TSI Opinion on the EBA Consultation Paper, Draft Regulatory Technical Standards.

On the retention of net economic interest and other requirements relating to exposures to transferred credit risk (Articles 394, 395, 397 and 398) of Regulation.

Consultation deadline: 22 August 2013

We appreciate being given an opportunity to express our opinion on the Draft Regulatory Technical Standards "On the retention of net economic interest and other requirements relating to exposures to transferred credit risk (Articles 394, 395, 397 and 398) of Regulation".

We welcome the further guidance given by the EBA on the interpretation of Article 394(1) of the CRR (version 23 March 2013). In particular, we appreciate the clarification of how to comply with risk retention requirements in the context of APCP programmes.

We would like to accept the invitation to respond to the questions set out in the Consultation Paper dated 22 May 2013 on draft Regulatory Technical Standards (draft RTS) which we deem relevant to asset backed commercial paper (ABCP) and other ABS programmes and to take the opportunity to comment on certain aspects of the draft RTS.

Given the strength of the German ABCP market, our comments focus primarily on the perspective of a sponsor in an ABCP programme. Overall, the draft RTS addresses all relevant topics and provides adequate solutions for compliance with risk retention requirements. However, in certain areas the CEBS Guidelines of December 2010 (Guidelines) provide greater clarity, whereas the draft RTS seems to leave gaps and scope for interpretation and doubt. Given the importance of ABCP in the German refinancing market and the weight that will be given to the RTS when interpreting Article 394 et seq of the CRR, we believe that it is of paramount importance to obtain clarification on certain additional aspects addressed in this response paper. Our request is particularly pertinent because the level one text of the CRR does not explicitly refer to ABCP in relation to risk retention requirements in general. For example, CP 40 (as a predecessor of the Guidelines) made no mention of liquidity facilities in ABCPs as a means of fulfilling the retention requirements under Article 122a. Only after a massive reaction by the ABCP industry were liquidity facilities addressed in the Guidelines.

We appreciate the fact that the EBA is not in a position to change the level one text of Article 394 et seq of the CRR or to provide guidance which is contrary to the clear formulation of the CRR. However, we would be grateful if the EBA could provide guidance where the level one text of the CRR is ambiguous or leaves room for interpretation, particularly as the CRR has been translated into a number of different languages, with the risk of the translations containing differences in interpretation.

In addition to the treatment of liquidity facilities as eligible means of fulfilling the retention requirements (see our response to Question 4) and the possibility of fulfilling the retention requirements on a consolidated level (see our response to Questions 1 and 2), we would like to highlight one further important aspect

relating to the question of grandfathering, which is currently not addressed in the draft RTS. The Guidelines and the related Q&A provided reassurance for the industry that ABCP programmes which existed prior to 2011 are considered "existing securitisations" and therefore benefit from the grandfathering rule until 31 December 2014, even though new asset transactions /exposures have been/will be added after 2010. In the absence of a confirmatory statement in the RTS, members of the ABCP industry have been unsure as to whether grandfathering would continue for ABCP programmes that existed prior to 2011 if new assets are added prior to 31 December 2014. We would appreciate a confirmatory statement from the EBA in the RTS.

Q1: The EBA would like to know to what extent securitisations rely on paragraphs 25-26 of the CEBS Guidelines in order to achieve the retention commitment and would also like to understand if these transactions could also meet the requirements set out in Article 394(1) of the CRR without applying the criteria provided in Paragraphs 25 and 26 of the CEBS Guidelines on Articles 122a of Directive 2006/48/EC taking into account the definition of securitisation according to Article 4(37) of the CRR and the respective definitions of originator, sponsor or original lender.

» In the case of ABCP programmes, situations can arise in which several banks syndicate a single transaction, which then becomes part of a larger ABCP programme consisting of multiple transactions. Typically, an ABCP programme, particularly its management and establishment, is run by one bank. Therefore, other banks which, for example, take part as liquidity providers, do not formally qualify as sponsors of the programme as defined in Article 4 paragraph (14), of the CRR. Nevertheless, they are clearly part of the structure of a part of the ABCP programme and, from the perspective of alignment of interests, are certainly not on the investor side.

With respect to Article 4(2) of the RTS, we therefore propose that liquidity banks also be considered sponsors, so that each institution involved can fulfill the retention requirements in relation to the proportion of the total securitised exposure that it syndicated. For liquidity facilities in ABCP programmes, this means that the retainer as described in Article 6(1)(b)(iii) of the RTS should consist of all banks taking part in the syndication.

With respect to transactions for which the retention requirement would be fulfilled on a consolidated or group level, it would, in our view, not be possible to meet the requirements set out in Article 394(1) of the CRR. Instead, reliance on paragraphs 25 and 26 of the Guidelines or on some other form of guidance is necessary (see also our response to Question 2 below).

Q2: The EBA would also like to understand if, for new securitisations – there are transactions that are likely not to be able to meet the retention requirements following the CRR and associated draft RTS.

» More often than not, in securitisations in general and in ABCP structures in particular, German balance sheet and insolvency related aspects (true sale) make it a structural necessity for the retention requirement to be fulfilled not by the seller as an originator but by an affiliate of the seller, i.e. a consolidated group member, by providing a sub-loan or another form of credit enhancement.

Unfortunately, Article 394(2) of the CRR addresses the possibility of fulfilling the retention requirement on a consolidated level for EU credit institutions or other financial sector entities only, but not for originators that are either non-EU institutions or non-financial institutions. Therefore, it is necessary that the group member providing credit enhancement is covered by the definition of originator under Article 4(13)(a) or (b) of the CRR and would therefore be eligible as a retainer under Article 4(1) of the RTS.

Based on the fundamental principle of "alignment of interests", paragraph 29 (second sub-paragraph) and paragraph 71 of the Guidelines lead us to the conclusion that fulfillment of the retention requirement can be across a consolidated group.

Q3: To the extent securitisations have relied on Paragraph 48 in the CEBS Guidelines on Article 122a of Directive 2006/48/EC to meet the retention requirements, would there be any material impact (be it economic, operational, etc.) to now complying with retention option (a) of Article 394(1) of the Regulation (EU) No xxxx/2013 rather than relying on the provisions of Paragraph 48 in the CEBS Guidelines on Article 122a of Directive 2006/48/EC in order to meet the retention requirements?

» Paragraph 48 of the CEBS Guidelines specifies that option (b) of Article 394(1) of the CRR applies not only to transactions securitising revolving receivables but also to revolving transactions securitising non-revolving assets. This is a typical set-up in the context of ABCP programmes, where the assets are often non-revolving but the underlying transactions almost always are. Therefore, paragraph 48 of the Guidelines is of major relevance to the ABCP industry.

However, our interpretation of Article 6 of the draft RTS, which gives further guidance on option (a) of the risk retention requirements, is that it would also apply in this situation. If this understanding is correct, nothing would be achie-

ved by not explicitly incorporating paragraph 48 of the CEBS Guidelines into the EBA's new RTS. In this case, an explicit reference to revolving transactions and or exposures in the context of Article 6 of the RTS would clarify the matter.

Q4: Do you consider that this way to comply with the retention requirement under option (a) should be explicitly mentioned in the RTS?

» Following the introduction and entry into force of Article 122a, on the basis of paragraph 47 of the Guidelines, the majority of sponsor banks have achieved compliance with the retention requirements by providing a liquidity facility that is unrelated to a borrowing base and covers 100% of the commercial paper issued to investors.

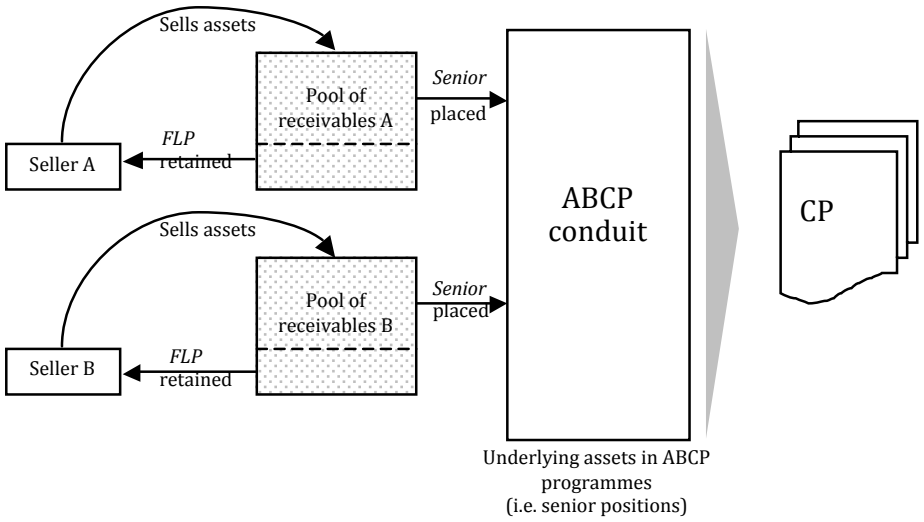
As outlined above, the clear formulation of Article 122a(1) (as well as of Article 394(1)) of the CRR does not refer to ABCP programmes in relation to risk retention requirements. Prior to the most welcome clarification in the Guidelines, the industry was left in doubt as to whether and in what form liquidity facilities could satisfy the retention requirements. Option (a), in its clear formulation, did not seem accessible, as the liquidity provider would not retain a vertical slice amounting to 5%. Option (d) did not seem appropriate either, as liquidity facilities do not absorb the first loss. Instead, in ABCP transactions the first loss is retained by the seller/originator or an affiliated party. As far as we are aware, paragraph 47 of the Guidelines (together with footnote 11) was introduced in response to substantial demand from the ABCP industry. Hence, we strongly petition for the retention of Article 6(1)(b) of the RTS.

Furthermore, we would like this option to be extended to other (non-ABCP) securitisation programmes which include fully supporting liquidity facilities. Such programmes are typically very similar to ABCP programmes, the only difference being the length of the refinancing tenure (e.g. refinancing via mid-term notes instead of short-termed commercial paper). Since the term of the paper issued does not change the alignment of interests between originator and investor, we advocate extending the rule set forth in Article 6(1)(b) of the RTS to securitisation programmes in general.

Q5: Do you consider that the conditions enumerated in Article 6.1(b) are correct and sufficient? If not, which conditions would you add/change/remove? Why?

» From our reading it is unclear what is meant by "the underlying exposures" in this Article. From an investor's point of view, the underlying exposures would be the senior tranches of the underlying receivable pools, while the first loss

pieces (FLPs), typically provided through refundable purchase discounts, would often be retained by the sellers of the receivables, and therefore not be part of the ABCP programme (see below). These senior positions, as the only part being refinanced through the issuance of CP, would typically be covered by liquidity facilities. This definition would also be consistent with the formulation of Article 394(1)(a) of the CRR, which refers to "the tranches sold or transferred to investors". If this understanding of "underlying exposure" is correct for this purpose, the Article is well formulated, but a confirmation of this understanding would be helpful.



If, on the other hand, the separate pools of receivables are considered underlying exposures, the formulation of this retention rule would be very unusual. In particular, the first loss pieces retained by the originators or original lenders (e.g. through a discount on the receivables) are not relevant to investors as they are not part of the risk transferred to them (see above). Furthermore, there would hardly be any liquidity facilities for those parts of the receivable pools, since those are by definition designed to cover funding problems in the CP market in the first place, and are then are extended to cover credit risk only as a second measure. Therefore, since FLPs are not refinanced through the CP market, there is no need for any liquidity facilities. A definition to that effect would hence be very unusual, particularly if compared to the currently prevailing market practice.

Q6: Do you consider that the retention option (d) under Article 8.1(b) via the provision of a liquidity facility should be explicitly mentioned in the RTS? Please also specify reasons why this provision should explicitly remain in the RTS?

» Yes, although it is currently unusual for liquidity facilities to be non-senior, there is no reason why this option should be ruled out. In particular from an alignment of interests point of view, there is no reason why a liquidity facility should always cover 100% of the risk transferred to investors as under option (a). Therefore, option (d) is a useful complement. Since liquidity facilities are not explicitly mentioned in Article 394(1)(d) of the CRR, the paragraph in the RTS provides useful clarification.

Q11: Should the broad stress testing requirement that institutions have to undertake be part of the Internal Capital Adequacy Process, in accordance with Article 72 of CRD IV, or should it, where applicable, be in accordance with Article 173 of the CRR and follow the credit stress testing requirements for IRB banks?

» The stress testing requirements for investors in connection with ABCP programmes should be fulfilled with regard to strong support by the sponsor/liquidity bank (particularly if fully supported) in accordance with the general stress testing requirements for bank risks. A stress test of securitised receivables portfolios cannot reasonably be carried out for ABCP programmes.

Q14: For which type of underlying assets do you think that the information on a loan level basis is not necessary for complying with the due diligence requirements under Article 395 of the Regulation (EU) No xxxx/201y? What kind of information is required in those cases? Please specify by type of underlying asset.

» In the case of highly granular transactions, which are customary in ABCP programmes, the loan-level requirement is not standard market practice, nor is it useful. Instead, established market practice is to provide aggregate information for each transaction – including granular transactions – in an ABCP programme in the monthly investor report. Similar practices have become established for highly granular auto securitisations or RMBS. We are therefore opposed to loan-level reporting.

That applies particularly but not exclusively to cases in which, in an ABCP programme, investors are additionally protected against exposure risks in the securitised portfolios by accordingly structured liquidity facilities.

TSI – What we do

Securitisation in Germany and TSI – the two belong together. True Sale International GmbH (TSI) was set up in 2004 as an initiative of the German securitisation industry with the aim of promoting the German securitisation market.

In the last nine years TSI has strongly supported the development of the German securitisation market. Its concern has always been to give banks an opportunity to securitise loans under German law on the basis of a standardised procedure agreed with all market participants. Another objective is to establish a brand for German securitisation transactions which sets a high standard in terms of transparency, investors information and underwriting as well as servicing standards. And finally the goal is to create a platform for the German securitisation industry and its concerns and to bridge the gap to politics and industry.

Nowadays TSI Partners come from all areas of the German securitisation market – banks, consulting firms and service providers, law firms, rating agencies and business associations. They all have substantial expertise and experience in connection with the securitisation market and share a common interest in developing this market further. TSI Partners derive particular benefit from TSI's lobbying work and its PR activities.

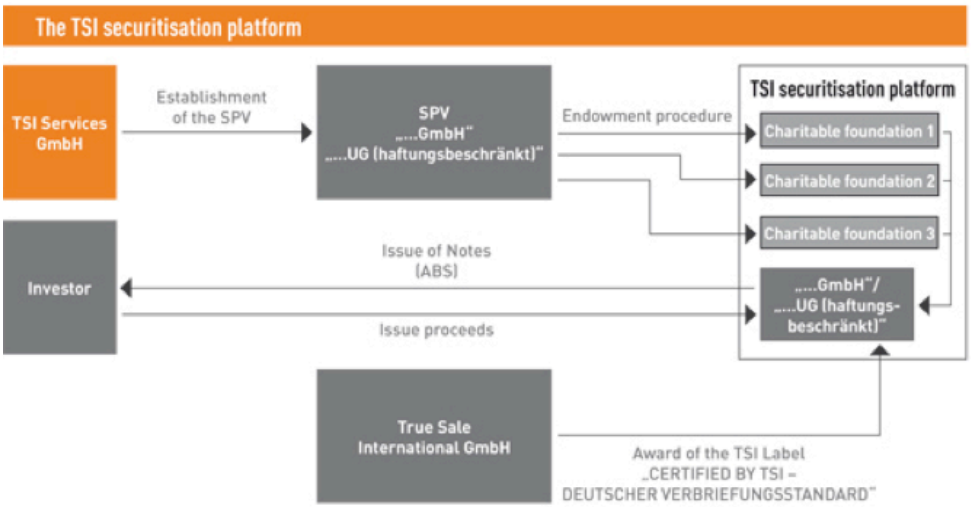
TSI securitisation platform

TSI has been providing special purpose vehicles (SPVs) under German law since 2005. In far more than 80 transactions (as of 2013), German and other originators have already taken advantage of German SPVs as part of the securitisation process.

The TSI securitisation platform comprises three charitable foundations, which become shareholders in the SPVs set up by TSI. The charitable foundations provide support for academic work in the following fields:

- Capital market research for Germany as a financial centre
- Capital market law for Germany as a financial centre
- Corporate finance for Germany as a financial centre

The three charitable foundations are committed to promoting scholarship and science with a focus on capital market and corporate finance topics.



CERTIFIED BY TSI – DEUTSCHER VERBRIEFUNGSSTANDARD

The high quality of German securitisation transactions reflects the high quality of the standards applied to lending and loan processing.

The brand label DEUTSCHER VERBRIEFUNGSSTANDARD is founded on clearly defined rules for transparency, disclosure, lending and loan processing. Detailed guidelines and samples for investor reporting ensure high transparency for investors and the Originator guarantees, by means of a declaration of undertaking, the application of clear rules for lending and loan processing as well as for sales and back office incentive systems. The offering circular, the declaration of undertaking and all investor reports are publicly available on the TSI website, thus ensuring free access to relevant information.

Events and Congress of TSI

Events of TSI provide opportunities for specialists in the fields of economics and politics to discuss current topics relating to the credit and securitisation markets. The TSI Congress in Berlin is the annual meeting place for securitisation experts and specialists from the credit and loan portfolio management, risk management, law, trade and treasury departments at banks, experts from law firms, auditing companies, rating agencies, service providers, consulting companies and investors from Germany and other countries. Many representatives of German business and politics and academics working in this field take advantage of the TSI Congress to exchange professional views and experience. As a venue, Berlin is at the pulse of German politics and encourages an exchange between the financial market and the world of politics.