

Position Paper

**on BSBC and IOSCO Consultative Document on Criteria for
identifying simple, transparent and comparable
securitisations**

February 2015

Introduction

The Comité des Constructeurs Français d'Automobiles (CCFA), the Society of Motor Manufacturers and Traders (SMMT) and the Verband der Automobilindustrie (VDA) represent the leading companies of the automotive industry in France, the U.K. and Germany, and the AKA represents the automotive captives in Germany.

The Captives are an indispensable partner for the vehicle manufacturers in the marketing of passenger cars and commercial vehicles. Each year about 12 million new passenger cars are registered in the European Union. Approximately 60 % of the cars sold are either financed or leased with a significant proportion of the finance being provided by the Captives. Automobile finance and leasing companies ensure that the automotive value chain runs smoothly.

In order to provide customers and car dealers with sufficient funding, the Captives depend on a solid refinancing strategy themselves. In this regard, the securitisation of customer receivables – so-called Auto-Asset Backed Securities (Auto-ABS) – is a vitally important financing tool for the Captives. It allows for diversification by providing an alternative funding source to deposits, bank loans and other capital market instruments and offers valuable protection against market volatilities.

Against this background we welcome the opportunity to comment on the Basel Committee on Banking Supervision (BCBS) and the International Organisation for Securities Commissions (IOSCO) Consultative Document on Criteria for identifying simple, transparent and comparable securitisations. Due to the US subprime crisis, securitisations have suffered from a general stigmatisation. Yet the ABS class is fairly heterogeneous, and BCBS and IOSCO quite rightly point out in the concept of STC securitisations of the Consultative Document that the performance of securitisations during the crisis varied substantially across different asset classes and regions. We agree with BCBS and IOSCO that criteria for simple, transparent and comparable securitisations will help transaction parties – including originators, investors and other parties with a fiduciary responsibility – evaluate the risks of a particular securitisation and across similar products.

With our comments to the BCBS and IOSCO Consultative Document we would like to support this aim.

In this regard we would like to point out that we have already supported BCBS' and IOSCO's work as we replied on the "Questionnaire to market participants on developments in securitisation markets" dated 9th June 2014.

Our comments:

True sale term transactions

In principle, we agree with the criteria but see some need for slight changes and clarifications to allow for qualification of asset backed securities already perceived as simple, transparent and comparable, for instance, such as auto loan and auto lease securitisations.

A. Asset risks

Criterion 1: Nature of the assets

Basel Committee

Commonly accounted market interest rates: “Any referenced interest payments or discount rates should be based on commonly encountered market interest rates.”

Our Comment:

Commonly accounted market interest rates: In the automobile business loans and leases are subsidised by the car manufacturers or car dealers to promote the sale of the cars. It should be clarified that loans and leases subsidised, for instance, by the manufacturer and/or the car dealer are not excluded, particularly given the fact that loans or leases e.g. with interest rate subventions show normally a lower default rate.

Criterion 3: Payment status:

Basel Committee

“Receivables shall be excluded that are in default, delinquent 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.”

Our Comment:

It is common practice of prime Auto-ABS that all receivables are to be excluded being past due. In addition, it is required that at least one instalment has been paid in respect of each of the purchased loan receivables. This practice has proved to maintain low level of losses for the underlying securitised auto loan and auto leasing contracts in the past even under severe stress conditions. In contrast, it was typical for originate-to-distribute model in the US subprime RMBS segment that loan receivables were sold without obtained any payment by the debtor. Thus, it is imperative to continue this practice to ensure high quality of the underlying securitised loan and lease contracts.

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. It could be difficult to measure and determine a material increase in expected loss. The cal-

culuation of expected loss requires the parameter PD, LGD and EAD. However, such parameters are typically calculated by IRB-banks and would exclude banks that use the credit standardised approach. Beyond such practical issues, we doubt whether an increase of the expected loss is an appropriate criterion at all. We understand such requirement if it is the aim to avoid that an originator mainly selects the receivables where he expects a significant increase of the expected losses. However, this should be better addressed by the requirement that the selection of the receivables has to be carried out randomly and that no adverse selection of receivables is permitted which could hinder the comparison of the performance of the non-securitised portfolio with the expected performance of the securitised loans.

Criterion 4: Consistency of underwriting

Basel Committee

“To ensure that the quality of the securitised credit claims and receivables is not dependent on changes in underwriting standards, the originator should demonstrate to investors that any credit claims or receivables being transferred to the securitisation have been originated in the ordinary course of the originator’s business to uniform and non-deteriorating underwriting standards.”

Our Comment:

Underwriting standards can change from time to time because the underwriting standards are part of the credit and acceptance policy. Moreover, the underwriting process will change over time, for instance, due to new recognised risks as to fraud or for the sake of process optimisation. In any case, the underwriting standards for the loans and leases to be securitised and non-securitised should not differ and not deteriorate in substance. Hence, the originator should apply the same sound and well-defined criteria for credit-granting to exposures to be securitised as they apply to exposures to be held in their own book. We propose the following wording: “the originator should demonstrate to investors that any credit claims or receivables being transferred to the securitisation have been originated in the ordinary course of the originator’s business to standards with sound and well-defined criteria for credit-granting to exposures to be securitised as they apply to exposures to be held in their own book. In addition, the originator should demonstrate that there is no deterioration of underwriting standards in substance.”

Structural risk

Criterion 9: Payment priorities and observability

Basel Committee

“To ensure that junior note holders do not have inappropriate payment preference over senior note holders that are due and payable, throughout the life of a securitisation, or, where there are multiple securitisations backed by the same pool of credit claims or receivables, throughout the life of the securitisation programme, junior liabil-

ities should not have payment preference over senior liabilities which are due and payable.”

Our Comment:

It should be clarified that the following common priority of payments is eligible:

1. Payment of interest on the senior notes
2. Payment of interest on the junior notes
3. Redemption of the principal amount of the senior notes
4. Redemption of the principal amount of the junior notes

Criterion 11: Documentation disclosure and legal review

“To ensure that the securitisation’s legal documentation has been subject to appropriate review prior to publication, the terms and documentation of the securitisation should be reviewed and verified by an appropriately experienced and **independent** legal practice.”

Questions:

Our Comment: It should be clarified that a law firm mandated by the originator and acting as transaction counsel does not conflict with the requirement of “independence”.

Criterion 12: Alignment of interest

Basel Committee

“In order to align the interests of those responsible for the underwriting of the credit claims or receivables with those of investors, the originator or sponsor of the credit claims or receivables should retain a material net economic exposure and demonstrate a financial incentive in the performance of these assets following their securitisation.”

Our Comment:

In Europe there is already a regulation aiming to ensure a skin in the game from originators. Article 405 of the capital requirements regulation (CRR) defines 5 options how such net economic interest can be ensured. Thus, we would appreciate a clarification stating that this regulation is in line with the risk retention requirement above. This applies in particular for the option that is widely used for auto loan and auto lease securitisation transactions where it is common practice that a randomly selected sub-portfolio equivalent to no less than 5 % of the nominal value of the securitised exposures, where such exposures would otherwise have been securitised in the securitisation, is retained provided that the number of potentially securitised exposures is no less than 100 at origination. It should be possible to continue this well established practice.

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

In principle, yes we agree. The criteria are rather generic and more principle-oriented. Given the fact that it will be a worldwide global standard and the partly major differences between the European and the US securitisation market, we believe that this is the right level of detail for a global standard. Further rule based clarifications will be given by the competent supervisory authorities such as EBA in Europe. However, to foster further standardisation and comparability across the national ABS markets, especially between Europe and the US market, we recommend reviewing the more detailed rules by the competent authorities after their implementation in some years to further specify the criteria. For the time being, we advise against further detailing.

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

Basically, we agree with the principles, but see some need for slight changes and clarifications to allow for qualification of asset backed securities already perceived as simple, transparent and comparable, for instance, such as auto loan and auto lease securitisations. See our comments above.

In addition, we deem it necessary to require at least the payment of one instalment from all underlying securitised loans and leases to allow for high quality of underlying securitised loans and leases.

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

ABCP is an important part of the European Auto ABS securitisation market and in particular plays a vital role in funding many private Auto ABS securitisation transac-

tions purchased by bank multi-seller conduits. It is therefore essential that an equivalent favourable capital regime is developed for ABCP.

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

We imagine that by operation of market forces and applicable regulation (such as the Prospectus Directive in the EU) there is already a high and appropriate degree of standardisation of securitisation transaction documentation (in Europe). However, this is something that we cannot be sure of and therefore we defer to the views of investors and to securitisation legal counsel who will both be in a better position to comment on this. While we are not averse to the idea of standardisation (if it helps investors) we are concerned that if it is not implemented correctly it may actually inhibit the proper explanation of the varying characteristics of different securitisations by inappropriately imposing a "one size fits all" approach (e.g. an overly restrictive template that does not work well for a particular asset class) - this would obviously be an undesirable outcome and potentially a difficult one for regulators to avoid given the range and multiplicity of assets and markets potentially involved.

Berlin, London, Paris

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