



Alternative Investment Management Association

International Organization of Securities Commissions
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28006 Madrid
Spain

Comments submitted via email to Consultation-2014-10@iosco.org and via
www.bis.org/bcbs/commentupload.htm

13 February 2015

Dear Mr Moor,

AIMA response to the BCBS and IOSCO Consultation Paper on criteria for identifying simple, transparent and comparable securitisations

The Alternative Investment Management Association Limited¹ (AIMA) welcomes the opportunity to submit its comments to the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) joint task force to review developments in securitisation markets titled Criteria for identifying simple, transparent and comparable securitisations (the 'Consultation Paper'). AIMA's membership includes many firms who are investors in securitisation products as well as many firms who are or have been originators and/or sponsors of securitisation products as well as firms who would like to be able to be originators and sponsors of securitisation products in the future.

AIMA welcome's the BCBS and IOSCO's efforts to provide a basis for the industry and the regulatory community to identify certain features of securitisations which may indicate those securitisations that lend themselves to easier analysis and therefore could contribute to building sustainable securitisation markets.

In our view, a properly functioning and efficient securitisation regime should be designed not only from the banking perspective but also by taking into account all parts of the market, in particular, the non-bank actors within it - such as insurance companies (which Solvency II is addressing) and funds whether such non-bank actors are non-bank originators/sponsors or investors.

A careful balance will need to be struck between the tighter transparency and other product requirements to which a qualifying securitisation must be subject and the capital changes and other requirements applicable to originators and sponsors in relation to qualifying securitisations.

Importantly, in order to achieve the desired benefits of a move toward encouraging market based finance, the requirements should be set in a way that would not stifle issuance or unduly limit the types of non-bank originators or sponsors for example by constraining the nature of the investments to lower yielding senior tranches which is likely to result in significant constriction of the available investor base (banks, insurance companies and indeed the ECB which are themselves significantly constrained as investors in other ways).

In general, AIMA agrees that the criteria set out in the Consultation Paper could be helpful in identifying simple, transparent and comparable securitisations. However, we have significant concerns with the proposals which we discuss in the annex to this letter and relate to the following issues:

¹ As the global hedge fund association, the Alternative Investment Management Association (AIMA) has over 1,500 corporate members (with over 8,000 individual contacts) worldwide, based in over 50 countries. Members include hedge fund managers, fund of hedge funds managers, prime brokers, legal and accounting firms, investors, fund administrators and independent fund directors. AIMA's manager members collectively manage more than \$1.5 trillion in assets.

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- **Recognition of the value of the entire securitisation market:** we feel that it is important that the introduction of the criteria does not lead to a stigmatisation or under-development of the remaining securitisation sector. Indeed, the review of the securitisation framework should be a comprehensive exercise that not only focuses on improvements in the simple and non-complex space but also attempts to develop the entire securitisation framework as a robust source of non-bank finance;
- **Subjective criteria:** AIMA considers that the criteria adopted should be made more objective and it should be clearer how they are to be applied. For example, the document setting out the criteria should state whether each of the criteria are to be given an equal weight;
- **Asset selection and transfer:** AIMA does not consider that it is necessary to have a blanket ban on managed collateralised loan obligations (CLOs). CLO managers can add clear value, while still being constrained to standardised tests and criteria, and do not manage on a 100% discretionary basis;
- **Redemption cash flows:** AIMA considers that setting a preference to avoid assets that need to be refinanced would be unnecessarily restrictive and exclude a significant proportion of assets used in the banking industry, such as corporate and CRE loans;
- **Standardisation of securitisation transactions' documentation:** Given that the criteria are stated to be non-exhaustive and non-binding, we do not consider that standardisation of securitisation transactions' documentation should be obligatory. However, we consider that where legislation imposes obligations on a participant in a securitisation transaction which are dependent on information being provided by another party to the transaction, a corresponding disclosure obligation should be placed on the other part(y/ies) to the transaction and any standardised template should take these obligations into account. In addition we would note that it is currently the case that many types of securitisation documents have already been standardised by market forces. Any standardisation should not be developed in a way that discounts the need for investors to perform due diligence on the assets and their own risk analysis.

We hope you find our comments useful and would be more than happy to answer any questions you may have in relation to this submission.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J. Król", written in a cursive style.

Jiří Król
Deputy Chief Executive Officer
Head of Government & Regulatory Affairs



Annex

AIMA's response to the questions posed in the Consultation Paper

1. Do respondents agree that the criteria achieve the goals they aim to achieve? In particular, do respondents believe that the criteria could help investors to identify “simple”, “transparent” and “comparable” securitisations?

In general, AIMA agrees that the criteria set out in the Consultation Paper could help to provide a basis for the industry and the regulatory community to identify certain features of securitisations which may indicate those securitisations that lend themselves to less complex analysis and therefore could contribute to building sustainable securitisation markets. However, as the criteria are stated to be non-exhaustive and non-binding, we feel we feel that it is important that the introduction of the criteria does not lead to a stigmatisation or under-development of the remaining securitisation sector. Indeed, the review of the securitisation framework should be a comprehensive exercise that not only focuses on improvements in the simple and non-complex space but also attempts to develop the entire securitisation framework as a robust source of non-bank finance

We also think that any criteria adopted should be objective and it should be clear how they are to be applied. Some of the proposed criteria are subjective and leave questions about how they should be applied. For example, one of the criteria talks about needing to have a “suitable performance history.” This example also raises questions about who decides whether the criteria have been met and on what basis. In other words, there is no proposed method for scoring the criteria and no indication of what benchmark the criteria should be judged against. It is also not clear whether a securitisation would have to meet all of the criteria and whether each of the criteria are to be given an equal weight.

2. Do respondents agree with the STC criteria set out in the annex of this paper? In particular, are they clear enough to allow for the development by the financial sector of simple, transparent and comparable securitisations? Or do respondents think they are too detailed as globally applicable criteria? The annex provides guidance on each criterion. Which additional criteria would respondents consider necessary, if any, and what additional provisions would be useful or necessary to support the use of the criteria? What are respondents' views on the “additional considerations” set out under some criteria in the annex? Should they become part of the criteria? Are there particular criteria that could hinder the development of sustainable securitisation markets due, for example, to the costliness of their implementation?

In general, AIMA agrees that the criteria could be helpful. However, we have certain concerns with the proposals relating to asset selection and transfer and redemption cash flows.

Asset selection and transfer

On page 14 of the Consultation Paper, the BCBS and IOSCO set out the criteria for asset selection and transfer as follows:

“Whilst recognising that credit claims or receivables transferred to a securitisation will be subject to defined criteria, the performance of the securitisation should not rely upon the initial and ongoing selection of assets through active management on a discretionary basis of the securitisation's underlying portfolio. Credit claims or receivables transferred to a securitisation should be whole portfolios of eligible credit claims or receivables, or should be randomly selected from those satisfying eligibility criteria and **may not be actively selected, actively managed or otherwise cherry-picked on a discretionary basis.** Investors should be able to assess the credit risk of the asset pool prior to their investment decisions.”



This would therefore exclude all managed collateralised loan obligations (CLOs). AIMA does not consider that it is necessary to have a blanket ban on managed pools, given that:

- CLO managers can add clear value, while still being constrained to standardised tests and criteria, and do not manage on a 100% discretionary basis;
- Comprehensive data is available that compares a manager's track record with the loan indices, making it possible to assess the value of the management team;
- Managers already report the date, price and motivation for every trade in standardised monthly reports; and
- Base management fees are typically 15bps senior and 35bps subordinated, to incentivise the manager to maintain the credit quality of the pool and avoid breaching coverage tests.

Redemption cash flows

On page 15 of the Consultation Paper, the BCBS and IOSCO set out the criteria for redemption cash flows as follows:

"Liabilities subject to the refinancing risk of the underlying credit claims or receivables are likely to require more complex and heightened analysis. To help ensure that the underlying credit claims or receivables do not need to be refinanced over a short period of time, there should not be a reliance on the sale or refinancing of the underlying credit claims or receivables in order to repay the liabilities, unless the underlying pool of credit claims or receivables is sufficiently granular and has sufficiently distributed repayment profiles."

AIMA considers that setting a preference to avoid assets that need to be refinanced would be unnecessarily restrictive and exclude a significant proportion of assets used in the banking industry, such as corporate and CRE loans. We consider that it would be more proportionate to require that a pool of liabilities subject to the refinancing risk of the underlying credit claims or receivables should be granular and have a sufficiently distributed repayment profile.

3. What are respondents' views on the state of short-term securitisation markets and the need for initiatives with involvement from public authorities? Do respondents consider useful the development of differentiating criteria for ABCP, in a manner similar to that of term securitisations? The BCBS and IOSCO would particularly welcome any data and descriptions illustrating the state of short-term securitisation markets by jurisdiction and the views of respondents on concrete comparable criteria that could be applied to short-term securitisations.

No comment

4. What are respondents' views on the level of standardisation of securitisation transactions' documentation? Would some minimum level of standardisation of prospectuses, investor reports and key transaction terms be beneficial? Do respondents think there are other areas that could benefit from more standardisation? Would a standardised template including where to find the relevant information in the prospectus be helpful? The BCBS and IOSCO would particularly welcome a description, by jurisdiction, of the extent to which different elements of initial documentation are standardised.

Given that the criteria are stated to be non-exhaustive and non-binding, we do not consider that standardisation of securitisation transactions' documentation should be obligatory. However, we consider that where legislation imposes obligations on a participant in a securitisation transaction which are dependent on information being provided by another party to the transaction, a corresponding disclosure obligation should be placed on the other part(y/ies) to the transaction and any standardised template should take these obligations into account. For example, in the EU, an alternative investment fund manager (AIFM) that is authorised under the Alternative Investment Fund Managers Directive (AIFMD) and wants to make investments in securitisation positions on behalf of one or more the alternative investment funds (AIFs) it manages will be required to comply



with certain qualitative requirements imposed by Article 17 of the AIFMD and expanded upon in Articles 50 to 56 of the delegated Level 2 regulation relating to the AIFMD (the Level 2 Regulation). Article 52 of the Level 2 Regulation lays down certain qualitative requirements that the **AIFM must ensure** that the sponsor or originator meet before an AIFM may assume exposure to the credit risk of a securitisation on behalf of its AIFs. It will be extremely difficult for an AIFM to ensure these requirements are met without the cooperation of the sponsor and originator and hence we consider that there should also be an obligation imposed on the sponsor and originator to comply with these obligations.

In addition we would note that it is currently the case that many types of securitisation documents have already been standardised by market forces. Any standardisation should not be developed in a way that discounts the need for investors to perform due diligence on the assets and their own risk analysis.