



October 5, 2017

Basel Committee on Banking Supervision
c/o Bank for International Settlements
Centralbahnplatz 2
4051 Basel
Switzerland

Board of the International Organization
of Securities Commissions (IOSCO)
C/ Oquendo 12
28006 Madrid
Spain

Re: Comments on Consultative Documents re: Criteria and Capital Treatment for “Simple, Transparent and Comparable” Short-Term Securitizations

I. Introduction

The Structured Finance Industry Group (“SFIG”)¹ appreciates the opportunity to offer comments on the July 2017 Consultative Documents of the Basel Committee on Banking Supervision (“BCBS”) and the Board of the International Organization of Securities Commissioners (“IOSCO”) entitled “Criteria for Identifying Simple, Transparent and Comparable Short-Term Securitizations” (the “Criteria Document”)² and “Capital Treatment for Simple, Transparent and Comparable Short-Term Securitizations” (the “Capital Document” and, together with the Criteria Document, the “Consultative Documents”)³ that propose criteria for simple, transparent and comparable (“STC”) securitizations and a framework for incorporating STC short-term securitizations into the capital framework for securitizations, respectively. SFIG acknowledges the efforts of the BCBS that produced the Consultative Documents and strongly supports initiatives to strengthen the global securitization markets.

As we have indicated in prior comment letters related to the adoption of criteria for STC term securitizations and related capital treatment, most concerning to SFIG members are standards which would result in different capital treatments for the same transaction across different jurisdictions. Such a result, stemming from regionally-biased criteria for “qualifying”

¹ SFIG is a member-based, trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. SFIG provides an inclusive network for securitization professionals to collaborate and, as industry leaders, drive necessary changes, be advocates for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. Members of SFIG represent all sectors of the securitization market including issuers, investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers, and trustees. Further information can be found at www.sfindustry.org.

² <http://www.bis.org/bcbs/publ/d414.pdf>

³ <http://www.bis.org/bcbs/publ/d413.pdf>

securitizations (or an absence of criteria at all in some jurisdictions), would result in fragmented regional markets and, therefore, diminished market liquidity and access to credit for households and businesses. We appreciate that the implementation of final positions adopted at the BCBS level is left to the relevant regulatory bodies in the various member jurisdictions. However, we also believe that, under the current circumstances, the market would benefit from the BCBS forging a viable consensus among its constituent members.

In addition, while SFIG's members appreciate the effort that went into developing the criteria for STC short-term securitizations and related capital treatment, in many instances, because of their highly detailed and prescriptive nature, these criteria deviate substantially from current practice in ways that do not materially change the risk of the relevant exposures, but that would prevent the criteria as written from applying to the vast majority of short-term securitizations in today's market. More specifically, our members have the following concerns and comments:

1. BCBS and IOSCO should adopt alternative approach 2 for determining compliance with STC criteria. The treatment of ABCP issued by an ABCP conduit and the treatment of transaction-level exposures should be separated.
2. Qualifying transaction exposures funded directly by banks should be eligible for short-term STC treatment.
3. The definition of seller should be revised to incorporate all relevant transaction structures.
4. The definition of sponsor should be revised to ensure that the term includes banks providing credit and liquidity facilities that are affiliates of entities providing administration services to an ABCP conduit.
5. The description of credit claims and receivables would seem to unnecessarily exclude certain standard asset classes that warrant STC treatment.
6. Similarly, the requirement that deal cash flows be homogeneous would also unnecessarily exclude certain standard deal structures from the framework.
7. The requirements that the performance history of the financed assets and the experience of the sponsor/servicer be not shorter than seven years for non-retail assets and no shorter than five years for retail exposures should be adjusted.
8. The short-term STC criteria with respect to payment status should be revised to properly accommodate appropriate revolving asset pool securitizations.
9. The additional requirement for capital purposes under criterion A3 that credit claims and receivables meet certain credit criteria is too specific.

10. The requirement in criterion A4 that a sponsor ensure that sellers disclose to it the timing and purposes of changes to underwriting criteria is too broad.
11. The prohibition against actively managed transactions should be clarified to ensure that common warehousing transaction structures are permitted.
12. Criterion B11 should be revised to accommodate multi-lender or purchaser financings and structures with intermediate purchasing entities.
13. The requirement in the last paragraph of criterion C17 that certain information be contained in all performance reports does not take into the fact that some of such information may not be relevant for all asset classes and should be modified accordingly.
14. Some exceptions to the required minimum risk weights for underlying pools should be granted provided these exposures are covered by appropriate credit enhancement or excluded from the transaction advance rate.

Our comments do not include any specific comments with respect to the conduit level criteria. This results from our members' view that it would be virtually impossible for any existing ABCP conduit to comply with all of the listed criteria without wholesale changes thereto and what they believe to be the limited utility of STC status to ABCP investors that are banks. What our members view as important is that final guidelines encourage as many transactions as possible to be structured as STC short-term securitizations. Developing sound, independent transactional criteria will best achieve this result. Should BCBS and IOSCO wish to discuss the wholesale nature of the changes to criteria necessary for the STC short-term securitization criteria to work at the ABCP conduit level, our members would welcome the opportunity to participate in that discussion.

II. Discussion

1. ***BCBS and IOSCO should adopt alternative approach 2 for determining compliance with STC criteria. The treatment of ABCP issued by an ABCP conduit and the treatment of transaction-level exposures should be separated.***

The “all or nothing” approach of the Consultative Documents should be replaced by an approach that separates conduit and transaction treatment. As discussed above, very few existing ABCP conduits can readily be restructured to (i) meet all of the conduit level criteria proposed and (ii) cause all of their existing exposures to meet the transaction level criteria, but sponsors can assure that many future transactions will meet the STC transaction level criteria.

ABCP and privately negotiated bank financing have for over 30 years been a vital source of low-cost working capital for businesses of all kinds globally, from industrial companies to finance and service companies to governmental entities. This market is important to the financing of a wide variety of consumer and commercial asset types that allow for increased lending to these important segments of the economy. Assets funded through these vehicles include auto loans, commercial

loans, trade receivables, credit card receivables, student loans and many other types of financial assets. Lowering the capital costs for banks participating in these markets through a better alignment of capital and risk would in turn lower overall financing costs for issuers in this market, which would encourage global economic growth. As you note in the Capital Document, adopting alternative approach 2 provides an incentive to structure more STC-compliant transactions, which in turn lowers securitization costs and encourages economic growth in this vital market.

2. *Qualifying transaction exposures funded directly by banks should be eligible for short-term STC treatment.*

If alternative approach 2 is adopted as we suggest, the source of a bank's funding of what would otherwise be an STC-compliant securitization transaction should be irrelevant. Since the financial crisis, several banks have funded securitization transactions that would have otherwise been financed (or, in the case of certain multi-lender transactions continue to be financed) by ABCP conduits. These transactions would not otherwise be eligible for treatment as STC term securitizations due to their privately negotiated nature and the resulting lack of formal disclosure documents, among other issues. ABCP conduits and banks extending credit or purchasing interests in assets in this market, however, have the right under the legal documents governing these transactions to obtain extensive information about the securitized asset pools, asset originating entities and servicers without the need to rely on disclosure requirements mandated by regulation. Permitting banks that fund transactions outside of sponsored ABCP conduits to receive short-term STC treatment would be both logical and fair and promote the stated goal of encouraging more STC-compliant securitization transactions. To ensure that bank funded transactions are the functional equivalent of ABCP conduit funded exposures, the final criteria could require that any qualifying transaction be privately negotiated or otherwise not purchased by the bank in any securities market. They could also restrict the length of the lending or purchase commitment of the bank or ABCP conduit in the relevant transaction to no greater than three years.

3. *The definition of seller should be revised to incorporate all relevant transaction structures.*

The definition of "seller" in the Criteria Document contemplates a party that "transferred those assets in a transaction to the ABCP conduit." It is unclear to our members whether this description is broad enough to cover certain specific transaction types that do not contemplate a sale of the assets to the ABCP conduit (or bank in a direct funded transaction). For example, in many transactions, the assets are typically sold to a special purpose entity sponsored by the bank's customer and then either (1) a security interest in these assets is granted to the ABCP conduit or bank to secure a loan made by the ABCP conduit or bank to the sponsored special purpose entity, or (ii) an undivided interest (but not the whole asset) is sold to the ABCP conduit or bank. In addition, it is also not uncommon for the seller in an ABCP conduit or bank customer securitization transaction to purchase rather than directly originate the underlying assets.

We therefore suggest revising the definition of seller to reflect this clarification as follows (emphasis added):

“Seller” means a party that (i) concluded (in its capacity as original lender *or through the purchase of the assets from the original lender*) the original agreement that created the obligations or potential obligations (under a credit claim or receivable) of an obligor, and (ii) transferred those assets *or an interest therein or granted a security interest in those assets* through a transaction to the ABCP conduit or a bank.

4. ***The definition of sponsor should be revised to ensure that the term includes banks providing credit and liquidity facilities that are affiliates of entities providing administrative services to an ABCP conduit.***

It is common for entities affiliated with the bank that provides primary credit and liquidity support to an ABCP conduit to provide all or a portion of the administrative services to that ABCP conduit. The term “sponsor” as used in the Consultative Document should be defined to reflect that fact. We would suggest that the first sentence of the definition of sponsor be revised to read as follows: “The sponsor of an ABCP conduit, *including any affiliate providing administrative services or credit or liquidity support to the ABCP conduit.*” (emphasis added.)

5. ***The description of credit claims and receivables would seem to unnecessarily exclude certain standard asset classes that warrant STC treatment.***

The additional guidance for capital purposes under criterion A1 provides in pertinent part as follows: “Repayment of the securitisation exposure should mainly rely on the principal and interest proceeds from the securitized assets. Partial reliance on refinancing or resale of the assets supporting the exposure may occur provided that refinancing is sufficiently distributed within the pool and the residual values on which the transaction relies are sufficiently low and that the reliance on refinancing is thus not substantial.” Our members are concerned that this language does not provide sufficient guidance as to when securitization transactions relying in part on the sales proceeds of residual assets that underlie the financed receivables may achieve STC status and potentially does not give sufficient credit to the predictability of asset residual performance in securitizations of common asset classes such as equipment leases or auto leases. We request that criterion AI be revised to clearly provide that exposures in standard equipment lease and auto lease securitization transactions may be eligible for STC treatment.

6. ***Similarly, the requirement that transaction assets be homogeneous would also unnecessarily exclude certain standard deal structures from the framework.***

Our members are concerned that the requirement that transaction assets be homogeneous would exclude certain common deal structures from the STC framework. Certain trade receivables securitizations, for example, will finance receivables that are payable in multiple currencies, but that are covered by foreign currency hedges that would meet the requirements of the STC framework. As another example, often auto loans and leases or equipment loans and leases are commingled for client convenience to have the flexibility to allocate commitments between originations of loans and leases funded in the same transaction. In each of these cases, the sponsor or funding bank has access to sufficient information to properly structure these transactions. Our

members would ask that BCBS and IOSCO take a more principled approach to this issue rather than per se excluding these transaction types from potential STC treatment. In particular, our members request that “homogeneous” assets in this context include (i) receivables of the same type originated by a single affiliated group of asset originators that are payable in multiple currencies provided that any resulting currency risk is appropriately mitigated as required by Criterion A9, and (ii) equipment loans and leases or auto loans and leases financed in a single transaction originated by a single affiliated group of asset originators.

7. *The requirements that the performance history of the financed assets and the experience of the sponsor/servicer be not shorter than seven years for non-retail assets and no shorter than five years for retail exposures should be adjusted.*

Our members agree that asset performance history and sponsor/servicer experience are important aspects of well performing securitization transactions. However, the additional requirement for capital purposes under criterion A2 that performance history be no shorter than seven years for non-retail exposure and five years for retail exposures is excessive. Caution should be exercised that any historical data requirements are sufficiently flexible to allow originators to extend their origination activities to support growing areas of the real economy without the concern that the quality of assets they generate may not be securitizable due to an absence of directly comparable historic data (e.g. a lessor of automobiles extending into the leasing of light trucks).

The due diligence practices of ABCP conduits sponsors and banks providing direct securitization financing are very thorough and require completion of rigorous credit approval processes. Banks must also have sufficient performance data to meet regulatory capital calculation procedures. Banks that meet these requirements should be deemed to have satisfied the asset performance history criteria. We note that the European legislative framework for simple, transparent and standardized securitisations provides for a minimum asset performance history of five years for all assets other than trade receivables and other short-term receivables, which require an asset performance history of at least three years. Our members view this requirement as a more reasonable one that better reflects sound market practice.

8. *The short-term STC criteria with respect to payment status should be revised to properly accommodate appropriate revolving asset pool securitizations.*

The additional requirement for capital purposes under criterion A3 “payment status” in the Capital Document contains specific credit criteria that must be met with respect to each credit claim or receivable being transferred into the securitization. This requirement would be problematic for many revolving asset transactions, where the transactions require an asset originator to sell all credit claims or receivables of a specific type into a transaction structure regardless of their credit quality. In these transactions, the ABCP conduit or bank providing funding protects itself from the credit risk of any sub-standard receivables by excluding such receivables from the advance rate calculation for such transaction. Thus, while these receivables are technically a part of the collateral pool for these transactions and are available as excess enhancement, they are assumed to have zero value. Allowing these receivables to be a part of the collateral pool is irrelevant as a practical matter to the credit quality of the bank’s securitization exposure to the transaction.



Trade receivables securitizations are a prominent example of this type of transaction. In these transactions one or more asset originators transfer all of their trade receivables as generated to a sponsored special purpose entity, which in turn obtains financing for the receivables from one or more ABCP conduits or banks. The financing documents set forth eligibility requirements for the financed trade receivables that exclude low credit quality receivables. Excluding ineligible receivables from these transactions would be administratively burdensome, increase the risk of cash commingling, and potentially create an inability to properly mark the records identifying the collateral and would not benefit the credit quality of these transactions. The advance rate calculations in such transactions include only eligible receivables. An example of an advance rate calculation from a transaction that finances the trade receivables of a manufacturing company is set forth as Appendix A to this letter.

Our members request that the relevant criteria be adjusted to permit lower credit quality credit claims or receivables to be included as part of a securitized asset pool in revolving asset securitization transactions provided that these assets are either assigned a zero value in any advance rate calculation for the transaction or are covered by credit enhancement sufficient to cause the bank's exposure in the transaction to be treated as "investment grade" or its equivalent or better under applicable risk-based capital rules.

9. *The additional requirement for capital purposes under criterion A3 that credit claims and receivables meet certain credit criteria is too specific.*

Our members support the notion that asset eligibility criteria in securitization transactions should prevent certain credit impaired credit claims and receivables from being advanced against. The additional requirement for capital purposes under criterion A3 sets forth certain specific requirements that will not be met in securitizations of certain standard asset types. In a standard securitization of non-retail assets such as trade receivables, for example, asset obligors that are currently the subject of bankruptcy or other insolvency proceedings are treated as ineligible receivables. Past insolvency status is not tracked. There is also no requirement in these transactions that the originating entity ensure that any obligor of a securitized receivable not have an "adverse credit history" that is reflected in a public registry and not have a credit score indicating a significant risk of default. We believe that these specific requirements were written in contemplation of securitizations of retail receivables where such information is tracked and available. We would suggest instead that a more principled approach be taken to address this issue, which allows a bank to use well established credit criteria relevant to the specific asset class to address concerns with financing sub-standard receivables.

The additional requirement for capital purposes under criterion A3 also requires that at least one payment be made with respect to all credit claims and receivables. Our members request that this requirement be eliminated. Some securitizations of common asset classes may require at least one payment be made, but not all do. For example, student loan securitizations may finance student loans while students are still in school and that are therefore subject to payment grace periods. All loss data is analyzed in these transactions using historical data against all payment milestones. As a result, any impact of defaults for customers who never make a single payment is properly factored into expected loss calculations and advance rates.

10. *The requirement in criterion A4 that a sponsor ensure that sellers disclose to it the timing and purposes of changes to underwriting criteria is too broad.*

Securitization transactions do contain covenants that require asset sellers to inform banks and ABCP conduit sponsors of certain types of changes to their underwriting and collection policies. In most transactions, however, this requirement is limited to material adverse changes to these policies. Requiring a seller to disclose all changes to these policies is unnecessary and overly burdensome. Sellers often make changes to these policies that do not have an effect on the ultimate collectability of credit claims or receivables.⁴ Our members request that this requirement be changed to require sponsors to ensure that sellers disclose any material adverse changes to their underwriting policies.

11. *The prohibition against actively managed transactions should be clarified to ensure that common warehousing transaction structures are permitted.*

Criterion A5 requires the sponsor to ensure that credit claims or receivables transferred are not “actively managed.” Footnote 15 in the Criteria Document (footnote 19 in the Capital Document) helpfully indicates that the addition of credit claims or receivables during a revolving period or their substitution or repurchase due to the breach of representations and warranties do not represent active portfolio management.

It is not clear, however, that receivables that are sold out of a warehousing securitization transaction financed by an ABCP conduit into a term securitization would also not constitute active portfolio management. It is common for ABCP conduits to finance warehouse transactions of this type. While the sponsor bank underwrites the pool of receivables assuming that it will not be sold into a term securitization transaction, it nonetheless expects that the assets will be so sold at the point in time where financing those receivables in that manner becomes a more efficient means of financing. Our members seek clarification that the sale of receivables to a term securitization in the ordinary course from a warehouse transaction financed by an ABCP conduit is not “active management” within the meaning of Criterion A5.

12. *Criterion B11 should be revised to accommodate multi-lender or purchaser financings and structures with intermediate purchasing entities.*

ABCP conduit and private bank securitizations are often financed by multiple lenders or purchasers. This would make the requirement in Criterion B11 that all voting and enforcement rights be transferred to the ABCP conduit impossible to achieve in these transactions. Criterion B11 should be adjusted to permit a trustee or administrative agent to act on behalf of multiple

⁴ The following examples illustrate this point. Sellers will often update their underwriting policies to adjust the individual credit approval limits for credit officers or groups of credit officers within their organizations. Sellers also frequently update the credit scorecards in their underwriting policies as they receive additional relevant information. Consumer asset sellers also frequently include the form of their consumer disclosures as part of their underwriting policies and update those disclosures to comply with new statutes and regulations. In none of these cases would these changes be material to an ABCP conduit or bank funding the assets of such sellers.

lenders or purchasers in this situation. In addition, rights in financed assets are often sold to an intermediate purchasing entity that enters into the financing with the ABCP conduit or bank. Upon a default under the financing, the financing entities or their agent are permitted to foreclose on the receivables and exercise any rights of the asset originator with respect to such receivables. Criterion B11 should also be revised to accommodate these structures.

- 13. *The requirement in the last paragraph of criterion C17 that certain information be contained in all performance reports does not take into the fact that some of such information may not be relevant for all asset classes and should be modified accordingly.***

As an example, tracking principal prepayments and past due interest is not relevant for trade receivables securitizations. Sponsors and banks should ensure that performance reports contain all of the information that is necessary for them to analyze all relevant risks that could reasonably be expected to impact the likelihood of repayment of their exposures. We would suggest the following modifications to this paragraph to address this issue (emphasis added):

To enhance transparency and visibility over all receipts, payments and ledger entries at all times, the sponsor should ensure that for all transactions the performance reports include “*key performance data standard for a particular asset class including for example*” the following: the transactions’ income and disbursements, such as scheduled principal, redemption principal, scheduled interest, prepaid principal, past-due interest and fees and charges, delinquent, defaulted, restructured and diluted amounts, as well as accurate accounting for amounts attributable to principal and interest deficiency ledgers, “*payment terms, potential set-off, eligibility criteria, new originations, credit enhancement, portfolio performance triggers, asset aging information*”.

- 14. *Some exceptions to the required minimum risk weights for underlying pools should be granted provided these exposures are covered by appropriate credit enhancement or excluded from the transaction advance rate.***

Additional criterion D18 under the Capital Document requires that all of the assets transferred into a qualifying securitization transaction meet certain minimum risk weights under the standardized approach. Similar to the issues created by Criterion A2 in 7 above, this requirement would be problematic for many revolving asset transactions, where the transactions require an asset originator to sell all credit claims or receivables of a specific type into a transaction structure regardless of their credit quality. This requirement may also be problematic for certain other transactions that include a small percentage of these receivables in the financed pool. In these transactions, the ABCP conduit or bank providing funding protects itself from the credit risk of any sub-standard receivables by either excluding such receivables from the advance rate calculation for such transaction or ensuring that transaction credit enhancement adequately covers the risk of these exposures.

Our members request that where the amount of any receivables not meeting additional criterion D18 are given zero value in the advance rate calculation, that these receivables be excepted from the criterion. Where the protection provided is instead in the form of credit enhancement, our



members request that the criterion be revised such that transaction receivables are permitted not to meet the minimum risk weight requirement provided that these receivables are covered by credit enhancement that is no less than the amount required for the bank's exposure in the transaction to be treated as "investment grade" under applicable risk-based capital rules.



III. Conclusion

We greatly appreciate your consideration of our members' comments. Please contact the undersigned at +1 (202) 524-6301 or Richard.Johns@sfindustry.org should you have any questions in connection with this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Johns", is written over a horizontal line.

Richard Johns
Executive Director

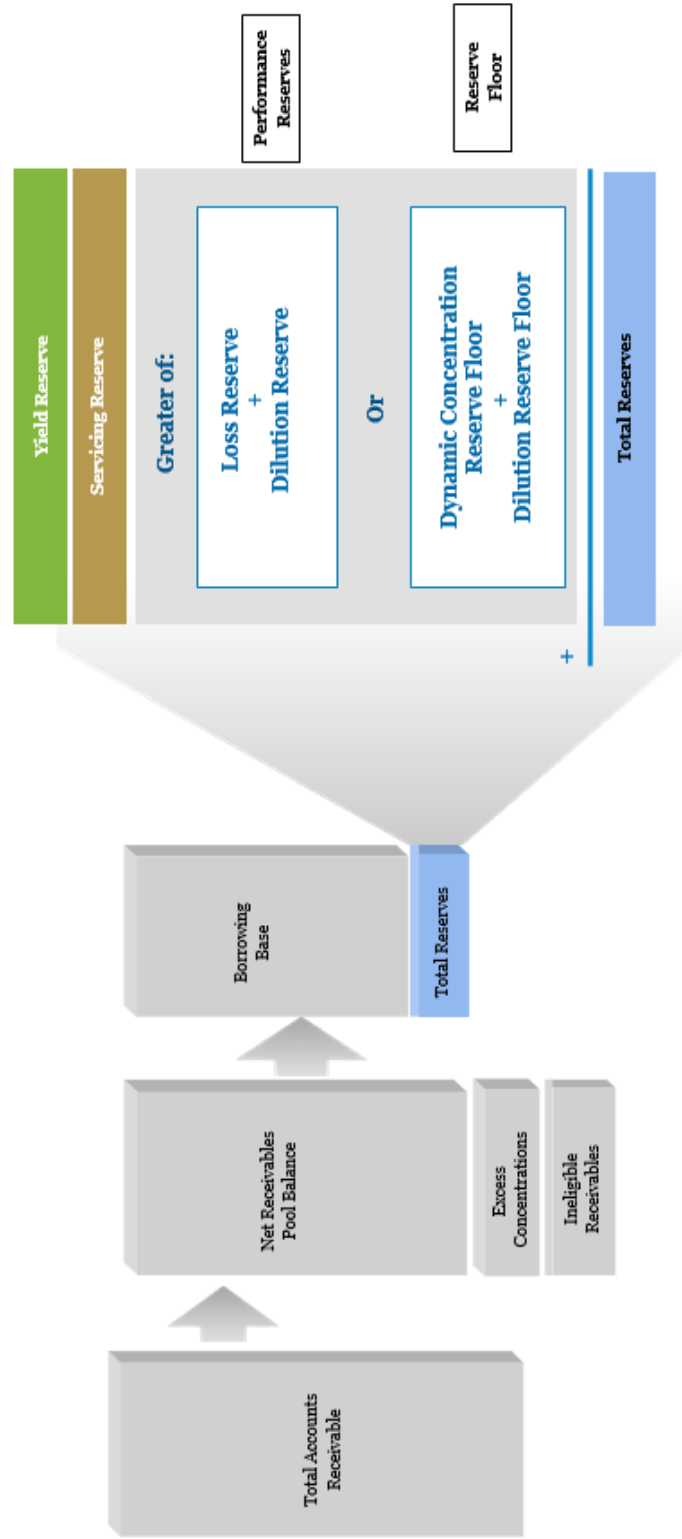
APPENDIX A

Attached

Reserve Mechanics

Total Reserves

- Total Reserves are recalculated monthly based on the composition of the receivables pool (eligible receivables and obligor concentrations) and the pool's performance metrics (dilution and defaults)
- The Total Reserve Percentage is calculated as follows:



Sample Advance Rate Calculation

Borrowing Base = $(1 - \text{TRP}) \times \text{NRPB}$

▪ **NRPB** = Net Receivables Pool Balance = Eligible Receivables – Excess Concentrations

▪ **TRP** = Total Reserve Percentage = the greater of (i) or (ii), plus (iii), plus (iv)

- i. Performance Reserves (a) + (b)
 - a) Loss Reserve Percentage = $\text{SF} \times \text{DR} \times \text{LH}$
 - SF = Stress Factor = 2.00x to 2.50x
 - DR = Default Ratio = the highest 3-month rolling average Default Ratio over the LTM
 - Default Ratio = an objectively assigned default proxy divided by sales originating those defaults
 - LH = Loss Horizon = cumulative credit sales over the last several months divided by NRPB in the current month
 - b) Dilution Reserve Percentage = $[(\text{SF} \times \text{ED}) + ((\text{DS} - \text{ED}) \times \text{DS}/\text{ED})] \times \text{DH}$
 - SF = Stress Factor = 2.00x to 2.50x
 - ED = Expected Dilution = 12-month rolling average of the monthly dilution ratio
 - DS = Dilution Spike = highest dilution ratio over the preceding 12 months
 - DH = Dilution Horizon = credit sales for the most recent several months divided by the NRPB in the current month
- ii. Reserve Floor (a) + (b)
 - a) Dynamic Concentration Reserve Floor = the greatest of:
 - 4-5 largest non-investment grade or non-rated obligors
 - 2-3 largest A-3/P-3 (or BBB-/Baa3) obligors
 - 1-2 largest A-2/P-2 (or BBB+/Baa1) obligors
 - 0-1 obligors rated A-1/P-1 (or A+/A1) or better
 - b) Dilution Reserve Floor = $\text{ED} \times \text{DH}$
 - ED = Expected Dilution = 12-month rolling average of the monthly dilution ratio
 - DH = Dilution Horizon = credit sales for the most recent several months divided by the NRPB in the current month
- iii. Yield Reserve Percentage = $(\text{BR}/360) \times \text{SF} \times \text{DSO}$
 - BR = Base Rate (currently 3.25%)
 - SF = Stress Factor (1.5x)
 - DSO = Days Sales Outstanding
- iv. Servicing Fee Reserve Percentage = $(\text{SFR}/360) \times \text{SF} \times \text{DSO}$
 - SFR = Servicing Fee Rate (typically 1.00%)
 - SF = Stress Factor (1.5x)
 - DSO = Days Sales Outstanding