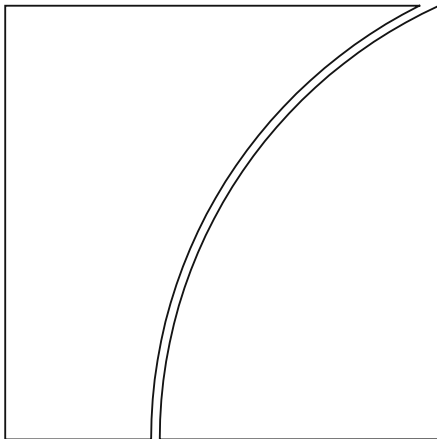


Basel Committee on Banking Supervision

Standard

Capital treatment for
short-term “simple,
transparent and
comparable”
securitisations

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1. Introduction

The Basel Committee on Banking Supervision (BCBS) published the revised securitisation framework in December 2014.¹ In July 2015, the Basel Committee and the Board of the International Organization of Securities Commissions (IOSCO) published the criteria for identifying “simple, transparent and comparable” (STC) term securitisations (hereafter the “July 2015 STC criteria for term securitisations”).² In July 2016, the Committee published revisions to its securitisation framework that incorporated the regulatory capital treatment of STC term securitisations (hereafter the “July 2016 framework”).³ The purpose of these criteria and associated regulatory capital treatment is to assist the financial industry in its development of simple and transparent securitisation structures.

The published criteria for identifying STC term securitisations and associated regulatory capital treatment had explicitly scoped out short-term securitisations and, more specifically, asset-backed commercial paper (ABCP) structures. An ABCP programme predominantly issues (i) commercial paper with an original maturity of one year or less or (ii) notes to third parties (hereafter referred to collectively as “notes”) backed by assets or loans held in a bankruptcy remote special purpose entity (SPE). The exclusion took into account the difference in structure between ABCP programmes and term securitisations, which meant that the July 2015 STC criteria for term securitisations cannot be applied to exposures to ABCP structures without appropriate amendments. It was mentioned in the publication, however, that BCBS-IOSCO would consider whether STC criteria for exposures to ABCP structures should be issued. In addition, should BCBS-IOSCO eventually publish the STC criteria for short-term securitisations (hereafter the “short-term STC criteria”), the Committee would also determine how to incorporate them in the revised securitisation framework.

In conjunction with BCBS-IOSCO’s publication of the short-term STC criteria,⁴ this document sets out how the short-term STC criteria would be incorporated into the capital framework.

2. Incorporating the short-term STC criteria into the capital framework

All principles underlying the July 2015 STC criteria for term securitisations are relevant for short-term securitisation and help to mitigate uncertainty related to asset risk, structural risk, governance and operational risk. Nevertheless, to better capture the nuances and qualitative elements of ABCP structures, a number of criteria within the short-term STC criteria have been amended/added to reflect some specific aspects of ABCP programmes, in particular:

- the short maturity of the commercial paper issued by ABCP conduits;
- the different forms of programme structures (multi-seller, single seller);⁵ and
- the existence of multiple forms of liquidity and credit support facilities to different levels of the ABCP structure (ie conduit level of transaction level).

¹ www.bis.org/bcbs/publ/d303.htm.

² www.bis.org/press/p150723.htm.

³ www.bis.org/bcbs/publ/d374.htm.

⁴ www.bis.org/bcbs/publ/d442.htm.

⁵ Some jurisdictions use multi-seller structures in which a conduit typically holds interest from multiple pools of credit claims or receivables from various sellers. These sellers can be non-financial institutions.

While the short-term STC criteria are sufficiently detailed to serve as guidance for good practice, the use of the criteria for the setting of preferential regulatory capital requirements requires greater prescriptiveness. In addition, the short-term STC criteria focus on the perspective of investors of notes issued under an ABCP programme rather than on the role of a bank as a sponsor, which is typically the main role played by banks in ABCP structures.

The Committee has therefore decided to enhance and supplement the short-term STC criteria by setting out additional criteria for the specific purpose of applying preferential capital treatment (short-term STC capital criteria) for banks acting as investors and sponsors.

Enhancements and supplements to the short-term STC criteria

The enhancements and supplements to the short-term STC criteria have been developed to be consistent with the STC criteria for regulatory capital purposes in the July 2016 framework. This ensures that the design of the short-term STC capital criteria is as stringent as the STC criteria for regulatory capital purposes in the July 2016 framework and provides the same degree of confidence with respect to short-term securitisations that the STC criteria provide for term securitisations.

In addition to largely retaining the additional guidance and requirements for regulatory capital purposes from STC term securitisations, new guidance and requirements have been added to the following criteria:

- **Initial and ongoing data (Criterion A6):** to ensure that investors have access to key monthly information on the performance and key characteristics of the ABCP structure.
- **Full support (Criterion B7):** to ensure that investors in the notes issued by the conduit are fully protected against losses, the sponsor should provide support covering 100% of the notional value of the notes issued by the conduit against any losses.
- **Redemption cash flow (Criterion B8):** to ensure that the redemption risk of the underlying assets is addressed from the sponsor's perspective.
- **Documentation disclosure and legal review (Criterion B12):** to ensure the transactions funded by the conduit have an enforceable legal structure and that sponsors ensure that they receive sufficient information from sellers and other relevant parties, and disclose sufficient information to investors.

The full set of the short-term STC capital criteria (including the additional guidance and requirements for regulatory capital purposes) are set out in Annex 3.

3. Satisfying the short-term STC capital criteria

Satisfaction of conduit-level and transaction-level criteria

The short-term STC criteria distinguish between criteria relevant at the transaction level (which must be separately met by each transaction in the conduit) and at the conduit level (which must be met by the overall conduit as a whole). Most criteria are relevant at both levels, but have a slightly different focus to reflect the differences in risk, stakeholders or structure at each level. For instance, at the transaction level, for the criterion on consistency of underwriting (Criterion A4), the sponsor is required to ensure that sellers apply a consistent underwriting standard between the assets transferred to the transaction and those retained on its balance sheet. At the conduit level, the sponsor is required to make

representations and warranties to investors that it has taken steps to verify that assets financed by the conduit have been subject to consistent underwriting standards.

For banks' exposures at the conduit level (eg exposure arising from investing in the commercial paper issued by the ABCP programme or sponsoring arrangements at the conduit/programme level), the short-term STC capital criteria have to be complied with fully at both the conduit level and the transaction level.

For a bank's exposure at the transaction level to qualify for STC capital treatment, compliance with the transaction-level short-term STC capital criteria alone would suffice (ie independently of whether the overall conduit/other transactions underlying the conduit qualified).

Number of entities providing support for satisfaction of support criterion

For the satisfaction of the support criterion (Criterion B7), the majority of the liquidity facilities and credit protection support (assessed in terms of coverage) at the conduit level and the transaction level has to be provided by a single sponsor. However, the criterion provides an exception in the scenario where the main sponsor has to be replaced due to a material deterioration in its credit standing.

4. Determining compliance with the short-term STC capital criteria

In terms of determining compliance with the short-term STC capital criteria, the bank must disclose to investors and relevant parties the necessary information to allow them to determine whether the exposure is compliant with the short-term STC capital criteria. The determination of compliance for different types of exposures would then be carried out as follows:

- For notes issued by the ABCP conduit – The assessment of compliance with the short-term STC capital criteria is performed by the investor only. The sponsor, though not required to assert that the short-term capital criteria are met, must make sufficient disclosures to enable the investor to make the assessment that the criteria are met at both the transaction and the conduit level, which may include pool-level disclosures and attestations of relevant facts.
- For other exposures to an ABCP structure – In the case of a sponsor's exposure to an ABCP structure, only the main sponsor would need to assess that the criteria have been met. In the case of a third-party support provider, the provider would determine compliance with the criteria. The third-party support provider should have access to information on the underlying exposures it supports and must undertake its own due diligence to assess whether the criteria are met.

5. Capital treatment

Given that the short-term STC capital criteria have been designed to be as stringent as the STC capital criteria for term securitisations, it follows that exposures to ABCP conduits or transactions that are compliant with the short-term STC capital criteria should justify the same extent of capital reduction, as exposures to STC-compliant term securitisations.

Notes issued by an ABCP conduit

In its role as an investor, a bank's exposure to notes issued by an ABCP conduit is economically the same as its exposures to a term securitisation tranche, notwithstanding the difference in legal form of the instrument.

As long as the ABCP conduit meets the short-term STC capital criteria,⁶ the capital treatment for the exposures to the issued notes should be equal to that of risk positions of comparable maturity within STC term securitisations published in the July 2016 framework. For example:

- When applying the external ratings-based approach (SEC-ERBA) for its holding of a note issued by an ABCP conduit that meets the short-term STC capital criteria with a short-term credit rating, a bank investor would use the applicable risk weights for STC exposures with short-term credit ratings in Table 1 below.

Table 1: STC ABCP SEC-ERBA risk weights (consistent with the published standard for tranches of term securitisations with short-term credit ratings)

External credit assessment	A-1/P-1	A-2/P-2	A-3/P-3	All other ratings
Risk weight for STC exposures (both term securitisations and ABCP)	10%	30%	60%	1,250%

- When applying the internal ratings-based approach (SEC-IRBA), for its holding of a note issued by an ABCP conduit that meets short-term STC capital criteria, a bank investor would use the note maturity as the input to the SEC-IRBA formula. The risk weight under the formulaic approaches would be determined by applying a 0.5 scalar to the "p"-parameter, with the "p" parameter floored at 0.3, and a risk weight floor of 10% for senior tranches and 15% for non-senior tranches.

Other bank exposures to an ABCP structure

The situation of a bank providing liquidity and/or credit facilities to an ABCP structure is akin to taking a position in a term STC securitisation.

The capital treatment would follow the treatment for STC term securitisations in the July 2016 framework. Given that the robustness of the short-term STC capital criteria is similar to that of term STC securitisations, the capital discount is calculated in the same way (ie by applying a 0.5 scalar to the "p"-parameter, with the "p" parameter floored at 0.3; and a risk weight floor for exposures treated under the formulaic approaches of 10% for senior tranches and 15% for non-senior tranches, and using the discounted risk-weight tables for exposures treated under the SEC-ERBA or the IAA, respectively).

Similarly to the July 2016 framework, where the risk weights for market risk hedges such as currency or interest rate swaps are inferred from a securitisation exposure that is junior to or pari passu with the swaps, the same capital treatment would be adopted for short-term securitisations. Swap exposures would qualify for STC treatment – for instance, similar to that for notes issued by an ABCP conduit – as long as the swap exposure meets the requirements in paragraph 63, 69 or 86 of the July 2016 framework (where the notes would be the reference securitisation exposure).

⁶ For the avoidance of doubt, this includes the full support criterion.

6. Feedback from consultation

Overall, respondents supported the capital treatment proposed for securitisation exposures meeting the short-term STC capital criteria and how compliance is to be determined. However, respondents were concerned that the enhancements and supplements to the short-term STC criteria additional for capital purposes were too prescriptive.

After considering all comments, the Committee has amended certain aspects of the enhancements and supplements that were considered overly prescriptive/rigid, and clarified other issues where respondents raised doubts about their interpretation or implementation. Changes made include:

- Setting the minimum performance history for non-retail and retail exposures at five years and three years, respectively, in Criterion A2 (“Asset performance history”).
- Clarifying in Criterion A5 (“Asset selection and transfer”) that the requirement for a legal opinion supporting the claim that the true sale and the transfer of assets under the applicable laws comply with the transaction-level criterion can be satisfied if an in-house legal opinion is furnished.
- Removing data on the cash flow generated by the underlying assets from the list of required information to be included in standardised investor reports in Criterion A6 (“Initial and ongoing data”).
- Clarifying in Criterion B7 (“Full support”) that the support can be provided by more than one entity, subject to certain conditions (refer to Section 3).
- Setting the threshold for the granularity of the pool in Criterion D19 (“Granularity of the pool”) at 2% (ie aggregated value of all exposures to a single obligor should not exceed 2% of the aggregated outstanding exposure value of all exposures in the ABCP programme) and that trade receivables which are fully protected from credit risk can be excluded from the concentration measure.

Standards text

These paragraphs replace paragraphs 109 and 110 of the revised securitisation framework published in July 2016.⁷

1. Scope and identification of STC securitisations for the purposes of alternative capital treatment

109. Only traditional securitisations including exposures to ABCP conduits and exposures to transactions financed by ABCP conduits fall within the scope of the STC framework. Exposures to securitisations that are STC-compliant will be subject to capital requirements as determined by paragraphs [115 to 118].

110. For regulatory capital purposes, the following will be considered STC-compliant:

- Exposures to non-ABCP, traditional securitisations that meet the criteria in Annex 2.
- Exposures to ABCP conduits and/or transactions financed by ABCP conduits, where the conduit and/or transactions financed by it meet the criteria in Annex 3.

⁷ www.bis.org/bcbs/publ/d374.htm.

Annex 3

Criteria for identifying simple, transparent and comparable (STC) short-term securitisations

Terms and definitions

ABCP conduit / conduit	Asset-backed commercial paper (ABCP) conduit, being the special purpose vehicle which can issue commercial paper.
ABCP programme	The programme of commercial paper issued by an ABCP conduit.
assets / asset pool	The credit claims and/or receivables underlying a transaction in which the ABCP conduit holds a beneficial interest
investor	The holder of commercial paper issued under an ABCP programme, or any type of exposure to the conduit representing a financing liability of the conduit, such as loans.
obligor	The borrower underlying a credit claim or a receivable that is part of an asset pool.
seller	A party that (i) concluded (in its capacity as original lender) the original agreement that created the obligations or potential obligations (under a credit claim or a receivable) of an obligor or purchased the obligations or potential obligations from the original lender(s), and (ii) transferred those assets through a transaction or passed on the interest ⁸ to the ABCP conduit.
sponsor	Sponsor of an ABCP conduit. It may also be noted that other relevant parties with a fiduciary responsibility in the management and administration of the ABCP conduit could also undertake control of some of the responsibilities of the sponsor.
transaction	An individual transaction in which the ABCP conduit holds a beneficial interest. A transaction may qualify as a securitisation, but may also be a direct asset purchase, the acquisition of undivided interest in a revolving pool of asset, a secured loan etc.

Scope of application

For an ABCP conduit to be considered STC, the following criteria need to be met at both the conduit level and the transaction level.

⁸ For instance, transactions where assets are sold to a special purpose entity sponsored by a bank's customer and then either a security interest in the assets is granted to the ABCP conduit to secure a loan made by the ABCP conduit to the sponsored special purpose entity, or an undivided interest is sold to the ABCP conduit.

Additional requirement for capital purposes

For exposures at the conduit level (eg exposure arising from investing in the commercial paper issued by the ABCP programme or sponsoring arrangements at the conduit/programme level), compliance with the short-term STC capital criteria is achieved only if the criteria are satisfied at both the conduit level and the transaction level.

In the case of exposures at the transaction level, compliance with the short-term STC capital criteria is considered to be achieved if the transaction-level criteria are satisfied for the transactions to which support is provided.

A. Asset risk

1. Nature of assets	
Relevant to the conduit level	Relevant to the transaction level
<p>The sponsor should make representations and warranties to investors that the subsections of Criterion A1 defined at the transaction level are met, and explain how this is the case on an overall basis. Only if specified should this be done for each transaction.</p> <p>Provided that each individual underlying transaction is homogeneous in terms of asset type, a conduit may be used to finance transactions of different asset types.</p> <p>Programme-wide credit enhancement should not prevent a conduit from qualifying for STC, regardless of whether such enhancement technically creates re-securitisation.</p>	<p>The assets underlying a transaction in a conduit should be credit claims or receivables that are homogeneous, in terms of asset type.⁹</p> <p>The assets underlying each individual transaction in a conduit should not be composed of "securitisation exposures" as defined in the Basel III securitisation framework.¹⁰</p> <p>Credit claims or receivables underlying a transaction in a conduit should have contractually identified periodic payment streams relating to rental,¹¹ principal, interest, or principal and interest payments. Credit claims or receivables generating a single payment stream would equally qualify as eligible. Any referenced interest payments or discount rates should be based on commonly encountered market interest rates,¹² but should not reference complex or complicated formulae or exotic derivatives.¹³</p>

Additional guidance for capital purposes

"Homogeneity"

For capital purposes, this criterion should be assessed taking into account the following principles:

⁹ For the avoidance of doubt, this criterion does not automatically exclude securitisations of equipment leases and securitisations of auto loans and leases from the short-term STC framework

¹⁰ www.bis.org/bcbs/publ/d374.htm.

¹¹ Payments on operating and financing lease are typically considered to be rental payments rather than payments of principal and interest.

¹² Commonly encountered market interest rates may include rates reflective of a lender's cost of funds, to the extent that sufficient data are provided to the sponsors to allow them to assess their relation to other market rates.

¹³ The Global Association of Risk Professionals (GARP) defines an exotic instrument as a financial asset or instrument with features making it more complex than simpler, plain vanilla, products.

- The nature of assets should be such that there would be no need to analyse and assess materially different legal and/or credit risk factors and risk profiles when carrying out risk analysis and due diligence checks for the transaction.
- Homogeneity should be assessed on the basis of common risk drivers, including similar risk factors and risk profiles.
- Credit claims or receivables included in the securitisation should have standard obligations, in terms of rights to payments and/or income from assets and that result in a periodic and well defined stream of payments to investors. Credit card facilities should be deemed to result in a periodic and well defined stream of payments to investors for the purposes of this criterion.
- Repayment of the securitisation exposure should mainly rely on the principal and interest proceeds from the securitised assets. Partial reliance on refinancing or re-sale of the asset securing the exposure may occur provided that re-financing 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.

“Commonly encountered market interest rates”

Examples of these would include:

- interbank rates and rates set by monetary policy authorities, such as Libor, Euribor and the federal funds rate; and
- sectoral rates reflective of a lender’s cost of funds, such as internal interest rates that directly reflect the market costs of a bank’s funding or that of a subset of institutions.

“Exotic derivatives”

Interest rate caps and/or floors would not automatically be considered exotic derivatives.

“Conduit should not be composed of ‘securitisation exposures’”

The transaction-level requirement is still met if the conduit does not purchase the underlying asset with a refundable purchase price discount but instead acquires a beneficial interest in the form of a note which itself might qualify as a securitisation exposure, as long as the securitisation exposure is not subject to any further tranching (ie has the same economic characteristic as the purchase of the underlying asset with a refundable purchase price discount).

2. Asset performance history	
Relevant to the conduit level	Relevant to the transaction level
In order to provide investors with sufficient information on the performance history of the asset types backing the transactions, the sponsor should make available to investors sufficient loss performance data on claims and receivables with substantially similar risk characteristics, such as delinquency and default data on similar claims, and for a time period long enough to permit meaningful evaluation. The sponsor should disclose to investors the sources of such data and the basis for claiming similarity to credit claims or receivables financed by the conduit.	In order to provide the sponsor with sufficient information on the performance history of each asset type backing the transactions and to conduct appropriate due diligence and to have access to a sufficiently rich data set to enable a more accurate calculation of expected loss in different stress scenarios, verifiable loss performance data, such as delinquency and default data, should be available for credit claims and receivables with risk characteristics substantially similar to those being financed by the conduit, for a time period long enough to permit meaningful evaluation by the sponsor.

Such loss performance data may be provided on a stratified basis. ¹⁴	
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Additional requirement for capital purposes

The sponsor of the securitisation, as well as the original lender that underwrites the assets, must have sufficient experience in the risk analysis/underwriting of exposures or transactions with underlying exposures similar to those securitised. The sponsor should have well documented procedures and policies regarding the underwriting of transactions and the ongoing monitoring of the performance of the securitised exposures. The sponsor should ensure that the seller(s) and all other parties involved in the origination of the receivables have experience in originating same or similar assets, and are supported by a management with industry experience. For the purpose of meeting the short-term STC capital criteria, investors must request confirmation from the sponsor that the performance history of the originator and the original lender for claims or receivables substantially similar to those being securitised has been established for an "appropriately long period of time". This performance history must be no shorter than a period of five years for non-retail exposures. For retail exposures, the minimum performance history is three years.

Rationale

The Committee considered that, in addition to the asset performance history, it is important that the original lender should have a minimum track record in originating assets similar to those securitised. Moreover, the seller and all other parties (such as the seller's agents) should have experience in the origination of the receivables, not only in the servicing of the receivables.

3. Payment status

Relevant to the conduit level	Relevant to the transaction level
The sponsor should, to the best of its knowledge and based on representations from sellers, make representations and warranties to investors that Criterion A3 at the transaction level is met with respect to each transaction.	The sponsor should obtain representations from sellers that the credit claims or receivables underlying each individual transaction are not, at the time of acquisition of the interests to be financed by the conduit, in default or delinquent or subject to a material increase in expected losses or of enforcement actions.

Additional requirement for capital purposes

To prevent credit claims or receivables arising from credit-impaired borrowers from being transferred to the securitisation, the original seller or sponsor should verify that the credit claims or receivables meet the following conditions for each transaction:

¹⁴ Stratified means, by way of example:

- all materially relevant data on the conduit's composition (outstanding balances, industry sector, obligor concentrations, maturities etc) and conduit's overview; and
- all materially relevant data on the credit quality and performance of underlying transactions, allowing investors to identify collections, and, as applicable, debt restructuring, forgiveness, forbearance, payment holidays, repurchases, delinquencies and defaults.

- the obligor has not been the subject of an insolvency or debt restructuring process due to financial difficulties in the three years prior to the date of origination;¹⁵
- the obligor is not recorded on a public credit registry of persons with an adverse credit history;
- the obligor does not have a credit assessment by an external credit assessment institution or a credit score indicating a significant risk of default; and
- the credit claim or receivable is not subject to a dispute between the obligor and the original lender.

The assessment of these conditions should be carried out by the original seller or sponsor no earlier than 45 days prior to acquisition of the transaction by the conduit or, in the case of replenishing transactions, no earlier than 45 days prior to new exposures being added to the transaction. In addition, at the time of the assessment, there should, to the best knowledge of the original seller or sponsor, be no evidence indicating likely deterioration in the performance status of the credit claim or receivable.

Further, at the time of their inclusion in the pool, at least one payment should have been made on the underlying exposures, except in the case of replenishing asset trust structures such as those for credit card receivables, trade receivables, and other exposures payable in a single instalment, at maturity.

Rationale

The Committee believes that providing a clear definition of credit-impaired borrowers should facilitate compliance checks.

4. Consistency of underwriting	
Relevant to the conduit level	Relevant to the transaction level
<p>The sponsor should make representations and warranties to investors that:</p> <ul style="list-style-type: none"> • it has taken steps to verify that, for the transactions in the conduit, any underlying credit claims and receivables have been subject to consistent underwriting standards, and explain how; and • when there are material changes to underwriting standards, it will receive from sellers disclosure about the timing and purpose of such changes. <p>The sponsor should also inform investors of the material selection criteria applied when selecting sellers (including where they are not financial institutions).</p>	<p>The sponsor should ensure that sellers (in their capacity as original lenders) in transactions with the conduit demonstrate to it that:</p> <ul style="list-style-type: none"> (a) any credit claims or receivables being transferred to or through a transaction held by the conduit have been originated in the ordinary course of the seller's business subject to materially non-deteriorating underwriting standards. Those underwriting standards should also not be less stringent than those applied to credit claims and receivables retained on the balance sheet of the seller and not financed by the conduit; and (b) the obligors have been assessed as having the ability and volition to make timely payments on obligations. <p>The sponsor should also ensure that sellers disclose to it the timing and purpose of material changes to underwriting standards.</p>

¹⁵ This condition would not apply to borrowers that previously had credit incidents but were subsequently removed from credit registries as a result of the borrowers cleaning their records. This is the case in jurisdictions in which borrowers have the "right to be forgotten".

Additional requirement for capital purposes

In all circumstances, all credit claims or receivables must be originated in accordance with sound and prudent underwriting criteria based on an assessment that the obligor has the “ability and volition to make timely payments” on its obligations.

The sponsor of the securitisation is expected, where underlying credit claims or receivables have been acquired from third parties, to review the underwriting standards (ie to check their existence and assess their quality) of these third parties and to ascertain that they have assessed the obligors’ “ability and volition to make timely payments” on their obligations.

Rationale

This additional requirement improves the consistency of the criterion, as it requires securitised credit claims and receivables to be originated in accordance with sound and prudent underwriting standards in all circumstances, including for granular pools.

If the sponsor of the securitisation did not originate the assets, the additional requirement will ensure that the seller has to check (a) the existence and quality of the standards; (b) that the borrowers to whom the acquired loans are extended have been screened by the lender; and (c) that their ability and their willingness to repay have been assessed by the original lender. This should not, however, be understood as an obligation for the seller to perform this assessment itself.

5. Asset selection and transfer	
Relevant to the conduit level	Relevant to the transaction level
<p>The sponsor should:</p> <ul style="list-style-type: none"> provide representations and warranties to investors about the checks, in terms of their nature and frequency, it has conducted regarding enforceability of underlying assets; and disclose to investors the receipt of appropriate representations and warranties from sellers that the credit claims or receivables being transferred to the transactions in the conduit are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due. 	<p>The sponsor should ensure that credit claims or receivables transferred to or through a transaction financed by the conduit:</p> <ul style="list-style-type: none"> (a) satisfy clearly defined eligibility criteria; (b) are not actively selected after the closing date, actively managed¹⁶ or otherwise cherry-picked. <p>The sponsor should be able to assess thoroughly the credit risk of the asset pool prior to its decision to provide full support to any given transaction or to the conduit.</p> <p>The sponsor should ensure that the transactions in the conduit effect true sale such that the underlying credit claims or receivables:</p> <ul style="list-style-type: none"> are enforceable against the obligor; are beyond the reach of the seller, its creditors or liquidators and are not subject to material re-characterisation or clawback risks; are not effected through credit default swaps, derivatives or guarantees, but by a transfer¹⁷ of the credit claims or the receivables to the transaction; and

¹⁶ Provided they are not actively selected or otherwise cherry-picked, the addition of credit claims or receivables during the revolving periods or their substitution or repurchasing due to the breach of representations and warranties do not represent active portfolio management.

¹⁷ This requirement should not affect jurisdictions whose legal frameworks provide for a true sale with the same effects as described above, but by means other than a transfer of the credit claims or receivables.

	<ul style="list-style-type: none"> demonstrate effective recourse to the ultimate obligation for the underlying credit claims or receivables and are not a re-securitisation position. <p>The sponsor should ensure that, in applicable jurisdictions, for conduits employing transfers of credit claims or receivables by other means, sellers can demonstrate to it the existence of material obstacles preventing true sale at issuance¹⁸ and should clearly demonstrate the method of recourse to ultimate obligors.¹⁹ In such jurisdictions, any conditions where the transfer of the credit claims or receivables is delayed or contingent upon specific events and any factors affecting timely perfection of claims by the conduit should be clearly disclosed.</p> <p>The sponsor should ensure that it receives from the individual sellers (in their capacity either as original lender or servicer) representations and warranties that the credit claims or receivables being transferred to or through the transaction are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due.</p>
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Additional requirement for capital purposes

An in-house legal opinion or an independent third-party legal opinion must support the claim that the true sale and the transfer of assets under the applicable laws comply with points (a) and (b) at the transaction level.

Rationale

A legal opinion will provide comfort that a transaction complies with these criteria, in particular in cases where it is issued in accordance with non-domestic legal provisions.

6. Initial and ongoing data	
Relevant to the conduit level	Relevant to the transaction level
<p>To assist investors in conducting appropriate due diligence prior to investing in a new programme offering, the sponsor should provide to potential investors sufficient aggregated data that illustrate the relevant risk characteristics of the underlying asset pools in accordance with applicable laws.</p> <p>To assist investors in conducting appropriate and ongoing monitoring of their investments' performance and so that investors who wish to purchase commercial paper have sufficient information to conduct appropriate due diligence, the sponsor should provide timely and sufficient aggregated data that convey the relevant risk characteristics of the underlying pools in accordance with applicable laws. The sponsor should ensure that standardised investor reports are readily available to current and potential investors at least monthly. Cutoff</p>	<p>The sponsor should ensure that the individual sellers (in their capacity as servicers) provide it with:</p> <ul style="list-style-type: none"> (a) sufficient asset-level data in accordance with applicable laws or, in the case of granular pools, summary stratification data on the relevant risk characteristics of the underlying pool before transferring any credit claims or receivables to such underlying pool; and (b) timely asset-level data in accordance with applicable laws or granular pool stratification data on the risk characteristics of the underlying pool on an ongoing basis. Those data should allow the sponsor to fulfil its fiduciary duty at the conduit level in terms of disclosing information to investors, including the alignment of cutoff dates of the asset-level or

¹⁸ For instance, the immediate realisation of transfer tax or the requirement to notify all obligors of the transfer.

¹⁹ For instance, equitable assignment or perfected contingent transfer.

dates of the aggregated data should be aligned with those used for investor reporting.	granular pool stratification data with those used for investor reporting. The seller may delegate some of these tasks, in which case the sponsor should ensure that there is appropriate oversight of the outsourced arrangements.
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Additional requirement for capital purposes [New]

The standardised investor reports which are made readily available to current and potential investors at least monthly should include the following information:

- materially relevant data on the credit quality and performance of underlying assets, including data allowing investors to identify dilution, delinquencies and defaults, restructured receivables, forbearance, repurchases, losses, recoveries and other asset performance remedies in the pool;
- the form and amount of credit enhancement provided by the seller and sponsor at the transaction and the conduit level, respectively;
- relevant information on the support provided by the sponsor; and
- the status and definitions of relevant triggers (such as performance, termination or counterparty replacement triggers).

Rationale

Adequate investor disclosure is a key pillar in ensuring appropriate governance of the sponsor and performance of the ABCP structure. Investors should have appropriate information on the performance of the underlying assets and available credit enhancements. Key metrics of interest to the investor include delinquencies, dilution, statistics on deal triggers and available credit enhancements.

B. Structural risk

7. Full support	
Relevant to the conduit level	Relevant to the transaction level
The sponsor should provide the liquidity facility(ies) and the credit protection support ²⁰ for any ABCP programme issued by a conduit. Such facility(ies) and support should ensure that investors are fully protected against credit risks, liquidity risks and any material dilution risks of the underlying asset pools financed by the conduit. On that basis, investors should be able to rely on the sponsor to ensure timely and full repayment of the commercial paper.	(-)

²⁰ A sponsor can provide full support either at the ABCP programme level or at the transaction level, ie by fully supporting each transaction within an ABCP programme.

Additional requirement for capital purposes [New]

Number of sponsors providing support

While liquidity and credit protection support at both the conduit level and transaction level can be provided by more than one sponsor, the majority of the support (assessed in terms of coverage) has to be made by a single sponsor (referred to as the “main sponsor”).²¹ An exception can, however, be made for a limited period of time, where the main sponsor has to be replaced due to a material deterioration in its credit standing.

Conduit-level requirement

The full support provided should be able to irrevocably and unconditionally pay the ABCP liabilities in full and on time. The list of risks provided in Criterion B7 that have to be covered is not comprehensive but rather provides typical examples.

General requirements

Under the terms of the liquidity facility agreement:

- Upon specified events affecting its creditworthiness, the sponsor shall be obliged to collateralise its commitment in cash to the benefit of the investors or otherwise replace itself with another liquidity provider.
- If the sponsor does not renew its funding commitment for a specific transaction or the conduit in its entirety, the sponsor shall collateralise its commitments regarding a specific transaction or, if relevant, to the conduit in cash at the latest 30 days prior to the expiration of the liquidity facility, and no new receivables should be purchased under the affected commitment.

The sponsor should provide investors with full information about the terms of the liquidity facility(ies) and the credit support provided to the ABCP conduit and the underlying transactions (in relation to the transactions, redacted where necessary to protect confidentiality).

Rationale

In order to provide sufficient protection to investors in the notes issued by the ABCP conduit, the liquidity facility(ies) provided to the ABCP conduit shall be sufficient to redeem in full the outstanding notes in case the paper cannot be rolled over so that the investors do not retain any exposure to the credit risk of the underlying securitised assets. The liquidity facility providing full support should cover all the risks that prevent the full repayment from the proceeds of underlying securitised assets of the notes at maturity.

To ensure that investors in the notes issued by the ABCP conduit are fully protected by the facility(ies) provided to the ABCP conduit, if the creditworthiness of the liquidity providers deteriorates or if a commitment is not renewed, the liquidity provider shall be required to fully collateralise the facility(ies) in cash to ensure the payment of maturing notes. As an alternative, a backup facility provider could be used in case the creditworthiness of the current provider is no longer sufficient. The facility should also be drawn down and used to redeem the outstanding notes in case it is not renewed at least 30 days prior to its expiration. This requirement aims to ensure that the full support is available to investors at any point in time.

²¹ “Liquidity and credit protection support” refers to support provided by the sponsors. Any support provided by the seller is excluded.

Information about the support provided to the ABCP structure, at the conduit and the transaction level, as well as the maturity of the facility(ies) provided to the ABCP structure, shall also be disclosed to investors. This will enable investors to assess the liquidity risks associated with their exposures to the ABCP structure.

8. Redemption cash flow	
Relevant to the conduit level	Relevant to the transaction level
(-)	Unless the underlying pool of credit claims or receivables is sufficiently granular and has sufficiently distributed repayment profiles, the sponsor should ensure that the repayment of the credit claims or receivables underlying any of the individual transactions relies primarily on the general ability and willingness of the obligor to pay rather than the possibility that the obligor refinances or sells the collateral and that such repayment does not primarily rely on the drawing of an external liquidity facility provided to this transaction.

Additional requirement for capital purposes [New]

For capital purposes, sponsors cannot use support provided by their own liquidity and credit facilities towards meeting this criterion. For the avoidance of doubt, the requirement that the repayment shall not primarily rely on the drawing of an external liquidity facility does not apply to exposures in the form of the notes issued by the ABCP conduit.

Rationale

The criterion allows some of the refinancing risk to be met by an external liquidity facility. However, the additional requirement clarifies that, for capital purposes, the criterion must be met without reference to a sponsor's own support provided. This helps to ensure that sponsors are adequately protected against the redemption risk of underlying assets.

9. Currency and interest rate asset and liability mismatches	
Relevant to the conduit level	Relevant to the transaction level
<p>The sponsor should ensure that any payment risk arising from different interest rate and currency profiles:</p> <ul style="list-style-type: none"> (i) not mitigated at transaction level; or (ii) arising at conduit level; <p>is appropriately mitigated. The sponsor should also ensure that derivatives are used for genuine hedging purposes only and that hedging transactions are documented according to industry-standard master agreements.</p> <p>The sponsor should provide sufficient information to investors to allow them to assess how the payment risk arising from the different interest rate and currency profiles of assets and liabilities is appropriately mitigated, whether at the conduit level or at the transaction level.</p>	<p>To reduce the payment risk arising from the different interest rate and currency profiles of assets and liabilities, if any, and to improve the sponsor's ability to analyse cash flows of transactions, the sponsor should ensure that interest rate and foreign currency risks are appropriately mitigated. The sponsor should also ensure that derivatives are used for genuine hedging purposes only and that hedging transactions are documented according to industry-standard master agreements.</p>

Additional requirement for capital purposes

The term “appropriately mitigated” should be understood as not necessarily requiring a completely perfect hedge. The appropriateness of the mitigation of interest rate and foreign currency risks through the life of the transaction must be demonstrated by making available, in a timely and regular manner, quantitative information, including the fraction of notional amounts that are hedged, as well as sensitivity analysis that illustrates the effectiveness of the hedge in extreme but plausible scenarios.

The use of risk-mitigating measures other than derivatives is permitted only if the measures are specifically created and used for the purpose of hedging an individual and specific risk. Non-derivative risk mitigation measures must be fully funded and available at all times.

Rationale

It is necessary to clarify that “appropriately mitigated” should not necessarily be understood from an accounting point of view, but rather from an economic perspective.

10. Payment priorities and observability	
Relevant to the conduit level	Relevant to the transaction level
<p>The commercial paper issued by the ABCP programme should not include extension options or other features which may extend the final maturity of the asset-backed commercial paper, where the right to trigger does not belong exclusively to investors.</p> <p>The sponsor should:</p> <ul style="list-style-type: none"> (i) make representations and warranties to investors that Criterion B10 is met at the transaction level and, in particular, that it has the ability to appropriately analyse the cash flow waterfall for each transaction which qualifies as a securitisation; and (ii) make available to investors a summary (illustrating the functioning) of these waterfalls and of the credit enhancement available at programme level and transaction level. 	<p>To prevent the conduit from being subjected to unexpected repayment profiles from the transactions, the sponsor should ensure that:</p> <ul style="list-style-type: none"> • priorities of payments are clearly defined at the time of acquisition of the interests in these transactions by the conduit; and • appropriate legal comfort regarding the enforceability is provided. <p>For all transactions which qualify as a securitisation, the sponsor should ensure that all triggers affecting the cash flow waterfall, payment profile or priority of payments are clearly and fully disclosed to the sponsor in both the transactions’ documentation and reports, with information in the reports that clearly identifies any breach status, the ability for the breach to be reversed and the consequences of the breach. Reports should contain information that allows sponsors to easily ascertain the likelihood of a trigger being breached or reversed. Any triggers breached between payment dates should be disclosed to sponsors on a timely basis in accordance with the terms and conditions of the transaction documents.</p> <p>For any of the transactions where the beneficial interest held by the conduit qualifies as a securitisation position, the sponsor should ensure that any subordinated positions do not have inappropriate payment preference over payments to the conduit (which should always rank senior to any other position) and which are due and payable.</p> <p>Transactions featuring a revolving period should include provisions for appropriate early amortisation events and/or triggers of termination of the revolving period, including, notably: (i) deterioration in the credit quality of the underlying exposures; (ii) a failure to replenish sufficient new underlying exposures of similar credit</p>

	<p>quality; and (iii) the occurrence of an insolvency-related event with regard to the individual sellers.</p> <p>To ensure that debt forgiveness, forbearance, payment holidays, restructuring, dilution and other asset performance remedies can be clearly identified, policies and procedures, definitions, remedies and actions relating to delinquency, default, dilution or restructuring of underlying debtors should be provided in clear and consistent terms, such that the sponsor can clearly identify debt forgiveness, forbearance, payment holidays, restructuring, dilution and other asset performance remedies on an ongoing basis.</p> <p>For each transaction which qualifies as a securitisation, the sponsor should ensure that it receives, both before the conduit acquires a beneficial interest in the transaction and on an ongoing basis, the liability cash flow analysis or information on the cash flow provisions allowing appropriate analysis of the cash flow waterfall of these transactions.</p>
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11. Voting and enforcement rights

Relevant to the conduit level	Relevant to the transaction level
<p>To provide clarity to investors, the sponsor should make sufficient information available in order for investors to understand their enforcement rights on the underlying credit claims or receivables in the event of insolvency of the sponsor.</p>	<p>For each transaction, the sponsor should ensure that, in particular upon insolvency of the seller or where the obligor is in default on its obligation, all voting and enforcement rights related to the credit claims or receivables are, if applicable:</p> <ul style="list-style-type: none"> • transferred to the conduit; and • clearly defined under all circumstances, including with respect to the rights of the conduit versus other parties with an interest (eg sellers), where relevant.

12. Documentation disclosure and legal review

Relevant to the conduit level	Relevant to the transaction level
<p>To help investors understand fully the terms, conditions, and legal information prior to investing in a new programme offering and to ensure that this information is set out in a clear and effective manner for all programme offerings, the sponsor should ensure that sufficient initial offering documentation for the ABCP programme is provided to investors (and readily available to potential investors on a continuous basis) within a reasonable period of time prior to issuance, such that the investor is provided with full disclosure of the legal information and comprehensive risk factors needed to make informed investment decisions. These should be composed such that readers can readily find, understand and use relevant information.</p> <p>The sponsor should ensure that the terms and documentation of a conduit and the ABCP programme it issues are reviewed and verified by an appropriately experienced and independent legal practice prior to publication and in the event of material changes. The</p>	<p>(-)</p>

<p>sponsor should notify investors in a timely fashion of any changes in such documents that have an impact on the structural risks in the ABCP programme.</p>	
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Additional requirement for capital purposes [New]

To understand fully the terms, conditions and legal information prior to including a new transaction in the ABCP conduit and ensure that this information is set out in a clear and effective manner, the sponsor should ensure that it receives sufficient initial offering documentation for each transaction and that it is provided within a reasonable period of time prior to the inclusion in the conduit, with full disclosure of the legal information and comprehensive risk factors needed to supply liquidity and/or credit support facilities. The initial offering document for each transaction should be composed such that readers can readily find, understand and use relevant information.

The sponsor should also ensure that the terms and documentation of a transaction are reviewed and verified by an appropriately experienced and independent legal practice prior to the acquisition of the transaction and in the event of material changes.

Rationale

In addition to disclosure to end-investors, each transaction must also have sufficient disclosure and legal review to protect the conduit and provide the sponsor with information on the risks it is supporting.

13. Alignment of interest

Relevant to the conduit level	Relevant to the transaction level
<p>In order to align the interests of those responsible for the underwriting of the credit claims and receivables with those of investors, a material net economic exposure should be retained by the sellers or the sponsor at the transaction level, or by the sponsor at the conduit level.</p> <p>Ultimately, the sponsor should disclose to investors how and where a material net economic exposure is retained by the seller at the transaction level or by the sponsor at the transaction or the conduit level, and demonstrate the existence of a financial incentive in the performance of the assets.</p>	(-)

14. Cap on maturity transformation

Relevant to the conduit level	Relevant to the transaction level
<p>Maturity transformation undertaken through ABCP conduits should be limited. The sponsor should verify and disclose to investors that the weighted average maturity of all the transactions financed under the ABCP conduit is three years or less.</p> <p>This number should be calculated as the higher of:</p> <ol style="list-style-type: none"> the exposure-weighted average residual maturity of the conduit's beneficial interests held or the assets 	(-)

<p>purchased by the conduit in order to finance the transactions of the conduit;²²</p> <p>2. the exposure-weighted average maturity of the underlying assets financed by the conduit calculated by:</p> <ol style="list-style-type: none"> a. taking an exposure-weighted average of residual maturities of the underlying assets in each pool; and then b. taking an exposure-weighted average across the conduit of the pool-level averages as calculated in Step 2a. <p>Where it is impractical for the sponsor to calculate the pool-level weighted average maturity in Step 2a (because the pool is very granular or dynamic), sponsors may instead use the maximum maturity of the assets in the pool as defined in the legal agreements governing the pool (eg investment guidelines).</p>	
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C Fiduciary and servicer risk

15. Financial institution

Relevant to the conduit level	Relevant to the transaction level
The sponsor should be a financial institution that is licensed to take deposits from the public, and is subject to appropriate prudential standards and levels of supervision. ²³	(-)

16. Fiduciary and contractual responsibilities

Relevant to the conduit level	Relevant to the transaction level
<p>The sponsor should, based on the representations received from seller(s) and all other parties responsible for originating and servicing the asset pools, make representations and warranties to investors that:</p> <ul style="list-style-type: none"> • the various criteria defined at the level of each underlying transaction are met, and explain how; and • the seller's (sellers') policies, procedures and risk management controls are well documented, adhere to good market practices and comply with the relevant regulatory regimes; and that strong systems and reporting capabilities are in place to ensure appropriate origination and servicing of the underlying assets. <p>The sponsor should be able to demonstrate expertise in providing liquidity and credit support in the context of</p>	<p>The sponsor should ensure that it receives representations from the seller(s) and all other parties responsible for originating and servicing the asset pools that they:</p> <ul style="list-style-type: none"> • have well documented procedures and policies in place to ensure appropriate servicing of the underlying assets; • have expertise in the origination of assets that are the same as or similar to those in the asset pools; • have extensive servicing and workout expertise, thorough legal and collateral knowledge and a track record in loss mitigation for the same or similar assets; • have expertise in the servicing of the underlying credit claims or receivables; and • are supported by a management team with extensive industry experience.

²² Including purchased securitisation notes, loans, asset-backed deposits and purchased credit claims and/or receivables held directly on the conduit's balance sheet

²³ National supervisors should decide what prudential standards and level of supervision are appropriate for their domestic banks. For internationally active banks, prudential standards and the level of supervision should be in accordance with the Basel framework. Subject to the determination of the national supervisor, in addition to risk-based regulatory capital this may include liquidity, leverage capital requirements and other requirements, such as related to the governance of banks.

<p>ABCP conduits, and that it is supported by a management team with extensive industry experience.</p> <p>The sponsor should at all times act in accordance with reasonable and prudent standards. The policies, procedures and risk management controls of the sponsor should be well documented, and the sponsor should adhere to good market practices and relevant regulatory regime. There should be strong systems and reporting capabilities in place at the sponsor.</p> <p>The party or parties with fiduciary responsibility should act on a timely basis in the best interests of the investors.</p>	
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Additional guidance for capital purposes

In assessing whether “strong systems and reporting capabilities are in place”, well documented policies, procedures and risk management controls, as well as strong systems and reporting capabilities, may be substantiated by a third-party review for sellers that are non-banking entities.

Rationale

Banks are subject to an ongoing assessment of their internal reporting systems and capabilities, as outlined in Criterion 7 of Principle 15 of the Basel Core Principles for Effective Banking Supervision. To ensure an assessment that is comparable with that of banking entities, other non-bank originating entities not subject to the Basel Core Principles should provide proof of an independent assessment of their reporting capabilities. Evidence of a suitable third-party review can be based on the supervisory regime applicable to this entity (if such supervision covers internal reporting systems).

17. Transparency to investors	
Relevant to the conduit level	Relevant to the transaction level
<p>To help provide full transparency to investors and to assist them in the conduct of their due diligence, the sponsor should ensure that the contractual obligations, duties and responsibilities of all key parties to the conduit, both those with a fiduciary responsibility and the ancillary service providers, are defined clearly both in the initial offering and in any relevant underlying documentation²⁴ of the conduit and the ABCP programme it issues.</p> <p>The sponsor should also make representations and warranties to investors that the duties and responsibilities of all key parties are clearly defined at the transaction level.</p> <p>The sponsor should ensure that the initial offering documentation disclosed to investors contains adequate provisions regarding the replacement of key counterparties of the conduit (eg bank account providers and derivatives counterparties) in the event of failure or non-performance or insolvency or deterioration of creditworthiness of any such counterparty.</p> <p>The sponsor should also make representations and warranties to investors that provisions regarding the</p>	<p>The sponsor should conduct due diligence with respect to the transactions on behalf of the investors.</p> <p>To assist the sponsor in meeting its fiduciary and contractual obligations, the duties and responsibilities of all key parties to all transactions (both those with a fiduciary responsibility and the ancillary service providers) should be defined clearly in all the documentation underlying these transactions and made available to the sponsor.</p> <p>The sponsor should ensure that provisions regarding the replacement of key counterparties (in particular, the servicer or liquidity provider) in the event of failure or non-performance or insolvency or other deterioration of any such counterparty for the transactions are well documented (in the documentation of these individual transactions).</p> <p>To enhance the transparency and visibility of all receipts, payments and ledger entries at all times, the sponsor should ensure that, for all transactions, the performance reports include all of the following: the transactions’ income and disbursements, such as scheduled principal,</p>

24 “Underlying documentation” does not refer to the documentation of the underlying transactions.

<p>replacement of key counterparties at the transaction level are well documented.</p> <p>The sponsor should provide sufficient information to investors about the liquidity facility(ies) and credit support provided to the ABCP programme for them to understand its functioning and key risks.</p>	<p>redemption principal, scheduled interest, prepaid principal, past due interest and fees and charges, and delinquent, defaulted, restructured and diluted amounts; and accurate accounting for amounts attributable to principal and interest deficiency ledgers.</p>
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D. Additional criteria for capital purposes

18. Credit risk of underlying exposures	
Relevant to the conduit level	Relevant to the transaction level
	<p>At the date of acquisition of the assets, the underlying exposures have to meet the conditions under the Standardised Approach for credit risk and, after account is taken of any eligible credit risk mitigation, be assigned a risk weight equal to or smaller than:</p> <ul style="list-style-type: none"> • 40% on a value-weighted average exposure basis for the portfolio where the exposures are loans secured by residential mortgages or fully guaranteed residential loans; • 50% on an individual exposure basis where the exposure is a loan secured by a commercial mortgage; • 75% on an individual exposure basis where the exposure is a retail exposure; or • 100% on an individual exposure basis for any other exposure.

Rationale

The Committee was concerned that inconsistent underwriting practices across jurisdictions could result in different risk characteristics within a single asset class. A criterion based on regulatory risk weights under the Standardised Approach for credit risk has the merit of using globally consistent regulatory risk measures. It also affords the benefit of applying a filter to ensure that higher-risk underlying exposures are not granted an alternative capital treatment as STC-compliant transactions. Careful consideration is needed of whether the risk-weight requirement should be applied on individual exposures or on a portfolio-weighted average basis.

19. Granularity of the pool	
Relevant to the conduit level	Relevant to the transaction level
<p>At the date of acquisition of any assets securitised by one of the conduits' transactions, the aggregated value of all exposures to a single obligor at that date shall not exceed 2%²⁵ of the aggregated outstanding exposure value of all exposures in the programme.</p>	

²⁵ In jurisdictions with structurally concentrated corporate loan markets, subject to ex ante supervisory approval and only for corporate exposures, the applicable maximum concentration threshold could be increased to 3% if the sellers or sponsor retain subordinated tranche(s) that form loss-absorbing credit enhancement, as defined in paragraph 55 of the December 2014 framework, and which cover at least the first 10% of losses. These tranche(s) retained by the sellers or sponsor shall not be eligible for the STC capital treatment.

Additional guidance for capital purposes

In the case of trade receivables where the credit risk of those trade receivables is fully covered by credit protection, provided that the protection provider is a financial institution, only the portion of the trade receivables remaining after taking into account the effective of any purchase price discount and overcollateralisation shall be included in the determination of whether the 2% limit is breached.