Comments

On the EU Framework for Simple, Transparent and Standardised Securitisations

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Comments On the EU Framework for Simple, Transparent and Standardised Securitisations

I. General comments

We welcome the European Commission's initiative for the development of a sustainable high-quality securitisation market. We expressly agree that short-term measures are required to achieve the wider objective of sustainable growth and job creation by mobilising investment in European enterprises and infrastructure. We support the view of the European Commission that securitisations play a key role in this context, and contribute to a well-functioning financial market. Securitisation is crucially important as a financing vehicle for enterprises; it is also a key risk management tool for banks. We also believe that a sensibly-designed framework for high-quality securitisations can promote further integration of European financial markets.

In its Consultative Document, the European Commission makes a reference to various political initiatives for the revitalisation of securitisation markets, and on securitisation initiatives at a European level. It is clear from this presentation alone that the development of a sustainable securitisation market can be discussed from different perspectives. In some areas, regulations have been developed which apply a differentiated view to the treatment of securitisations. The European Commission acknowledges the complexity and intricacy of regulations – and regulated sectors – in Annex 2 to the Consultative Document. Against this background, and for the sake of developing a sustainable securitisation market, it is essential to pursue a holistic approach that takes up the suggestions of the various initiatives and integrates existing regulations. A common set of fundamental requirements covering all regulated sectors could prevent a fragmentation of securitisation markets in terms of criteria for high-quality securitisations. This does not preclude sensible extensions of regulations for each respective sector.

Existing initiatives should be reviewed as to whether they are conducive, in their present form, to the goal of growth and job creation – or whether additional aspects need to be taken into account. It would be fatal if a framework for high-quality securitisations were to be established whereby regulations ignore reality, and hence fail to achieve the desired effect. We would like to outline an example that illustrates our concerns in this respect: according to our information, synthetic securitisations which, from a commercial point of view, may also be referred to as 'guaranteed securitisations' are a particularly important tool to the financial sector for transferring risks, and hence, to free capacity for additional lending to enterprises. For this reason, 'guaranteed securitisations' should also be incorporated into a framework for simple, transparent and comparable securitisations. Yet existing initiatives have excluded this type of the securitisation – without providing any plausible reason for such exclusion. We believe that if 'guaranteed securitisations' meet the criteria of the comprehensive framework, it should be possible to classify them as 'high-quality securitisations'. Please refer to Appendix 1 for our in-depth argumentation and illustration of this issue.

Moreover, we strongly advocate also including asset-backed commercial paper (ABCP) issues by multi-seller conduits into the scope of simple, transparent and comparable securitisations. ABCP play a major role in the refinancing of real-economy businesses. According to information by Moody's, multi-seller conduits securitised retail and leasing receivables in an aggregate volume of approximately EUR 63 billion in 2014. Given that multi-seller conduits differ from the usual term securitisation structure, we have outlined, in our response to question no. 2 (as well as in Appendix 2 to these comments) how criteria should be tailored to fit high-quality ABCP.

II. Special comments

Question 1:

A. Do the identification criteria need further refinements to reflect developments taking place at EU and international levels? If so, what adjustments need to be made?

The European Commission has proposed a modular approach to identifying high-quality securitisations, which comprises 'foundation' criteria as well as additional ('top-up') criteria. Whilst foundation criteria would apply across regulated sectors, additional criteria might provide additional requirements for high-quality securitisations, in line with the specific prudential requirements in a given sector. From our perspective, this approach contributes to the harmonisation of requirements across all regulated sectors, thus countering a fragmentation of criteria for high-quality securitisations. We therefore also advocate adopting a modular approach.

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In principle, criteria for high-quality securitisations should be designed in a manner providing minimum latitude for further interpretations, and should be practicable. For the time being, it is impossible to meet investor's expectations and to warrant the compliance with the criteria laid down in article 13 of the COMMISSION's DELEGATED REGULATION (EU) 2015/61 (delegated act to the LCR) for Level 2B securitisations and those of the COMMISSION's DELEGATED REGULATION (EU) 2015/35 (Solvency II) laid down in article 177 (2) for Type 1 securitisations. Due to partially vague legal requirements it is currently unclear how to interpret and implement these requirements. In addition, there exist severe implementing challenges. Notably, this refers to the non-impairment requirements in article 13 (2) (j) of the delegated act to the LCR and article 177 (2) (k) of the delegated act to Solvency II, but also to the non-impairment criterion 5 (iii) of the EBA discussion paper. Without further specification, it is not feasible to issue Asset Backed Securities that fulfil the non-impairment criteria of the delegated acts to the LCR, Solvency II and the EBA proposal (Discussion Paper). This is a very critical point, because credit institutions report that investors have begun in order to save the value of their investments to require "qualifying securitisations" that are compliant to the LCR and Solvency II and already show some reservation if such compliance cannot be warranted. We assume that this trend will increase in the next months and entail further reservations of potential investors to invest in ABS. At present, negative impacts on spreads are still concealed by the ECB purchase program which has a contrary impact. In criterion 5 (iii) of the EBA discussion paper, the EBA proposes an impairment definition that is inconsistent with the impairment rules specified in the respective accounting standards. Amongst other things, the section stipulates that no underlying assets are eligible in a securitisation which has "a credit score indicating significant risk of default" – however, without clarifying what is deemed a "significant risk" in this context. This provides for a wide scope for interpretation, thus precluding a level playing field. A similar problem as to the non-impairment requirement exists in the delegated acts to the LCR and Solvency II that define significant risk saying that "contractually agreed payments will not be made compared to the average obligor for this type of loans in the relevant jurisdiction." However, this definition is neither clear and prevent a level playing field. Assumed, it would be specified when a credit score and the assigned PD indicate a significant risk then a it might occur a situation where an obligor indicates a significant risk compared to the average obligor in Germany but not to the average obligor in other countries of the European Union like Italy or Greece, for instance, due to higher average default risk in such countries. Moreover, this would require additional guidelines for further detailed specification and implementation. Instead tested and established solutions should be used as to the non-impairment requirements.

The definition of criteria should also bear in mind the European Commission's over-arching goal – to support the economy. An impairment definition based on the judgement of rating agencies (ECAIs) for assessing impairment requirements is inadequate in this context. To a large part, the economy is sustained by medium-sized enterprises (SMEs and Midcaps), which usually do not have a rating issued by a rating agency, or another publicly-available score. A definition for impairment requirements should be structured accordingly.

Overall, we believe that non-impairment requirements need to be revised, and have summarised our detailed comments and proposals in Appendix 2. Otherwise, we will observe increasing reservations of investing credit institutions affecting the market adversely. Thus, if not amended, the effect of the new non-impairment requirement might be that issuers of ABS will be deterred of the issuance of ABS for a substantial period of time until they will have clarity about the requirements and will have accumulated enough assets based on the new non-impairments requirements. Any such issuance hiatus would be bad for European securitisation markets. Against the backdrop we recommend to react quickly.

Another aspect we would like to draw attention to in connection with the appropriateness of criteria are cross-relationships with potential future regulations, which may impact upon the framework for securitisations. The proposals submitted by the Basel Committee for a revision of the Credit Risk Standardised Approach (CRSA) are particularly worth mentioning in this context: according to the proposals, the risk weight for loans and advances to enterprises would be measured on the basis of an enterprise's revenues and its leverage ratio. Based on the current proposals, this calibration would lead to predominantly higher risk weights, compared to the existing regulations. Were the origination of a high-quality securitisation only permitted on the basis of assets with a certain risk weight, this would hold the threat of SME and Midcaps receivables being left outside, due to the fact that the Basel Committee's proposal suggests relatively high risk weights exactly for these enterprises – businesses which the EU Commission focuses upon, and wants to promote. This would affect all corporate SMEs and Midcaps with [annual] revenues of up to €5 million and an equity ratio [not exceeding] 33% – these would then be excluded from securitisation.

For this reason, we believe that regulations for high-quality securitisations need to be revised concerning changes to other frameworks, and adjusted if necessary, in order to ascertain long-term support for the economy and a sustainable development of securitisation markets.

We believe that adherence to credit processes – as opposed to the receivable's risk weight – should be decisive as to whether a receivable is eligible for securitisation. Using the risk weight of a receivable as an eligibility criterion for inclusion in a potential high-quality securitisation would create false incentives, since this would only allow 'good' receivables to be securitised. In our view, however, high-quality securitisation criteria should not include any such restrictions concerning the credit risk exposure of the underlying assets. We believe that it is of primary importance that the receivable was established within the scope of 'ordinary' banking business, and that credit processes were adhered to during origination. Otherwise, there could be detrimental effects on the provision of SMEs and Midcaps with loans if credit institutions adapt their acceptance policy to the non-impairment requirement of SST-securitisations in order to avoid a deterioration of the quality of the remaining portfolio due to the enforced retention of SME loans with higher risk. Such scenario is quite realistic because rating agencies are about to focus more on ratios as to asset quality in their assessment. A deterioration of the asset quality of the non-securitised portfolio could have a negative effect on the credit institution's own rating. In addition, it would increase the risk weight of the credit institution itself. As mentioned above this would also apply if the proposal of the Basel Committee should be adopted because the Basel Committee has proposed to base the risk weights of credit institutions in the standardised approach on two ratios of which one ratio is the asset quality ratio. However, due to the new floor regulations, this will also affect IRB-credit institutions. Hence, credit institutions using securitisation to a larger extent might be virtually forced to adapt their own acceptance policy to the non-impairment requirement. Such impact might be reinforced if the risk weights of the standardised approach as proposed by the Basel Committee would have to be used as eligibility criteria, because it is not in the interest of the credit institution to remain the loans with high risk weights on the balance sheet and to securitise the loans with the lowest risk weights. Due to these adverse but certainly not intended consequences we recommend to drop such eligibility criteria that will have an adverse impact on the credit institutions' acceptance policies.

B. What criteria should apply for all qualifying securitisations ('foundation criteria')

Regarding criteria, the European Commission's Consultative Document refers to Delegated Acts to Solvency II for insurance companies, and regarding the Liquidity Coverage Ratio (LCR) for banks. The criteria set out by the EBA, however, focus more on banks and on equity backing of securitisation exposures. The criteria proposed by the Task Force on Securitisation Markets (TFSM) established by the Basel Committee and IOSCO are more general in nature. In principle, we believe the catalogue of criteria proposed on the various levels to be sufficient for the purposes of foundation criteria.

We would like to strongly emphasise that the definition of criteria for high-quality securitisations must not exclude certain types of securitisation in the first place. Criteria must be based on commonly-accepted market standards, to avoid excluding securitisations which investors already regard upon as high-quality, simple, transparent and standardised securitisations today.

Specifically, the Basel Committee/IOSCO TFSM as well as the EBA have limited the scope of high-quality securitisations to true-sale transactions, leaving short-term transactions (ABCP) and synthetic securitisations out of scope. As already explained in our general comments, we believe this approach to be inappropriate with a view to promoting SMEs and Midcaps.

In this context, the catalogue of criteria must be designed in a way that prevents criteria from excluding any specific type of securitisation. Based on the EBA's proposals, we have adjusted the criteria for ABCP securitisations; the results are summarised in Appendix 3.

We refer to Appendix 1 for the development of adjusted criteria for synthetic securitisations. On a more general note, we would like to draw attention to prominent examples of synthetic securitisations being used by public-sector entities:

- Kreditanstalt für Wiederaufbau (KfW) is the single most important public-sector development bank in Germany. Within the scope of its activities, KfW has launched securitisation programmes ("PROMISE", for example) which German and European banks can use to transfer risks from SME

lending to the capital markets. In the case at hand, KfW has used synthetic securitisation for its programme.

- The European Investment Fund (EIF) specialises in financial products to support smaller and mid-sized enterprises in Europe; these products are provided through a network of partner banks. As part of this activity, the EIF issues guarantees for securitised SME portfolios (specifically, for senior and mezzanine tranches) – another form of synthetic securitisation.

The entities backing initiatives for high-quality securitisation submitted to date have yet to come up with a comprehensive explanation substantiating the exclusion of synthetic securitisation from the scope for high-quality securitisations. This is understandable in the absence of a corresponding instruction to these initiators. For this reason, we would like to ask the European Commission to issue a corresponding, expanded instruction to the EBA (for example) as part of determining criteria for high-quality securitisations, or to develop such criteria itself. It should be ensured that 'synthetic' securitisations are not excluded merely on the grounds of terminology.

As a rule, investors are required to deposit cash collateral in a synthetic securitisation. In the current market situation, originating banks can only deposit such cash collateral with a small number of [financial] institutions, since these must have a very good rating (where an external rating is required, in accordance with the rating agency's requirements). This bottleneck should be remedied in order to promote securitisation markets. Please refer to [our response to] question 8, section B for a more detailed explanation of this issue.

Question 2:

A. To what extent should criteria identifying simple, transparent, and standardized short-term securitisation instruments be developed? What criteria would be relevant?

B. Are there any additional considerations that should be taken into account for short-term securitisations?

The EU-Commission rightly points out that ABCP issued by multi-seller conduits have been neglected in the proposals for "High Quality"-Securitisations issued by the European Banking Authority (EBA) and the Joint BCBS/IOSCO Task Force on Securitisation Markets (TFSM). We nevertheless understand that both bodies are at present considering ways to factor in ABCP into the framework for "High Quality"-Securitisations.

Multi-seller conduits are platforms that purchase predominantly trade or leasing receivables from corporations or leasing companies. The purchase is funded by issuing short-term commercial paper (ABCP). The sponsor bank which is running the conduit provides liquidity lines that can be drawn if losses in the pool of securitized receivables occur. Most of the ABCP in Germany are "fully supported". That means that any losses of the investors are borne by the provider of the liquidity facility.

As the EU-Commission correctly observes ABCP Conduits play an important role in the financing of businesses. They are advantageous for corporates as well as for banks. Corporates can use the sale of own receivables as a substitute for other forms of funding (especially bank loans or bonds). In this respect they can be regarded as an equivalent to the use of ABS by large corporates as an alternative funding source. Banks can provide additional funding to corporates without extending credit lines.

While the volume of the conduit business market shrunk significantly due to the exit of arbitrage conduits and structured investment vehicles (SIVs) after the financial crises of 2007/2008 the share of multi-seller conduits in all conduit issuances has risen considerably. According to Moody's multi-seller conduits in Europe securitised trade or leasing receivables of an amount of 63.3 billion EUR in 2014 and thereby account for 82 percent of the ABCP market.

There are two roles banks can play in an ABCP multi-seller conduit transaction: Investor and sponsor bank.

Prima facie the investor is exposed to the credit risk of the pool of the securitised receivables. On closer inspection one can see that due to the "full support" by the sponsor bank the investor is only exposed to

the risk of the securitised portfolio if the sponsor defaults (so-called double default). This feature significantly reduces the risks of "fully supported" ABCP for the investor and makes them comparable to a covered bank bond. That is why multi-seller ABCP show a strong performance. They have experienced a stable and sound development also through the financial crisis 2007/2008 and subsequent years. In Germany no ABCP investor has ever suffered a loss. For this reason "fully supported" ABCP could be thought of as "high quality" securitisations per se.

As already described above the sponsor of a multi-seller ABCP is providing a liquidity line that covers all losses in the securitised portfolio. Therefore he is exposed to the credit risk of the securitised receivables. This risk is mitigated by the fact that the pool consists of a diversified portfolio of independent debtors with a high granularity. Moreover, the eligibility criteria of the transaction often exclude higher-risk exposures. In many cases the securitised receivables are even covered by credit insurance.

Nevertheless, for sponsor banks there should be well defined criteria for simple, transparent and standardised securitisations. As multi-seller conduits differ from the usual structure of a term securitisation there should be specific tailor-made "high quality" criteria for liquidity lines to multi-seller conduits.

As a natural starting point we would like to refer to the criteria proposed by the EBA and the TFSM as well as in this Consultation Document. In the following we would like to illustrate the most important adjustments to the criteria proposed by these bodies that should be made in order to better capture the special nature of multi-seller ABCP programs.

Many of these adjustments are necessary because the originator of an ABCP is not a regulated financial institution that securitises own loans but an unregulated real economy corporate that uses the conduit to securitise its receivables. Others are due to the limited availability or the sensitivity of information about certain features of the transaction. The provision of a limited set of information to the investor can be justified for fully supported ABCP because the investor is at worst exposed to the risk of an exposure to the sponsor bank. This adds enormous simplicity to the analysis of the investment. We therefore feel that if the securitisation is fully supported, access can be limited to materially relevant underlying documentation that enables the investor to assess the structure and the credit quality of the securitisation. Last but not least, changes are necessary to better capture specific features of the transaction (e. g. use of separate purchasing and issuing vehicles).

The EU-Commission as well as EBA and TFSM demand that the securitisation should be backed by exposures that are homogeneous in terms of asset type, currency and legal system under which they are subject. From our experience many SMEs and Midcaps are doing business internationally, i. e. they deliver goods or provide services not only in a single country. Such SMEs and Midcaps are accepting the currency and governing law as proposed by their customers. That is why they often do not have sufficient receivables to securitise receivables separately in different countries. Therefore we would like to suggest that from the perspective of the sponsor the homogeneity criterion should be met if the asset type is uniform and any material risks out of currency mismatches or different legal systems are covered by adequate measures (FX-hedging, credit insurance or legal opinions). In our opinion this would ensure an adequate level of homogeneity of the securitised receivables and at the same time guarantee that SMEs and Midcaps can use securitisation of their trade and lease receivables as a refinancing option.

Above this the EBA requires that the securitised receivables should be exposures to an obligor that is an individual or a corporate. This requirement can, in principle, be satisfied for ABCP. For avoidance of doubt it should nevertheless be clarified that co-funding structures or structures with separate purchasing and issuing vehicles within ABCP-programs where one SPV is buying a pool of trade or lease receivables from an original lender and the risk is passed on to another SPVs which is issuing a securitisation position (which is not a re-securitisation position) do not harm this criterion.

One important requirement of the EBA as well as the TFSM reads that the pool of securitised receivables should not contain any exposures to a credit impaired borrower. As credit impairments in the securitised pool lead to losses for the sponsor banks these banks would happily comply with it. It should be noted, however, that real economy originators, i. e. corporates, do not have systems and procedures in place to perform a bank-like credit approval process. In particular those originators will not be in a position to track whether an obligor has been subject to an insolvency or debt restructuring process due to financial difficulties prior to the date of origination. In order to protect themselves from credit impaired borrowers sponsor banks often require that trade receivables are covered by a commercial credit insurance.

Therefore, if the original lender is not a credit institution and the losses of the receivables are covered by a commercial credit insurance a borrower shall only be defined as credit-impaired if the original lender has positive knowledge of circumstances that make it highly unlikely that the borrower is able to pay its obligation in full.

The EBA wants to require that, where legally possible, investors should have access to all underlying transaction documents. In this context we would like to remark that even in cases where the disclosure of information to the investor by providing access to the underlying transaction documents is legally possible, it could endanger business secrets of real economy companies whose trade and lease receivables are securitised. A disclosure of portfolio data in combination with the name of the originator, could allow competitors of such company to extract sensitive data (such as payment terms accepted by the company, distribution of the customer base, or general business development (e. g. turn-over etc.). In some cases even the mentioning of the name of the originator company could negatively impact the originating company (suspected financing needs).

As already mentioned the investor in a fully supported ABCP is at worst ex-posed to the risk of an exposure to the sponsor bank. We therefore feel that if the securitisation is fully supported, access can be limited to materially relevant underlying documentation that enables the investor to assess the structure and the credit quality of the securitisation. Additionally, the real economy originator shall define which information shall be protected as its business secret and which information can be published.

According to EBA's and the TFSM proposals the transaction documents should clearly specify the changes in waterfall following trigger breaches as well as the obligation to report such breaches. We feel that reporting on breaches should only be done to the extent and in a way that is compatible with protectable rights of the originator or sponsor or original lender in terms of business secrets. Confidentiality issues must not be harmed. However, changes in the waterfall due to the occurrence of a termination event (or of other breaches) will be reported in the next monthly investor report.

Furthermore the EBA wants the originator or sponsor to provide investors with a liability cash flow. We think that cash flow statements should not be mandatory within ABCP programs where assets and liabilities are constantly revolving. Any reporting of cash flow information should be made in a reasonable and sufficient manner to enable the investor to have a clear picture of all materially relevant aspects regarding his risk position in the respective investment. In multi-seller ABCP programs with trade or lease receivables from various real economy companies certain data should be kept confidential if information memorandum and investor reporting provide all materially relevant information for assessing the risk position of the investor. Therefore the originator and sponsor should only provide investors with a liability cash flow where applicable.

The EU-Commission as well as the EBA and the TFSM are proposing that investors should have access to data on the underlying individual assets on a loan-by-loan level. From our point of view this should not apply to multi-seller ABCP programs because of the specific structure of these programs. As mentioned above it should be sufficient if investors have information about the materially relevant data of the underlying assets on an aggregated basis (e. g. asset type, industry of sellers, currencies, geographical distribution etc.). Loan-by-loan-level data of trade receivables is practically not deliverable, already outdated and potentially not sensible to disclose. It may even be critical in terms of business secrets of the corporate sellers. Furthermore, investors do not benefit from such data as they rely primarily on the liquidity support of the sponsor bank. Aggregated pool data has proven to be fully sufficient.

Additionally the EBA and the TFSM demand that underlying exposures should be originated in accordance with sound and prudent credit granting criteria. In this context the EBA requests that such criteria should include at least an assessment of the borrower's creditworthiness in accordance with the Mortgage Credit Directive 2014/17/EU or the Consumer Credit Directive 2008/48/EC, as applicable. We think that this requirement should only be relevant for such original lenders or originators which are covered by the respective directives. It should especially not be relevant for the securitisation of trade receivables. According to Article 2 of the Directive 2008/48/EC, such directive only applies to credit agreements but not to trade or (most) leasing receivables. Accordingly the originators (mainly corporates) - which are usually no financial institutions - do not comply with the directive. We are of the opinion that a carve out for such originators is absolutely necessary.

According to another suggestion by the EBA the pool of exposures to be securitised should be such that the largest exposure to a single obligor does not exceed 1% of the value of the aggregate outstanding

balance. We think that this criterion shall not apply for liquidity facility within a fully supported ABCP program. Furthermore, for the securitisation of leasing receivables any residual values shall not be counted as an obligor for the purpose of fulfilling this granularity criterion.

Within the trade receivables pools of multi-seller ABCP-programs the exposure to a single debtor is subject to the business policy and customer base of the corporate originator (e.g. automotive suppliers with naturally only have few customers whereby trading companies may have thousands). It would not be appropriate to declare a whole ABCP program is not eligible as a simple, transparent and standardized securitisation because of single transactions with higher concentrations. This counts even more if the portfolio (or the whole ABCP program) is covered by a commercial credit insurance or a fully supported liquidity line.

Last but not least, the EBA proposes that at the time of inclusion the risk weights of the underlying exposures under the Standardized Approach shall not be higher than 40, 50, 75 or 100 percent depending on the exposure class. We think that this criterion can only apply if the original lender or the originator is an institution supervised under the CRR. Corporates are not always in a positon to gauge the risk weight of their receivables under the Standardised Approach. This especially holds for foreign customers with an external rating.

Moreover, based on the EBA's proposals dated 14 October 2014 (EBA/DP/2014/02), in Appendix 3 we have provided a detailed listing of which parts of EBA's proposed criteria need to be adjusted in order to incorporate the specific characteristics of ABCP.

Question 3:

A. Are there elements of the current rules on risk retention that should be adjusted for qualifying instruments?

In principle, we consider the existing risk-retention rules to be appropriate. However, compared to the previous wording of Article 122a of CRD II, further precision is necessary concerning the purchase of receivables:

Within the scope of SME and Midcap financing, enterprises use the sale of receivables as a tool for managing default and liquidity risks. Receivables are sold to a bank, subject to a haircut on the purchase price (the so-called 'first-loss piece'). The originator's objective is to keep this haircut as low as possible, in order to achieve a balance-sheet reduction (from an accounting perspective). However, according to existing regulatory provisions, a bank acting as an investor in this scenario must prove that the enterprise (selling receivables) has retained a minimum of 5 per cent of the receivables sold – in other words, a minimum haircut of 5 per cent. At this point, accounting rules collide with regulatory requirements.

In fact, Article 122a in conjunction with Recital 25 of CRD II had provided a solution, to the extent that there was no risk-retention requirement when purchasing receivables. Even though Recital 58 of the CRR (in its current form) is identical with the previous provisions, the wording of the CRR does not include any specific exemption. Since the Recital has no binding legal effect, however, enterprises and banks are currently faced with the problem that banks have to prove a 5 per cent risk retention – which contradicts the enterprise's objectives.

We therefore advocate reinstating the previous rule, especially against the background of promoting the economy. Failing to do so would render the sale of receivables less attractive.

Risk-retention rules differ across various areas: for instance, different requirements – especially governing investors' due diligence obligations – are set out in Solvency II, the CRR, and the Alternative Investment Fund Managers Directive (AIFMD). Here, we propose a harmonisation that would facilitate investors' compliance with the requirements.

B. For qualifying securitisation instruments, should responsibility for verifying risk retention requirements remain with investors (i.e. taking an "indirect approach")? Should the onus only be on originators? If so, how can it be ensured that investors continue to exercise proper due diligence?

Right now, we see no need for adjustments concerning the indirect approach to risk retention.

Question 4:

A. How can proper implementation and enforcement of EU criteria for qualifying instruments be ensured?

The appropriate implementation and enforcement of criteria for high-quality securitisations throughout the European Union is a fundamental prerequisite for achieving the objectives associated with development of these criteria.

To make high-quality securitisations attractive to the market, the costs for implementing and enforcing criteria will need to remain within commensurate levels. This might be achieved by refraining from analysing each and every securitisation instrument or structure for compliance with requirements, on a case-by-case basis. Instead, it should be possible to copy a securitisation structure that has been approved as being 'high quality' without the need for additional review. The issuance-led approach proposed by the European Commission would need to be extended to incorporate the above-mentioned aspect. Likewise, the issuer-based approach identified by the European Commission might also satisfy this aspect.

The most important objective of a review as to whether the criteria for high-quality securitisation have been fulfilled is to obtain legal certainty – avoiding any potential liability, should the securitisation [subsequently] turn out not to have fulfilled the criteria (e.g. in the view of regulators). Legal certainty is the only way to create trust, and to re-start the securitisation market. Against this background, the party entrusted with reviewing fulfilment of the criteria should have authority to make such a judgment – in our view, this might be the financial sector or the regulatory authorities themselves.

In the case of a review by a financial sector, the party carrying out the review should be independent from the investor or originator. Established certification bodies such as TSI or PCS would be obvious choices for this task. As a prerequisite for legal certainty, corresponding authority would need to be transferred in order to ascertain that the respective judgement can be applied to the respective regulated sectors. As an alternative, a review might be conducted by an external auditor, who would issue an opinion certifying that the transaction is 'qualifying'.

Obviously, maximum legal certainty would be achieved by a regulatory authority issuing such a judgement. Given that securitisations need to be agreed upon with the supervisory authorities, this might constitute a possible extension of tasks for regulators – or for ECB (within the euro zone) and the Bank of England (outside the euro zone).

In our opinion, asking investors to conduct this review would not be viable – any such assessment duty might in fact be a deterrent for potential investors. This would be inconsistent with the objective of expanding the investor base. A review carried out by the originator might not be trusted by investors; in addition, this might give rise to a potential liability, in the event that the originator erroneously assumed – within the scope of his assessment – that the securitisation fulfilled the requirements to be classified as 'qualifying'. We therefore believe that the necessary legal certainty for all parties can only be achieved by a third party assuming review and certification.

B. How could the procedures be defined in terms of scope and process?

Aspects such as the time involved and practicability would need to be considered when setting out regulations governing a review of compliance with the criteria.

C. To what extent should risk features be part of this compliance monitoring?

The review of compliance with admission criteria concerning the eligibility of receivables to be securitised – which also includes criteria related to minimum credit quality (e.g. the exclusion of defaulted receivables) – is usually carried out by an independent third party. This compliance monitoring is carried out by taking and reviewing samples. Against this background, review of these criteria should not be the subject of the certification review. Instead, we suggest using the confirmation of such independent third party as the basis for certification by the certifying entity.

Comments On the EU Framework for Simple, Transparent and Standardised Securitisations

Question 5 (EU securitisation structure):

A. What impact would further standardisation in the structuring process have on the development of EU securitisation markets?

We advocate the further harmonisation and standardisation of the European securitisation market. This is because we also associate this with the potential for higher legal certainty – and hence, for a revitalisation and sustainable development of securitisation markets.

Against the background of the large number of EU countries with diverging legal requirements in different legal areas, a uniform set of rules and regulations would significantly simplify establishing a securitisation structure; it would reduce documentation efforts, harmonise documentation standards, and would reduce time and costs involved. It is up to legislators to determine the extent to which it is possible and appropriate to regulate securitisation structures within the scope of a Regulation or Directive. A Regulation would likely be more appropriate to ascertain a level playing field within Europe.

In our view, establishing a harmonised European securitisation structure would first require identifying the areas of law which are relevant to creating such a structure. Once these areas of law have been identified, the next step is an analysis as to what extent short-term (phase 1) and medium- or long-term (phase 2) measures can be taken in order to harmonise rules in the respective area. Any regulations which can be harmonised through short-term measures should be implemented at short notice, in order to achieve the objective of re-starting the securitisation market within a short period of time.

Market practice may provide guidance for developing a European securitisation structure and the areas of law affected. In Luxembourg, a securitisation act has been in force since 2004. The aspects governed by this act include securitisation organisms in various legal forms, supervision of such securitisation organisms, types of securitisation, qualifications of service providers and investor protection, but also accounting and tax issues. A firm of auditors has analysed growth of securitisation organisms in Luxembourg during the period from 2004 to 2011. Despite the international financial crisis, the number of securitisation organisms in Luxembourg grew steadily during this period. Apparently, the framework established is sufficiently robust to remain attractive to the market – even in a difficult economic situation.

To provide relief in connection with insolvency law, it would be possible to establish a uniform funding register, in line with section 22 of the German Banking Act (*Kreditwesengesetz* – "KWG"): in the event of insolvency proceedings affecting the party having transferred assets to an SPV (the originator), the party entitled under the transfer (e.g. the SPV) would have the right to segregate the relevant assets, and thus to protect them against insolvency.

To adequately support the economy, and to ensure a certain degree of flexibility concerning the underlying assets available for securitisation, standardisation should refer to the structure – at this point, we do not believe standardisation at the level of certain asset classes to be appropriate. Regulations specific to certain products (true sales, ABCP, synthetic securitisations) might be required; these might be specified separately, in more detail. In principle, the approach to standardisation should be as broad and comprehensive as possible.

B. Would a harmonised and/or optional EU-wide initiative provide more legal clarity and comparability for investors? What would be the benefits of such an initiative for originators?

In principle, we assume that a European initiative for the harmonisation of securitisation structures will provide investors with a higher degree of legal certainty and comparability, and will hence further promote the development of an attractive European securitisation market. Having said that, market experience shows that investors often have solid know-how concerning the securitisation structure, and that the challenges tend to be related to the legal framework. For this reason, it is particularly important to reduce legal uncertainty. At this juncture, it is worth bearing in mind that whilst a standardised securitisation structure may remove legal uncertainty and enhance comparability, any new framework will create legislative fringes – which may in turn lead to uncertainty amongst investors. Therefore, the financial services sector should be involved – and its practical experience incorporated – when developing such requirements.

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C. If pursued, what aspects should be covered by this initiative (e.g. the legal form of securitisation vehicles; the modalities to transfer assets; the rights and subordination rules for noteholders)?

Harmonising securitisation structures requires harmonisation steps in various areas of the law. Besides regulatory law, this involves the following areas:

- General civil law issues:
  - limited recourse (where the claims of the parties involved are restricted to the assets within the SPV) and non-petition clauses (where the parties to a transaction undertake not to file for insolvency proceedings);
  - the law governing standard terms and conditions (*AGB-Recht*) – an issue specific to Germany;
  - the laws governing securities and debentures/debt securities (relating to coordination of noteholders across tranches);
  - provisions governing set-off (borrowers' right to set off the underlying assets against all claims against the originator).
- Insolvency law:
  - the right to segregate underlying assets (segregating assets in the events of the seller's insolvency);
  - the right to segregate collected amounts (no segregation of amounts collected and held by the originator before forwarding to the SPV);
  - risk of insolvency of service providers (counterparty credit risk) – please refer to our response to question 8, section B.
- Tax law:
  - general tax law issues (such as whether interest paid on continuing obligations (*Dauerschuldzinsen*) is subject to trade tax; avoidance of taxable profits being realised);
  - cross-border taxation.

- Banking secrecy (investor interests vs. originators' confidentiality duties)
- Data protection issues

The areas of law outlined above are regulated differently across European countries. As a minimum requirement, uniform rules should be established in these areas – at the very least, specific rules need to be created that provide higher legal certainty.

According to market practice, the concept of a 'floating charge' – a form of collateralisation under English property law – has been successfully used in England, and might be taken as a blueprint for the harmonisation of insolvency law.

D. If created, should this structure act as a necessary condition within the eligibility criteria for qualifying securitisations?

No – an EU securitisation structure should not be a prerequisite for classification as high-quality securitisation. Our view is also based on the assessment that legal harmonisation is likely to take more time than the European Commission's schedule for revitalisation of securitisation markets provides for. Waiting for legal adjustments would counteract the European Commission's goal to quickly re-start the securitisation markets.

Question 6:

A. For qualifying securitisations, what is the right balance between investors receiving the optimal amount and quality of information (in terms of comparability, reliability, and timeliness), and streamlining disclosure obligations for issuers/originators?

As a matter of principle, we advocate disclosure of all information an investor needs to assess the risk (and risk concentrations) inherent in a securitisation tranche, as well as for evaluating an investment. It is established market practice that investors receive all information requested from bank originators – no information is held back. Against this background, transparency requirements should be adequate, purposeful, and practicable. We do not see any need for excessive transparency requirements which do

not create any added value for investors. Involving third parties, where information might have to be stored, would tend to incur unnecessary transaction costs, and would make the securitisation process more complex.

B. What areas would benefit from further standardisation and transparency, and how can the existing disclosure obligations be improved?

C. To what extent should disclosure requirements be adjusted – especially for loan-level data15 – to reflect differences and specificities across asset classes, while still preserving adequate transparency for investors to be able to make their own credit assessments?

Question 7:

A. What alternatives to credit ratings could be used, in order to mitigate the impact of the country ceilings employed in rating methodologies and to allow investors to make their own assessments of creditworthiness?

Using internal credit risk assessment methods should be possible, as an alternative to external credit ratings determined by rating agencies.

B. Would the publication by credit rating agencies of uncapped ratings (for securitisation instruments subject to sovereign ceilings) improve clarity for investors?

Whilst the publication of uncapped credit ratings related to securitisation instruments might indeed be useful to investors, knowledge about an uncapped rating alone would not create value per se. Instead, investors (as well as other parties to a securitisation transaction) should be permitted to use such knowledge, e.g. in connection with determining the risk weight for a securitisation exposure originated in a Member state of the European Union, and hence, the capital backing required for that exposure. This would make securitisations from countries with high add-ons in the European Union (due to their economic situation) more attractive. Such a move would also be justified, since the risk associated with a securitisation is not necessarily linked to the risk of the country the securitisation is allocated to. Moreover, it would enhance comparability with IRB exposures – where institutions are permitted to apply their own assessments for rating purposes.

Question 8:

A. For qualifying securitisations, is there a need to further develop market infrastructure?

We believe that the infrastructure can be developed further for securitisations in general – and for high-quality securitisations in particular. Depending upon a potential investor's objectives or business activities, securitisations need a certain degree of fungibility. Investors seeking exposure to securitisations, who do not intend to hold their investments to maturity (as is predominantly the case), must have the opportunity of selling their securities. This is particularly relevant when looking at money-market funds as potential investors: for these investors, tradeability is a mandatory prerequisite for an investment. The ability to liquidate investments is also relevant against the background of the requirements set out in the Delegated Act on LCR. The ability to trade a securitisation on an exchange would open it up to a broader base of potential investors. From our perspective, this might be a useful building block for the promotion of securitisation markets.

If secondary-market tradability of securitisations is to be promoted, the increase in capital requirements for high-quality securitisations held in the trading book should be avoided. As part of its review of trading-book rules, the Basel Committee plans to significantly increase capital requirements for securitisations held in the trading book. In their current form, capital requirements for securitisation exposures held in the trading book would be higher compared to those held in the banking book. If these proposals were to be implemented into European rules, they would counteract the promotion of securitisation markets.

B. What should be done to support ancillary services? Should the swaps collateralisation requirements be adjusted for securitisation vehicles issuing qualifying securitisation instruments?

The market for ancillary services is narrow. Account banks and/or swap providers fear the costs associated with a downgrade (such as transfer costs or costs associated with the collateralisation of counterparty risk). If an account bank's or swap provider's downgrade is caused by a systemic crisis, alternative counterparties are very unlikely to be available for the SPV. As a consequence, its securities will suffer a downgrade although the (credit) quality of the underlying portfolio will remain unaffected. In such a case, investors could be forced to reduce and sell their exposure, which in turn would deepen the crisis.

An initiative pursuant to which receivables of the SPV fall outside the institution's insolvency state would necessarily reduce or even eliminate the rating requirements currently established by the rating agencies if pre-insolvency scenarios, such as a moratorium, are also taken into account. This is not only true for account banks but to some degree also for swap providers since a privileged insolvency/moratorium treatment of claims associated with a swap agreement would substantially enhance the SPV's economic and legal position in an insolvency situation.

As described above, we also advocate not excluding synthetic securitisations from the scope for high-quality securitisation *per se* – especially given that public-sector institutions such as KfW or the EIF use synthetic securitisation in order to promote small and medium-sized enterprises. Where this instrument is applied with a direct link to the real economy, it may contribute to achieving the set objectives.

Within the scope of synthetic securitisations, investors provide cash collateral when purchasing a securitisation exposure. This cash collateral is invested on a bank account, or in securities with a comparable level of risk. In order to secure an adequate rating for a securitisation transaction, cash collateral may only be invested with a very restricted range of institutions. Assuming that synthetic securitisation cannot be excluded from the scope of application, and bearing in mind the underlying motivation of promoting the securitisation market, public-sector support might be provided by facilitating the deposit of cash collateral on accounts maintained with KfW, the EIF, or with similar institutions (such as the ECB or national central banks). This would increase the number of institutions with the commensurate rating.

Such a move would particularly benefit securitisation transactions included under the CRSA (with a zero per cent weighting). A positive effect would also occur, in the form of a lower risk weight, for securitisation transactions included in the IRB. Ultimately, this measure has the potential for raising the attractiveness of securitisations for investors, and to stimulate the securitisation market.

C. What else could be done to support the functioning of the secondary market?

Question 9:

With regard to the capital requirements for banks and investment firms, do you think that the existing provisions in the Capital Requirements Regulation adequately reflect the risks attached to securitised instruments?

From our perspective, current European securitisation regulations governing capital requirements adequately reflect the risk exposures inherent in securitisations. Following the financial crisis, European legislators have taken a number of measures designed to remedy any deficiencies regarding the process and capital adequacy which became evident during the financial crisis. Specifically, these measures were related to risk retention, risk transfer, higher risk weights for re-securitisations, and disclosure requirements. Moreover, stricter requirements were imposed upon rating agencies. This means that from our perspective, the right measures were taken, which are sufficient and appropriate.

According to an EBA survey, current capital requirements for an entire securitisation are already higher than the aggregate capital requirements for the underlying assets. Hence, we see no necessity for any adjustment to the current CRR/CRD regulations, or to further restrict the calibration of risk weights for high-quality securitisations. It is essential for a revitalisation of securitisation markets that capital

requirements for high-quality securitisations remain unchanged at their current levels. The calibration under the current framework sufficiently accounts for the risk from securitisations. The default risk of European securitisations remains low – a fact also recognised by the EBA: in its discussion paper, it pointed out that "it should be noted that most EU securitisation products performed well with almost zero losses before, during and after the crisis".

Question 10

If changes to EU bank capital requirements were made, do you think that the recent BCBS recommendations on the review of the securitisation framework constitute a good baseline? What would be the potential impacts on EU securitisation markets?

The recommendations of the Basel Committee for review of the securitisation framework provide for significant changes to capital requirements for securitisation exposures, with higher risk weights for senior tranches in particular. This would presumably result in additional burdens for European securitisation markets, and would likely exclude any support or revitalisation.

As part of the consultation process for the Basel Committee, we already pointed out the following aspects:

- The calibration would lead to a situation where the aggregate capital requirements applicable to all banks involved in a securitisation transaction would be clearly higher than the capital requirements if the securitised portfolio was held by a bank.
- The Basel Committee proposal would jeopardise the securitisations' positive effects for the real economy. New capital requirements shall and must not force banks to completely withdraw from the field of securitisations. Negative side effects for the real economy may occur above all in the field of term transactions, ABCP and if banks purchase receivables to their own balance sheet with a discount schemes. When used correctly, securitisations offer a valuable tool for banks' risk and capital management.
- Securitisations are particularly helpful when it comes to loans to small and medium-sized enterprises (SMEs). By passing on SME and Midcap exposures to the capital market, banks obtain new leeway for their lending activities to this customer group.
- Securitisation are being used in order to fund exposure portfolios especially of small and medium sized businesses by reverting to the capital market – these are customer groups which usually lack any external rating. In these transactions, banks usually act as liquidity providers. For companies, such conduit structures where mostly retail and leasing exposures are funded by issues of Asset Backed Commercial Papers (ABCP), constitute an important tool for balance sheet management as well as liquidity management.

The biggest problem of the revised Basel Framework for securitisations is the fact that banks acting as originators would no longer achieve any economic relief for their RWAs through the securitisation of assets. As a consequence, securitisation would no longer be attractive as a risk management tool for banks, since the purpose of securitisation would then no longer be achievable. For this reason, we are opposed to incorporating the calibration of the Basel Framework. Nonetheless, we are open to those aspects of the Basel Framework dealing with the hierarchy of approaches for the calculation of capital requirements.

Question 11:

How should rules on capital requirements for securitisation exposures differentiate between qualifying securitisations and other securitization instruments?

The European Commission plans to establish rules and regulations for high-quality securitisations, which are supposed to be simple, comparable/standardised and transparent. From our perspective, this should also apply to the framework itself, and especially to the rules governing capital backing requirements for high-quality securitisations. Accordingly, capital requirements should be designed as simply as possible – in contrast to other proposals, no completely new capital adequacy approaches should be devised, the impact of which is very difficult to estimate.

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We advocate that today's requirements for securitisations under the CRR should essentially also apply to high-quality securitisations in the future – which would maintain the current capital requirements for high-quality securitisations. In this context, it is essential that high-quality securitisations are considered in their entirety, instead of protecting the present levels [of capital requirements] for certain tranches only. Failure to do so would once again give rise to 'cliff effects' – for example, in the event of current capital requirement levels (pursuant to the CRR) not being maintained for high-quality non-senior tranches.

We have no preference regarding the form in which said aspects (simplicity, and maintenance of existing levels for capital backing) will be taken into account. In our view, there are two possibilities for determining capital requirements for high-quality securitisations, based on the revised Basel Framework, which would comply with demands:

- A regulatory parameter ("p") is used to determine the risk weight for securitisations; this paramater could be adjusted for high-quality securitisations.
- In line with the approach taken concerning the Credit Risk Standard Approach (which provides for a haircut to be applied to retail (SME) exposures), a deduction to risk weights originally determined might be applied to high-quality securitisations.

Question 12:

Given the particular circumstances of the EU markets, could there be merit in advancing work at the EU level alongside international work?

Yes, because this will preserve the maximum opportunity to achieve the goal of creating a sustainable, solid and meaningful securitisation market, in conjunction with the planned Capital Markets Union. It is especially SMEs – which, given their size, have no direct access to the capital markets – that can benefit from securitisation at attractive refinancing cost levels.

Question 13:

Are there wider structural barriers preventing long-term institutional investors from participating in this market? If so, how should these be tackled?

According to the market experience of our member institutions, the investor group largely comprises banks, insurance companies and investment funds. Specifically, the capital requirements set out in the Delegated Act to Solvency II represent a barrier for insurance companies to invest in ABS issues. Capital requirements for junior tranches are particularly prohibitive (80% for five-year junior tranches, for example) and will lead to the complete withdrawal of insurance companies as investors, unless capital requirements are changed.

Furthermore, money-market funds should be given the opportunity of increasing their ABS investments, provided that such ABS are classified as highly liquid, pursuant to the Delegated Act to the LCR. The current proposal by the EU Commission provides for further restrictions, which would lead to a factual prohibition of money-market funds investing in Auto ABS.

We also recommend that 'qualifying ABS' be recognised as level 2 assets. The existing limit of 15% for all types of level 2B assets will not provide any impulses for re-starting the securitisation markets.

Industrial companies investing in securities are also potential investors, who might be looking to invest funds for the long term. Companies with pension obligations might be additional potential investors. Market conditions would need to be enhanced for these potential investors, and improved for existing investors. It would certainly be helpful if an active secondary market was in place, where such instruments can be bought and sold as required. In this respect, please refer to our response to question 15, section A.

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Question 14:

A. For insurers investing in qualifying securitised products, how could the regulatory treatment of securitisation be refined to improve risk sensitivity? For example, should capital requirements increase less sharply with duration?

Calibration under Solvency II is geared towards the spread risk of securitisations. During the last crisis, there was no clear differentiation between 'high-quality' and 'non-high-quality' securitisations. As a consequence, there was significant uncertainty, during the crisis, concerning the quality of securitisations in general. In addition, structured investments vehicles were forced to carry out extensive fire sales, due to maturity mismatches in their funding structure. Meanwhile, structured investment vehicles have largely disappeared from the market. Based on experience acquired during the last crisis, investors are now able to distinguish between high-quality securities, which perform well even during a crisis, and issues of lesser quality. We therefore believe that there is scope for further fine-tuning of the calibration.

Subprime securitisations were taken into account as 'non-type-1' securitisations for calibration purposes. In this context, we recommend differentiation between European and non-European securitisations. Furthermore, diverging from the Delegated Act for Solvency II, junior tranches of 'qualifying' securitisations should be given the risk weights of type-1 securitisations.

B. Should there be specific treatment for investments in non-senior tranches of qualifying securitisation transactions versus non-qualifying transactions?

When distinguishing between high-quality versus non-high-quality securitisations, there should no further distinction regarding the seniority of the securitisation exposure. In other words, relief should not be based upon tranche seniority. Therefore, relief should be available when the criteria for high-quality securitisations have been fulfilled, regardless of whether an investment is made in a junior or senior tranche – especially since seniority has sufficient influence upon the risk weight. Conversely, no relief must be provided unless the securitisation can be classified as high-quality. In essence, relief should be based on the process and structure, rather than tranche seniority.

Question 15:

A. How could the institutional investor base for EU securitisation be expanded?

Current investors are subject to restrictions concerning the extent to which they may invest in securitisations. This applies in particular to insurance companies and money-market funds. These parameters might be adjusted (or limits increased) in order to raise the exposure of such investors to securitisations, thus creating significant market potential. Such increases can be designed in a manner so as to ascertain system security.

B. To support qualifying securitisations, are adjustments needed to other EU regulatory frameworks (e.g. UCITS, AIFMD)? If yes, please specify.

Question 16:

A. What additional steps could be taken to specifically develop SME securitisation?

As outlined above, we advocate refraining from generally excluding synthetic securitisations from the scope of high-quality securitisations, since SMEs and Midcaps prefer using this instrument in particular.

B. Have there been unaddressed market failures surrounding SME securitisation, and how best could these be tackled?

C. How can further standardisation of underlying assets/loans and securitisation structures be achieved, in order to reduce the costs of issuance and investment?

Comments On the EU Framework for Simple, Transparent and Standardised Securitisations

D. Would more standardisation of loan level information, collection and dissemination of comparable credit information on SMEs promote further investment in these instruments?

We cannot see how any further standardisation of information at single-loan exposure level would provide particular support to SME securitisations. Rather to the contrary, we consider it appropriate that data which is in fact useful and relevant be provided to actual investors. Whilst we assume that investors require pool data in particular, a level of detail – including the name of the original borrower – will not provide any additional insights.

Question 17:
To what extent would a single EU securitisation instrument applicable to all financial sectors (insurance, asset management, banks) contribute to the development of the EU's securitisation markets? Which issues should be covered in such an instrument?

Please refer to our response to question no. 5.

Question 18:

A. For qualifying securitisation, what else could be done to encourage the further development of sustainable EU securitisation markets?

B. In relation to the table in Annex 2 are there any other changes to securitization requirements across the various aspects of EU legislation that would increase their effectiveness or consistency?

Comments On the EU Framework for Simple, Transparent and Standardised Securitisations

Appendix 1

Inclusion of certain synthetic securitisations into a framework for high-quality ("simple, transparent and standardised") securitisations in Europe

A. Preliminary comments

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

Business environment characterised by family-owned SMEs and Midcaps

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

European credit markets are driven by demand from businesses

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

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

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

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

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

Comments On the EU Framework for Simple, Transparent and Standardised Securitisations

Financing relief must be oriented upon demand to be effective

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

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

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

Banks should not face unnecessary burdens when placing parts of their credit risk exposure to professional investors. Yet this is exactly what would happen if synthetic securitisations were generally excluded from the regulations for high-quality securitisations, as opposed to so-called "true sales". In fact, synthetic securitisations are particularly suitable for this purpose, since they only require comparatively straightforward contractual agreements – and no full transfer of title of the underlying loan receivables (regardless of whether these are not desired for reasons of business policy, or downright illegal). Moreover, this would negatively affect banks whose clients are preferring bank loans – leading to competitive distortions.
Furthermore a one-sided focus on true sale securitisation would discriminate between jurisdictions where true-sale securitisation is common practise and others like Germany where historically synthetic securitisation has proven to be more feasible and accepted by borrowers.

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

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

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

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

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

B. Appropriate modification of SST criteria regarding synthetic securitisations

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

EBA criticisms

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

1. No access to securitised assets
   In the EBA's view, assets in an SST securitisation should be permanently transferred legally and economically to a special-purpose vehicle (SPV). As we understand it, the EBA in this way intends to ensure that the investor in such a securitisation can access the transferred assets should the SPV fail to meet the agreed payment obligations. The assets then serve as security for the investor's claims. This applies also in the event of default by the originator.

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

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

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

Basic principles

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

Protection of the investor

This creates three basic principles for synthetic securitisation:

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

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

<u>Linking the EBA criticisms to the basic principles for synthetic securitisation:</u>

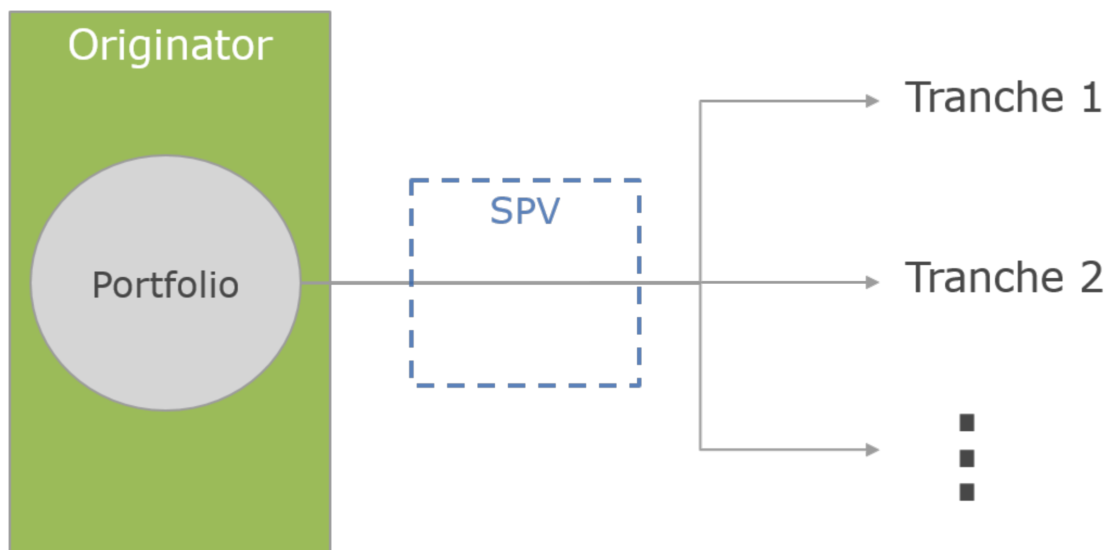
The complexity of a synthetic securitisation is low insofar as the underlying assets precisely do not have to be transferred. The risk of default of the underlying loan portfolio is transferred by way of bilateral agreements that can be based on standard master agreements. Legally effective title transfer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

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

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

Synthetic securitisation criteria

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



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

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

In its consultation document, the EBA has already proposed numerous criteria for high-quality securitisation. We have taken the liberty of examining these to assess their suitability for synthetic securitisation. Our assessment is set out in the following overview (Tables A-D). In this assessment, we make proposals for amendment and provide further advice on how applicable or also questionable certain

requirements for synthetic securitisation are. We do not take up our proposed amendments to criteria that also apply to true sale securitisation and refer in this connection to the German Banking Industry Committee (DK) comments on the EBA consultation document on SST securitisation.

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

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

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

Simple Securitisation (Table A):

No.	Criterion	Adjustments for synthetic securitisation / Comments
1	The securitisation should meet the following conditions: • It should be a securitisation as defined in the CRR (as per Article 4 (61)); • It should be a 'traditional securitisation' as defined in the CRR (as per Article 242(10)); • It should not be a 're-securitisation' as defined in the CRR (as per Article 4 (63)).	The second bullet should read: It should be a 'traditional securitisation' as defined in the CRR (as per Article 242(10)) or a `synthetic securitisation´ as defined in the CRR (as per Article 242 (11)). It should be added: Applying leverage to credit risks is not permitted.
2	The securitisation should not be characterised by an active portfolio management on a discretionary basis. Assets transferred to a securitisation should be whole portfolios of eligible exposures or should be randomly selected from those satisfying eligibility criteria and may not be actively selected or otherwise cherry-picked. Substitution of exposures that are in breach of representations and warranties should in principle not be considered as active portfolio management.	No adjustments necessary. We ask for clarification that replenishment is not a case of active portfolio management (as EBA in EBA/DP/2014/02, Rational to Question 2).
3	The securitisation should be characterised by legal true sale of the securitised assets and should not	It should be added: In case of a synthetic securitisation, such securitisation should be characterised by an effective contractual transfer of the credit risk of the

	include any severe insolvency clawback provisions. A legal opinion should confirm the true sale and the enforceability of the transfer of assets under the applicable law(s). Severe clawback provisions should include rules under which the sale of cash flow generating assets backing the securitisation can be invalidated by the liquidator solely on the basis that it was concluded within a certain period (suspect period) before the declaration of insolvency of the seller (originator/intermediary), or where such invalidation can only be prevented by the transferees if they can prove that they were not aware of the insolvency of the seller (originator/intermediary) at the time of the sale.	securitised assets and should effectively mitigate counterparty default risks. This means that the Investor takes just the credit risk of the underlying assets and in the case of the termination of the funded securitisation the investor receives the invested money back (if there is no default within the portfolio). All investor proceeds received by the originator or the SPV in case of a (partially) funded transaction have to be kept in a segregated account isolated from the insolvency of the originator and/or the SPV. Comment: The difference is that in a synthetic securitisation, the credit risk associated with a loan receivable is transferred by way of a bilateral agreement between the protection seller and the protection buyer, through a guarantee or a credit derivative contract – as opposed to transferring the loan receivable itself. This facilitates the transfer of risk from a legal perspective, since the originator does not need to take the manifold legal requirements for a legally effective full transfer of rights into account (and investors will not need to analyse whether such requirements are in fact fulfilled). It is possible to evidence the legal effectiveness of the guarantee (or the credit derivative) by way of a qualified legal opinion as defined by Article 194 of the CRR. The mechanism for the transfer of credit risk by way of a bilateral agreement (under the law of obligations) is relatively easy and robust. This would also allow for an easier introduction of uniform pan-European contractual (and thus product) standards
4	The securitisation should be backed by exposures that are homogeneous in terms of asset type, currency and legal system under which they are subject. In addition, the exposures should meet the following criteria: i. They arise from obligations with defined terms relating to rental, principal, interest or principal and interest payments, or are rights to receive income from assets specified to support such payments; ii. They are consistently originated in the ordinary course of the original lender's business pursuant to uniform and non-deteriorating underwriting standards; iii. They contain a legal, valid and binding obligation of the obligor, enforceable in accordance with its terms against any third party, to pay the sums of money specified in it (other than an obligation to pay interest on overdue amounts);	Synthetic securitisations may only be used to hedge the originating bank's existing credit risks, based on exposures originated or actually purchased by that bank. No. iii part "enforceable in accordance with its terms against any third party" is not relevant for synthetic securitisation.

	iv. They are underwritten: a. with full recourse to an obligor that is an individual or a corporate and that is not a special purpose entity, and b. on the basis that the repayment necessary to repay the securitisations was not intended, in whole or in part, to be substantially reliant on the refinancing of the underlying exposures or re-sale value of the assets that are being financed by those underlying exposures.	
5	At the time of inclusion in the securitisation, the underlying exposures should not include: i. Any disputes between original lender and borrower on the underlying assets; ii. Any exposures which are in default. An exposure is considered to be in default if: a. it is more than 90 days past-due; b. the debtor is assessed as unlikely to pay its credit obligations in full without realisation of collateral, regardless of the existence of any past-due amount or of the number of days past due. iii. Any exposures to a credit-impaired borrower. For these purposes, a borrower should be deemed as credit-impaired where he has been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination or he is, to the knowledge of the institution at the time of inclusion of the exposure in the securitisation, recorded on a public credit registry of persons with adverse credit history, or other credit registry where a public one is not available in the jurisdiction, or he has a credit assessment by an ECAI or a credit score indicating significant risk of default; iv. Any transferable securities, as defined in Directive 2004/39/EC (MIFID) or derivatives, except derivatives used to hedge currency and interest rate risk arising in the securitisation. In addition, the original lender should provide representations and warranties that assets being included in the securitisation are not subject to any condition or encumbrance that can be foreseen to adversely affect	No specific comments on synthetic securitisation (please refer to question 1 and attachment 2).

	enforceability in respect of collections due.	
6	At the time of inclusion, the underlying exposures are such that at least one payment has been made by the borrower, except in the case of securitisations backed by personal overdraft facilities and credit card receivables	No adjustments necessary.

Standard Securitisation (Table B)

No.	Criterion	Adjustments for synthetic securitisation / Comments
7	The securitisation should fulfill the CRR retention rules (Article 405 of the CRR).	No adjustments necessary.
8	Interest rate and currency risks arising in the securitisation should be appropriately mitigated and any hedging should be documented according to standard industry master agreements. Only derivatives used for genuine hedging purposes should be allowed.	No adjustments necessary. It should be adjusted: For true sale securitisations the only derivatives used for genuine hedging purposes should be allowed.
9	Any referenced interest payments under the securitisation assets and liabilities should be based on commonly encountered market interest rates and may include terms for caps and floors, but should not reference complex formulae or derivatives.	No adjustments necessary.
10	The transaction documentation of those transactions featuring a revolving period should include provisions for appropriate early amortisation events and/or triggers of termination of the revolving period, which should include, at least, each of the following: i A deterioration in the credit quality of the underlying exposures; ii A failure to generate sufficient new underlying exposures of at least similar credit quality; and iii The occurrence of an insolvency-related event with regards to the originator or the servicer.	For clarification: the "revolving period" in the case of synthetic securitisation is replenishment. No further adjustments are necessary.
11	Following the occurrence of a performance-related trigger, an event of default or an acceleration event:	Comment: In an event of default, the synthetic securitisation will be wound up and the loss upon such default will be allocated to a particular tranche in that securitisation in accordance with its contractual terms. It should be ensured that the investor has access to the cash collateral if no default in the underlying assets has occurred.

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

Comments On the EU Framework for Simple, Transparent and Standardised Securitisations

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

Transparent Securitisation (Table C)

No.	Criterion	Adjustments for synthetic securitisation / Comments
15	The securitisation should meet the requirements of the Prospectus Directive.	It should be amended: The securitisation should meet the requirements of the Prospectus Directive or any other disclosure (offering) document that contains substantially the same economic information. Comment: A synthetic securitisation can be a public or private placement and can be funded or unfunded. In case of private placement or unfunded (no securities issued) securitisation the requirement cannot be fulfilled. For this reason the requirement should be extended.
16	The securitisation should meet the requirements of Article 409 of the CRR and Article 8b of the CRA (disclosure to investors).	No adjustment necessary.
17	Where legally possible, investors should have access to all underlying transaction documents.	No adjustment necessary.
18	The transaction documentation should provide in clear and consistent terms definitions, remedies and actions relating to delinquency and default of underlying debtors, debt restructuring, debt forgiveness, forbearance, payment holidays and other asset performance remedies. The transaction	As far as requirements are applicable, no adjustment necessary.

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

	principal, scheduled interest, prepaid principal, past due interest and fees and charges; • The breach of any waterfall triggers and the changes in waterfall that this entails.	

Credit Risk Criteria (Table D):

No.	Criterion	Adjustments for synthetic securitisation / Comments
A	Underlying exposures should be originated in accordance with sound and prudent credit granting criteria. Such criteria should include at least an assessment of the borrower's creditworthiness in accordance with paragraphs 1 to 4, 5(a) and 6 of Article 18 of Directive 2014/17/EU or Article 8 of Directive 2008/48/EC, as applicable.	No adjustments necessary.
B	The pool of exposures to be securitised should be such that the largest aggregated exposure to a single obligor does not exceed 1% of the value of the aggregate outstanding balance. For the purposes of this calculation, loans or leases to a group of connected clients, as referred to in Article 4(39) of the CRR, should be considered as exposures to a single obligor.	No adjustments necessary.
C	The underlying exposures should fulfil each of the following criteria: i. They have to be exposures to individuals or undertakings that are resident, domiciled or established in an EEA jurisdiction, and ii. At the time of inclusion they have to meet the conditions for being assigned, under the Standardised Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than: a. [40%] on a weighted average basis where the exposure is a loan secured by a residential mortgage or fully guaranteed residential loan, as referred to in paragraph 1(e) of Article 129 of the CRR; b. [50%] on an individual loan basis where the exposure is a loan secured by a commercial mortgage c. [75%] on an individual loan basis where the exposure is a retail exposure d. [100%] on an individual loan basis for any other exposures. iii. Under (a) and (b) loans secured by lower ranking security rights on a given asset should only be included in the	No specific comments on synthetic securitisation (please refer to question 1).

	securitisation if all loans secured by prior ranking security rights on that asset are also included in the securitisation. Under (a) no loan in the securitised portfolio should be characterised by a loan-to-value ratio higher than 100%.	

New Criteria (Table E)

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

Comments On the EU Framework for Simple, Transparent and Standardised Securitisations

Appendix 2

Adjustments to the non-impairment requirements

The requirements to the quality of the loans should be better balanced and credit risks of non-securitised and securitised loans should be better disseminated within the system.

On the one hand, it is to acknowledge to warrant an appropriate quality of the underlying assets and to avoid an adverse selection of loans to be securitised. On the other hand, a selection of underlying loans, whose credit quality is much more better than that of the other originated loans that will not be securitised should be avoided as well. From a financial stability point of view it can't be desirable that only high quality loans will be securitised and the rest will remain on the balance sheet of the credit institution. Thus, we believe that it is important in order to warrant a high degree of financial stability of the financial system to strike the right balance by disseminating the credit risks of originated underlying assets in the system. To achieve this, we recommend to modifying the non-impairment requirements with regard to the underlying assets.

The requirement of "simplicity" with regard to underlying assets should focus on the simplicity of such assessment and the degree of certainty of such assessment to prevent the occurrence of tail-risks.

We are convinced that it is more important that investors are able to assess the quality of the underlying assets adequately and that such assessment is not complicate and challenging with regard of the level of uncertainty that is inherent to such assessment. The criterion of "simplicity" should thus rather refer to the simplicity of such assessments. A "simple" assessment is in our view strongly supported, if the credit and business processes, especially the acceptance policy and underwriting standards, but also the collection and dunning process as well as the internal controls and internal audits are the same for the non-securitised and securitised portfolio, if underwriting standards have been stable over time in substance, if transparent information including vintage curves exist about the historical performance and the development of the non-securitised portfolio and former securitised portfolios that allows investors to compare the performance of securitised and non-securitised loans easily, so that it can be simply concluded from the quality and performance of such portfolios in the past adjusted by macroeconomic forward-looking information if necessary to that of the securitised portfolio. In addition, it is important that the loans to be securitised are selected randomly from a target portfolio to avoid bias in the assessment. To simplify the assessment and to reduce uncertainty, it is reasonable to exclude loans that are in default according to Basel II or the CRR and that show evidence of impairment according to the respective accounting standard with the need of specific allowances. In addition to provide investors more comfort and to exclude loans that could indicate a significant increase in credit risk, it is common practice of existing high quality ABS to exclude delinquent loans and to require that at least one and partly even two payments have been made before securitisation. This practice reduces uncertainty and simplifies the assessment of the credit quality of the underlying assets for investors significantly.

In summary, we are of the opinion that the criterion of "simple" should be rather referred to simple assessment reducing the uncertainty as to the occurrence of non-expected losses than of the high quality of individually selected underlying loans itself.

According to the eligibility criteria of the delegated acts and the proposal by EBA defaulted loans according to article 178 of the CRR and credit-impaired borrowers of the underlying loans shall be excluded from the definition of high quality securitisation. However, the definition of impairment is unfortunately not based on accounting rules and unnecessarily too broad, partly unclear and difficult to implement. In particular, this relates to the requirement that loans to be securitised as qualifying shall be assessed by an ECAI (External Credit Assessment Institution) or an internal credit score where the assessment or credit score must not indicate a significant risk of default. Yet it is completely unclear, for the time being, what the indication of "significant risk of default" actually means. If supervisory authorities referred to the term "significant risk" under IFRS 9 which means no "low risk" and that was published in July last year, then for example all companies would have to be excluded from qualifying securitization whose rating is a "non-investment" grade or an equivalent to it.

Especially, the creditworthiness of SMEs and Midcaps is often due to the relative low equity level not "investment grade" i.e. an equivalent to "investment grade" although the company has a satisfactory

creditworthiness. The problem might be heightened by EBA's proposal in its discussion paper to simple, transparent standard ABS to allow only the securitisation of loans for qualifying securitisation that will have a certain risk weight based on the credit standardised approach. According to the recent consultative paper by the Basel Committee on the revision of the credit standardised approach, this would mean, for instance, that all corporate SME with revenues up to 5 million € and an equity ratio of 33% would be excluded from qualifying securitisation irrespective whether there is a significant single risk or not. If only a third or a half of the loans of a bank portfolio can be securitised that are anyway linked with low risk weights then we believe that the intended effects to boost the financing opportunities for SMEs to create growth and jobs will not be achieved. Due to limited capital resources of credit institution due to Basel III and increased capital requirements by EBA and ECB to augment the resilience of credit institutions, capital is a scarce resource in credit institutions in the meantime which limit the expansion of the lending business. Thus, banks already seem to focus their lending to customers who absorb rather lower level of capital. However, these companies don't have problems in general to obtain financing means such as loans. Hence, it seems more important that also loans can be securitised as qualifying that are originated in the normal course of business based on a transparent underwriting standards of the credit institution to enable the transfer of credit risk and the freeing up of capital for new credit business.

In addition, it should be noted that securitisation refers to the securitisation of pools of receivables rather than to single risks. Diversification effects play an important role when assessing the quality of a portfolio if this is sufficiently granular. Provided that underwriting standards are stable in substance over time, such diversification effects increase the predictability of cash flows, reduce uncertainty of each assessment and thus the level of non-expected losses which is important for simple transactions. In other words, it is less a problem that the probability of defaults or the expected losses are a little bit elevated than rather the deviation and the level of deviation of such expectation on a pool level. Simple, standard and transparent securitization should provide for that such deviations from the expectations, especially under stressed conditions are significantly lower than that of non-qualifying securitisations and that losses under such circumstances will be within the expectation of stressed scenarios with a high degree of certainty to enable a "simple" assessment.

One should be aware that not the level of expected losses in a baseline scenario and the level of unexpected loss in a stressed scenario, but the level of non-expected losses due to so-called tail risk may cause problems. Unexpected losses are those that are rather unlikely, but possible under certain circumstances under stressed conditions. From a statistical point of view, that is such loss exceeding the expected loss on a certain confidence level. For highly rated ABS tranches the confidence level is typically very high. Non-expected loss is, however, the tail risk that is beyond the defined confidence level and beyond the assumptions of stress test scenarios. Unexpected losses are typically covered by credit enhancements. Non-expected losses, however, are not covered and would result in a default. Due to the significantly higher predictability and reliability of the assessment with regard to the baseline and stresstest scenario, it is extremely unlikely that the senior and junior notes of simple, standardised and transparent securitisations suffer a loss. In contrast to such SST-securitisations the tail risk of non-SST securitisations is significantly higher.

Expected losses are on a portfolio level typically fully covered by the interests of the securitised loans or by the discounts based an internal interest rate to cover the interests to be paid for the ABS tranches. For a stressed scenario, there exist credit enhancements like cash reserves, overcollateralization by purchase price discounts or excess spreads to cover unexpected losses. Even rating agencies require in the meantime high level of credit enhancement that helps to withstand even sever economic distress. Simple, standard and transparent securitisations should from a conceptual point of view rather provide for to reduce uncertainty with regard to the deviation of the expected losses than focusing on the expected PD's or losses itself.

Based on these remarks, we believe that it should be a typical feature of simple, transparent and standard securitisations that the underlying assets can be simply assessed and in a comparable way to the non-securitised portfolio, so that it is simply possible on the one hand to conclude from the observed losses in the past considering the macroeconomic outlook to the expected losses and to perform reliable and conservative stress test to estimate the level of unexpected losses on the other hand supported by historical data of a business cycle. Thus, instead of excluding loans with "significant" risks, which can be very restrictive if the defined PD-threshold is low, we propose more to focus on the criteria that enable a "simple" and "reliable" assessment.

Comments On the EU Framework for Simple, Transparent and Standardised Securitisations

If the non-impairment requirement was not amended many loans could be excluded from securitisation that are still included in securitised portfolios of high quality securitisation, such as Auto-ABS for instance, where the underlying loans have shown low level of defaults and losses at all times. This applies notably, if the EBA or national supervisory authorities set low PD-thresholds for "significant risk of default". This could be further detrimental to the financing opportunities of SMEs. In any case, the financing opportunities of these companies will not ameliorate.

High uncertainty as to the prerequisites of using ECAI's and credit scores exist

Beyond the fact that it is fully unclear when a credit assessment by an ECAI or a credit scoring indicates a significant risk, it is not clear whether external credit assessments and internal credit scorings can be used alternatively or whether they have to be used in combination. The wording would allow both interpretations. The latter would be linked with significantly high additional costs.

In addition, there is a high uncertainty about prerequisites to use ECAI's and internal scores. For the being it is unclear which ECAI's and which credit scorings could be used under which conditions. Many originators of high quality ABS still use the credit standardised approach and thus have no IRB approval by the supervisory authorities although many of them have scoring and rating procedures and models in place that are validated annually and that are at least with regard to the discriminatory power comparable to those of IRB credit institutions and that usually show significantly better performance than that of ECAI's. As to level of sophistication of originators using the credit standardised approach, notably in the retail business, one can distinguish between those originators who use the internal application scorecard only to support the credit decision process to decide on credit applications based on an acceptance policy and a cut-off-score to discriminate between those loans that should be accepted and those loans that should be rejected and those originators that additionally estimate and validate PD's that are assigned to the score grid to use such PD's for the internal capital management and the building of portfolio provisions in the first months.

Although the assessments of ECAI's are often used in the credit process as additional piece of information but not universally, notably, if the internal score does not indicate a "green" case, they cannot be used for the credit standardised approach, and hence the requirements of the CRR to use the assessments of ECAI's are not implemented. In addition, it has to be noted that it is intended by the EU to reduce the dependency on external ratings. However, the new requirement would increase the dependencies on external ratings and scorings, respectively again.

Problems with regard to the comparability of "significant risks" across Europe

To ensure comparability across Europe of "significant risk", a PD-threshold would have to be determined. The same applies to ECAI-scores. In addition, it has to be noted that the default definition in Europe has not been harmonised yet. In some countries of the European Union such as Italy, for instance, a borrower is first deemed to be in default after more than 180 days. This means that the PD's of those countries that use the more than 90 days past due criterion are more conservative and thus not comparable with those based on 180 days. As a result, ABS from countries which have implemented the default definition on the basis of more than 90 days past due would be discriminated against the ABS of countries that have implemented the default definition based on more than 180 days past due, because the PD's of one and the same portfolio would be higher on the basis of the default definition based on more than 90 days past due. As a result, based on the default definition of more than 90 days past due more borrowers would have to be excluded than based on the default definition based on more than 180 days past due as "significant risk". In the end, the "qualifying securitions" of Italy, for instance, would not be comparable to that of Germany which might be detrimental for the sought capital union in Europe and the trust in the comparability of "qualifying" securitisations" across Europe. The problem can neither be resolved by the definitions in the delegated acts to the LCR and Solvency II requiring the exclusion of loans as credit-impaired that have a credit assessment by an ECAI or have a credit score "indicating a significant risk that contractually agreed payments will not be made compared to the average obligor for this type of loans in the relevant jurisdiction." In contrast to a uniform PD, national supervisors might define national PD-thresholds for their market which will further hinder the comparability of "qualifying securitization" and which would be detrimental to the sought capital market union for securitisations as well.

For the time being, many high quality securitisations, such as Auto-ABS, for instance, are not based on ECAI-assessments or internal credit scoring but on the non-overdue status, although the credit decisions are based on application scorecards that are validated annually, but that are not approved by the

supervisory authorities for capital purposes under the IRB approach. Accordingly, all underlying exposures that are overdue at the time of the selection (pool-cut) or additionally in case of replenishment after incorporation at any time after issuance are excluded from the selection. In future, if not amended, this proved and tested processes which have in combination with the acceptance policies of these credit institutions and based on their internal assessments ensured low losses of the securitised underlying assets even in crisis times would have to be changed and would exclude additional loans that are securitised today successfully.

High uncertainty and implementing challenges with regard to the non-impairment requirement

Further, it is not clear, for the time being, under which conditions and how long a credit history is deemed adverse or not adverse anymore after a company has recovered or a private person is able to pay after a phase of unemployment. Such requirement might especially prevent the recovery of SMEs after an economic downturn due to increased financing costs even if the company has good credit quality in the mean-time.

Moreover, it is doubtful whether it is worth excluding companies, such as SMEs, that have recovered after an insolvency or debt restructuring process if they are not impaired any longer according to the applicable accounting rules. Even according to the accounting it has to be assessed after a recovery whether the borrower is still credit-impaired. If this is the case, then such loans would be exempted from the securitisation of high quality ABS if the exclusion was based on applicable accounting rules. According to the current proposal such borrowers would be excluded for three years notwithstanding the current creditworthiness which would be detrimental to the recovery of such companies. In addition, it should be clarified that only those borrowers should be excluded based on a “debt restructuring process” where the “debt restructuring” is recorded on an “official” register or where the originator has knowledge on the “debt restructuring process”. The reason is that it can be difficult to obtain knowledge of “private debt restructuring process” with third parties.

Finally, credit institutions report that it will be difficult to implement the requirements that refer to events three years prior to orgination, because the required information is often not stored in a structured manner in the IT-systems of the originators that technically could support the exclusion of the loans defined as credit-impairment according to a new definition that significantly deviates from the credit-impairment definition according to the accounting rules. Thus, it is unclear how to exclude such borrowers and lessees that are not credit-impaired any longer according to the accounting rules or in default and are serviced in the meantime in the normal course of business after their recovery, but to be excluded as credit-impaired according to the EBA Discussion Paper and the delegated acts to the LCR and Solvency II. The required information to identify such borrowers is often only available in an unstructured manner in credit agency reports.

High granular ABS can comprise many thousands contracts. Credit institutions report that it is virtually impossible to check all these contracts manually. As a result, many existing high quality ABS structures are not catered for the new non-impairment requirements, although existing eligibility criteria that mainly referred to the non-overdue status in combination with the requirement that at least one and partly even two payments have to be made and that the loans have to be securitised according to the standards for non-securitised loans proved a high performance even under stressed conditions during the last crisis.

For the being, it is impossible to comply with the existing non-impairment requirements. This will result in some reservations of investing credit institutions and affect the market adversely. Thus, if not amended, the effect of the new non-impairment requirement might be that issuers of ABS will be deterred of the issuance of ABS for a substantial period of time until they will have clarity about the requirements and will have accumulated enough assets based on the new non-impairments requirements. Any such issuance hiatus would be bad for European securitisation markets.

Recommended requirements as to the minimum credit quality criteria of the underlying assets

As to the eligibility criteria for securitised loans of qualifying securitosations we recommend that these criteria as well should be “simple” with regard to its interpretation, free of preconditions, “simple” to implement and “robust” with regard to the assessment, unbiased as possible, objective and comparable across Europe.

Comments On the EU Framework for Simple, Transparent and Standardised Securitisations

As an alternative, we plead for objective minimum credit quality criteria already used, that do not need further guidance and interpretation, that can be simply complied with, and that are applied consistently across Europe to ensure a harmonised application of minimum credit quality criteria.

Proposed Solutions:

We propose to exclude all exposures that are in default according to article 178 of Regulation (EU) 575/2013 ("CRR"), that are credit-impaired with objective evidence of impairment according to the relevant accounting standard or appendix A of IFRS 9 or that are overdue. Thus, we propose to modify the non-impairment requirement as follows and combine it with non-default requirement as follows:

"at the time of issuance of the securitisation or when incorporated in the pool of underlying exposures at any time after issuance, the underlying exposures do not include exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013, that show evidence of impairment according to the applicable accounting framework requiring to build specific provisions or that are delinquent".

Rationale

The default definition according to the CRR, the definition of evidence of impairment based on the relevant account framework and the delinquencies are still available, do not need further guidance and do not cause any addition implementation cost which might impede the issuance of "qualifying" securitisations.

The delinquent status is a clear and objective indicator for credit quality to indicate "significant risk" that can be simply measured, does not rely on any credit assessments, imply no model risk and is still available in investor reports. This would contribute to reduce reliance on the assessment of external credit agencies as well. In addition, it would facilitate the identification of the exposure to be excluded. Because it is possible, that the risk of new originated loans to be securitised is significant increased, which cannot be seen based on the delinquent status at the inception, it is important to require that at least one payment, but better two payments without delinquent status have been made.

In addition, in order to consider a forward looking perspective and a prudent selection of the receivables to be securitised that are in line with existing business practices and based on a prudent acceptance policy and underwriting standards of the originator we propose the following:

Only loans and leases should be eligible to be securitised that would have to be accepted in the ordinary course of business if not securitised. To ensure a forward-looking perspective, the credit acceptance process has to be supported by an internal or external scoring or rating procedure that has to be validated at least annually. To avoid any adverse selection the loans and leasing contracts originated according to the internal policy should be selected randomly from a target portfolio. By combining these elements it would be possible to have a prudent procedure in place that would be in line with good market standards.

Thus, at least as an alternative for retail transactions to the use of internal or external scores to exclude loans and lease receivables with "significant risk" it should be permitted to exclude all loans and lease receivables that are delinquent.

Appendix 3

Possible criteria for simple standard and transparent ABCP

As multi-seller conduits differ from the usual structure of a term securitisation there should be specific “high quality” criteria for multi-seller conduits. In the following we would like to illustrate in which respect the criteria proposed by the EBA in its Discussion Paper as of 14 October 2014 (EBA/DP/2014/02) should be adjusted in order to better capture the special nature of multi-seller ABCP programs.

Pillar I: Simple securitisations

Criterion 1

According to the EBA the securitisation shall not be a “re-securitisation” as defined in Article 4 (63) CRR. It should be clarified in this context that typical co-funding structures where a pool of trade or lease receivables is refinanced via one or more banks or ABCP programs or structures with separate purchasing and issuing vehicles (e. g. within ABCP-programs) where an SPV acquires the receivables and passes on the risk pari passu to the various banks or ABCP programs are not regarded as a re-securitisation provided that the inherent risk of the underlying portfolio is only tranched once (on the primary or the secondary level).

Criterion 2

The EBA proposes that securitisations should not be characterised by an active portfolio management on a discretionary basis. For the avoidance of doubt it should be made clear here, that the revolving purchase of receivables (e. g. trade receivables) to replace maturing or ineligible assets is not to be regarded as active portfolio management in the sense of a discretionary decision by a manager.

Criterion 3

In the EBA’s view the securitisation should be characterised by legal true sale of the securitised assets. From our point of view this criterion shall be deemed to be fulfilled if the securitisation meets the requirements under Art. 13 (2) (c) and (d) of the Commission Delegated Regulation of 10.10.2014 to supplement Regulation (EU) 575/2013 with regard to liquidity coverage requirement for Credit Institution. This cross-reference shall help to harmonize regulations across various similar, but independent regulatory subjects and avoids unintended mismatches.

Criterion 4

Here the EBA is proposing that the securitisation should be backed by exposures that are homogeneous in terms of asset type, currency and legal system under which they are subject. From our point of view this criterion shall in the case of an ABCP programme not apply to the securitised assets but to the risk protection scheme or the risk taker. Therefore, as long as the credit risk of the securitised assets is fully covered by a third party (e.g. by a credit insurance or by a fully supported liquidity facility within an ABCP-program) it should be sufficient that the obligors of trade or lease receivable securitisations fulfil the criteria i. to iii.

This would enable fully supported ABCP-programs to fulfil the criterion even if the various pools of such multi-seller programs stem from different originators, asset classes, currencies and legal systems. By way of the full credit support the investor is exposed primarily to the risk of the sponsor bank. This adds enormous simplicity to the analyses of the investment. Similarly, the stress testing requirements according to the Commission Delegated Regulation 625/2014 only relate to the sponsor bank and not the portfolio.

From the perspective of the liquidity bank (which does not benefit from the full support) the homogeneity criterion for trade and leasing pools of real economy originators should be met if the asset type is uniform and if any material risks out of currency mismatches or different legal systems are covered by adequate measures (FX-hedging, credit insurance resp. legal opinions).

Comments On the EU Framework for Simple, Transparent and Standardised Securitisations

From our experience many SMEs and Midcaps are doing business internationally, i. e. they deliver goods or provide services not only in a single country. Furthermore, such SMEs and Midcaps are accepting the currency and governing law as proposed by their customers. Finally SMEs and Midcaps do not have sufficient receivables to securitise receivables separately in different countries. The above mentioned amendments would ensure in our opinion that SMEs can use securitisation of their trade and lease receivables as a refinancing option.

Additionally the EBA requires that the securitised exposures are underwritten with full recourse to an obligor that is an individual or a corporate and that is not a special purpose entity (iv. a). For the avoidance of doubt it should be clarified that co-funding structures or structures with separate purchasing and issuing vehicles (e.g. within ABCP-programs) where an SPV is buying a pool of trade or lease receivables from an original lender and the risk is passed on to another SPVs which is issuing a securitisation position (which is not a re-securitisation position) do not harm criterion 4 iv (a).

Criterion 5

According to the EBA proposal at the time of inclusion in the securitisation, the underlying exposures should not include any exposures to a credit-impaired borrower. For these purpose, a borrower should be deemed as credit-impaired where he has been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination or he is, to the knowledge of the institution at the time of inclusion of the exposure in the securitisation, recorded on a public credit registry of persons with adverse credit history, or other credit registry where a public one is not available in the jurisdiction, or he has a credit assessment by an ECAI or a credit score indicating significant risk of default.

In the case of trade and lease receivable securitisations where the original lender is not a credit institution a borrower shall only be defined as credit-impaired if such original lender has positive knowledge of circumstances that make it highly unlikely that the borrower is able to pay its obligation in full. It should be noted that real economy originators, i. e. corporates, do not have systems and procedures in place to perform a bank-like underwriting and credit approval process. It should also be taken into account that trade receivables often are covered by a commercial credit insurance. In particular those originators will not be in a position to track whether an obligor has been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination.

In addition, the EBA requires that the original lender should provide representations and warranties that assets being included in the securitisation are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due. From our point of view the representations and warranties of the original lender regarding enforceability of collections with regard to trade receivables should allow for exclusions of such circumstances that are ordinary in the original lender’s business (e. g. dilutions, set-offs). If the ABCP programme is fully supported this requirement should be met automatically.

Criterion 6

Here the EBA requires that at the time of inclusion, the underlying exposures are such that at least one payment has been made by the borrower, except in the case of securitisations backed by personal overdraft facilities and credit card receivables. We feel that trade receivables and any other one-off payment obligations shall be added to the list of exemptions.

Pillar II: Standard securitisations

Criterion 9

The proposal requires that any referenced interest payments under the securitisation assets and liabilities should be based on commonly encountered market interest rates and may include terms for caps and floors, but should not reference complex formulae or derivatives. For the avoidance of doubt any lease receivables that contain interest rates at subsidized levels may be considered eligible if they are purchased with a discounted purchase price that adjusts the yield to the market rate level.

Criterion 10

The transaction documentation of those transactions featuring a revolving period should include provisions for appropriate early amortization events or triggers of termination of the revolving period if the originator or sponsor is not able to generate sufficient new underlying exposures of at least similar credit quality (ii). For the avoidance of doubt it should be clarified that this requirement does not apply to ABCP programs as these are designed to refinance fluctuating receivables pools (e. g. trade receivables).

Criterion 12

Criterion 12 requires that the transaction documentation should clearly specify the procedure regarding any replacement of the liquidity facility provider. In ABCP programs the replacement of the liquidity facility provider is not intended due to the paramount importance of the provided fully supporting liquidity facility (in contrast to liquidity facilities in term transactions, where the scope and function of a liquidity facility is rather limited) and the fact that the liquidity facility is a collateral in addition to the assets (which means two layers of security for the benefit of the investors: assets and facility).

Further it should be clarified, that it is to ensure that the default or insolvency of the current servicer does not automatically lead to a termination of the servicing of the underlying assets without the replacement of the current servicer by a new servicer.

Criterion 13

According to the EBA proposal the documentation shall contain provisions relating to an "identified person" with fiduciary responsibilities, who acts in the best interest of the investors in the transaction. From our point of view does not apply to ABCP programs where there is only one key risk taker (e. g. in the case of a fully supported ABCP program, the sponsor bank acts as key liquidity bank). Only where there is a broad variety of investors which are exposed to the underlying risk of the securitised assets (in difference to ABCP programs where the underlying risk is fully covered by the sponsor/liquidity bank in relation to the investors), the problem that investors cannot act on their own behalf but need to rely on a third party with fiduciary responsibilities can occur.

Criterion 14

Here the EBA requires that the management of the servicer of the securitisation should demonstrate expertise in servicing the underlying loans. Regarding the servicing of the underlying receivables in the case of a multi-seller ABCP, the servicer (which in the case of trade or lease receivables is no credit institution) demonstrates expertise when he is servicing the underlying receivables and confirms that he services the sold receivables as if such receivables have not been sold.

Pillar III: transparent securitisations

Criterion 15

The EBA is proposing that the securitisation shall meet the requirements of the Prospectus Directive. From our point of view this criterion should not apply if a securitisation in the form of an ABCP program (or in a similar form) is not publicly offered or listed. In this case an Information Memorandum (or similar document) shall be satisfactory if it contains materially similar information as it would be required under the Prospectus Directive. This should be insured by the Sponsor or Originator.

For bilateral or private deals (e. g. such as ABCP Programs for the securitisation of trade and lease receivables) a prospectus is not obligatory and hence structures typically do not fall under the Prospective Directive. However there is no reason why such transactions shall not be regarded as transparent only

because there is no formal prospectus which complies with the requirements of the Prospectus Directive. Furthermore, the requirement to prepare a full prospectus would impact negatively in particular small securitisations (e. g. the securitisation of its trade receivables by a company) whereas large securitisations (as executed for example by international banks) are hardly effected. A market entry barrier for smaller, real economy originators would be the result.

Criterion 16

The securitisation should meet the requirements of Article 409 of the CRR and Article 8b of the CRA (disclosure to investors). We feel that the Criterion should also capture the relevant articles of the Commission Delegated Regulation 625/2014 and the RTS to the CRA3. For the securitisation of trade and lease receivables within ABCP-programs special requirements addressing the specialties of multi-seller conduits should apply.

Criterion 17

The EBA want to require that, where legally possible, investors should have access to all underlying transaction documents. We feel that access should be limited to materially relevant underlying documentation to assess the structure and the credit quality of the securitisation. For the securitisation of trade and lease receivables, the relevant real economy originator may define which information shall be protected as its business secret and whether there may be information published.

Even where a disclosure is legally possible, the disclosure could endanger business secrets of real economy companies whose trade and lease receivables are securitised. In such cases the originator is not a bank, but a real economy company. The securitisation transactions are, similar to factoring transactions, for many companies off-balance and, in some cases, even off-notes. In such cases even the mentioning of the name of the originator company could negatively impact the originating company. Furthermore, a disclosure of portfolio data in combination with the name of the originator, could allow competitors of such company to extract sensitive data (such as payment terms accepted by the company, distribution of the customer base, or general business development (e. g. turn-over etc.).

This applies even more if the securitisation is fully supported by a sponsor/liquidity bank or other means which cover all risks (e.g. credit insurance). Where investors rely on the support by a third part, they should only be entitled to request documentation that is materially relevant to understand their risk position to the extent that they may reasonably request such information without hurting business secrets of any of the counterparts involved.

Criterion 18

According to EBA's proposal the transaction documents should clearly specify the priority of payments, triggers, changes in waterfall following trigger breaches as well as the obligation to report such breaches. As pointed out in our remarks on criterion 17, reporting on breaches should only be done to the extent and in a way that is compatible with protectable rights of the originator or sponsor or original lender in terms of business secrets. Confidentiality issues must not be harmed. However, changes in the waterfall due to the occurrence of a termination event (or of other breaches) will be reported in the next monthly investor report.

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

Criterion 19

Here it is proposed that the transaction should be subject to mandatory external verification on a sample of underlying assets (confidence level of at least 95%) at issuance, by an appropriate and independent party or parties, other than a credit rating agency. Confirmation that this verification has occurred should be included in the transaction documentation.

First of all, we would like to ask the EBA for a more detailed explanation of this requirement. In particular it is not clear what is meant by "external verification". If it relates to the validity of the receivables pool at the initial issuance (or cutoff date) this is understood and confirmed that an initial due diligence by the sponsor bank or an appropriate and independent party has to be made initially. However, with respect to pools of trade or lease receivables a confidence level of 95% may hardly be achieved in all cases. It should suffice to procure that a material sample which is representative for the pool has been verified. Investors can be informed upon request about the relevant size of the samples verified. If the term "external verification" is meant to include also historical loss, delinquency and dilution profiles, this would be overly burdensome and expensive for the originators (real economy companies). Investors can be informed upon request about the contents of the verified aspects.

In case of a revolving pool where assets are constantly replaced (e.g. trade or lease receivables), the verification of a sample of underlying assets should be repeated once per year by the sponsor bank or an appropriate and independent party. The size of each sample should be sufficient to adequately reflect the pool. In particular for short-term receivables (e.g. 3 months) such check is not appropriate against the background of the fast turnover of the receivables. This holds in particular true, since on site audits of the seller are conducted by involved parties regularly (e. g. liquidity facility providers in ABCP programs) and external confirmations (e. g. by audit firms) are obtained.

Criterion 20

The EBA suggests that investors and prospective investors should have readily available access to data on the historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, covering a historical period representing a significant stress or where such period is not available, at least 5 years of historical performance. The basis for claiming similarity to exposures being securitised should also be disclosed.

From our point of view this requirement should not apply to multi-seller ABCP programs be-cause of the specific structure of these programs. According to criterion 22 investors will have information about the materially relevant data on the credit quality and performance of underlying assets. Each ABCP-program reports on a pool-by-pool basis about the performance, compliance with triggers, credit enhancement and pool description. Furthermore each ABCP-program provides information on the full support by the sponsor bank as well as general information on the ABCP-program.

Because of the ongoing changes in ABCP programs (additions/removals of pools, permanent replenishment in each pool) and the coverage through (at least 100 %) liquidity support by the sponsor bank historical data of single pools is neither practically available from the companies nor relevant for investors.

Criterion 21

The EBA is proposing that investors and prospective investors should have readily available access to data on the underlying individual assets on a loan-by-loan level, at inception, before the pricing of the securitisation, and on an ongoing basis.

From our point of view this should not apply to multi-seller ABCP programs because of the specific structure of these programs. Through criterion 22 investors will have information about the materially relevant data of the underlying assets on an aggregated base (e. g. asset type, industry of sellers, currencies, geographical distribution etc.). Loan-by-loan-level data of trade receivables is practically not deliverable, already outdated and potentially not sensible to disclose. It may even be critical in terms of business secrets of the corporate sellers. Furthermore, investors do not benefit from such data as they

rely primarily on the liquidity support of the sponsor/liquidity bank. Aggregated pool data has proven to be fully sufficient.

Credit risk criteria

Criterion A

Underlying exposures should be originated in accordance with sound and prudent credit granting criteria. Such criteria should include at least an assessment of the borrower's creditworthiness in accordance with paragraphs 1 to 4, 5(a) and 6 of Article 18 of Directive 2014/17/EU or Article 8 of Directive 2008/48/EC, as applicable. We think that the second sentence should only be relevant for such original lenders or originators which are covered by the respective directives. It should especially not be relevant for the securitisation of trade receivables. The requirements of a sound and prudent credit granting shall take into account the nature of the receivables (e.g. trade receivables). According to Article 2 of the Directive 2008/48/EC, such directive only applies to credit agreements but not to trade or (most) leasing receivables. Accordingly the originators (mainly corporates) - which are usually no finance institutions - do not comply with the directive. A carve out for such originators is necessary.

Criterion B

According to this suggestion the pool of exposures to be securitised should be such that the largest aggregated exposure to a single obligor does not exceed 1% of the value of the aggregate outstanding balance. For the purposes of this calculation, loans or leases to a group of connected clients, as referred to in Article 4(39) of the CRR, should be considered as exposures to a single obligor.

We think that this criterion shall not apply for the securitisation of trade or leasing receivables if the receivables pool is fully covered by a third party (e.g. by a credit insurance) or by a fully supported liquidity facility within an ABCP-program. For the securitisation of leasing receivables any residual values shall not be counted as an obligor for the purpose of fulfilling this granularity criterion

Within the trade receivables pools of multi-seller ABCP-programs the exposure to a single debtor is subject to the business policy and customer base of the corporate originator (e.g. automotive suppliers with naturally only have few customers whereby trading companies may have thousands). It would not be appropriate to declare a whole ABCP-program is not eligible as a simple standard and transparent securitisation because of single transactions with higher concentrations. This counts even more if the portfolio (or the whole ABCP program) is covered by a commercial credit insurance or a fully supported liquidity line - see also criterion 4.

Furthermore, in case of leasing transaction with (predetermined) residual values, the manufacturer or an affiliate usually covers the credit risk of the residual value. This should not be regarded as an obligor but as a seller related risk.

Criterion C

The EBA requires that the underlying exposures of the securitisation have to be exposures to individuals or undertakings that are resident, domiciled or established in an EEA jurisdiction (i). For the securitisation of trade or leasing receivables this criterion shall not apply if the credit exposure is covered by a third party (e. g. by a credit insurance or by a fully supported liquidity facility within an ABCP-program) which is domiciled in an EEA jurisdiction. Especially for multi-seller ABCP conduits there should be a threshold level for exposures (e. g. 10 %) that may be domiciled outside an EEA jurisdiction.

According to (ii) at the time of inclusion the risk weights of the underlying exposures under the Standardized Approach shall not be higher than 40, 50, 75 or 100 percent depending on the exposure class. This criterion shall only apply if the original lender or the originator is an institution supervised under Directive 2013/36/EU (CRR). Corporates that have high export rates should not be excluded from ABCP-financing or forced to obtain credit insurance coverage. Furthermore such corporates cannot be obliged to generate or select only such trade receivables that have certain minimum risk weights (under

the Standardized Approach of the CRR. Criterion ii shall therefore only apply to supervised institutions under the CRR.