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Ref. DK: VER/SEC
Ref. BdB: BA.01
Prepared by Ar/To

Comments on Consultative Document:

4 February 2016

Capital treatment for “simple, transparent and comparable”
securitisations

Enclosure

GBIC comments

Dear Sir or Madam,

The German Banking Industry Committee (GBIC) very much
appreciates the opportunity to comment on the Basel Committee’s
consultative document on Capital treatment for “simple, transparent
and comparable” securitisations.

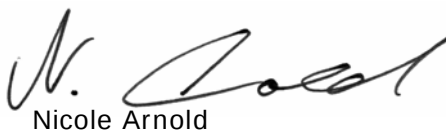
Please find enclosed our response to this consultation.

We hope you will find these comments helpful and would be happy
to discuss these or any other issues relating to the STC framework
with you.

Yours sincerely,
on behalf of the German Banking Industry Committee,
Association of German Banks


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Comments

on BCBS Consultative Document Capital treatment for “simple, transparent and comparable securitisations” (BCBS 343)

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Berlin, 4 February 2016

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Comments on BCBS Consultative Document Capital treatment for “simple, transparent and comparable securitisations” (BCBS 343)

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Comments on BCBS Consultative Document Capital treatment for “simple, transparent and comparable securitisations” (BCBS 343)

General comments

We welcome the fact that the Basel Committee on Banking Supervision (BCBS) wants to integrate the criteria for identifying simple, transparent and comparable (STC) securitisations developed jointly with the International Organization of Securities Commissions (IOSCO) into the new Basel framework for securitisations. A reduction in capital requirements for STC securitisation will, in our view, reinforce incentives for banks to originate or sponsor securitisation transactions and invest in securitisation positions. Furthermore, we think that it reflects the lower risk of these securitisations.

Our overarching objective is still a consistent set of criteria and thus scope of regulation, complemented by appropriate capital requirements which will create legal certainty and incentives for all market participants – for the securitisation industry when originating transactions, for investors when conducting their due diligence, and for regulators in performing their oversight.

Scope

Unfortunately, we are of the opinion that neither the scope of the STC definition nor the proposed reduction in regulatory capital are sufficient. In order to create an international level playing field, we advocate taking into account the ongoing legislative work at European level and the report on synthetic securitisation published by the European Banking Authority (EBA) on 18 December 2015. We propose that, first, securitisation positions in multi-seller ABCP programmes or in transactions of those programmes and second, synthetic securitisation should both qualify as STC securitisations as recommended from the EBA. Third, the proposed reduction in regulatory capital for STC securitisations should at the very least be increased to match the European Commission’s proposals for amending the securitisation rules in the Capital Requirements Regulation (CRR).

We firmly believe, however, that the level of capital required under Basel II is still appropriate for high-quality securitisation and should be taken into account when calibrating the capital requirements for STC securitisation. This applies in particular to the risk weights determined under the External Ratings-Based Approach (SEC-ERBA), which are currently far too high for STC securitisations. Given the reduced structural risks of STC securitisation, we would suggest retaining the current floor risk weight of 7% for institutions using the IRBA and applying it both under the SEC-IRBA and SEC-ERBA. Possibly, the idea could be considered of reducing the risk weights for STC securitisation by a segment-specific calibration.

Notwithstanding our general support for the European Commission’s proposals, we believe a number of amendments will be needed to make them work. We have therefore included our comments on the Commission’s proposals in **Annex 1 and 2** to this response.

A principles-based approach

To ensure a smoothly functioning securitisation market, it is highly important that a securitisation with lower structural risk gets a lower capital surcharge than does a securitisation with higher structural risk.

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The lower structural risk will be achieved by meeting a set of criteria which avoid complex securitisation structures and risky underlying assets. To improve the market acceptance of securitisations, we suggest that these criteria should not be formulated in too detailed a fashion. The BCBS’s consultative document contains added additional guidance (on nature of assets, for example). These explanations are too detailed for a global standard, would rule out the application of enhanced transaction models in the future and do not reflect commonly accepted market practice. As we understand it, the additional guidance is for explanatory purposes only and is not part of the proposed requirements. With this in mind, we would recommend deleting the additional guidance to avoid inconsistent interpretation in future regulation processes. In our view, the criteria should be comparatively generic and principles-based, as proposed in the joint BCBS-IOSCO consultation paper.

Asset-backed commercial paper (ABCP)

The BCBS and IOSCO did not cover multi-seller ABCP in their paper of July 2015. Consequently, there are no proposals for reduced capital requirements for STC ABCP in this consultation paper. We understand, however, that the BCBS and IOSCO are currently considering whether ABCP should be incorporated into the scope of STC securitisations and how STC criteria for this type of securitisation could be designed. As multi-seller conduits differ from the usual structure of a term securitisation, there should be specific high-quality criteria for multi-seller conduits at the transaction and at the programme level. In **Annex 3**, we outline which of the STC criteria proposed by the BCBS and IOSCO should be applied at the transaction and which should be applied at the programme level. We also describe how these criteria should be adjusted in order to better capture the special nature of multi-seller ABCP programmes.

Synthetic securitisation

If making securitisation markets more secure, transparent and attractive to a broader group of investors in order to enlarge lending, appropriate STC criteria play a key role to reach this aim. Limiting the application of STC criteria to true-sale securitisations – as only one type of credit risk mitigating transactions – would not only impede the desired recovery of securitisation markets but would also limit the markets lending capacity below actual levels, as all non-STC transactions would drop out the investment scope of institutional non-bank investors. We therefore strongly recommend degenerating the STC criteria from the used type of risk mitigation and extending their scope and developing special STC criteria for synthetic securitisation programmes. We firmly believe that qualifying criteria can be identified to cover all required aspects of simple, transparent and comparable transactions and would be happy to play a constructive part in this process. **Annex 4** contains a proposal we have developed to this end.

We would urge the Basel Committee to consider at the very least allowing reduced capital requirements for specific positions in synthetic securitisation. The European Commission proposes to privilege retained senior position if the securitisation meets the STS criteria, if the securitisation is backed by a pool of SME loans and if the not retained position is guaranteed or fully funded. In our view this would help, as a first step, until specific criteria are developed for synthetic securitisations.

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Replies to the questions

Question 1 – Do respondents agree with the rationale for introducing STC criteria into the capital framework? Are there any other aspects that the Committee should consider before introducing STC criteria into the capital framework that are not already reflected in the rationale above?

We agree with the rationale for introducing STC criteria into the capital framework. We share the Basel Committee’s view that STC criteria are better able to capture the nuances and qualitative elements of structures, thus increasing confidence and helping to mitigate the uncertainty related to asset risk, structural risk and operational risk. We also support the conclusion that a reduction in the conservatism of risk weights for STC transactions would be justified.

One additional point should be taken into account when thinking about the calibration of capital requirements for STC securitisation. It is true that, in principal, the Basel II capital requirements were already in force during the financial crisis. But Basel II offered a transitional period for applying the risk weights. Basel II risk weights were consequently not applied to all securitisation positions and, as a result, the Basel II calibration was not tested in the context of the financial crisis. We believe this should be borne in mind when calibrating the risk weight for STC securitisations.

Question 2 – Do respondents agree that, for the purpose of alternative capital treatment, additional criteria are required? What are respondents’ views regarding the additional criteria presented in Annex 1?

D15. Credit risk of underlying exposures

This criterion requires the underlying exposures not to exceed certain ceilings of risk weights under the Standardised Approach for credit risk. In our opinion, this requirement is very problematic because it would lead to the exclusion of many corporate exposures that are successfully securitised today.

The key point, in our view, is that investors are able to adequately assess the quality of the underlying assets and we do not regard this assessment as complicated or challenging in terms of the level of inherent uncertainty. The criterion of “simplicity”, as we see it, should refer to the simplicity of the assessments. An assessment may be deemed simple if the following prerequisites are met: (i) the credit and business processes, especially the acceptance policy and underwriting standards but also the collection and dunning process as well as the internal controls and internal audits, should be the same for the non-securitised and the securitised portfolio, (ii) underwriting standards should have been substantially stable over time and (iii) transparent information, including vintage curves, should exist about the historical performance and development of the non-securitised portfolio and former securitised portfolios. Provided these conditions are satisfied, investors can easily compare the performance of securitised and non-securitised loans. The quality and performance of previous portfolios, together with

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forward-looking macroeconomic information, then offer a straightforward basis on which to assess the likely quality and performance of the securitised portfolio. In addition, it is important that the loans to be securitised are selected randomly from a target portfolio to avoid assessment bias. This random selection will guarantee that the quality of the underlying securitised exposures is comparable to the non-securitised portfolio, which is one main feature of “comparable” securitisations.

To simplify the assessment and to reduce uncertainty, it is reasonable to exclude loans that are in default under Basel II (as implemented in the CRR) and that show evidence of impairment according to the applicable accounting standard and require specific allowances. Furthermore, to make matters more attractive for investors and to exclude loans that could indicate a significant increase in credit risk, it is common practice with existing high-quality ABS to exclude – as of the cut-off date - delinquent loans and to require at least one or sometimes even two payments to have been made before securitisation. As a result, such securitisations are “simple” and “comparable”.

If, however, major parts of the originated portfolio are excluded from securitisation because they are linked with higher risk weights, we believe that the intended effects of boosting financing opportunities for SMEs and creating growth and jobs will not be achieved. Owing to Basel III and the increased capital requirements set by the EBA and ECB to make financial institutions more resilient, capital has become a scarce resource in credit institutions, making it difficult to expand lending. As a result, many banks now focus their lending business on customers which absorb lower levels of capital. These companies do not generally experience problems in obtaining funding in the form of loans, for example. It is therefore vital, in our view, to also allow securitisations to qualify if the loans have been originated in the normal course of business based on transparent underwriting standards which are not less strict than the underwriting standards that apply to exposures that are not securitised. This would enable the transfer of credit risk, free up capital for new lending and support the real economy.

We understand criteria A3 (payment status) and A4 (consistency of underwriting) as safeguards against the inclusion of high-risk underlying exposures. Criterion A4 requires exposures to be originated in the ordinary course of the originator’s business pursuant to underwriting standards that are not less stringent than those the originator applies to the origination of similar exposures which are not securitised. In addition, criterion A3 requires at least one payment to have been made and excludes defaulted and credit-impaired exposures. With this in mind, we see no need to exclude further exposures shortly after origination. For these reasons, we suggest that criterion D15 be deleted.

D16. Granularity of the pool

Criterion D16 envisages that, at the portfolio cut-off date, the aggregated value of all exposures to a single obligor should not exceed 1% of the aggregated outstanding exposure value of all exposures in the portfolio.

We agree that this threshold is appropriate for retail transactions. With respect to wholesale transactions, however, we are of the opinion that it is too low. In our view, a threshold of 5% is necessary. To allow for

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sufficient diversification, we propose the following: a second aggregate threshold of 20% should be introduced where the concentration of a single group of connected clients may not exceed a proportion of between 3% and 5% in relation to the securitised portfolio. For the other 80%, we propose a threshold of 3% to diversify the exposures in the less granular sub-portfolio.

Question 3 – What are respondents’ views on the compliance mechanism and the supervision of compliance presented in this consultative document?

The BCBS requires the originator/sponsor and also, independently, the investor to assess compliance with the STC criteria for regulatory capital purposes. Supervisors would review the preferential regulatory capital treatment assignments made by the banks that they supervise during the normal supervisory process. Measures taken by supervisors would concern material misrepresentations or omissions. The STC transaction would have to be certified by a written attestation of the securitising parties.

We welcome the BCBS’s clarification that supervisors should only take remedial action in the event of material misrepresentations or omissions. If the originator, however, is subject to legal liability or regulatory action then, in return, originator should at least have the right to request and obtain a binding confirmation of conformity after the self-assessment of the criteria that certain of the requested criteria under A through C are met. We believe that this would be necessary from a prudent perspective of the originator and as part of his legal risk management to reduce his regulatory risk that can incur in case of a different interpretation as to whether a certain criterion is fulfilled in the special case. Different to a certification such confirmation could not cause any moral hazard as indicated by the Committee, because the originator would have to provide a self-assessment and to give reasons why in his opinion a certain criterion is met. Furthermore, the possibility of obtaining such confirmation would have the advantage to reduce reputational risks both for originators but also for the STC-securitisation market because it would help avoid cases that “supervisor [will] not be satisfied with a bank’s determination” which would make market participants insecure and which would adversely impact the further development of the STC-securitisation market.

Question 4 - What are respondents’ views on the alternative capital requirements for STC securitisation presented in this consultative document?

We expressly welcome favourable capital treatment of “simple, transparent and comparable” securitisations. We also welcome the proposed method of calculating the alternative treatment of exposures in STC securitisations by rescaling the p-parameter and the SEC-ERBA risk weights. In our view, this approach will keep the entire capital treatment of securitisation positions comparatively simple.

However, we are convinced that the proposed reductions of risk weights are nowhere near sufficient to revitalise the securitisation market. Even the reduced risk weights for STC securitisations are mostly

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significantly higher than the current risk weights for securitisation positions under Basel II. We believe that, for high-quality securitisations, the level of capital required under Basel II remains appropriate.

Although the structural risks of STC securitisations are significantly lower than those of non-STC securitisations, the Basel Committee proposes a floor risk weight for institutions using the IRBA which is significantly higher than that applied today. We strongly advocate retaining the 7% floor risk weight for STS securitisation under the SEC-IRBA.

In addition, the risk weights for STC securitisations under the SEC-ERBA (and thus IAA) should not be higher than those applying today for institutions using the IRBA for securitisations. This is because we believe that many IRBA institutions will not be ready to develop the specific IRB models that would be necessary for the various securitisation segments, such as RMBS, auto ABS, etc. due to the high development and maintenance costs of such models and a lack of data. Only a very few big financial institutions with sufficiently rich data resources will be able to develop such IRB models and achieve the required economies of scale. All other institutions will mainly have to use the SEC-ERBA (or the IAA). As there is no reason to prescribe different risk weights for IRBA and SA institutions that both use external ratings to determine risk weights, the current Basel II risk weights applying to banks using the IRB approach should also apply to institutions using the standardised approach to credit risk. We therefore see an urgent need to revise the proposed risk weights for STC securitisation.

Preliminary model calculations under the SEC-IRBA based on internal data from originators show that capital requirements for the entire securitisation are often negatively impacted by the floor capital requirements for senior bonds because the risk weight calculated before applying the floor is often significantly lower than the floor risk weight. This also applies to a 7% floor. On the other hand, the risk weight for junior tranches will sometimes increase significantly even in the context of an STS securitisation. We would urge the Basel Committee to consider attenuating the impact on the overall capital requirements for the securitisation by allowing the use of all or a portion of the excess capital requirement for the senior tranche to reduce the capital requirement for the junior tranche. In the interests of prudence, a relative floor could be introduced for junior tranches to ensure that the capital requirement for a junior tranche is higher than that for the senior tranche.

Comments on BCBS Consultative Document Capital treatment for “simple, transparent and comparable securitisations” (BCBS 343)

Comments on Annex I of BCBS 343

A1. Nature of assets

Criterion A1 requires the assets underlying a simple, transparent and comparable securitisation to be credit claims or receivables that are homogeneous. The BCBS provides additional guidance for capital purposes.

Homogeneity is an important criterion for reducing the complexity of securitisations. In principle, we support the idea of limiting the assets used in a securitisation transaction to a single type. But one asset type should not have to be split into further categories, as the additional guidance seems to require. As we understand it, the additional guidance would not allow a securitisation of commercial and retail exposures in one transaction (as happens in many auto loan and lease transactions, for example). But this is current market practice and has not lead to any difficulties in calculating the risk of the securitisation transaction.

A further subdivision of one asset type would make it necessary to split portfolios currently securitised in one transaction into several portfolios, each of which would have to be securitised separately. This would mean that all regulatory and market-driven requirements would have to be fulfilled for each transaction. For example, the assessments of rating agencies would be necessary for each transaction. Each transaction would need derivative counterparties to hedge interest rate risk. For each transaction a prospectus would have to be prepared and a cash flow model delivered, etc. In addition, the portfolio size would shrink significantly, which would impede their marketability due to decreasing liquidity of small securitisations. If the homogeneity criterion is interpreted too strictly by supervisory authorities, it will ultimately make securitisation uneconomical.

Recital 18 of the European legislative 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 standardized securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 sets out what the European Commission understands by a pool of assets that are homogenous in asset type. In our view, the distinction between asset types made here is adequate to ensure that investors perform robust due diligence and to facilitate the assessment of underlying risks.

For these reasons, it should merely be clarified that the pool of underlying assets should consist of one asset type. The additional guidance should be deleted.

Furthermore, criterion A1 requires “periodic payment streams”. The current practice with auto loans is that contractually agreed payment streams include a final payment that is higher than the monthly payments and that is secured by an asset. We would appreciate clarification that this important kind of financing will not be excluded.

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A2. Asset performance history

The additional requirement for capital purposes states that the performance history should ideally cover at least one complete economic cycle.

In our experience, it can be very difficult to assess the exact length of a complete economic business cycle and different parties may have different opinions. To avoid uncertainty, this additional requirement should clearly state how long a period needs to be covered. The phrase “ideally [...] at least one complete economic cycle” should be deleted.

For non-retail exposures with a residual maturity of one year or less a performance history of three years should be sufficient.

A3. Payment status

The criterion requires that credit claims or receivables being transferred to the securitisation do not, at the time of inclusion in the pool, include obligations that are in default. It should be borne in mind that the impairment criteria can only be checked at the time of selection for inclusion in the securitisation. It takes some time, however, for the selected exposures to be legally transferred and assigned. During this short period, there is no way to avoid some exposures going into default or becoming impaired. The exclusion of defaulted exposures should therefore refer to the time of selection provided that the underlying exposures are transferred and assigned without undue delay. In practice, the time between the selection of the portfolio and its inclusion into the securitisation does normally not exceed three months.

The criterion includes a requirement to measure and determine any material increase in expected loss. In our view, this could be difficult for the following reasons. The calculation of expected losses requires the parameters PD, LGD and EAD. These parameters are typically calculated by banks using the IRB approach, which would exclude banks that use the Standardised Approach for credit risk. On top of this practical issue, we doubt whether an increase in expected losses is an appropriate criterion at all. We would understand such a requirement if the aim were to avoid an originator mainly selecting receivables where it expects a significant increase in expected loss. However, this would be better addressed by requiring the selection of the receivables to be carried out randomly, and by specifying that no adverse selection of receivables is permitted which could hinder the performance comparison between the non-securitised portfolio and the expected performance of the securitised loans. The phrase “for which the transferor or parties to the securitisation are aware of evidence indicating a material increase in expected losses” should be deleted.

The additional guidance states that if the obligor has been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination, the obligor will be deemed credit-impaired. In practice, seasoned exposures are also securitised. This requirement would mean that for contracts originated five years ago, for instance, the originator would

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have to look back eight years even if the credit quality has been beyond question for five years. The whole requirement is excessively complicated and does not consider market practice for high-quality securitisations. The credit acceptance process is based on a policy that is the same for securitised and non-securitised exposures, and which is usually supported by scorecards for retail customers and continuously validated rating procedures for corporate customers. To guarantee a simple assessment of the securitised exposures and to give investors additional security, all exposures that are delinquent at the time of selection are excluded from the securitisation of high-quality ABS. In addition, the exposures to be securitised are selected randomly from the target portfolio. This ensures that the quality of the securitised portfolio is comparable – and typically slightly better – than the quality of the non-securitised portfolio. We are of the opinion that that such arrangements should suffice for STC securitisations and advocate deleting this additional requirement.

**Annex 1 – GBIC-Comments Regulation laying down common rules on
securitisation and creating a European framework for simple and
transparent securitisation COM (2015) 472**

Comments

Regulation laying down common rules on
securitisation and creating a European
framework for simple and transparent
securitisation COM (2015) 472

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Comments Legislative proposal on securitisation criteria for simple, transparent and standardised (STS) securitisation

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Comments Legislative proposal on securitisation criteria for simple, transparent and standardised (STS) securitisation

General remarks

We appreciate the opportunity to comment on the EU-Commissions legislative proposals (i) for a regulation of the European Parliament and of the Council laying down common rules on securitisation and creating a European framework for simple and transparent securitisations COM (2015) 472 and (ii) for a regulation amending regulation (EU) No 575/2013 COM (2015) 473.

Level Playing Field and legal certainty

The European Commission includes in its legislative proposal on securitisation criteria for simple, transparent and standardised (STS) securitisation (STS-R). We support the Commission's initiative to define such securitisation by means of certain criteria. As we see it, the proposed criteria are, however, still vague and require further explanation.

The current proposals for designing some criteria lead to great uncertainty among originators and investors as to whether the criteria for STS securitisation can be met in future. In view of the fact that originators and sponsors are to be held liable for losses resulting from possible misjudgement of compliance with the criteria and the sanctions are considerable (Article 17 par.2), we believe that the criteria need to be specified further. They should, however, be specified further in the legislative text itself. It must be possible for an originator or an investor conducting due diligence to tell from the legislative text whether the securitisation meets the STS criteria. This is the only way to ensure the required legal certainty in the assessment of STS securitisations and to create a level playing field in the European securitisation market.

In addition, legal certainty should be significantly increased by conferring the right to the originator to request its competent supervisory authority to obtain a binding confirmation of conformity. This confirmation should be legally binding for other competent authorities. Otherwise there is a risk that the national competent authority would not confirm the fulfilment of STS criteria, because another competent authority of supervised investors in Europe could have an adverse opinion upon it. In this case ESMA or in most cases the Joint Committee of the European Banking Supervisory Authorities are empowered to take the final decision (Article 21 (5) in conjunction with Article 19 or Article 20 of STS-R), which could differ from the opinion of the national competent authority. But without a legally binding confirmation and together with the planned sanctions the originators, sponsors and SSPE's will not designate one securitisation transaction as STS. Furthermore, the self-attestation, the potential liability (which include civil court procedure, administrative fines and criminal sanctions) and the costs associated with excessive disclosure requirements define a considerable hurdle. For the success of the initiative it is extremely important that the risk of potentially different opinions of the different supervisory authorities on the STS eligibility and thus the legal uncertainty for the originator is mitigated by a binding confirmation of conformity at the request of the originator. In this respect, we propose changes to Article 14, 16 and 21.

Proposed criteria for STS ABCP

We explicitly welcome that the EU Commission proposes to incorporate ABCP into the realm of STS securitisations. In this respect, we especially appreciate the development of a separate set of criteria for secu-

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ritisations positions in an ABCP programme at the transaction (i.e. liquidity facilities provided by the sponsor) and programme level (i.e. investment in ABCP). However, we wish to underline that, in their current version, these criteria are likely to be too onerous or inapplicable in practice to the vast majority of ABCP transactions and programmes.

Especially the requirement in Article 11 that ABCP securitisations (i.e. all securitisation positions at the transaction and at the programme level) can only be considered STS if the ABCP programme complies with the requirements in Article 13 and all transactions within the ABCP programme fulfil the requirements in Article 12 in combination with the requirement in Article 13 para. 1 STS-R would have the effect that one single non-compliant transaction would not only “infect” the programme but also all other compliant transactions.

Furthermore, the STS-R and CRR-R impose requirements on the securitised receivables that cannot be complied with in many, if not all, multi-seller ABCP programmes. In this context, especially the restriction on the maturity of the securitised exposures (Article 12 par. 2 STS-R) and the prohibition of exposures to corporates with a risk weight of more than 100 percent under the Standardised Approach for credit risk (Art. 243 para. 1(a) CRR-R) should be deleted. The requirement to apply the obligor concentration limit of 1% to groups of connected clients should also be removed as it cannot be fulfilled in a multi-seller ABCP programme.

Additionally, onerous requirements are imposed on real economy originators that will, from our point view, considerably reduce the willingness of these companies to participate in an ABCP transaction. In this context, the joint liability of originators, sponsors and SSPE implies that, specifically in multi-seller ABCP programmes with various originators (Article 13 par. 8 STS-R), these originators will be liable for information or circumstances that are beyond their control. On the one hand, it should be excluded in any case that originators or the sponsor are held liable if one originator did not meet the criteria. On the other hand, it should be ruled out that the originators are held liable if the programme sponsor provided misleading information.

Furthermore, real economy originators (e.g. corporates that securitise trade receivables) will become supervised by designated competent authorities (Article 15, par. 4 STS-R). These bodies may impose harsh sanction on such corporates (including a ban against members of the management bodies to exercise management function (Article 17 par. 2 (c))). From our point of view, it is highly unlikely that real economy originators will submit to such supervision.

Synthetic securitisation

Synthetic securitisations are currently not included in the scope of STS securitisations in the Commission's proposals like term securitisations and ABCP programmes. We therefore welcome the fact that the Commission intends to examine the issue further and to analyse to what extent synthetic securitisations might be able to be included in the STS framework. There is no reason, as we see it, to automatically exclude certain types of securitisation from the “STS” category. Synthetic securitisation enables real-economy exposures to be securitised in an efficient manner.

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Earlier in the year, the German Banking Industry Committee (GBIC) suggested criteria for defining simple, transparent and standardised synthetic securitisations in its response to the Commission's consultation document of 18 February 2015 on an EU framework for STS securitisations and were also sent directly to the EBA (see also Annex 4). As our proposals demonstrate, synthetic securitisations are also capable of being designed in a way which is neither complex nor opaque, which is fully suitable to the STS approaches for term securitisation and ABCP programmes.

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Specific comments

Definition of a securitisation (art. 2 par. 1 STS-R)

It should be clarified that long-term financing for infrastructure, industrial and real estate projects, as well as for aircraft, ships and other assets do not count as securitisations. In some cases these projects and assets are funded via structures that, if viewed in isolation, would meet the definition of securitisations given in Article 2 par. 1 STS-R. This is the case where the finance takes the form of multiple tranches with different seniority. If a borrower defaults and the subordinate creditor is unable to assert its claims (a situation known as a “non-cross default”), the junior creditor would have to bear the loss.

In contrast to “true” securitisations, though, no risk is transferred with these specialised lending exposures. However, this is a precondition for assigning the transaction to one of the two forms of securitisations mentioned in the STS-R. In a traditional securitisation (Article 2 par. 9 STS-R), the risk is transferred by selling the exposure to an SSPE (a process known as a “true sale”). In the case of a synthetic securitisation, the transfer is achieved using credit derivatives (Article 2 par. 10 STS-R). Neither of these situations exist in the case of the above-mentioned specialised lending exposures. In line with this, Recital 6 of the STS-R clarifies with respect to the definition of the term “securitisation” that an exposure that creates a direct payment obligation for a transaction or scheme used to finance or operate physical assets should not be considered an exposure to a securitisation, even if the transaction or scheme has payment obligations of different seniority.

In our opinion, to avoid misunderstandings, the definition of a securitisation in the “Securitisation Regulation” (Article 2 par.1 STS-R) should take up the wording of Recital 6.

Due Diligence of structural features (art. 3 par. 2 (b) STS-R)

For investors in ABCP issued by multi-seller conduits with transactions that are fully supported by a liquidity facility provided by the sponsor other features than the ones mentioned in this passage (triggers, credit enhancements, definition of default) materially impact the performance of his securitisation position. This should be clarified.

Due Diligence of STS criteria (art. 3 par. 2 (c) STS-R)

Investor may place appropriate reliance on STS notifications and information disclosed by the originator, sponsor and SSPE when verifying the compliance with the STS criteria. The full evaluation of compliance with the STS criteria would impose an onerous new burden on investors. Detailed information would need to be collected relating to a large number of criteria. The time and effort involved would be exacerbated by the subsequent analysis of whether or not the criteria are fulfilled. On top of that, there is no legal certainty at present concerning how the criteria are to be interpreted. All in all, the work associated with this additional task is likely to deter potential investors from investing in STS securitisations.

A recourse to the STS notification and disclosed information is permitted, but it is not clear which degree of certainty can be achieved from this information and which further analyses are necessary. As far as we

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understand, the investor has to engage in further analysis irrespective of whether the STS notification is positive. The conclusion is that the legal uncertainty is not mitigated.

We would therefore recommend that investors should be able to base their analysis of whether or not STS requirements are met on publications by ESMA. This would eliminate legal uncertainty for the investor. What is more, investors would not be forced to choose between more onerous due diligence requirements for STS securitisations and the higher risks associated with non-STS securitisations.

Stress tests (art. 3 par. 3 (b) STS-R)

Investors have to regularly perform stress tests on the cash flows and collateral values supporting the underlying exposures that are commensurate with the nature, scale and complexity of the risk. As for the due diligence requirements there is neither a grandfathering clause nor a transitional provision nor an empowerment to develop a new regulatory technical standard, it is not clear whether the concretisation of the requirements in chapter IV of Commission Delegated Regulation (EU) No 625/2014 can be applied to securitisations issued after 1 January 2011 or revolving securitisations where new underlying exposures have been added or substituted after 31 December 2014. It should, therefore, be clarified, in accordance with Article 18 par. 3 of Commission Delegated Regulation (EU) No 625/2014, that, in the case of a fully supported ABCP programme, institutions can carry out stress tests on the creditworthiness of the liquidity facility provider rather than on the securitised exposures.

Risk Retention (art. 4 STS-R)

Direct approach to risk retention (art. 4 par. 1 STS-R)

Article 4 of the proposal deals with risk retention when a securitisation is issued. Risk retention has been covered so far by Article 405 CRR and requires the investor to check the compliance with the relevant requirements before investing in a securitisation position (so-called "indirect approach"). The Commission proposes shifting responsibility for compliance with the risk retention requirements to the originator, sponsor or original lender (so-called "direct approach").

The change in approaches raises further questions that need to be settled to ensure the required legal certainty. It is unclear what the procedure is to be in the case of transactions where not all the entities in question are domiciled in the EU. To what extent, if any, is the direct approach to be applied if only one entity is domiciled in the EU? We would welcome, if the text of the proposal would include details of exactly when the direct or indirect approach applies.

Definition of sponsors (new)

In practice, a sponsor is not necessarily, as stated in Article 2 par. 5 STS-R, „a credit institution or investment firm as defined in Article 4 (1)(1) and (2) of Regulation 2013/575/EU“. We therefore consider it necessary to broaden the definition of a "sponsor" for the purpose of applying the risk retention rules.

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Basically, sponsors should be able to retain a portion of the risk even if they are not subject to EU regulation, as long as they have to comply with comparable regulatory requirements instead.

Transparency requirements (art. 5 STS-R)

General remarks (art. 5 par. 2 STS-R)

The requirements of Article 5 STS-R do not comply completely with the disclosure requirements of Delegated Regulation (EU) 2015/3 for structured finance instruments that refer to article 4 (1) (61) of Regulation (EU) No. 575/2013. To reduce legal uncertainty and to restrict implementation cost we suggest to provide transparency and disclosure requirements for securitisations in STS-R, only.

Disclosure of information on the underlying receivables in an ABCP securitisation (art. 5 par. 5 (a) STS-R)

In the case of an ABCP securitisation it is required that information on the underlying receivables shall be disclosed on a monthly basis. From our point of view it should be clarified that the disclosure of this information is only required in an aggregate form and thus no loan level data is required.

Time of publication for ABCP (art. 5 par. 1 sentence 4 STS-R)

In an ABCP securitisation the information described in the subparagraphs (a) and (e) shall be made available at latest one month after the due date for the payment of interest. We would like to indicate that not all ABCP comprise fixed payment dates for interest because they are discounted or the interest is paid at the moment of expiry. Thus, this requirement should only apply where possible.

Confidentiality of publication (art. 5 par. 2 STS-R)

According to Art. 5 par. 2 the entity designated to fulfil the requirements set out in paragraph 1 shall make the information available by means of a website. From our point of view the information should be provided on a password protected website or by means of another medium in order to achieve confidentiality for private or bilateral transactions.

Furthermore, we feel that in a bilateral or private transaction the sponsor should be given the option to disclose the required information solely to investors in their securitisations and to the competent authorities.

Publication of confidential data (art 5 par. (new))

In contrast to the unofficial draft versions of the proposal there is no regulation that prevents originators, sponsors or SSPEs to make available information which publication would breach Union or national law

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governing the protection of confidentiality of information sources and personal data. We think that such a provision should be reinserted.

Furthermore, there is not only Union or national law governing the protection of confidentiality of information sources or the processing of personal data but also the banking secret that has to be observed, for instance in Germany as a contractual accessory duty of the originators based on common case law. Any violation would entail liability of the originator towards the debtors of the underlying assets.

Last but not least, it should be clarified that for ABCP programmes only information at the programme level but no transaction information shall be disclosed to investors. The relevant transaction documentation should be disclosed to the liquidity facility provider who is exposed to the risk of the underlying exposures at transaction level.

Homogeneity of underlying assets (art. 8 par. 4 STS-R)

Article 8 par. 4 STS-R requires that the securitisation shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type. It is not clear what “homogenous in terms of asset type” means and is thus open to unforeseeable interpretation by supervisory authorities. Hence, it should be clarified that the pool of underlying exposures shall consist of one asset type which is the current market practice. Additional requirements by supervisory authorities based on later guidelines to achieve a maximum level of homogeneity would have the consequence that currently successfully securitised portfolios could no longer be securitised within one STS securitisation. Instead, it would be necessary to split these securitised portfolios into several portfolios. Each of these split portfolios would have to be securitised separately. It would mean that all regulatory and market driven requirements would have to be fulfilled for each transaction. For example, the assessments of rating agencies would be necessary for each transaction. Each transaction would need derivative counterparties to hedge interest rate risks. For each transaction a prospectus would have to be prepared and a cash flow model to be delivered etc. In addition, the portfolio size would shrink significantly, which would impede the marketability due to decreasing liquidity of small securitisations. In the end, if the criterion of homogeneity is interpreted too strict by supervisory authorities it will make the securitisation uneconomically.

Significant Risk (art. 8 par. 7 (c) STS-R)

Article 8 par. 7 (c) STS-R requires that, at time of transfer of the exposures to the SSPE, shall not include (...) exposures to a credit-impaired debtor or guarantor, who, to the best knowledge of the originator or original lender has a credit assessment or a credit score indicating that the risk of contractually agreed payments not be made is significantly higher than for the average debtor for this type of loans in the relevant jurisdiction.

It is not clear, in practice, what is meant by “that the risk of contractually agreed payments not be made is significantly higher than for the average debtor for this type of loans in the relevant jurisdiction”. There is much room for interpretation, which generates a high level of uncertainty for originators and investors.

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The required comparison with the average debtor for the same type of loan in the relevant jurisdiction exacerbates the uncertainty and complexity because, among other things, debtors might be deemed to be of significant risk in one European country with high credit standards, but not in another country with less strict credit standards.

The established market practice is much more precise and objective. Effectively all loans that have been approved in the normal course of business and that have been selected randomly for securitisation are eligible provided that, first, at least one payment has been made and, second, the selected loans are performing loans, i.e. not delinquent and not in default at the time of selection for securitisation.

We think that the non-impairment requirement should be simple with regard to its interpretation, free of preconditions, easy to implement and robust with regard to its assessment. Its application across Europe would also be largely consistent. We would therefore propose excluding loans that show evidence of impairment under the applicable accounting framework requiring the allowance of specific provisions. Such data are already available for accounting purposes. Since each allowance of specific provisions is based on assessments that can differ between originators, we suggest as a back-stop the status of delinquency, which is a very objective and prudent measure that can be easily determined, that is already used in investor reports and is already a criterion considered in the context of high-quality securitisation.

In the case of retail exposure it must be allowed to apply the non-impairment requirement at the level of an individual credit facility rather than in relation to the total obligations of a borrower. This is important for credit institutions that apply a default definition according to article 178 (1) subparagraph 2 CRR at contract level. Historical information is in such cases often only available at the level of the contract but not or only partly at the level of the obligor. At a minimum, a transitional provision should be introduced for a transitional time if the backward looking requirements are not fulfilled. Without practical relieves in terms of the backward looking requirements it could take some years until the originating credit institution will be able to issue STS-retail securitisations.

In addition, it should be reconsidered to require checking whether the debtor has declared insolvency, agreed with his creditors to a debt dismissal or reschedule or had a court grant his creditors a right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination. In practice, also seasoned exposures are securitised. The requirement would mean for contracts that were originated, for instance, five years ago that it would have to be looked backed 8 years even if the credit quality is out of question for years.

In addition, it should be noted that the impairment criteria according Art. 8 (7) can only be checked one time at the time of selection for inclusion in the securitisation. However, it takes some time that can't be avoided until the selected exposures can be legally transferred and assigned, respectively. During this short period, it cannot be avoided that exposures get into default or become credit-impaired. Thus, the exclusion of defaulted exposures according to Article 178 CRR and credit-impaired exposures according to this paragraph should refer to the time of selection if the underlying exposures will be transferred and assigned, respectively without undue delay. In practice, it is often required that the time between portfolio selection and the inclusion into securitisation does not need to exceed 3 months.

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Residual value (art. 8 par. 9 STS-R)

Article 8 par. 9 STS-R requires that the repayment of the holders of the securitisation positions shall not depend, substantially, on the sale of assets securing the underlying exposures.

There were lengthy deliberations about this point during the preparation of the delegated act on the LCR. We would, therefore, strongly recommend using the wording of Article 13 (3) of the delegated act on the LCR should be adopted.

Furthermore, in many cases such residual values are backed by repurchase obligations or guarantees by the manufacturer or seller at a fixed price – and are, therefore, not exposed to residual value risk (market risk). We advocate that in case that the residual value risk is hedged by a repurchase obligation or a guarantee by the manufacturer or the seller it should be eligible as underlying assets, because the market risk is mitigated.

Termination of Servicing (art. 9 par. 6 (b) STS-R)

Article 9 par. 6 (b) STS-R requires to ensure that a default or insolvency of the servicer does not result in a termination of servicing.

It is current practice that a replacement clause is agreed which enables the replacement of the servicer in case of default or insolvency of the servicer. It should be abstained from further requirements because there are no comparable requirements for covered bonds. However, the impact of a default or insolvency of the administrator of the underlying exposures is the same irrespective of a securitisation or a covered bond because it makes no difference whether the administrator of the underlying exposures of a securitisation or a covered gets into default or insolvent. This applies a fortiori in those cases where the servicer is an institution subject to the resolution regime of the BRRD. Also, the current consultative document of the Basel Committee on Banking Supervision on the “Capital treatment for “simple, transparent and comparable” securitisations”, released on 10 November 2015, requires only provisions documented for the replacement of servicers.

To facilitate the assessment it should be said that a replacement clause enabling the replacement of the servicer in the event of default or insolvency will normally fulfil the requirement to ensure that a default or insolvency of the servicer does not result in a termination of the servicing.

Clear and consistent term definitions (art. 9 par. 7 STS-R)

Article 9 par. 7 STS-R requires definitions, remedies and actions to be provided in clear and consistent terms. It should be noted that processes and, especially, certain kinds of actions are not always predetermined. Decision-makers at the originator or servicer have a certain level of discretion when taking their decisions with regard to the underlying assets. Processes, definitions and actions might change during the lifetime of an ABS transaction without lowering the standards and this must be permitted. A clarification on this point would be helpful.

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Historical default and loss performance data (art. 10 par. 1 STS-R)

Article 10 par. 1 STS-R requires that the originator, sponsor and SSPE provide the investor before investing access to data on static and dynamic historical default and loss performance, such as delinquency and default data.

In this context, we feel that five years is much too long a period for trade receivables. It should be reduced to three years.

External verification (art. 10 par. 2 STS-R)

According to art. 10 par. 2 STS-R a sample of the underlying exposures shall be subject to external verification prior to issuance of the securities resulting from the securitisation by an appropriate and independent party, including verification that the data disclosed in respect of the underlying exposures is accurate, with a confidence level of 95%. In our view for short term, revolving assets such as trade receivables it is neither possible nor appropriate to verify the accurateness with a confidence interval of 95%. Furthermore, in ABCP programmes with fully supported liquidity the CP investor is protected by the liquidity facility and hence, such verification is unnecessary and costly. Especially in ABCP programmes where ABCP is issued frequently it is impossible to make verification “prior to issuance”.

Therefore this requirement should only be applied to static pools and if the securitisation is not within an ABCP programme. This can be achieved by adding art. 10 par. 2 STS-R to the “exemption list” in art. 12 par. 1. STS-R.

Joint responsibility (art. 10 par. 4 STS-R)

Art. 10 par. 4 STS-R requires that the originator, sponsor and SSPE shall be jointly responsible for compliance with Article 5 of this Regulation and shall make all information required by Article 5(1) (a) available to potential *investors* before pricing. The originator, sponsor and SSPE shall make the information required by Article 5 (1) (b) to (e) available before pricing at least in draft or initial form, where permissible under Article 3 of Directive 2003/71/EC. The originator, sponsor and SSPE shall make the final documentation available to *investors* at the latest 15 days after closing of the transaction.

We would like to point out that in an ABCP programme not only the investor is exposed to the risks of the securitisation and thus in need of information. As already indicated the holder of a securitisation position can either be on a transaction level (e.g. the relevant liquidity bank) or on the programme level (e.g. the ABCP investor). Thus, we would like to propose to replace the term “investor” by “holder of a securitisation position”).

As we will later argue in our comments on Article 13 par. 8 STS-R we strongly advocate to limit the responsibility of the originator to information on his portfolio of receivables.

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Compliance with STS criteria (art. 11 STS-R)

According to Article 11 ABCP securitisations (i.e. all securitisation positions at the transaction and programme level) shall only be considered STS if the ABCP programme complies with the requirements in Article 13 and all transactions within that ABCP programme fulfil the requirements in Article 12. This would imply, from our point of view, that a securitisation position at transaction level (e.g. a liquidity line) cannot be considered STS if the ABCP programme in its entirety does not comply with the STS criteria. In other words: one non-STS transaction within an ABCP programme would “infect” other transactions even if they fulfil with the STS criteria at the programme level.

The already strict provision in Article 13 par. 1 would have the effect that one non-STS transaction can “infect” the whole ABCP programme (see our comments below). But it would leave other STS-compliant transaction unaffected. Taken together these provisions would have the effect that one single non-compliant transaction would not only infect the programme but also every other compliant transaction.

We, therefore, strongly advocate deleting this provision. It should be sufficient that transactions comply with the requirements in Article 12 and programmes with those in Article 13.

Remaining maturity (art. 12 par. 2 STS-R)

Article 12 par. 2 STS-R requires for ABCP transactions a maximum remaining maturity of the underlying exposures of no longer than three years. At the same time the remaining weighted average life shall be of no longer more than two years.

Limiting the remaining maturity to three years would mean that many ABCP transactions in their current form could not be classified as STS. As things stand, ABCP programmes contain some transactions whose underlying exposures have longer maturities. These longer maturities are due to the types of underlying exposures involved, which normally include car loans and leases, operating equipment and consumer loans but also leases of machineries or other tangible assets. These have longer original maturities by their very nature (e.g. 6 years) and consequently also have longer residual maturities when they are securitised. With such underlying real-economy exposures an ABCP transaction would not qualify as simple, transparent and standardised. This flies in the face of the Commission’s declared objective of promoting the real economy.

The maturity cap would in particular affect the securitisation of auto loans and leases. These securitisations play an important role for the real economy, especially for SMEs. They are especially important for the sale of cars for European auto manufacturers. According to Moody’s, European multi-seller ABCP programmes securitised receivables of an amount of 65 billion EUR in 2014. More than one quarter of these assets (approximately 16.5 billion EUR) were auto loans and leases.

In our view, investors can be only exposed to a liquidity risk stemming from the need to refinance the longer term assets at expiry date if underlying assets cannot be refinanced by issuing new ABCP. Investors would then face a credit risk because the underlying exposures had to be sold to pay back the investors. This cannot happen, if the ABCP programme is fully supported. In this case the liquidity or credit

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risks mentioned above are covered by the liquidity facility provided by the sponsor. Therefore the fundamental question when assessing whether or not the CP issued by a programme can qualify as “STS” should be whether the sponsor is providing full liquidity and credit support, and whether the investor can expect this support to be reliable. When the sponsoring bank provides this full, robust support, the CP issued by an ABCP conduit is equivalent to a covered bond. Furthermore, the investors are protected against a default of the sponsor by the requirement in Article 13 par. 7(f) STS-R that the programme has to provide for a collateralization of the funding commitment or a replacement of the liquidity facility provider in case of a default.

For this reason, we would recommend removing the restriction of maturity of assets in the underlying pool - which becomes unnecessary when the programme-level criteria of full credit and liquidity support is fulfilled.

Seller default (art. 12 par. 4 STS-R)

If the seller defaults principal receipts from the underlying exposures shall be passed to the investors via sequential payments and no substantial amount of cash shall be trapped in the SSPE. We suggest deleting this requirement. In the case of a seller's default the liquidity line will be drawn and the underlying exposures are paid to the liquidity bank according to the priority of payments. In our view it is not relevant for STS criteria whether cash is trapped in the SSPE or not because this is an individual bilateral agreement between the liquidity bank and the SSPE.

Underwriting standards (art. 12 par. 5 STS-R)

Material changes in the underwriting standards shall be fully disclosed to potential investors. In fully supported ABCP transactions the investor is mainly exposed to the risk of the liquidity bank (sponsor). Changes in the underwriting standards are thus foremost interesting for the liquidity bank. Therefore, we suggest to change the addressee of this requirement to the “holder of the securitisation position”. This would enable the liquidity bank (as holder of a securitisation position) to have access to information regarding underwriting standards and would protect the originator from disclosing sensitive details of the underwriting to third party investors of the ABCP programme.

This would also be in line with our general comment that transaction specific details or documentation should not be disclosed to investors because they are protected by the liquidity facility.

Termination of the transaction (art. 12 par. 6 (c) STS-R)

The revolving period shall be terminated if the programme is not able to generate sufficient new underlying exposures that meet the pre-determined credit quality criteria. We would like to point out that in ABCP trade receivables transactions it is quite common that the underlying exposure fluctuates and the maximum purchase limit is not reached. This is due to the nature of the business or asset class and, from our point of view, not relevant for STS criteria. We, therefore, suggest deleting this requirement.

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At least, it should be clarified, in accordance with the rationale of the EBA for the corresponding Criterion 11 (p. 80 of the EBA report), that it is not required to terminate the revolving period when the unavailability of appropriate exposures is only temporary and not caused by any changes with respect to the credit quality of the seller or the transferred assets, but by non-credit risk related issues like the actual funding needs of the seller or seasonal variations in the demand for certain products or services.

Review of seller's underwriting standards (art. 12 par. 7 (d) STS-R)

The sponsor shall verify that the seller's underwriting standards, servicing capabilities and collection processes meet standards as stringent as those defined in the requirements specified in points (i) to (m) of Article 259(3) of the CRR-R. In line with the proposal by the EBA this requirement could be deleted *here* because the respective requirements relate to the ABCP programme (EBA Criterion A, p. 83) and are not compliant by servicing capabilities and collection processes of a single transaction. It might be included in Article 13.

ABCP programme criteria (art. 13 par. 1 STS-R)

In order for an ABCP programme to qualify as a STS securitisation all ABCP transactions shall fulfil the requirements for qualified transactions in Article 12.

This would mean that if, even due to a minor or temporary breach of one of the criteria, one transaction becomes ineligible, the whole ABCP programme would be "infected" by the ineligible transaction and thus the ABCP issued could not be counted for as qualifying. This very restrictive requirement would likely have the effect that not a single ABCP programme can comply with the STS criteria.

We, therefore, strongly advocate implementing an upper limit, of e. g. 30% of all financed receivables, for non-qualified transactions within an ABCP programme. This would give sponsors a certain amount of flexibility to allow for a small number of transactions that fall out of the STS scope. Such a ceiling would especially be beneficiary for corporates using non-compliant transactions (e.g. for leases) that otherwise would have to resort to (costlier) bank loans for their funding.

ABCP with call options (art. 13 par.5 STS-R)

The Commission wants to make sure that no instrument issued by an ABCP programme includes clauses which can have an effect on the final maturity of the instrument. We would propose to limit this prohibition to the structured ABCP issued only. There may be a co-existence of CPs that contain e.g. put options for the investor (structured CP) and 'plain vanilla' ABCP (without optionalities) within the same programme. In such a case the 'plain vanilla' ABCP may still be a STS securitisation where - at the same time - the structured CP is not. Otherwise one structured CP would "infect" all unstructured ABCP.

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Responsibility of the trustee (art. 13 par. 7 (a) and (b) STS-R)

According to this provision the responsibility of the trustee and other entities with fiduciary duties towards investors shall be specified in the programme documentation. Furthermore the documentation shall contain clear provisions facilitating the timely resolution of conflicts of conflicts between the sponsor and the investor. From our point of view, we cannot think of any conflict between the sponsor and the investor that can occur in a fully supported ABCP programme. We rather think that there is a total alignment of interests between those parties due to the full support. We would therefore propose to delete this provision.

Replacement of counterparties (art. 13 par. 7 (e) STS-R)

Article 13 par. 7 (e) STS-R requires that the programme documentation specifies provisions for replacement of derivative counterparties, and the account bank at ABCP programme level upon their default, insolvency and other specified events, where applicable.

We are of the opinion that this criterion is not required, if the liquidity facility covers the default and the further specified events of the derivative counterparty and account bank.

Joint compliance with programme requirements (art. 13 par. 8 STS-R)

Here it is required that the sponsor and the SSPE shall jointly with the originator comply at the ABCP programme level with the requirements to provide information to the investors in Article 5. From our point of view, only the sponsor should be responsible to make information available to the investor of the ABCP programme. In a multi-seller programme receivables from several real economy originators are securitised. This is why, the individual originator can only be held reliable for information about their own portfolios and for the quality of their servicing. They should not be reliable for consolidated information provided by the sponsor or features of the programme structure or documentation. We think that only the sponsor should make available information to the investor at the programme level. The Originator and the SSPE are not in a position to do this.

STS notification (art. 14 par. 1 STS-R)

The EU Commission proposes that originators, sponsors and SSPEs shall “jointly notify” ESMA that the securitisation meets the requirements for STS securitisations. We are of the opinion that this would cause insurmountable difficulties for ABCP programmes. In an ABCP programme multiple sellers sell their receivables to one of the transactions. This is why they can only declare their compliance in relation to “their” transaction but not to the entire ABCP programme. We, therefore, propose that in such ABCP programmes each originator shall only be obliged to declare that the securitisation meets the requirements of Article 12 for its “own” transaction.

Furthermore, ESMA has to publish this confirmation on its website. We think that bilateral or private transactions should only be notified to ESMA but not published on the ESMA website.

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Notification requirements for non-banks (art. 14 par. 2 STS-R)

This regulation seeks to impose notification obligations on originators that are not supervised credit institutions. They would apply, in particular, to unregulated real economy originators in multi-seller ABCP programmes. In our view these requirements will drive up costs for these originators and will increase their administrative burden. This would jeopardize the economic profitability of such transactions for these originators and would ultimately prejudice the financing of such real economy businesses through securitisation which may be their only access to the capital market.

Additionally, such originators would have to provide a confirmation that their credit granting has not been subject to supervision (art. 14 par. 2 (b)). Most likely, originators that are not credit institutions or investment firms (such as real economy enterprises) will not be subject to supervision. However, in its due diligence any investor will be aware of this fact so that a separate declaration is in our view obsolete and can be deleted. In sum, the whole paragraph should, therefore, be deleted.

STS notification (art. 14 par. 2 (new) STS-R)

There exist many competent authorities in the European Union for credit institutions, insurance undertakings and funds that can have different opinions on the STS compliance of certain securitisations. In case of disagreement the matter would have to be referred to ESMA pursuant to Article 21 (5) STS-R and the Joint Committee of the European Supervisory Authorities that would have to take the final decision on the STS eligibility based on Article 20 of Regulation (EU) No 1095/2010. Thus, it is not to expect that the competent authority of the originator will grant the requested confirmation because it has to fear to be overruled by the Joint Committees of the European Supervisory Authorities. Against this backdrop, it is crucial that the competent authority of the originator or sponsor have the power to grant the requested confirmation of conformity to create the required legal certainty for originators given the envisaged extremely dissuasive sanctions (see also our explanation set out in the general remarks). Therefore, it should be possible that the originator or sponsor may file a letter of enquiry to their competent supervisory authority to obtain a binding confirmation of conformity based on a joint opinion of the originator, SSPE and sponsor complies with the requirements relating to certain criteria.

List of STS securitisations (art. 14 par. 4 STS-R)

ESMA shall maintain on its website a list of all STS securitisations. We propose to exempt bilateral or private transactions from this requirement.

Designation of competent authorities (art. 15 par. 4 STS-R)

For entities not covered by the Union legislative acts referred to in paragraph 3, Member States shall designate one or more competent authority to ensure compliance with Articles 4 to 14 of this Regulation. This would mean that unregulated entities like corporates (as originators or sellers of e.g. trade receivables) shall get a designated supervisor who can impose sanctions on the corporate according to Article 17

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par. 2 STS-R. This would include a temporary ban against the management bodies to exercise management functions (c) as well as fines (e) to (g) etc. Given the comprehensive catalogue of STS-criteria with – to some extent – unclear definition and various parties involved we think this would pose an unpredictable legal risk for a single originator within an multi-seller ABCP programme.

We advocate deleting this paragraph or at least make it not applicable to real economy entities as originators within a multi-seller ABCP programme. SSPEs in Europe are already supervised.

Powers of the competent authorities (art. 16 par. 4 (new) STS-R)

Referring to our explanation set out in the general remarks and under Article 14 (2) (new) STS-R we propose that Article 16 STS-R should include the empowerment for the competent authority to confirm the joint opinion of the originator, SSPE and sponsor that the securitisation complies with the requirements relating to certain criteria. Such confirmation shall be binding in the European Union to warrant the necessary level of legal certainty for all market participants.

Cooperation between competent authorities (art. 21 par. 5 STS-R)

Referring to our explanation set out in the general remarks we propose that Article 21 par. 5 STS-R should regulate in the case of disagreement between the competent authorities, when a binding confirmation by a competent authority exist, that this is an exception from the procedure of Article 19 or Article 20 STS-R.

Amendment to Regulation (EU) 648/2012 (art. 27 STS-R)

We have serious concerns regarding the proposed amendments of Regulation (EU) 648/2012 (EMIR) as these are likely to conflict and overlap with the numerous RTS currently under development or being in the process of being adopted. Specifically, as generally known ESMA has already presented its final report on the RTS on the clearing obligations under EMIR in respect of IRS and CDS (the former has already been accepted by the Commission) and EBA, ESMA and EIOPA are currently jointly in the process of finalizing their proposal for the RTS on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) EMIR. All of these RTS finalised or in the process of finalisation already contain provisions on the special treatment of OTC derivative contracts which are concluded with covered bond issuers or with cover pools for covered bonds as well as the provision on risk mitigation, segregation of collateral and practical/legal impediments for prompt transfer of assets. The proposed revision of the level 1 text regarding these issues may directly interfere with the framework already under development and may result in inconsistencies, conflict or unnecessary overlaps. This could jeopardize the solutions and approaches which have been developed and are already in the process of being implemented. While we of course fully support the proposed exemption from the clearing obligation for covered bond related transactions and likewise, transaction with securitisation special purpose entities we believe the proposed approach needs to be reviewed. In particular we believe it to be vital, that the details are coordinated as closely as possible with the already existing draft RTS as well as the RTS currently under development

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regarding these issues. We also strongly suggest to consider a close collaboration with the ESA experts in the development of an alternative approach. Against this background we believe that recital 29 should be deleted and article 27 STS-R need to be revised in his entirety. We propose to amend only recitals 16 and 24 of EMIR accordingly and set the rules for exemptions for derivatives relating to securitisations on level 2, i.e. follow the same approach that has led to successful results for derivatives relating to covered bonds.

Transitional provisions (art. 28 STS-R)

Transitional provisions on due diligence (art. 28 par. 3 STS-R)

In deviation from the general principle to apply the STS-R to securitisations issued after the entry into force of the regulation, Article 28 par. 3 STS-R requires that “[i]n respect of securitisations the securities of which were issued on or after 1 January 2011 and to securitisation issued before that date, where new underlying exposures have been added or substituted after 31 December 2014, Article 3 of this Regulation are complied with”.

We would like to point out that a retroactive change of a requirement is difficult to fulfil in the majority of cases. The requirement in Article 3 states that the investor shall verify different aspects before becoming exposed to a securitisation. In fact, an investor, who already owns these securities, is not able to verify the required information before. On the other hand, the originator or original lender would have some effort to make these information available. Therefore we propose to delete Article 28 par. 3 STS-R.

Furthermore, the application of the STS-R to new securitisations would mean that banks were not allowed to use the concretisations of the due diligence requirements in chapter IV of the Commission delegated regulation 625/2013 as these reference Article 406 CRR. We therefore advocate, first, to insert a respective empowerment clause in Article 3 and, second, a grandfathering clause for the due diligence requirements that allows banks to apply chapter IV of the Commission delegated regulation 625/2013 until the new RTS applies.

Transitional provisions on risk retention (art. 28 par. 4 STS-R)

Article 28 par. 4 STS-R requires that “in respect of securitisation positions outstanding as of [date of entry into force of this Regulation] credit institution (...) shall continue to apply Article 405 of Regulation (EU) No 575/2013 (...) in the version applicable on [day before date of entry into force of this Regulation].”

As far as we understand the current requirements on risk retention shall be continued for securitisation position that are outstanding before the date of entry into force of the Securitisation Regulation. We consider that this requirement conflicts with the current requirement in Art. 404 CRR-R. This Article states that the requirements on risk retention shall apply to new securitisations issued on or after 1 January 2011. Securitisation issued before that date don't need to fulfil this requirement. This transitional requirement of the current CRR should be taken into account for the new Securitisation Regulation.

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Transitional provision for synthetic securitisations (art. 28 par. 7 (new) STS-R) and Review on STS criteria for synthetic securitisation (art. 30 par. 2 (new) STS-R)

As there are currently no STS criteria for synthetic securitisation defined to include them in the scope of the Regulation, we welcome the fact that the Commission intends to examine the issue further and to analyse to what extent synthetic securitisations might be able to be included in this Regulation (see also Recital 16 STS-R).

The EBA and the Commission have made clear that synthetic securitisations have, first and foremost, not been considered in their first draft of the proposal on simple, transparent and standardised securitisations as they have not identified an established market standard for synthetic securitisations. We also support their point of view to avoid opaque structures and transactions like ABS of ABS, as they appeared with the advent of the financial markets crisis 2007/2008. The Commission also made clear that she does not want to exclude fractions of credit financed SME from the option of benefiting from securitisation markets refinanced credit programs. We agree that by standardising synthetic transactions and ensuring that the credit risk of the securitised portfolio is ultimately borne by the investors (no fallback at any point of time of the transaction), a suitable way can be found to include certain synthetic securitisations by defined STS criteria. These criteria should follow those STS criteria that have been positioned for term securitisations and ABCP programmes in this legislative proposal.

The EBA is currently doing a survey with several banks and other market participants after the German Banking Industry Committee (GBIC) has developed a proposal for criteria for simple, transparent and standardised synthetic securitisations (see also Annex 4). This has been part of the GBIC's comments - on the Consultation Document of the Commission and was also sent directly to the EBA.

From our point of view it is of utmost importance that the Commission and the EBA is carrying on with its work on developing criteria, which can be adopted by the Commission to include certain synthetic securitisations into the new STS Regulation.

Review (art. 30 STS-R)

It is proposed that the commission shall present a report to the European Parliament and the Council on the functioning of this Regulation, accompanied, where appropriate, by a legislative proposal by four years after entry into force to take corrective measures if the experiences with the new rules indicate the need for changes. We recommend to change the timeline from four to one year.

Annex 2 – GBIC-Comments Regulation amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms COM (2015) 473

Comments

Regulation amending Regulation (EU) No
575/2013 on prudential requirements for credit
institutions and investment firms
COM (2015) 473

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General remarks

Capital requirements

We expressively welcome the plan to reduce risk weights for qualifying securitisations compared to those in the securitisation framework by the Basel Committee that has to be implemented by 1 January 2018. It should nevertheless be borne in mind that the capital requirements for STS securitisations will be considerably higher than today.

This applies, inter alia, to the floor risk weight for senior tranches. Even a reduction from 15% to 10% for qualifying securitisations in the IRB approach would mean an increase of the floor from 7% to 10% compared to the current situation (see Article 260 CRR-R).

In this context, we would like to draw attention to the following table, which has been taken from the EBA's consultation paper on the mapping of ECAI's credit assessments for securitisation positions:

Table 2 three-year CDR per asset class (July 2001-Jan 2010, S&P, Moody's and Fitch)

	AAA	AA	A	BBB	BB	B	CCC	CC	% of benchmark sample
All SF	2.1%	10.9%	12.9%	18.2%	25.0%	36.2%	54.4%	67.9%	
US sub-prime	4.8%	22.4%	28.4%	36.6%	47.8%	55.8%	60.9%	82.6%	34%
US CDO	5.8%	10.1%	9.6%	10.7%	11.8%	18.6%	33.8%	46.4%	8%
US RMBS ex sub-prime	0.6%	7.1%	12.0%	18.0%	25.7%	29.8%	52.9%	64.6%	27%
US CMBS	0.3%	1.9%	3.3%	6.9%	15.0%	25.4%	65.4%	66.3%	10%
EU CMBS	0.3%	0.7%	0.9%	3.1%	6.8%	15.6%	31.0%	22.7%	1%
EU CDO	0.4%	0.7%	0.7%	1.2%	1.7%	4.3%	22.0%	20.6%	1%
US ABS	0.0%	0.6%	0.8%	2.2%	9.0%	15.9%	26.3%	24.0%	7%
EU ABS	0.0%	0.0%	0.1%	0.7%	1.9%	8.5%	51.7%	45.7%	1%
EU RMBS	0.0%	0.1%	0.1%	0.6%	4.0%	8.8%	22.8%	18.5%	3%
Current CQS	1	1	2	3	4	5	5	5	

Source: CEREP data, EBA calculations.

Considering the very good performance of European ABS in general in the past, with three-year cumulative default rates for triple A and double A-rated European ABS bonds of 0.0%, we believe it would send

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out the wrong signal if the floor risk weight for triple A-rated ABS were increased from 7% to 10% for STS-securitisations. Moreover, the increase in the floor capital requirement was, inter alia, motivated by model risk and risk as to the structure. Yet model and structure risks are significantly reduced if a securitisation is simple, transparent and standardised. In addition, notably the capital requirements for junior bonds with STS eligibility would extremely rise compared to the current capital requirements. For example, the risk weight for single A+ rated STS junior bonds with 5 year maturity and a tranche thickness of 5% would rise from 18% to 105% under the External Ratings Based Approach and thus around 5 times.

From our point of view, there should be a greater reduction in risk weights for STS securitisation compared to non-STs. This holds true for ABCP transactions that securitise exposures with longer maturities. For example, a liquidity facility provided by a sponsor for a granular leasing transaction with a maximum maturity of the underlyings of three years, with an internal risk assessment of A+ would, under the current regulations, receive a risk weight of 10 percent. If this transaction is non-STs this risk weight would be increased to 36 percent under the Commission's proposal. If the transaction is STS it would, admittedly, experience a considerable reduction of the risk weight to 23 percent but nevertheless be more than twice as high as today.

In total, the attractiveness of STS securitisation should not be undermined by capital requirements that are significantly higher than the current capital requirements for bank investors. Thus, capital requirements should not be increased for STS securitisations compared to the current situation. This would be more than justified given the good historical performance of European securitisations even during the last financial crisis.

Hierarchy of approaches

The hierarchy for the calculation of capital requirements entails a ranking of approaches reflecting the risk sensitivity of these approaches (SEC-IRBA, SEC-ERBA, SA). This hierarchy should be retained also for calculation of the capital requirements for high-quality securitisations. This is necessary for three reasons in particular:

1. Retention of the hierarchy for the calculation of the capital requirements for securitisations – also for high-quality securitisations – keeps the securitisation framework as a whole relatively simple.
2. The SEC-ERBA is more risk-sensitive than the SA and should therefore rank above the SA in the hierarchy. On no account should the SEC-ERBA be removed from the hierarchy. While rating errors were found to have been made by credit rating agencies during the financial crisis, measures were taken by regulators to address the flaws of the approach. These measures comprise the supervision of such CRAs and rules for determining ratings for securitisations. In addition, the reliance on external ratings was reduced through a change in the hierarchy of regulatory approaches.
3. The SEC-ERBA is, not least, a precondition for the application of the Internal Assessment Approach (IAA). Under this approach, banks rate their securitisation exposures to ABCP programmes in a manner consistent with CRAs' methodologies. They determine the risk weights by applying the self-determined ratings to the SEC-ERBA. Dropping the SEC-ERBA would mean

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that, in particular, liquidity facilities which sponsors provide for multi-seller ABCP programmes would have to be treated under the SEC-SA or even deducted from capital.

Any change to the hierarchy for calculating the capital requirements for high-quality securitisations compared to other securitisations would further unsettle the securitisation market. This is at odds with a revitalisation of the securitisation market. We are therefore firmly in favour of retaining the hierarchy under the Basel Committee's proposals also for calculation of the capital requirements for high-quality securitisations.

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Specific comments

General remarks on maximum risk weights

Referring to the risk weights of the underlying exposures under the Standardised Approach may deliver ambiguous results with respect to qualifying as STS for the purposes of art. 260, 262 and 264 CRR-R. The risk weights of the underlying exposures may differ between institutions as institutions may nominate different numbers and different names of ECAIs to be used for the determination of risk weights (art. 138 CRR). As a result, a position in a securitisation considered as STS with respect to STS-R may qualify for reduced risk weights (art. 260, 262 and 264 CRR-R) in one institution and may fail to qualify for reduced risk weights in another institution.

We regard this implication as non-conforming to the original idea of STS securitisation.

Maximum risk weights for STS ABCP (art. 243 par. 1 (a) CRR-R)

Article 243 par. 1 (a) CRR-R requires for ABCP transactions that the risk of the securitised exposures under the Standardised Approach shall not be higher than 100 percent for any non-retail exposure.

This criterion is very problematic as the real economy originator will normally not be able to detect the risk weight of his receivables under the Standardised Approach.

What is more, it could preclude the securitisation of corporate exposures including SME corporate exposures as STS securitisation altogether and should not be adopted.

At present, a risk weight of 100 percent would mean that obligors with an external rating of B or worse (according to the rating scale of S&P) would have to be excluded from securitisation. The result would be that many corporate SME exposures that are successfully securitised today would have to be excluded. This problem is likely to compound at a later stage. Based on the recent consultative paper by the Basel Committee of December 2014 on the revision of the Standardised Approach to credit risk, for instance, all corporate SMEs with revenues less than 5 m. EUR and an equity ratio of less than 33% would have to be excluded from STS securitisations irrespective whether there is a significant single risk or not.

Not allowing real economy originators to securitise riskier exposures via a multi-seller ABCP programme would raise the funding costs for these corporates. This can lead to higher prices for riskier customers. Moreover, it is likely to lead to a concentration of risky exposures on the originators balance sheet. This can reduce the creditworthiness of the company and increase its funding costs even further.

Article 12 par. 5 STS-R already requires that the exposure must be originated in the ordinary course of the seller's business pursuant to underwriting standards that are not less stringent than those the seller applies to origination of similar exposures not securitised. In addition, according to Article 8 par. 7 STS-R excludes credit-impaired exposures. Thus, we don't see the need to exclude further exposures.

In recital 14 the EU Commission correctly points out that STS securitisations are neither free of risk, nor do they indicate anything about the credit quality of the underlying exposures. Instead the STS label should be understood to indicate that a prudent and diligent investor will be able to analyse the risk involved in the securitisation.

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Last but not least, the delegated acts to the LCR and Solvency II do not contain such additional requirements, too.

For most high granular ABCP transactions no external ratings may be expected for the underlying exposures with high confidence. Nevertheless, a mandatory verification of the rating status for every single exposure in all transactions may not be delivered with reasonable effort by any party of the transaction.

We therefore propose to delete article 243 par. 1 (a) CRR-R.

Granularity criterion for ABCP (art. 243 par. 1 (b) CRR-R)

Article 243 par. 1 (b) CRR-R requires that positions in ABCP programmes can only qualify as STS securitisation if at the time of inclusion in the securitisation, the aggregate exposure value of all exposures to a single obligor in the pool does not exceed 1% of the exposure values of the aggregate outstanding exposure values of the pool of underlying exposures. For the purposes of this calculation, loans or leases to a group of connected clients, as referred to in point (39) of Article 4 (1), shall be considered as exposures to a single obligor.

We would like to point out that the proposed 1% ceiling for the exposure to a single obligor at the programme level is not viable for multi-seller ABCP programmes. As no common ID or unique labeling for obligors over the various transactions exists, it is technically neither possible for a sponsor bank to aggregate obligors over all transactions nor to check if groups of connected clients exist. Setting the ceiling at the transaction level would be no solution either as it would extremely limit the ability to securitise e.g. auto leases with guaranteed residual values. This would have adverse effects on the funding conditions of the respective manufacturers. We would, therefore, strongly suggest to limit the scope of the requirement. As it is neither possible to aggregate obligors over all transactions or to check for groups of connected clients the 1 % ceiling should be applied to the largest exposure of every transaction pool. For the purpose of this calculation, loans or leases to the same obligor in various transactions do not have to be aggregated. Article 4 par 39 should not apply.

We explicitly welcome that the requirement shall not apply to trade receivables where the credit risk of that receivables is fully covered by eligible credit protection. We propose to expand this exemption to residual leasing values that are not exposed to refinancing or re-sell risk due to an effective undertaking by a third party to repurchase or refinance the exposure at a certain amount.

Granularity criterion for term STS (art. 243 par. 2 (b) CRR-R)

Article 243 par. 2 (b) CRR-R envisages that positions in a securitisation will qualify as positions in an STS securitisation if, at the time of inclusion in the securitisation, the aggregate exposure value of all exposures to a single obligor in the pool does not exceed 1% of the exposure values of the aggregate outstanding exposure values of the pool of underlying exposures. For the purposes of this calculation, loans or leases to a group of connected clients, as referred to in point (39) of Article 4 (1), shall be considered as exposures to a single obligor."

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We agree that this threshold is appropriate for retail transactions. However, the requirements with respect to the group of connected clients should be formulated a little less restrictively to the effect that it applies “to the best of the knowledge” of the originator. The reason is that, to reduce the workload in the retail bulk business, thresholds are sometimes in operation to identify a group of connected clients. This practice does not compromise the identification of single risks, but could result in small exposures not being identified as belonging to a group of connected clients. Although it is very unlikely that the granularity threshold would be exceeded, the possibility cannot be fully ruled out that it might be exceeded slightly in a very few cases. To avoid securitisation failing to qualify as STS in such cases, we believe the wording should be softened in the way of according to the best knowledge of the originator in retail transactions.

With respect to wholesale transactions we are of the opinion that the threshold is too low. In our view, a threshold of 5% is necessary. To allow for a sufficient diversification, we propose the following: a second aggregate threshold of 20% should be introduced where the concentration of a single group of connected clients may not exceed a proportion between 3% and 5% in relation to the securitised portfolio. For the other 80%, we propose a threshold of 3% to diversify the exposures in the less granular sub-portfolio.

Maximum risk weights for term STS (art. 243 par. 2 (c) CRR-R)

Article 243 par. 2 (c) CRR-R requires a maximum risk weight of the underlying exposures under the Standardised Approach for any other exposures, 100% on an individual exposure basis.

This criterion is very problematic and could preclude the securitisation of corporate exposures including SME corporate exposures as STS securitisation and should not be adopted.

In addition, it should be noted that many originators have not nominated ECAs. The reason is, that originators often use the assessments of ECAs in the credit process as additional piece of information but not universally, because also originators that apply the credit standardised approach usually use internal applications scorecards and internal rating models that are validated regularly. Thus, such originators cannot use external ratings in the Credit Standardised Approach, because Article 138 sentence 4 of the CRR does not allow a selective use of external ratings. Furthermore, the obligation to use the assessment of ECAs would contradict the aim to reduce reliance on external ratings and thus the assessment of ECAs. It would increase again the dependencies on external ratings.

If originators were forced to nominate an external rating agency solely for the purpose to comply with such minimum credit criteria then this would mean to force originators to use external ratings continuously throughout the group worldwide also for those corporate exposures that are not intended to be securitised although they are used for the time being only on the case by case basis. An obligation to use external ratings on a continuous basis including the permanent updates would raise the costs for originators significantly and deteriorate the deal economics dramatically because they would have to pay additionally for such external ratings for the securitised and non-securitised portfolios.

A risk weight of 100% would further mean that obligors with an external rating of B or worse (according to the methodology of Moody's, S&P or Creditreform in Germany) would have to be excluded from securitisation. The result would be that many corporate SME exposures that are successfully securitised today

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would have to be excluded from securitisation and thus from financing means which would be detrimental to such corporate SMEs.

The problem might be further heightened at a later stage. Based on the recent consultative paper by the Basel Committee from December 2014 on the revision of the credit standardised approach, for instance, all corporate SMEs with revenues up to 5 m. EUR and an equity ratio of 33% would have to be excluded from qualifying securitisation irrespective whether there is a significant single risk or not.

If major parts of the originated portfolio were excluded from securitisation that are linked with higher risk weights then we believe that the intended effects to boost the financing opportunities for SMEs to create growth and jobs will not be achieved. Due to limited capital resources of credit institution due to Basel III and increased capital requirements by EBA and ECB to augment the resilience of credit institutions, capital is a scarce resource in credit institutions in the meantime which limits the expansion of the lending business. Thus, many banks focus their lending to customers who absorb rather lower levels of capital. However, these companies generally do not experience problems in obtaining funding by means of, for example, loans. Hence, it seems more important that also loans can be securitised as qualifying being originated in the normal course of business based on transparent underwriting standards of the credit institution that must not be less strict than the underwriting standards that apply for the exposures that are not securitised. This would enable the transfer of credit risk and free up capital for new credit business and support the real economy.

Article 8 par. 6 sentence 1 STS-R already requires that the exposure are originated in the ordinary course of the originator's business pursuant to underwriting standards that are not less stringent than those the originator applies to origination of similar exposures not securitised. In addition, according to Article 8 par. 8 STS-R at least one payment has to be made and Article 8 par. 7 STS-R excludes defaulted and credit-impaired exposures. Thus, we don't see the need to exclude further exposures. Also the delegated acts to the LCR and Solvency II do not contain such additional requirements. We propose to delete article 243 par. 2 (c) CRR-R.

Application of the 1,250 % risk weight (art. 244 par. 1 (b) CRR-R)

Article 244 par. 1. (b) CRR-R allows the originator institution to apply a 1.250 % risk weight to all securitisation positions it holds in the securitisation or deducts these securitisation positions from Common Equity Tier 1 items in accordance with Article 36 (1) (k) CRR.

Par. 37 of the Securitisation Framework of the Basel Committee issued in December last year stipulates that "originator banks can offset 1,250% risk-weighted securitisation exposures by reducing the securitisation exposure amount by the amount of their specific provisions on underlying assets of that transaction and non-refundable purchase price discounts on such underlying assets." The new Article 248 CRR-R is not catered for first loss securitisation positions of originator banks from traditional securitisations comprising the cash reserve and additional underlying exposures for the purpose of overcollateralisation to be considered according to Article 244 par. 1 (b) CRR-R. In cases where a significant risk transfer has been recognised but where the SSPE has still to be included in commercial consolidation according to IFRS 10, the specific provisions from the underlying securitised exposures cannot be released and are still available

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on the group level. Thus, it shall be further possible to deduct such specific provisions from the first loss position.

Definition mezzanine tranche (art. 244 par. 3 CRR-R)

Article 244 sentence 4 CRR-R proposes a definition of mezzanine securitisation position which differs from the current Article 243 par. 3 of the CRR.

As far as we understand the amendments of the current CRR result from the implementation of the new requirements of the changed securitisation framework from Basel or from the new securitisation regulation proposed by the European Commission. After due analysis of these documents, it appears that no changes of the definition of mezzanine securitisation are proposed. Therefore, we propose to maintain the current rules.

Legal opinions (art. 244 par. 4 (h), art. 245 par. 4 (g) CRR-R)

Articles 244 par. 4 (h) and 245 par. 4 (g) CRR-R requires an opinion from a qualified legal counsel that shall confirm compliance with the conditions set out in subparagraphs (b) to (g) / (f) of paragraph 4.

This would extend the current requirement to compile a legal opinion to conditions set out in Article 244 par. 4 (b), (d)-(g) / 245 par. 4 (b), (c), (e), (f) CRR-R.

We appreciate that regulators wish to establish greater legal certainty by extending the requirement for legal opinions. Given, however, that supervisors have to approve individual transactions involving a transfer of risk under the EBA's Guidelines on Significant Credit Risk Transfer (EBA/GL/2014/05 of 7 July 2014), they already have access to the entire documentation associated with the securitisation. It should also be borne in mind that extending the legal opinion requirement will increase the cost of transactions. Together with the higher capital requirements, this will make transactions less efficient, which runs totally counter to the Commission's wish to revive the securitisation market. Therefore, we propose to maintain the current rules.

Determination of tranche maturity (art. 257 par. 2 CRR-R)

Article 257 par. 2 CRR-R requires, by derogation from paragraph 1, institution shall use the final maturity of the tranche in accordance with point (b) of paragraph 1 where the contractual payments due under the tranche are conditional or dependent upon the actual performance of the underlying exposures.

Article 257 par. 1 (a) CRR-R determines that the tranche maturity can be measured on the basis of the weighted-average maturity of the contractual payments due under the tranche. We fully agree that this is the right approach to measure the tranche maturity. Unfortunately, paragraph 2 of Article 257 CRR-R stipulates that the final legal maturity of the tranche shall be used in accordance with point (b) of paragraph 1 where the contractual payments due under the tranche are conditional or dependent upon the actual performance of the underlying exposures. However, it is in the nature of securitisation tranches that they are conditional with regard to the rank of the payment stream in the waterfall and depend upon

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the actual performance of the underlying exposures. Thus, if the conditions in paragraph 2 are not amended, the tranche maturity would have to be calculated in all cases on the basis of the final legal maturity which would be overly conservative and not justified from a risk perspective. At least for senior and junior securitisation positions that are supported by a mezzanine and a first loss position it should be envisaged to calculate the tranche maturity based on the weighted-average maturity of the contractual payments. This is notably justified for rated medium term securitisation positions. In contrast to long term securitisation positions that benefit from the 5 years maturity cap in Article 257 (3) CRR-R and where it makes no difference due to the maturity cap whether the tranche maturity is calculated on the basis of the weighted-average maturity of the contractual payments or the final legal maturity of the securitisation position, the difference and thus the impact on the risk weights is notably very big for rated junior bonds of medium term ABS. Eventually, the calculation of the tranche maturity in the SEC-ERBA should be based on the residual maturity, because the degree of certainty increase with decreasing residual maturity.

Treatment of STS securitisations under the SEC-IRBA (art. 260 CRR-R)

The floor for ρ of 0.3 for securitisation as set by the Basel Committee in its securitisation framework from December 2014 and implemented in Article 259 par. 1 CRR-R has not been reduced for STS securitisations in Article 260 CRR-R. Given the reduced agency and structural risks of STS securitisations, the floor which determines the floor capital surcharge in terms of non-capital neutrality compared to the capital requirements for the underlying assets should be reduced as well to reduce the undue level of non-neutrality.

Due to the outstanding performance of senior European ABS we propose to keep the risk weight floor for senior securitisation position at 7% for STS securitisations.

In addition, we propose to review the constant term of 0.5 for STS securitisations which could be too conservative and to complement it by a further review factor that should be less than 1.0.

As model calculations show the capital requirements of the whole securitisation is often negatively impacted by the floor capital requirements for senior bonds, because the calculated risk weight before the floor is often significantly lower than the floor risk weight. This applies also in the case of a 7% risk weight floor. On the other hand, the risk weight for junior tranches will partly increase significantly even if it is a STS-securitisation. Thus, it should be considered to attenuate the impact on the capital requirement of the securitisation by allowing to use the entire excess capital requirement of the senior tranche or a proportion of it to reduce the capital requirement for the junior tranche. To be prudent a relative floor could be introduced for junior tranches to ensure that the capital requirement for a junior tranche is higher than the capital requirement of the senior tranche.

Treatment of STS securitisations under SEC-ERBA (art. 262 CRR-R)

The risk weights of table 4 should be reduced significantly to avoid that the capital requirements increase significantly in the SEC-ERBA compared to the current capital requirements even it is a STS securitisation. This applies especially for non-senior tranches.

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In addition, it is proposed that the risk weights for STS-securitisation positions should generally be calculated on the basis of the weighted-average maturity of the contractual payments due under the respective tranche of the securitisation. This would also contribute to the reduction of risk weights and would be justified given the better predictability of simple, transparent and standardised securitisations.

Senior positions in SME securitisation (art. 270 CRR-R)

SME as underlying (art. 270 (c) CRR-R)

As currently worded, Article 270(c) requires the underlying pool to be made up exclusively of exposures to SMEs. This is excessively restrictive, in our view. The reference to Article 501 of the CRR, which defines SME on the basis of Commission Recommendation 2003/361/EC of 6 May 2003, means that underlying pools could only include exposures to companies with a staff of less than 250, an annual turnover of no more than €50 million and total assets of no more than €43 million. This would automatically exclude a large number of businesses (e.g. midcaps).

The intention of this provision, as we understand it, is to ensure that securitisations backed by real-economy exposures may receive preferential treatment in the calculation of risk weights. Many companies which exceed the above criteria, such as midcaps, are nevertheless an integral part of the real economy. Their automatic exclusion runs the risk of undermining the creation of SME securitisations in the absence of sufficient underlying exposures capable of satisfying the envisaged criteria.

What is more, the number of eligible exposures will be further restricted by the need to also meet the requirements of Articles 8-10 STS-R.

To ensure that the objective of promoting the real economy can really be achieved, we would suggest broadening the definition of exposures eligible for securitisation along the lines of the Deutsche Bundesbank's list of assets eligible for use in the ESCB's refinancing system:¹

"The debtor must be a commercial undertaking (including business partnerships and one-man-businesses) in the non-financial sector or public sector. The borrower must be headquartered in a participating country. The above requirements also have to be met by all further joint debtors (if any). This point notwithstanding, multilateral development banks and international organisations are always eligible debtors."

Guarantor (art. 270 (d) and (e) CRR-R)

Article 270 CRR-R permits originators to apply risk weights for STS securitisations to retained senior tranches in synthetic securitisations as long as the conditions of Articles 8 to 10 STS-R are met (with the exception of the true sale criterion).

¹ Deutsche Bundesbank: Allgemeine Geschäftsbedingungen der Deutschen Bundesbank, Bankrechtliche Regelungen 5, Section V. 10. 3. (General Terms and Conditions of the Deutsche Bundesbank of 1 July 2015, in German only).

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Under Article 270(e) CRR-R, however, this only applies to transactions where the guarantor would qualify for a 0% risk weight. This will normally only be the case if the securitisation is agreed bilaterally between the originator and investor. Transactions will be excluded, by contrast, if the risk associated with the mezzanine tranche (the senior tranche being retained) is transferred to an SPV which then issues credit-linked notes (CLNs) for purchase by “normal” external investors. Under this structure, the proceeds from the CLN issue are pledged to the originator. Should the investor default, the originator consequently has protection in the form of cash collateral deposited, for instance, at the KfW (risk weight: 0%).

Given the objective of reviving the securitisation market, “normal” investors should not be placed in a less favourable position than are central governments, etc. If the risk of the investor’s default is covered by cash collateral, the risk is identical in both cases, in our view, and the regulatory treatment of both cases should also be identical. We therefore consider it appropriate to also apply risk weights for STS securitisations to retained senior positions collateralised in the manner described above.

Annex 3 - Criteria for simple, transparent and comparable ABCP

Criteria for simple, transparent and comparable ABCP

The Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) did not cover multi-seller ABCP in their paper “Criteria for identifying simple, transparent and comparable securitisations” of July 2015. Consequently, there are no proposals for reduced capital requirements for STC ABCP in this consultation paper. We understand, however, that the BCBS and IOSCO are currently considering whether ABCP should be incorporated into the scope of STC securitisations and how STC criteria for this type of securitisation could be designed.

Multi-seller conduits are platforms that predominantly purchase trade receivables as well as auto loans and leases from corporations or leasing companies. The purchase is funded by issuing short-term commercial paper backed by the underlying assets (ABCP). The sponsor bank, which runs the conduit, provides liquidity lines that can be drawn on if the ABCP cannot be sold to the market or if there are unexpected losses on the securitised receivables. Almost all ABCP issued in Europe is “fully supported”. That means that any losses of the investors are borne by the provider of the liquidity facility.

ABCP conduits play an important role in the financing of businesses. Corporates can use the sale of their own receivables as a substitute for other forms of funding (especially bonds or bank loans). For small and medium-sized companies, moreover, they can be regarded as equivalent to the use of ABS by large corporates as an alternative funding source.

Banks can provide additional funding to corporates without extending credit lines. Providing a liquidity line for ABCP is typically less risky than extending a loan to the same corporate. This is predominantly due to the fact that the main driver of credit risk is not the corporate, but a diversified portfolio of independent debtors with a high granularity and often additional coverage by a commercial credit insurance. Moreover, the eligibility criteria of the transactions often exclude higher-risk exposures. In addition, the monthly reporting obligations for the securitised portfolio give the bank more timely information than that typically obtained in a traditional lending relationship.

While the volume of conduit business has shrunk significantly due to the exit of arbitrage conduits and structured investment vehicles (SIVs) after the financial crisis, the share of multi-seller conduits as a proportion of all conduit issuances has risen considerably. According to Moody's, multi-seller conduits in Europe had securitised, as at June 2015, trade or leasing receivables amounting to 65 billion euros, thereby accounting for more than 80 per cent of the ABCP market.

Multi-seller ABCP performs strongly. It has experienced a stable and sound development even through the financial and economic crises of 2007/2008 and subsequent years. No ABCP conduit with full liquidity support has suffered losses due to a liquidity crisis.

Banks can play one of two roles in an ABCP multi-seller conduit: investor or sponsor bank. There are consequently two main securitisation positions for which STC criteria have to be developed: the ABCP at the programme level and the fully supporting liquidity facility at the transaction level. As a fully supporting liquidity facility is a central prerequisite for STC ABCP, it is of utmost importance, in our view, that both ABCP and the corresponding liquidity facilities are recognised as “simple, transparent and comparable securitisations” that can benefit from special regulatory treatment.

As multi-seller conduits differ from the usual structure of a term securitisation, there should be specific high-quality criteria for multi-seller conduits at the transaction and at the programme level. In the following, we would like to illustrate which STC criteria proposed by the BCBS and IOSCO should be applied at the transaction and which should be applied at the programme level. We will also point out how these criteria should be adjusted to better capture the special nature of multi-seller ABCP programmes.

In this context, we strongly advocate not imposing restrictions on the residual maturity of the securitised receivables. In our view, investors can be only exposed to a liquidity risk stemming from the need to refinance the longer term assets at expiry date if underlying assets cannot be refinanced by issuing new ABCP. Investors would then face a credit risk because the underlying exposures had to be sold to pay back the investors. This cannot happen, if the ABCP programme is fully supported. In this case the liquidity or credit risks mentioned above are covered by the liquidity facility provided by the sponsor. Therefore, the fundamental question when assessing whether or not the CP issued by a programme can qualify as “STS” should be whether the sponsor is providing full liquidity and credit support, and whether the investor can expect this support to be reliable. When the sponsoring bank provides this full, robust support, the CP issued by an ABCP conduit is equivalent to a covered bond. Furthermore, the investors are protected against a default of the sponsor because the programme has to provide for a collateralization of the funding commitment or a replacement of the liquidity facility provider in case of a default.

Limiting the remaining maturity of the underlying exposures would mean that many ABCP transactions in their current form could not be classified as STS. As things stand, ABCP programmes contain some transactions whose underlying exposures have longer maturities. These longer maturities are due to the types of underlying exposures involved, which normally include car loans and leases, operating equipment and consumer loans but also leases of machineries or other tangible assets. These have longer original maturities by their very nature (e.g. 6 years) and consequently also have longer residual maturities when they are securitised. With such underlying real-economy exposures an ABCP transaction would not qualify as simple, transparent and standardised.

Furthermore, it should be allowed to issue (non-STC-) ABCP that include clauses which can have an effect on the final maturity of the instrument under an, otherwise, STC-programme. There should be a co-

existence of CPs that contain e.g. put options for the investor (structured CP) and 'plain vanilla' ABCP (without optionalities) within the same programme. In such a case the 'plain vanilla' ABCP may still be a STC securitisation where - at the same time – the structured CP is not. Otherwise one structured CP would "infect" all unstructured ABCP.

In case of an ABCP the sponsor institution is exposed to the risks of a revolving portfolio of underlying exposures. According to the BCBS "Revisions to the securitisation framework" it shall, therefore, apply the longest contractually possible remaining maturity of an exposure that might be added during the revolving period (para. 23). This would also apply to STS-ABCP transactions. In this context, we would like to point out that the exposure to the risk of a deterioration of the credit quality of the underlying portfolio is effectively limited for STS ABCP. If the liquidity facility is provided to an STS transaction the transaction must have an early termination trigger that terminates the revolving period if the credit quality of the underlying exposures deteriorates below a pre-determined threshold. In such a case no new assets would be purchased. Thereby, with an effective early amortization trigger the provider of the liquidity facility for a revolving pool would be in the same position as the liquidity provider to a static pool. So from our point of view it would be commensurate to apply the weighted-average maturity of the underlying exposure to these transactions too. At least, the definition of final legal maturity of the tranche in para. 22 should apply.

Transaction-level STC criteria for ABCP

A. Asset risk

Homogeneity

According to the BCBS/IOSCO proposal, the assets underlying the securitisation should be homogenous credit claims or receivables. In assessing homogeneity, banks should consider asset type, jurisdiction, legal system and currency. In its additional guidance the BCBS/IOSCO, make clear that the securitised loans should be originated in the same currency and should be subject to the same legal framework for origination, transfer and enforcement.

In our view, the requirements of homogeneity by jurisdiction, legal system and currency should not apply to fully supported ABCP transactions. This would enable fully supported ABCP transactions to fulfil the criterion even if the securitised pool stemmed from different originators (e.g. within a group of affiliated companies), asset classes, currencies and legal systems. In our experience, many corporates that sell their receivables in an ABCP transaction do business internationally, i.e. they deliver goods or provide services in more than one country. Furthermore, they accept the currency and governing law proposed by their customers. Finally, SMEs do not have sufficient receivables to securitise them separately in different countries.

We would therefore suggest that, in order to comply with the homogeneity criterion at the transaction level, it should be sufficient for the asset type to be uniform and for any material risks arising from different legal systems to be covered by adequate measures. The foreign currency risk should be appropriately mitigated in accordance with criterion B8.

Periodic payment streams

Here it is required that credit claims or receivables should have contractually identified periodic payment streams. We would like to point out that this requirement cannot be applied to trade receivables or other one-off payment obligations. We therefore suggest excluding these receivables from the requirement.

Payment status

The credit claims or receivables transferred to the pool should not include obligations that are in default or obligations for which the transferor or parties to the securitisation are aware of evidence indicating a material increase in expected losses or of enforcement actions. A borrower should be deemed as credit-impaired if, to the best knowledge of the originator or sponsor, it has been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination, or, at the time of inclusion of the exposure in the securitisation, is recorded on a public credit registry of persons with adverse credit history or other credit registry where a public one is not available in the jurisdiction, or has a credit assessment by an ECAI or a credit score indicating significant risk of default.

We appreciate that the indications of default in the additional guidance are only to be applied to the best knowledge of the originator or sponsor. But in the case of securitisations involving trade and lease receivables where the original lender is not a credit institution, we believe a borrower should only be defined as credit-impaired if this lender has positive knowledge of circumstances making it highly unlikely that the borrower will be able to pay its obligation in full. It should be borne in mind that real economy originators, i.e. corporates, do not have systems and procedures in place to perform underwriting and credit approval processes equivalent to those performed at banks. It should also be taken into account that trade receivables often are covered by commercial credit insurance. These originators will not be in a position to track whether an obligor has been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination.

Asset selection and transfer

The Basel Committee wants to make sure that the performance of the securitisation does not rely on active portfolio management on a discretionary basis. In our view, it should be clarified that the revolving purchase of receivables (e.g. trade receivables) to replace maturing or ineligible assets will not be

regarded as active portfolio management in the sense of a discretionary decision by a manager provided that the purchases are based on clearly defined eligibility criteria and thus do not result in any form of cherry-picking.

For a securitisation to qualify as true sale, the BCBS requires the originator to provide representations and warranties that the assets included are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due. In our view, the representations and warranties of the original lender regarding the enforceability of collections with regard to trade receivables should allow for the exclusion of circumstances that are routine in the original lender's business (e.g. dilutions, set-offs). If the ABCP programme is fully supported, this requirement should be met automatically.

Initial and ongoing data

The BCBS proposes that investors and prospective investors should have readily available access to data on the underlying individual assets on a loan-by-loan level before the pricing of the securitisation.

We appreciate the clarification that loan level data only needs to be provided in accordance with applicable laws. In this context, we feel that not only laws governing the protection of confidentiality of information sources and the processing of personal data are relevant here, but also that banking secrecy has to be observed.

We also welcome the clarification that in the case of granular pools, summary stratification data of the relevant risk characteristics of the underlying pool should be made available to investors. This should especially apply to trade receivables. It is not feasible to deliver loan-by-loan-level data on these receivables, nor would such data be up-to-date or potentially useful. There might even be issues involving business secrets of the corporate sellers. Furthermore, investors would not benefit from such data as they rely primarily on the liquidity support of the sponsor/liquidity bank. Aggregated pool data have proven to be fully sufficient.

Likewise, an external verification of the data with application of a minimum confidence level would be extremely burdensome and costly for revolving portfolios of trade receivables. Given the fact that the claims of the investors are covered by a fully supported liquidity line such requirement should be deleted for ABCP transactions with revolving, short term assets.

B. Structural risk

Redemption cash flows

The BCBS requires that the repayment of the holders of the securitisation positions should not depend on the sale or refinancing of the underlying exposures. In many cases, residual values are backed by repurchase obligations or guarantees by the manufacturer or seller at a fixed price and are therefore not exposed to residual value risk (market risk). We recommend that, if the residual value risk is hedged by a repurchase obligation or a guarantee by the manufacturer or the seller, the residual value should nevertheless be eligible as underlying assets because the market risk is mitigated. Furthermore, such repurchase obligation or guarantee by the manufacturer should not harm the fulfilment of the granularity criterion (D 16).

Payment priorities and observability

Transactions featuring a revolving period are to include provisions for appropriate early amortisation events or triggers of termination of the revolving period if the originator or sponsor is not able to generate sufficient new underlying exposures of at least similar credit quality. We would like to point out that, in ABCP trade receivables transactions, it is quite common that the underlying exposure fluctuates and the maximum purchase limit is not reached. This is due to the nature of the business or asset class and is not, in our view, relevant for STS criteria. We therefore suggest deleting this requirement.

It should at least be clarified that there is no requirement to terminate the revolving period if the unavailability of appropriate exposures is only temporary and not caused by any changes with respect to the credit quality of the seller or the transferred assets, but by non-credit risk related issues like the current funding needs of the seller or seasonal variations in the demand for certain products or services.

Furthermore, the originator or sponsor is required to provide investors with a liability cash flow model. We think that cash flow statements should not be mandatory, especially not in ABCP programmes where assets and liabilities are constantly revolving. Any reporting of cash flow information should be made in a reasonable and sufficient manner to enable investors to have a clear picture of all materially relevant aspects regarding their risk position in the investment. Especially in fully supported multi-seller ABCP programmes with trade or lease receivables from various real economy companies, it should be possible to keep certain data confidential if information memoranda and investor reporting provide all materially relevant information for assessing the risk position of the investor. The originator and sponsor should only provide investors with a liability cash flow where applicable.

Documentation disclosure and legal review

To help investors fully understand the terms, conditions, legal and commercial information prior to investing, sufficient initial offering and underlying documentation has to be made available to investors. It should be clarified, in our view, that for ABCP programmes only documentation at the programme level but no transaction documentation has to be disclosed to investors. The relevant transaction documentation should be disclosed to the liquidity facility provider which is exposed to the risk of the underlying exposures at transaction level.

C. Fiduciary and servicer risk

Fiduciary and contractual responsibilities

According to this provision, the responsibility of the trustee and other entities with fiduciary duties towards investors has to be specified in the programme documentation. Furthermore, the documentation should contain clear provisions facilitating the timely resolution of conflicts between the sponsor and the investor. We cannot think of any potential conflict between the sponsor and the investor in a fully supported ABCP programme. We think, on the contrary, that there is a total alignment of interests between these parties due to the full support. We would therefore suggest deleting this provision.

D. Additional criteria for capital purposes

Here it is required that the risk of the securitised exposures under the Standardised Approach should not be higher than 100 percent for any exposure that is not retail or secured by mortgages. This criterion is very problematic for ABCP as real economy originators will not normally know the risk weight of their receivables under the Standardised Approach.

What is more, it could preclude the securitisation of corporate exposures, including SME corporate exposures, as STC securitisation altogether. We therefore urge the BCBS to reconsider this criterion. At present, a risk weight of 100 per cent would mean that obligors with an external rating of B or worse (according to the rating scale of S&P) would have to be excluded from securitisation. The result would be that many corporate SME exposures that are successfully securitised today would have to be excluded.

Not allowing real economy originators to securitise riskier exposures via a multi-seller ABCP programme would raise the funding costs for these corporates. This may lead to higher prices for riskier customers. Moreover, it is likely to lead to a concentration of risky exposures on the originator's balance sheet. This may reduce the creditworthiness of the company and increase its funding costs even further.

Criterion A4 already requires the exposure to be originated in the ordinary course of the seller's business pursuant to underwriting standards that are not less stringent than those the seller applies to the origination of similar non-securitised exposures. In addition, criterion A3 excludes credit-impaired exposures. We consequently see no need to exclude further exposures.

We are of the opinion that STC securitisations are neither free of risk, nor do they indicate anything about the credit quality of the underlying exposures. Instead, the STC label should be understood to indicate that a prudent and diligent investor will be able to analyse the risk involved. If the BCBS nevertheless wants to limit the risk of the underlying exposure pool, reference should be made to the fully supporting liquidity facility. This liquidity facility reflects the risk of the underlying exposures. Institutions that apply the Internal Assessment Approach (IAA) could therefore, alternatively, be allowed to use a maximum risk weight for the liquidity facility of 100 per cent.

Program level STC criteria for ABCP

Information provided to Investors

Asset performance history

Investors have to be provided with verifiable loss performance data, such as delinquency and default data for credit claims and receivables with substantially similar risk characteristics to those being securitised. These data should be provided for a period long enough to permit meaningful evaluation by investors.

In our view, this requirement should not apply to investors but only to those parties holding a securitisation position in a securitisation transaction in an ABCP programme. We feel, moreover, that the time period for reporting losses on trade receivables should not be longer than three years.

Investors should have information about materially relevant data on the credit quality and performance of the underlying assets. In consequence, they should have readily available access to all materially relevant data on the credit quality and performance of the underlying securitisation transactions. Every ABCP programme reports on a pool-by-pool basis about the performance, compliance with triggers, credit enhancement and pool description. Furthermore, every ABCP programme provides information on the full support by the sponsor bank as well as general information on the programme.

Granularity of the pool

The aggregated value of all exposures to a single obligor is required not to exceed one per cent of the aggregate outstanding exposure value of all exposures in the portfolio. We basically agree with this criterion if it is applied at the programme level. Setting the ceiling at the transaction level, however,

would severely limit the ability to securitise auto leases with guaranteed residual values, for example. This would have adverse effects on the funding conditions of the manufacturers.

Furthermore, the requirement should not apply to trade receivables whose credit risk is fully covered by eligible credit protection. The same exemption should apply to residual leasing values that are not exposed to refinancing or resell risk due to an effective undertaking by a third party to repurchase or refinance the exposure at a certain amount. Furthermore, such “guaranteed” residual leasing values should not be counted as exposures to a single obligor (the third party) for the calculation of the granularity criterion (D 16).

In any event, the granularity criterion should not apply to “groups of connected counterparties” as defined in para. 19 et seq. of the BCBS’s “Supervisory framework for measuring and controlling large exposures” of April 2014. As no common ID or unique labelling for obligors over the various transactions exists, it is technically not possible for a sponsor bank either to aggregate obligors over all transactions or to check if groups of connected clients exist.

Annex 4 - Criteria for simple, transparent and comparable synthetic securitisations

Criteria for simple, transparent and comparable synthetic securitisations

We are of the opinion that synthetic transactions should be included into the framework for simple, transparent and comparable securitisations. This particularly holds true when the set-up of a securitisation as a synthetic securitisation is the only reason for not meeting the TFSM's criteria for simple transparent and comparable securitisations. The essential benefits of synthetic transactions for many originating banks are the transfer of credit risk (e. g. SME loans) to third parties, when true sale transactions (traditional securitisations) cannot be employed since bank customers do not want the bank to sell their loans (transfer clause limitations), and the release of risk-weighted assets for new real economy transactions. Moreover, synthetic transactions are often the only way to manage risks arising from certain off-balance sheet exposures, e.g. letters of credit or guarantees provided to bank's customers. This also applies to certain on-balance sheet exposures, such as until-further-notice overdraft facilities. In other words, synthetic transactions do support - in the most efficient way - real economy SME transactions by enabling banks to transfer the risks of various lending products as well as taking care of bank client concerns such as data secrecy or the causeless but widely spread threat of a sale of the relationship to third parties like hedge funds. Synthetic transactions also support risk-sharing in the financial system.

In comparison to true sale transactions, synthetic transactions show further advantages. Since the securitised assets will not be sold to the SPV, risks such as legal validity of the receivables, commingling risk, settlement risk and collection risk will not be present. This implies that the investor does not suffer any losses arising from such risks, since they are not credit default risk. Moreover, if the originator bank defaults, the guarantee or credit default swap will be terminated and the investor gets back the provided cash (from purchased CLN) over and above any occurred credit events in the underlying portfolio (in contrast to selling the securitised assets or awaiting any scheduled repayments in the portfolio). This is of particular interest to investors who want to buy certain credit risk but not the actual underlying (and potentially therefore wait for their cash back until all assets are sold).

As mentioned above, synthetic transactions can be structured in a simple and transparent way. Often, the transactions and associated documentation are less complex for both issuer and investor as they do not involve the sale of assets. By way of example, there are much less involved parties in a synthetic transaction. A synthetic transaction could therefore be considered simple, transparent and comparable, under almost the same conditions/criteria proposed for a true sale securitisation.

In summary, we believe that when synthetic securitisations of bank loans meet the spirit of the proposed TFSM criteria, the set-up as a synthetic securitisation should not hamper the inclusion of such transaction in the definition of "simple transparent and comparable securitisation". Regulators should encourage the ability of banks to manage the risks associated with bank-originated loans.

On European level synthetic securitisations have not been included in the EU Commission's first proposal on STS securitisations. We therefore welcomed the fact that the EU Commission has examined the issue further and has analysed to what extent synthetic securitisations might be able to be included in the STS framework. The European Banking Authority (EBA) published its report on synthetic securitisation on 18 December 2015. GBIC has supported this examination process by developing some suitable criteria for the inclusion of synthetic securitisations into the scope, which we would like to share with you:

**Inclusion of certain synthetic securitisations in the regulation for STS securitisations
(from GBIC Comments to the EU Commission's consultation document of 18 February 2015 on
an EU framework for STS securitisations)**

A. Preliminary comments

The underlying objective of the EU Commission in its endeavours to revitalise European securitisation markets is to stimulate broad-based economic growth, across all the countries of the euro zone. We support this objective, and welcome plans to introduce a European framework for simple, transparent and comparable securitisations. Likewise, we welcome the associated introduction of a market segment for high-quality securitisations. However, when considering the suitability of measures to achieve the desired growth targets – and to achieve them without undue delay, and in an efficient manner – we believe a differentiated view is required upon the European economy, as well as Europe's corporate (and hence, financing) structures.

Business environment characterised by family-owned SMEs and Midcaps

Besides numerous large corporations, the European business environment is characterised, in particular, by small and medium-sized enterprises as well as a large number of family-owned mid-cap companies – especially in Germany. Family-owned businesses continue to be predominant, regardless of the fact that, from a company law perspective, limited companies have increasingly gained in importance. This structure of businesses looking for financing is decisive for an understanding of European credit markets.

European credit markets are driven by demand from businesses

In Europe, financing demand from businesses – as opposed to supply – has been the determining factor over recent decades. Accordingly, the banking sector began developing and offering suitable financing instruments (prior to the introduction of Basel II/III) that permit them to provide financing even outside their balance sheets, which are restricted in terms of equity. The question whether a bank offers any given capital market instrument (or capital markets-related structure) as a financing solution is almost exclusively driven by the bank's client structure.

Bank loans are the financing option of choice for the majority of SMEs and Midcaps

For a variety of reasons, SMEs as well as Midcaps focus on working capital facilities – in contrast, investment loans are requested for defined financing needs, such as the purchase of machinery or the construction of production sites, for example. This reflects the fact that the framework specifications for an investment loan – specifically, fixed amounts, defined tenor and redemption – often are only set for such clearly-defined individual investment projects, given depreciation rules under tax law, the planned useful life, or underlying investment calculations, to name but a few. In fact, bullet repayments are not common at all, since they only rarely match SME cash flow structures. The focus of European SMEs is rather on variable-rate financings of current operations: working capital facilities.

Furthermore, there are additional aspects as to why a large portion of companies will be reluctant to approach more capital markets-oriented financings, regardless of the offers available. Key points in this context are the wish to maintain local GAAP (e.g. German commercial law – "HGB"); the desire to retain control of proprietary company and financial data, and the scope of persons to whom such data is disclosed; a fear of increased efforts and costs involved in converting financial reporting to a quarterly basis – for example – in order to comply with the requirements of certain forms of capital markets financing. In addition a bank loan, as opposed to standardised capital market products, gives the borrowing company significantly more flexibility to get a financing that matches the companies needs.

In summary, it is fair to say that large companies –which are familiar with capital markets practice – are using such forms of financing as part of their financing mix, whereas others (and SMEs and Midcaps in particular) prefer traditional bank loans.

Financing relief must be oriented upon demand to be effective

In our view, targeted growth would be achievable in a much faster and more efficient manner if the focus was not on removing perceived burdens on lending by the banking sector, to allow businesses to access capital market financing – but by strengthening banks' equity, and by facilitating credit risk management using capital market instruments.

New securitisation standards and easier capital market financing will only benefit a small part of enterprises: large corporations. SMEs and Midcaps will continue to predominantly finance via established credit products on a national level, determined by the respective legal framework.

Criteria for high-quality securitisations should not lose sight of the underlying target of facilitating the provision of finance to the real economy

Banks should not face unnecessary burdens when placing parts of their credit risk exposure to professional investors. Yet this is exactly what would happen if synthetic securitisations were generally excluded from the regulations for high-quality securitisations, as opposed to so-called "true sales". In fact, synthetic securitisations are particularly suitable for this purpose, since they only require comparatively straightforward contractual agreements – and no full transfer of title of the underlying loan receivables (regardless of whether these are not desired for reasons of business policy, or downright illegal). Moreover, this would negatively affect banks whose clients are preferring bank loans – leading to competitive distortions.

Furthermore a one-sided focus on true sale securitisation would discriminate between jurisdictions where true-sale securitisation is common practise and others like Germany where historically synthetic securitisation has proven to be more feasible and accepted by borrowers.

Instead, the focus should always be on the benefit of a form of a capital market instrument for the real economy: the issue as to whether a securitisation is simple, transparent and comparable securitisation should not be determined on the basis of the legal structure alone. We would like to support the development with the following proposals for suitable criteria.

Using the quality identified by the credit quality assessments carried out by the banking sector to promote the European securitisation market

Both the retention requirements for securitisations pursuant to the CRR and the new BCBS Securitisation Framework – including numerous new, quality-enhancing rules for originators, sponsors and investors, have created a market for securitisations of a higher quality. This market is currently experiencing a revitalisation and should not be obstructed (or destroyed) by new segmentation initiatives.

If ratings of external rating agencies and updated credit risk models are used as evidence for the quality of a securitisation at a portfolio level, it is banks' credit quality assessments at a single-loan level that evidence the quality of receivables included in the securitisation. We agree with the view that re-securitisations, as well as complex securitisation structures which do not serve the purpose of directly hedging existing credit risks, should not be included in a standard for high-quality securitisations.

Going forward, the securitisation market should remain an 'overflow' mechanism for the credit market with limited equity. This will enable the banking sector to satisfy the credit demand of businesses, in line with clients' needs – provided that lending standards for individual loans are harmonised with an EU securitisation framework, which adequately incorporate established forms of securitisation, instead of excluding them.

B. Appropriate modification of SST criteria regarding synthetic securitisations

Following this economic assessment, we should like to look at the supervisory aspects of synthetic securitisations. In our view, synthetic securitisations can be structured in such a way that they are also simple, transparent and standardised.

EBA criticisms

In the EBA consultation document on simple, standard and transparent securitisation (SST securitisation), synthetic securitisation is explicitly excluded. The EBA gives three reasons for this:

1. No access to securitised assets

In the EBA's view, assets in an SST securitisation should be permanently transferred legally and economically to a special-purpose vehicle (SPV). As we understand it, the EBA in this way intends to ensure that the investor in such a securitisation can access the transferred assets should the SPV fail to meet the agreed payment obligations. The assets then serve as security for the investor's claims. This applies also in the event of default by the originator.

2. Increased complexity through counterparty risk

In the EBA's view, "most" synthetic securitisations are complex with regard to counterparty risk. This would be understandable if the EBA already regards the transfer of credit risk from the originator to the investor or SPV by means of a financial guarantee or credit derivative (e.g. credit default swap (CDS)) as in itself complex. By using the term "most", the EBA also admits, however, that this supposed complexity does not apply to synthetic securitisation in every case.

3. Increased complexity of risk modelling

The EBA's third criticism relates to the complexity of risk modelling. We understand this criticism to mean that the EBA suspects that due diligence in synthetic securitisation poses a greater challenge to the investor. We can appreciate that due diligence should be relatively simple for high-quality securitisation. In addition, we interpret the worry about unavailability of adequate portfolio reporting, particularly regular, detailed portfolio reporting, information on individual exposures, as well as cash flow information, as possible perceived complexity.

Our understanding is that the EBA's criticisms serve a common objective: designing STS securitisation in such a way that the investor is protected if possible against unforeseen events that impair the invested capital.

Basic principles

The EBA criticisms outlined above and their aim, as we see it, engender a fundamental idea that must be taken into account when structuring synthetic securitisations:

Protection of the investor

This creates three basic principles for synthetic securitisation:

- 1. The investor bears only the credit risk of the securitised portfolio.**
- 2. The investor recovers the capital he invested provided there is no credit default in the securitised portfolio.**
- 3. The investor receives all the information he needs to model the risks adequately.**

If a synthetic securitisation takes due account of these basic principles and the aspects associated therewith, the requirements set for SST securitisations are, in our view, fulfilled. This means that synthetic securitisations can also meet the requirements in regard to simplicity, transparency and standardisation.

Linking the EBA criticisms to the basic principles for synthetic securitisation:

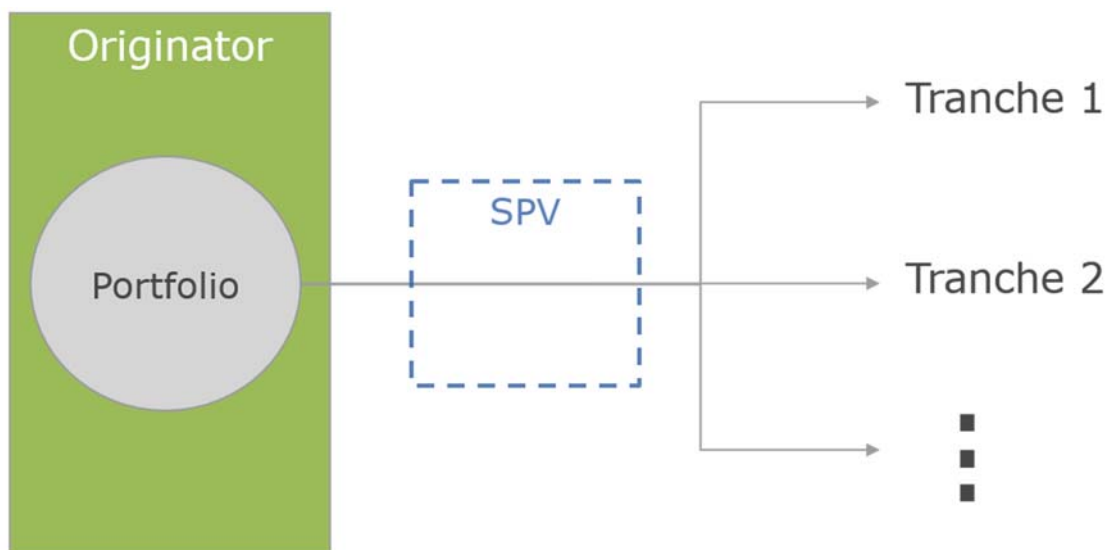
The complexity of a synthetic securitisation is low insofar as the underlying assets precisely do not have to be transferred. The risk of default of the underlying loan portfolio is transferred by way of bilateral agreements that can be based on standard master agreements. Legally effective title transfer that has to comply with comprehensive legal requirements is not necessary in this case. On the other hand, synthetic securitisation undeniably creates an additional counterparty risk. This counterparty risk can, however, be reduced through the hedging measures mentioned below to a level equivalent to that of a true sale transaction.

If a synthetic securitisation is financed in part by issuing securities, the proceeds of the issue are protected against insolvency – in relation to the originator and other transaction parties – by being separated and invested (cash collateral or equivalent securities). This means that the investor has no access to the underlying assets in the event of insolvency. However, the invested proceeds of the issue are available at short notice to repay the invested capital. As a result, the synthetic securitisation can also be regarded as collateralised. A loan portfolio does not need to be transferred to an SPV to secure the investment.

The investor requires detailed information to enable him to model risks. Our experience is that the investor receives all the information he needs to do so also when investing in synthetic securitisations.

Synthetic securitisation criteria

We should like in the following to translate the above remarks on the EBA's criticisms into explicit criteria for synthetic securitisations. We have a quite simple synthetic securitisation structure in mind, as shown in the diagram below:



Funded (e.g. CLN, bargedeckte (Finanz)Garantie) / Unfunded (e.g. CDS, (Finanz) Garantie) Credit Protection

The originator of a synthetic securitisation is, as a rule, a supervised institution. The supervised institution securitises a loan portfolio created by its own business activity. The portfolio credit risk is transferred to an investor by way of a financial guarantee or a credit default swap (CDS). The credit risk of the securitised portfolio can be transferred directly or through the involvement of an SPV. Provision of security for the guarantee or CDS and SPV refinancing are usually ensured by issuing credit linked notes (CLNs).

In its consultation document, the EBA has already proposed numerous criteria for high-quality securitisation. We have taken the liberty of examining these to assess their suitability for synthetic securitisation. Our assessment is set out in the following overview (Tables A-D). In this assessment, we make proposals for amendment and provide further advice on how applicable or also questionable certain requirements for synthetic securitisation are. We do not take up our proposed amendments to criteria that also apply to true sale securitisation and refer in this connection to the German Banking Industry Committee (DK) comments on the EBA consultation document on SST securitisation.

In addition, we have developed further criteria to take due account of the basic principles for synthetic securitisation. We propose the following additional criteria for simple, transparent and standardised synthetic securitisation:

- The originator of a synthetic securitisation is a regulated institution that is required to comply with supervisory requirements for lending processes, recovery and resolution (BRRD), and risk management.
- If cash collateral or equivalent security is used in synthetic securitisation, it must be separated and transferred to the investor in the event that the securitisation is terminated. This can ensure that the investor recovers the invested capital.
- Any counterparty risk within a synthetic securitisation must be covered so that the investor merely bears the credit risk of the securitised assets.
- Loan defaults and resulting losses are verified by an eligible, independent third party (e.g. certified public accountant). Verification also covers examination of whether the loan concerned fulfilled all the agreed criteria when included in the transaction.

We believe that these criteria contribute to simple, transparent and standardised securitisation. Please see in this connection Table E.

Simple Securitisation (Table A):

No.	Criterion	Adjustments for synthetic securitisation / Comments
1	The securitisation should meet the following conditions: • It should be a securitisation as defined in the CRR (as per Article 4 (61)); • It should be a 'traditional securitisation' as defined in the CRR (as per Article 242(10)); • It should not be a 're-securitisation' as defined in the CRR (as per Article 4 (63)).	The second bullet should read: It should be a 'traditional securitisation' as defined in the CRR (as per Article 242(10)) or a 'synthetic securitisation' as defined in the CRR (as per Article 242 (11)).

		It should be added: Applying leverage to credit risks is not permitted.
2	The securitisation should not be characterised by an active portfolio management on a discretionary basis. Assets transferred to a securitisation should be whole portfolios of eligible exposures or should be randomly selected from those satisfying eligibility criteria and may not be actively selected or otherwise cherry-picked. Substitution of exposures that are in breach of representations and warranties should in principle not be considered as active portfolio management.	No adjustments necessary. We ask for clarification that replenishment is not a case of active portfolio management (as EBA in EBA/DP/2014/02, Rational to Question 2).
3	The securitisation should be characterised by legal true sale of the securitised assets and should not include any severe insolvency clawback provisions. A legal opinion should confirm the true sale and the enforceability of the transfer of assets under the applicable law(s). Severe clawback provisions should include rules under which the sale of cash flow generating assets backing the securitisation can be invalidated by the liquidator solely on the basis that it was concluded within a certain period (suspect period) before the declaration of insolvency of the seller (originator/intermediary), or where such invalidation can only be prevented by the transferees if they can prove that they were not aware of the insolvency of the seller (originator/intermediary) at the time of the sale.	It should be added: In case of a synthetic securitisation, such securitisation should be characterised by an effective contractual transfer of the credit risk of the securitised assets and should effectively mitigate counterparty default risks. This means that the Investor takes just the credit risk of the underlying assets and in the case of the termination of the funded securitisation the investor receives the invested money back (if there is no default within the portfolio). All investor proceeds received by the originator or the SPV in case of a (partially) funded transaction have to be kept in a segregated account isolated from the insolvency of the originator and/or the SPV. Comment: The difference is that in a synthetic securitisation, the credit risk associated with a loan receivable is transferred by way of a bilateral agreement between the protection seller and the protection buyer, through a guarantee or a credit derivative contract – as opposed to transferring the loan receivable itself. This facilitates the transfer of risk from a legal perspective, since the originator does not need to take the manifold legal requirements for a legally effective full transfer of rights into account (and investors will not need to analyse whether such requirements are in fact fulfilled). It is possible to evidence the legal effectiveness of the guarantee (or the credit derivative) by way of a qualified legal opinion as defined by Article 194 of the CRR. The mechanism for the transfer of credit risk by way of a bilateral agreement (under the law of obligations) is relatively easy and robust. This would also allow for an easier introduction of uniform pan-European contractual (and thus product) standards
4	The securitisation should be backed by exposures that are homogeneous in terms of asset type, currency and legal system under which they are subject. In addition, the exposures should meet the following criteria: i. They arise from obligations with defined terms relating to rental, principal, interest or principal and interest payments, or are rights to receive	

	income from assets specified to support such payments; ii. They are consistently originated in the ordinary course of the original lender's business pursuant to uniform and non-deteriorating underwriting standards; iii. They contain a legal, valid and binding obligation of the obligor, enforceable in accordance with its terms against any third party, to pay the sums of money specified in it (other than an obligation to pay interest on overdue amounts); iv. They are underwritten: a. with full recourse to an obligor that is an individual or a corporate and that is not a special purpose entity, and b. on the basis that the repayment necessary to repay the securitisations was not intended, in whole or in part, to be substantially reliant on the refinancing of the underlying exposures or re-sale value of the assets that are being financed by those underlying exposures.	Synthetic securitisations may only be used to hedge the originating bank's existing credit risks, based on exposures originated or actually purchased by that bank. No. iii part "enforceable in accordance with its terms against any third party" is not relevant for synthetic securitisation.
5	At the time of inclusion in the securitisation, the underlying exposures should not include: i. Any disputes between original lender and borrower on the underlying assets; ii. Any exposures which are in default. An exposure is considered to be in default if: a. it is more than 90 days past-due; b. the debtor is assessed as unlikely to pay its credit obligations in full without realisation of collateral, regardless of the existence of any past-due amount or of the number of days past due. iii. Any exposures to a credit-impaired borrower. For these purposes, a borrower should be deemed as credit-impaired where he has been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination or he is, to the knowledge of the institution at the time of inclusion of the exposure in the securitisation, recorded on a public credit registry of persons with adverse credit history, or other credit registry where a public one is not available in the jurisdiction, or he has a credit assessment by an ECAI or a credit score indicating significant risk of default; iv. Any transferable securities, as defined in Directive 2004/39/EC	No specific comments on synthetic securitisation (please refer to question 1 and attachment 2).

	(MIFID) or derivatives, except derivatives used to hedge currency and interest rate risk arising in the securitisation. In addition, the original lender should provide representations and warranties that assets being included in the securitisation are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due.	
6	At the time of inclusion, the underlying exposures are such that at least one payment has been made by the borrower, except in the case of securitisations backed by personal overdraft facilities and credit card receivables	No adjustments necessary.

Standard Securitisation (Table B)

No.	Criterion	Adjustments for synthetic securitisation / Comments
7	The securitisation should fulfill the CRR retention rules (Article 405 of the CRR).	No adjustments necessary.
8	Interest rate and currency risks arising in the securitisation should be appropriately mitigated and any hedging should be documented according to standard industry master agreements. Only derivatives used for genuine hedging purposes should be allowed.	No adjustments necessary. It should be adjusted: For true sale securitisations the only derivatives used for genuine hedging purposes should be allowed.
9	Any referenced interest payments under the securitisation assets and liabilities should be based on commonly encountered market interest rates and may include terms for caps and floors, but should not reference complex formulae or derivatives.	No adjustments necessary.
10	The transaction documentation of those transactions featuring a revolving period should include provisions for appropriate early amortisation events and/or triggers of termination of the revolving period, which should include, at least, each of the following: i A deterioration in the credit quality of the underlying exposures; ii A failure to generate sufficient new underlying exposures of at least similar credit quality; and	For clarification: the "revolving period" in the case of synthetic securitisation is replenishment. No further adjustments are necessary.

	iii The occurrence of an insolvency-related event with regards to the originator or the servicer.	
11	Following the occurrence of a performance-related trigger, an event of default or an acceleration event: i The securitisation positions are repaid in accordance with a sequential amortisation payment priority, whereby the seniority of the tranches determines the sequential order of payments. In particular, a repayment of noteholders in an order of priority that is 'reverse' with respect to their seniority should not be foreseen; ii There are no provisions requiring immediate liquidation of the underlying assets at market value.	Comment: In an event of default, the synthetic securitisation will be wound up and the loss upon such default will be allocated to a particular tranche in that securitisation in accordance with its contractual terms. It should be ensured that the investor has access to the cash collateral if no default in the underlying assets has occurred. Issue proceeds in (partially) funded structures may be invested in liquid and secure alternative assets which can be standardised (such as government bonds, Pfandbriefe, or bank deposits). It should be adjusted: In particular, a repayment of investors in an order of priority that is 'reverse' with respect to their seniority should not be foreseen; No adjustments necessary.
12	The transaction documentation should clearly specify the contractual obligations, duties and responsibilities of the trustee, servicer and other ancillary service providers as well as the processes and responsibilities necessary to ensure that: i the default or insolvency of the current servicer does not lead to a termination of the servicing of the underlying assets;	In case of synthetic securitisation the servicer is the originating bank. The default of the servicer leads to the transaction wound up. It should be amended: This requirement is not applicable for synthetic securitisation. Comment: The loan receivable (and hence, the entire contractual relationship that is relevant for ongoing maintenance and settlement of that receivable) remains with the originating bank (as protection buyer) without the need for any additional contractual arrangements related to the cash flow transfer to investor – making the contractual framework less complex and less costly. Moreover, there is no third-party risk involved (or only to a very limited extent), since loan receivables will not have to be collected (or collateral realised, with extensive effort) in order to determine the actual loss incurred. In case of a servicer default the transaction will be terminated, losses of already reported credit events will be appraised and verified by independent, qualified third parties. No adjustment necessary.

	ii upon default and specified events, the replacement of the derivative counterparty is provided for in all derivative contracts entered into for the benefit of the securitisation; and iii upon default and specified events, the replacement of the liquidity facility provider or account bank is provided for in any liquidity facilities or account bank agreements entered into for the benefit of the securitisation.	It should be adjusted: upon default and specified events, the replacement of the liquidity facility provider or account bank is provided if any liquidity facilities or account bank agreements entered into for the benefit of the securitisation. .
13	The transaction documentation contains provisions relating to an 'identified person' with fiduciary responsibilities, who acts on a timely basis and in the best interest of investors in the securitisation transaction to the extent permitted by applicable law and in accordance with the terms and conditions of the securitisation transaction. The terms and conditions of the notes and contractual transaction documentation should contain provisions facilitating the timely resolution of conflicts between different classes of noteholders by the 'identified person'. In order to facilitate the activities of the identified person, voting rights of the investors should be clearly defined and allocated to the most senior credit tranches in the securitisation.	It should be amended: In case of synthetic securitisation there is an "identified person" who is responsible for the verification (and notification) of default /losses in the underlying portfolio of securitised assets and who is independent, free from conflicts of interests and acts unbiased on a commercially reasonable basis, and, finally, that the loss verification of such "identified person" will bind all parties to the transaction. Comment: The Trustee in a synthetic securitisation will act in the best interest of the investors. In the context of a loss verification the trustee will also verify that the asset servicing has been conducted in accordance with the agreed servicing principles.
14	The management of the servicer of the securitisation should demonstrate expertise in servicing the underlying loans, supported by a management team with extensive industry experience. Policies, procedures and risk management controls should be well documented. There should be strong systems and reporting capabilities in place.	See above comment to no. 12 and 13, no adjustments necessary.

Transparent Securitisation (Table C)

No.	Criterion	Adjustments for synthetic securitisation / Comments
15	The securitisation should meet the requirements of the Prospectus Directive.	It should be amended: The securitisation should meet the requirements of the Prospectus Directive or any other disclosure (offering) document that contains substantially the same economic information. Comment: A synthetic securitisation can be a public or private placement and can be funded or unfunded. In case of private placement or unfunded (no securities issued) securitisation the requirement cannot be fulfilled. For this reason the requirement should be extended.
16	The securitisation should meet the requirements of Article 409 of the CRR	No adjustment necessary.

	and Article 8b of the CRA (disclosure to investors).	
17	Where legally possible, investors should have access to all underlying transaction documents.	No adjustment necessary.
18	The transaction documentation should provide in clear and consistent terms definitions, remedies and actions relating to delinquency and default of underlying debtors, debt restructuring, debt forgiveness, forbearance, payment holidays and other asset performance remedies. The transaction documents should clearly specify the priority of payments, triggers, changes in waterfall following trigger breaches as well as the obligation to report such breaches. Any change in the waterfall should be reported on a timely basis, at the time of its occurrence. The originator or sponsor should provide investors a liability cash flow.	As far as requirements are applicable, no adjustment necessary.
19	The transaction should be subject to mandatory external verification on a sample of underlying assets (confidence level of at least 95%) at issuance, by an appropriate and independent party or parties, other than a credit rating agency. Confirmation that this verification has occurred should be included in the transaction documentation.	For synthetic securitisation the external verification on a sample of underlying assets at issuance can be replaced by an ex-post verification. We propose: The losses allocated to the investor have to be verified by an independent, qualified third party, e.g. an auditing company. See comment to criterion no. 13. Comment: For the avoidance of doubt. A loss allocation is only possible, when the defaulted asset has complied with all eligibility criteria upon the inclusion into the transaction. This would be part of the loss verification process.
20	Investors and prospective investors should have readily available access to data on the historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, covering a historical period representing a significant stress or where such period is not available, at least 5 years of historical performance. The basis for claiming similarity to exposures being securitised should also be disclosed.	No adjustment necessary.
21	Investors and prospective investors should have readily available access to data on the underlying individual assets on a loan-by-loan level, at inception, before the pricing of the securitisation, and on an ongoing basis. Cut-off dates of this disclosure should be aligned with those used for investor reporting purposes.	No adjustment necessary.
22	Investor reporting should occur at least on a quarterly basis. As part of investor reporting the following information should also be disclosed:	No adjustment necessary.

	• All materially relevant data on the credit quality and performance of underlying assets, including data allowing investors to clearly identify debt restructuring, debt forgiveness, forbearance, payment holidays, delinquencies and defaults in the pool; • Data on the cash flows generated by underlying assets and by the liabilities of the securitisation, including separate disclosure of the securitisation's income and disbursements, i.e. scheduled principal, scheduled interest, prepaid principal, past due interest and fees and charges; • The breach of any waterfall triggers and the changes in waterfall that this entails.	
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Credit Risk Criteria (Table D):

No.	Criterion	Adjustments for synthetic securitisation / Comments
A	Underlying exposures should be originated in accordance with sound and prudent credit granting criteria. Such criteria should include at least an assessment of the borrower's creditworthiness in accordance with paragraphs 1 to 4, 5(a) and 6 of Article 18 of Directive 2014/17/EU or Article 8 of Directive 2008/48/EC, as applicable.	No adjustments necessary.
B	The pool of exposures to be securitised should be such that the largest aggregated exposure to a single obligor does not exceed 1% of the value of the aggregate outstanding balance. For the purposes of this calculation, loans or leases to a group of connected clients, as referred to in Article 4(39) of the CRR, should be considered as exposures to a single obligor.	No adjustments necessary.
C	The underlying exposures should fulfil each of the following criteria: i. They have to be exposures to individuals or undertakings that are resident, domiciled or established in an EEA jurisdiction, and ii. At the time of inclusion they have to meet the conditions for being assigned, under the Standardised Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than: a. [40%] on a weighted average basis where the exposure is a loan secured by	No specific comments on synthetic securitisation (please refer to question 1).

	a residential mortgage or fully guaranteed residential loan, as referred to in paragraph 1(e) of Article 129 of the CRR; b. [50%] on an individual loan basis where the exposure is a loan secured by a commercial mortgage c. [75%] on an individual loan basis where the exposure is a retail exposure d. [100%] on an individual loan basis for any other exposures. iii. Under (a) and (b) loans secured by lower ranking security rights on a given asset should only be included in the securitisation if all loans secured by prior ranking security rights on that asset are also included in the securitisation. Under (a) no loan in the securitised portfolio should be characterised by a loan-to-value ratio higher than 100%.	
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New Criteria (Table E)

No	Criterion for synthetic securitisation	Si, T, St
1	The originator of a synthetic securitisation is a regulated institution that is required to comply with supervisory requirements for lending processes, recovery and resolution (BRRD), and risk management.	Si, St
2	If cash collateral or equivalent security is used in synthetic securitisation, it must be separated and transferred to the investor in the event that the securitisation is terminated. This can ensure that the investor recovers the invested capital.	St, T
3	Any counterparty risk within a synthetic securitisation must be covered so that the investor merely bears the credit risk of the securitised assets.	Si, St
4	Loan defaults and resulting losses are verified by an eligible, independent third party (e.g. certified public accountant). Verification also covers examination of whether the loan concerned fulfilled all the agreed criteria when included in the transaction.	St, T