / CRS REPORTING

There have been no recent material changes to the Cayman Islands FATCA / CRS reporting requirements for CLO issuers. The Maples Group handles the FATCA / CRS reporting requirements for any CLO issuers administered by the Group. CLO issuers not otherwise engaged by the Maples Group can reach out to us if they require assistance with respect to their Cayman Islands FATCA and CRS reporting requirements.

LIQUIDATIONS

While not an update in terms of regulation, as year end approaches, we thought it would be helpful to remind CLO managers that it is time to start planning the liquidation of Cayman Islands entities that have reached the end of their life cycle to avoid unnecessary fees and regulatory obligations.

In order to prevent the expense of annual 2022 government registration fees, an appointed liquidator will be required to hold the final general meeting for a company or file the final dissolution notice for an exempted limited partnership on or before 31 January 2022.

[Cayman Islands Voluntary Liquidations 2021](#)

Luxembourg

On 21 May 2021, draft amendments to Luxembourg's existing securitisation laws began making their way through the legislative process. Among other things, the draft amendments remove restrictions on the active risk management of securitised assets, such as those managed by a CLO issuer, by eliminating the current passive management limitation. The draft amendments also authorise a securitisation vehicle to grant security interests to a wider scope of beneficiaries and remove restrictions on the financing of a securitisation vehicle, allowing the entity to be financed entirely through borrowings. These amendments are expected to position Luxembourg as an attractive jurisdiction for European CLOs.

[Luxembourg Securitisation Bill And Amended Draft Law: A Bright Future For CLOS](#)



IRELAND

ESG – SUSTAINABLE SECURITISATION FRAMEWORK

Amendments to the EU Securitisation Regulation¹ came into force in April of this year.

One of the newly introduced provisions requires the European Banking Authority (“EBA”), in cooperation with other European bodies, to publish a report on developing a sustainable securitisation framework to integrate sustainability-related transparency requirements into the EU Securitisation Regulation. The report is intended to address measures implementing proportionate disclosure and due diligence requirements, as well as considering the potential impact of a sustainable finance framework on scaling up the EU securitisation market. The report is due to be published by 1 November 2021.

European CLO transactions are becoming increasingly focused on ESG. In particular, there has been a transition away from ESG negative screening to the adoption of positive ESG screening and scoring and closer alignment to Article 8 of the EU Sustainable Finance Regulation². The addition of a securitisation-specific sustainable finance framework should be welcome and will hopefully serve to accelerate the adoption of ESG targets in the securitisation industry.

CONSULTATION ON THE FUNCTIONING OF THE EU SECURITISATION REGULATION

The European Commission consultation into the functioning of the EU Securitisation Regulation closed in September 2021. The consultation ties into both the Commission’s legislative review obligations under Article 46 of the EU Securitisation Regulation, as well as the Commission’s commitments under the Capital Markets Union action plan.

Industry professionals are hopeful that this will prove to be an opportunity to improve the operation of the EU Securitisation Regulation by providing clarification on matters including jurisdictional scope and the distinction between private and public securitisations. Other matters being discussed include extending the definition of “sponsor” to encompass AIFMs and third-country investment firms. Additionally, it is hoped the Commission will explore the possibility of CLOs being capable of qualifying for simple, transparent and standardised (“STS”) status. CLOs are currently ineligible for STS certification at present due to their actively-managed status. STS status would increase investor appetite for CLOs, particularly among EU insurance undertakings.

CONSULTATION ON REGULATORY TECHNICAL STANDARDS

The EBA recently closed its consultation on the draft regulatory technical standards (“RTS”) with respect to risk retention requirements pursuant to the EU Securitisation Regulation. To date, the market has been operating on the basis of draft RTS dating from 2018, which the EBA submitted to the European Commission but were never finally adopted.

The new draft RTS are substantively based on the 2018 draft RTS, but contain some additional nuances that the market will need to digest. For example, the provisions in relation to compliance with the “sole purpose” test for limb (b) originators contain subtle changes in language. However, this amendment is not anticipated to be material and overall will affirm the principles-based approach for originators in complying with this test.

¹Regulation (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.

²Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.



CONTACTS

For further information, please speak with your usual Maples Group contact, or any of the following individuals:

CAYMAN

Scott Macdonald

Partner
+1 345 814 5317
scott.macdonald@maples.com

John Dykstra

Partner
+1 345 814 5530
john.dykstra@maples.com

LUXEMBOURG

Arnaud Arrecgros

Partner
+352 28 55 12 41
arnaud.arrecgros@maples.com

Julia Journée

Of Counsel
+352 28 55 12 71
julia.journee@maples.com

Maurice Honnen

Associate
+352 28 55 12 60
maurice.honnen@maples.com

IRELAND

Stephen McLoughlin

Partner
+353 1 619 2736
stephen.mcloughlin@maples.com

Callaghan Kennedy

Partner
+353 1 619 2716
callaghan.kennedy@maples.com

Emma Boylan

Associate
+353 1 619 7002
emma.boylan@maples.com