IACPM

July 7, 2023

Re: EBA Consultation Paper on the Guidelines on the STS criteria for on-balance-sheet securitisation

Response on behalf of IACPM Members

The International Association of Credit Portfolio Managers (**IACPM**) appreciates the opportunity to provide feedback on the draft Guidelines on the STS criteria for on-balance-sheet securitisation (the **Guidelines**) set out in the EBA consultation paper (the **CP**).

The IACPM is a global industry association established in 2001 to further the practice of credit exposure management by providing an active forum for its member institutions to exchange ideas on topics of common interest.

The IACPM's institutional member firms comprise the world's largest financial institutions, and as such overlap the membership of several other financial industry associations. Our perspective is different, however, in that the IACPM represents the teams within those institutions who have responsibility for managing credit portfolios, including actively controlling concentrations, adding diversification, managing the return of the portfolio relative to the risk, and applying capital to new lending.

In this instance, the IACPM is responding on behalf of the on-balance-sheet (**OBS**) securitisation market. Whilst the CP emphasises the EBA's desire for consistency across the STS requirements for traditional non-ABCP, traditional ABCP and OBS securitisations, responses are focused on the impact of the Guidelines on synthetic OBS transactions, which are currently executed by banks on their own lending portfolios across a diverse range of asset classes, such as loans granted to SMEs and/or corporates, project finance and auto-loans, and which do not use ABCP structures. There are fundamental differences between traditional and OBS securitisations, which should be respected in order to facilitate and encourage the use of this important tool. Moreover, the vast majority of OBS transactions are private and share risk by protecting only the junior and/or the mezzanine tranches, with the terms negotiated directly between the protection buyer and the protection seller(s), and so the investor(s) on any relevant transaction are very familiar with the applicable contractual terms. Given the sophistication of the investor base, the IACPM believes it is important to avoid overly-prescriptive guidelines that may not add material benefit and which may inadvertently impede the smooth operation of the OBS market.

We have responded only to the questions that are most relevant to our membership, which are questions 1, 3, 4, 6–8, 10–12, 15–19, 21, 22, 24, 26–28, 31, 35–39, 41and 42. For all other questions, the IACPM agrees with AFME's response letter.

In addition to the specific questions raised in the CP, the IACPM thinks that it would be very helpful for the EBA to clarify certain other matters in the finalised Guidelines.

1. Grandfathering

Existing STS OBS securitisations that achieve(d) their STS label prior to the application of the finalised Guidelines on the basis of reasonable interpretations of the STS criteria made in good faith should not lose their STS status in the event that they are not aligned with the interpretation set out in the Guidelines, especially as that could result in transactions becoming uneconomical for originators. For example, there is a clear difference in how the market has interpreted the "at least one payment" criterion and how the EBA has interpreted it in the Guidelines. Many deals could be impacted if they are unable to substitute in new assets to replace those that would be now deemed ineligible and, in some transactions, the entire portfolio may be ineligible for STS on account of the nature of the asset class and the portfolio profile of the originating bank.

2. Time calls

Likewise, almost every OBS securitisation (STS or otherwise) executed following the publication of the EBA's 2020 SRT Report includes a time call that may be exercised on or after a fixed date and the majority of which will have determined that fixed date on the basis of, *inter alia*, certain pre-payment assumptions. Despite the fact that the EBA's 2020 SRT Report suggested that time calls in OBS securitisations should not take into account any pre-payment assumptions, time calls that do so have been included in longer-dated OBS securitisations without comment from regulators.

3. Overlap with CRR/CRM regulations

The IACPM is also of the view that, where the Guidelines overlap with guidance that has been given in relation to the CRR and/or CRM requirements, it would be preferable not to offer further guidance in case that leads to any "gold-plating", inconsistencies or confusion. Furthermore, in the period following the implementation of the OBS STS regime, market participants have reached a broad consensus as to how to interpret most of the criteria and, as one of the most powerful aspects of OBS securitisation is its flexibility, the IACPM believes that it is very important not to reduce the ability to interpret the STS criteria in context. To do so could limit the availability of OBS securitisation and keep new issuers from the market. As a result, and for the avoidance of doubt, the finalised Guidelines should make it clear that lists are included by way of example(s) and are without limitation to the items set out therein. It would also be helpful to clarify the circumstances in which an OBS securitisation may be amended without losing its STS status.

The IACPM would also like to take this opportunity to note that, in its view, there are a number of other important issues pertaining to the OBS securitisation market which, while beyond the scope of the CP and this letter, should not be overlooked and the IACPM would enthusiastically welcome any opportunity to provide feedback on these.

The greater role that the (re)insurers could play in the STS OBS securitisation market is one such issue, as previously discussed in our paper to the European Commission (the **EC**) on **recognition of private credit insurers in the STS framework** for synthetic on balance-sheet securitisations dated February 8, 2022. The IACPM believes that expanding the scope of

eligible credit protection sellers to include private insurers and reinsurers providing cover on an unfunded basis[1] would have a number of benefits. Diversifying the investor pool would help transfer risk away from the banking sector whilst helping to minimise a concentration of risk simply building up in another. The insurance market does not rely on the banking sector to hedge its risk – instead, reinsurance and retrocessions are used to manage large exposures. The multiline (re)insurance market is highly diversified and those carriers under the Solvency II (and equivalent) regime are highly-regulated and well-capitalized. In addition, the risk of a payment default is mitigated by, *inter alia*, the fact that banks are required to hold capital against the (re)insurer counterparty risk. As the non-STS OBS securitisation market has matured, both the execution process and the contractual documentation have become more streamlined and standardised and the market is ideally placed to give the banking sector more options for obtaining capital relief in the unfunded STS OBS market, thereby increasing banks' capacity to lend to the real economy. We therefore encourage the EBA to ask the EC to call for advice in respect of a potential extension of the OBS STS regime to permit uncollateralised credit protection agreements entered into with certain non-0 *per cent.* RW counterparties such as Solvency II (and equivalent)-regulated credit (re)insurers. You may recall that we provided some initial proposals in relation to the recognition of (re)insurers as protection sellers for the purposes of both the prudential and securitisation regimes,[2] but we would welcome any further opportunity to provide additional feedback on this matter.

The IACPM, again mindful of the fact that it is outside the scope of the CP, would also like to take this opportunity to encourage the EBA and the EC to consider expanding the universe of **acceptable collateral** for the purposes of Article 26e(10), particularly as in the OBS market it is possible in some cases to apply haircuts to collateral where it is not in the traditional market as the SSPE will not have surplus funds to purchase the requisite amount of collateral. The IACPM thinks that, for example, an argument could be made that money market funds and reversed repurchase agreements could constitute acceptable collateral. In addition, the requirement that such collateral matures every quarter (or by no later than the next payment date, if sooner) is arguably more relevant to traditional securitisations than the OBS market, where there are often other margin arrangements in place, and could perhaps be revisited.

[1] *I.e.*, in an uncollateralised insurance policy format.

[2] A set out at attachment 5 (*Synthetic securitisation – Recognition of private credit insurers in the STS framework for synthetic on balance-sheet securitisations (Art 506)*) to our letter dated February 11, 2021 and entitled "Banking Package 2021 – Finalisation of Basel 3: Contribution of the IACPM to the "Have Your Say" procedure of the European Commission".

Q1 Requirements on the originator - Article 26b(1)

Q1 Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. For example, should additional interpretations of the term 'no less stringent policies' or 'comparable exposures' be provided and if yes, how are these terms understood in securitisation practice?

The IACPM considers that this criterion is clear and does not require clarification. The IACPM notes, however, that a response to EBA Q&A 2022_6539 on the related requirement under Article 18 and the meaning of "established in the Union" is pending a response from the EC and believes that the market is looking forward to the EC's answer.

Q3 Exposures held on the balance sheet – Article 26b(3)

Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.

The IACPM believes that the Guidelines should make it clear that the relevant balance sheet is the originator's prudential balance sheet. This interpretation is in line with the prudential nature of the benefits that flow from the STS regime and the prudential nature of the "group" definition in Article 26b(3) itself (which relates to the CRR or Solvency II prudential consolidation group).

Q4 No Double Hedging – Article 26b(4)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

The IACPM wishes to raise a number of points here.

First, there are instances where banks may benefit from, for example, public-sector guarantees that they have not sought or paid for. Such guarantees often cover broad sectors or asset types and are generally for the benefit of multiple entities rather than a specified bank. In these circumstances, provided that the bank treats payments under any such guarantee scheme as recoveries, the IACPM believes the moral hazard associated with double recoveries is absent.

Second, banks may wish to use exposures as collateral for secured funding purposes and it should be made clear that such activity does not contravene this criterion. This would be in line with the guidance provided in relation to risk retention hedging.

Third, banks should not be prohibited from synthetically securitising exposures that are referenced in a traditional, non-SRT securitisation. The IACPM acknowledges that careful structuring would always be required in order to comply with risk retention requirements and to avoid double hedging but this scenario should be permitted.

Finally, there may be instances where an originator / relevant lender purchases credit protection in the form of a credit default swap (**CDS**) on an obligor *but not* on any specific asset and books that CDS as a trading-book asset rather than a banking-book asset. It would be helpful if the Guidelines made it clear that this would not contravene the double hedging prohibition on the basis that purchasing trading-book CDS on an obligor at the entity level does not create the same moral hazard as purchasing credit protection on the same portion of any specific exposure would.

Q6 Representations and warranties – Article 26b(6)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

To the best of the originator's knowledge

The IACPM believes that the Guidelines should be amended to state that an originator is not required to take all legally-possible steps in order to determine the relevant requirements but should instead take those steps that the relevant entity would usually take in the course of its origination, servicing and risk management procedures and its policies in respect of the use of information received from third parties. The IACPM notes that this would be consistent with the rationale for this Guideline (set out at paragraph 15 of the rationale section of the CP).

An entity of the group to which the originator belongs

The definition of "group" is not fully-consistent with Article 26b(3) and it would be preferable to have a single interpretation of "group". It is unclear why the Level 1 text apparently makes a distinction between a "group" and "an entity which is included in the scope of supervision on a consolidated basis" and it seems reasonable to assume none was intended. The IACPM suggests referring to the definition in Article 26b(3) in the same way that paragraph 121 of the Guidelines does for "an entity which is included in the scope of supervision on a consolidated basis".

Q7 Eligibility criteria, active portfolio management – Article 26b(7)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Active portfolio management

The IACPM requests that the EBA clarifies that Article 26b(7)(a)–(d) is a non-exhaustive list. We agree with AFME's suggested additional circumstances but also suggest adding that a removal may be permitted where (for whatever reason) the exposure prevents the originator from complying with its obligations under Article 7 or where the relevant exposure has not been serviced in accordance with the servicing procedures and/or to the servicing standard. In addition, it would be helpful to clarify that removing an exposure that is found not to have complied with the eligibility criteria at its inclusion date is not prohibited.

The IACPM agrees with the AFME response in relation to the ambiguity in Article 26b(7)(c) and the proposed clarification.

The IACPM assumes that paragraph 123 is not an exhaustive list but it would be helpful if this could be clarified.

Q8 Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities – Article 26b(8)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Paragraph 127 of the Guidelines is not clear to the IACPM and we ask that it is deleted as the requirements of the second subparagraph of Article 26b(8) are very clear.

The IACPM also notes that paragraph 27 of the CP states that, "it is expected that where [specialised lending exposures, such as project finance, object finance and commodities finance exposures] are combined with other corporate exposures, the corresponding pool of exposures would not meet the homogeneity requires applicable to [OBS-securitisation]". The Guidelines themselves do not, however, reflect the substance of this statement. The IACPM assumes that this is because the EBA did not intend for the Guidelines to provide additional guidance on, or modifications to, the homogeneity criteria set out in the EBA's Final Report on the draft RTS on the homogeneity of underlying exposures in STS securitisation (EBA/RTS/2023/01), which stated that specialised lending exposures would fall under the corporate asset category. It would be helpful if the suggestion set out at paragraph 27 of the CP was not included in the final draft of the Guidelines to avoid any doubt on this matter. As noted in our letter entitled, "Re: EBA Consultation Paper on Draft Regulatory Technical Standards on the homogeneity of the underlying exposures in STS securitisation" and dated October 28, 2022 (the **Homogeneity RTS Response Letter**), the IACPM believes that there are good arguments as to why and in what circumstances (*i.e.*, where underwriting criteria / risk management processes are the same) specialised lending, such as project finance, could indeed be bucketed with other corporate exposures.

Q10 Underwriting standards, originator's expertise – Article 26b(10)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Similar exposures

The draft homogeneity RTS do not require all corporate exposures in a securitisation to be made to the same type of obligor if they are all resident in the same jurisdiction or where they are all secured by immovable property located in one jurisdiction. It is not clear why the underwriting expertise requirements in respect of a portfolio of corporate exposures set out at paragraph 129(b) is more specific than for other asset types. The IACPM believes that there may be circumstances where the requisite expertise may be more relevant where the expertise

is based on jurisdiction rather than asset type and the Guidelines should not preclude that possibility, particularly as this guidance also applies to Article 26c(8) and paragraph 174 of the Guidelines. If the intention behind this Guideline was to clarify that an originator needed to have expertise in underwriting each type of asset where the relevant asset pool comprises more than one asset type, then that should also be clearly stated; otherwise this Guideline would appear to "gold-plate" the homogeneity RTS, which is beyond the scope of the CP and could create confusion. For further discussion as to (among other things) why we believe that homogenous principles of credit underwriting and risk management should be determinative and why there are issues with defining homogeneity by reference to the type of obligor in some circumstances, such as in project finance portfolios, please see our Homogeneity RTS Response Letter.

No less stringent underwriting standards

The IACPM agrees with the AFME response and recommends that paragraphs 130 and 131 of the Guidelines be deleted.

Disclosure of material changes from prior underwriting standards

It is not clear to the IACPM why paragraph 134 of the Guidelines requires an explanation of the purpose of any changes to the underwriting standards, which is not required by the Level 1 text. This seems overly burdensome (and may be an issue in light of information barriers) and we expect that investors would ask the originator for an explanation if the purpose was unclear.

The Guidelines should also clarify that the requirement in the Level 1 text that material changes shall be disclosed to "potential investors" includes, or at least does not preclude disclosure to, actual investors where any changes are made following the execution of any relevant transaction.

Q11 No exposures in default and to credit-impaired debtors/guarantors – Article 26b(11)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

There is a need for clarity in relation to Article 26b(11)(c). Firstly, the IACPM would like clarification that underlying exposures classified as IFRS Stage 2 are not precluded *ab initio* from inclusion in an STS OBS securitisation by virtue of paragraph 152(a) of the Guidelines. The IACPM does not believe there are policy grounds why they should be but would prefer for the Guidelines to be explicit in this respect.

Secondly, it could be argued that Article 26b(11)(c) requires originators to securitise a representative sample of their book in order to satisfy this criterion. The IACPM does not believe that the Level 1 text (or the Guidelines) supports this interpretation and would be grateful if this could be expressly clarified in the Guidelines. The IACPM does, however, believe that text of Article 26b(11)(c) presents difficulties. The requirements set out at Article 26c(11)(a)–(b) are clearly meant to be tested at the asset level. However, while Article 26b(11)(c) can be read as if it is to be tested at the asset level, this would mean that each underlying exposure would have to

have the same credit assessment as the lowest-risk debtors or guarantors of comparable exposures or be excluded from the portfolio. Given that Recital (11) explicitly requires an originator to disclose where assets whose credit-risk profile is higher than that of comparable assets held on the balance sheet of that originator by way of a carve-out from Article 6(2) and states that there is no presumption that the assets underlying a securitisation should perform similarly to even the average assets held on the originator's balance sheet, the IACPM does not believe that this can have been the intention of the Level 1 text. We also note that paragraph 151(b) of the Guidelines indicates that the EBA also sees Article 26b(11)(c) as a portfolio-level, rather than an asset-level, test.

Even with this interpretation, however, the phrasing of paragraph 151(a) of the Guidelines means that it would not be possible to have an STS OBS securitisation where the portfolio being securitised was, on average, different from the rest of the book of comparable exposures. It would still be overly restrictive to limit STS OBS securitisations to those that reflected the average creditworthiness of the book of comparable exposures (particularly if the universe of comparable exposures is potentially very wide) and this cannot have been the original intention either. The IACPM therefore agrees with AFME that the best interpretation of "comparable exposures" is for the relevant exposures to satisfy the eligibility criteria set out in the transaction documentation other than those that pertain to creditworthiness but would add that originators should be able to select only those eligibility criteria that they determine are most relevant for the sake of any comparison on the basis that historical data for some assets, such as those relating to hospitality or tourism may not have sufficient historical data. As AFME note, the tests set out at paragraphs 151(b) and 152(b) of the Guidelines would then work, *provided that* the originator is able to compare the average performance of the securitised exposures against that of any comparable exposures held by the originator.

While the IACPM assumes that it must be the intention, it would also be helpful to clarify in paragraphs 151(b) and 152(b) of the Guidelines that the credit quality of the underlying exposures should not be significantly worse than, rather than different from, that of the comparable exposures.

The IACPM's last comment on this criterion relates to the "to the best of the originator's or original lender's knowledge" aspect of Article 26b(11). As per the IACPM's comment on Q6, the rationale set out at paragraph 39(c) of the CP states that the original lender / originator should not be required to take all legally-possible steps to determine the relevant debtor's credit status but should instead take those steps that the relevant entity would usually take in the course of its origination, servicing and risk management procedures and its policies in respect of the use of information received from third parties.

Q12 At least one payment made – Article 26b(12)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

The IACPM sees a number of issues with this Guideline as currently drafted. The Level 1 text does not specify that a payment must be made in respect of each such exposure. The IACPM believes that the fraud risk is adequately addressed by requiring originators to demonstrate that

the borrower has made at least one payment to the originator. In addition, as the investors in an OBS securitisation are not reliant upon payments by the underlying obligors, this criterion is not as relevant to the OBS market as it may be to the traditional securitisation market.

The proposed Guideline would mean that, even if a borrower had made a payment under nine out of ten exposures that were to be securitised, the tenth would not be eligible at that time. This would delay originators from achieving capital relief and obtaining credit protection in respect of newly-originated exposures, even in relation to loans advanced to existing clients. The IACPM is also concerned that banks' systems may prevent them from complying with this criterion where, for example, data is collated at the borrower level and is not available at the exposure level. Even if exposure-level data is available, it will be very burdensome to satisfy this requirement in respect of highly granular portfolios. Moreover, some assets may only, for example, repay at maturity and such assets—as well as revolving credit facilities and credit lines—would be precluded from STS OBS securitisations by the proposed Guideline. Other asset-types, such as so-called pay-day or buy-now-pay-later loans, could also be precluded from STS OBS transactions.

The IACPM also asks the EBA to expand paragraph 155 of the Guidelines so that it is clear that payment of any commitment, up-front and/or any other similar fees by a borrower can satisfy this criterion, which is how the market has interpreted this criterion for the reasons given above.

Q15–17 Referenced interest rates – Article 26c(3)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

On reference rates: Is the interpretation on this term deemed helpful for the interpretation of this requirement? Please provide more information on the referenced interest payments used in relation to the transaction in your entity's practice.

On complex formulae or derivatives: Is the guidance provided sufficient to clarify the requirement or should the guidance be extended? In case of the latter, please provide suggestions on how to define complex formulae and derivatives.

The IACPM believes that the main risk-free rates should be explicitly included (for example: €STR, SONIA, SOFR and TONA) given the discontinuation of certain IBOR reference rates that were previously predominantly used in the market.

Q18 Requirements after enforcement notice – Article 26c(4)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

The IACPM notes that all funded or collateralised OBS transactions set out the mechanics for determining the amount of cash to be returned to investors upon enforcement / termination up-

front in the contractual documentation, which, as mentioned at the start of this letter, is negotiated between the issuer and its investor(s). It is not standard market practice for the parties to negotiate these details upon the occurrence of any enforcement / termination event, not least because focus may be on other matters at such time but also because it is preferable to have the contractual certainty as to how the amount will be calculated known from the start. In addition, it seems unlikely in practice that trustees / other investor representatives will be comfortable determining and agreeing such amounts on behalf of the investors. The IACPM suggests that paragraph 161 of the Guidelines is amended to say that the agreement in respect of the amount of cash to be trapped may be as set out in the transaction documentation. The IACPM further suggests that paragraph 162 of the Guidelines make it clear that any relevant account opened and/or used for the purposes of the transaction may constitute such reserve account so as to avoid any implication that a new, separate account is required, which would be an unnecessary burden, when in practice cash is held in the same manner post-enforcement / termination as it is pre-enforcement / termination.

Q19 Allocation of losses and amortisation of tranches – Article 26c(5)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

As a general comment in respect of Article 26c(5), the IACPM notes that some of the proposals set out in the Guidelines mirror those in the EBA's 2020 SRT Report. As discussed in our letter to the EBA dated July 24, 2020, some of the proposals in such Report were, in the IACPM's opinion, problematic and we would ask that the EBA does not implement those via the Guidelines.

We agree with AFME's point that the final paragraph of Article 26c(5) should be clarified to take into account any unexecuted retained tranches ranking junior to the protected tranche(s), which must have been the intention of the Level 1 text in the context of mezzanine securitisations.

Significant losses

The IACPM believes that this Guideline is too restrictive and goes beyond the scope of the CP and what is set out in the final RTS on performance-related triggers. Parties should be able to determine what should constitute "significant losses" for themselves in the context of the relevant transaction and the IACPM recommends deleting paragraph 164 of the Guidelines. Certainly, following the Guidelines as currently drafted (as to which, please see "Last part of the maturity of the transaction" below), it seems unrealistic to expect two thirds of the expected losses to come in the last part of the maturity of the transaction.

Last part of the maturity of the transaction

The IACPM believes that, as with the interpretation of "significant losses", this Guideline is too restrictive and goes beyond the scope of the CP and what is set out in the final RTS on performance-related triggers. If the "last part of the maturity of the transaction" cannot be determined on the assumption that a time call may be exercised, originators will have to look towards the scheduled maturity of the transaction, by which point the reference pool will very

likely have almost fully amortised. The IACPM proposes that the reference to Article 238 of the CRR is deleted from paragraph 165 of the Guidelines and replaced with the expected maturity of the transaction, assuming the exercise of any time call at the earliest date upon which such time call could be exercised in accordance with the transaction documentation. It is also unclear what the "period" close to the maturity of the credit protection is. If this is held to be the last calculation period, then it again seems unrealistic to expect two thirds of the expected losses to occur in a single calculation period. The Guidelines should state that the parties to an OBS securitisation should be allowed to determine what the period close to the maturity of the credit protection is on a case-by-case basis.

Back-loaded loss distribution scenario

The IACPM believes that, as with the interpretation of "significant losses" and "last part of the maturity of the transaction", this Guideline is too restrictive and goes beyond the scope of the CP and what is set out in the final RTS on performance-related triggers. Concerns about the unrealistic conservatism of a back-loaded loss distribution scenario in which two thirds of the absolute amount of losses expected to occur during the expected maturity of the transaction take place equally distributed in the last third of such expected maturity of the transaction have been separately raised in industry comments on the quantitative commensurateness tests proposed in the EBA's 2020 SRT Report.

Q21 Transaction documentation – Article 26c(7)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

The IACPM sees a number of possibly unintended consequences in paragraph 168 of the Guidelines. By referring to "fixed standards", there is a suggestion that a bank cannot improve its servicing standards during the life of a securitisation, which cannot be the intended outcome of this criterion. Furthermore, a bank would not be able to satisfy this criterion where it is required to modify its standards by its regulator, which again would, realistically, only be relevant where the relevant regulator wanted to improve standards. There may also be difficulties complying with this requirement where a third-party servicer outside the control of the bank is involved.

Q22 Servicer's expertise and servicing requirements – Article 26c(8)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Well-documented and adequate policies, procedures and risk management controls

While paragraph 175(a) of the Guidelines is helpful, paragraph 175(b) is highly likely to cause issues in practice for a number of reasons: (i) it may be very difficult, or at least operationally burdensome, to get any entity that falls under this paragraph to disclose its policies and procedures; (ii) it is very unclear how an entity would provide evidence of "adherence to good

market practices and reporting capabilities"; and (iii) it is extremely unlikely that a third party credit-rating agency or external auditor will feel comfortable substantiating such proof. In addition, taking the ordinary meaning of "substantiate" would require the relevant third party to provide its own corroborating evidence and it is not clear how this could be satisfied in practice. The market has not had difficulties interpreting this Article and so IACPM recommends that paragraph 175 is deleted.

Q24 Timely resolution of conflicts between investors – Article 26c(10)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

The IACPM believes that this is another instance where the inherent differences between traditional and OBS securitisations are reasonable grounds for not aligning their STS criteria. Whilst the most common form of traditional cash securitisation will have separate classes of notes, OBS securitisations may be structured in a number of different ways. For example, a bank may purchase insurance from a number of insurers, in each case under a separate policy. Unlike in a traditional securitisation, the investors in that type of structure (and similar structures) are not all party to the same credit protection arrangement and this very prescriptive approach is likely to cause issues in practice.

The IACPM believes that no clarification is actually required for this criterion here on the grounds that the market polices itself as failing to include, for example, provisions in the transaction documentation for noteholder meetings or discretionary powers allowing a trustee to distinguish between separate classes of investor (in addition to or in the absence of contractually-created classes) invites difficulties that may prevent a transaction from operating smoothly. The IACPM recommends replacing the word "should" where it appears in paragraph 176 of the Guidelines with the words "may (without limitation)". In particular, requiring investors to attend meetings in the Union may decrease liquidity.

Q26–27 Verification of a sample of the underlying exposures – Article 26d(2)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

In particular, do you agree with the interpretation of the scope of the verification, in particular with the specification on how the size of the representative sample should be determined? Should additional aspects/parameters for determining the sample be clarified? Please substantiate your reasoning.

The IACPM agrees with AFME's response but would ask the EBA that, if AFME's proposal that the Guidelines allow (where there is no note issuance) for verification to take place after signing but before the effective date is accepted, the Guidelines do not prohibit verification from taking place prior to signing.

Q28 Liability cash flow model – Article 26d(3)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Additional aspects that should be clarified

In order to avoid excessive operational burden, it would be helpful to clarify that an originator's obligation to "make that [cash flow] model available to investors on an ongoing basis" (emphasis added) is not an obligation to prepare (or procure the preparation of) an updated cash flow model on a periodic basis and that an originator would only need to prepare (or procure the preparation of) an updated cash flow model following any amendment of any relevant contractual relationship, provided that the most up-to-date cash flow model is always made available to investors and potential investors.

Q31 Credit events covered under the credit protection agreement – Article 26e(1)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

The IACPM believes that no further guidance is required.

Q35 Third-party verification agent– Article 26e(4)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

The IACPM agrees with AFME's response.

Q36–38 Early termination events by originator – Article 26e(5) / early termination events exercisable by the investor – Article 26e(6)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Do you consider necessary to provide interpretation of the term 'breach by the investor of any material obligation'? Please provide information on such material breaches applied in securitisation practice.

Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. For example, do you consider it necessary to provide interpretation of the term 'material breach' of contractual obligations by the originator? Please substantiate your reasoning.

The proposed method for calculating the WAL is overly conservative in not making any pre-payment assumptions. The IACPM also agrees with AFME's response in relation to OBS securitisations with a replenishment feature on the basis that the actual end date of the replenishment period cannot be known at the start of a transaction. From a practical perspective, the IACPM suggests that paragraph 201 of the Guidelines allows the WAL in a replenishing transaction to be the scheduled end of the replenishment period *plus* either: (i) the WAL of the portfolio at closing; or (ii) the maximum WAL of the portfolio permitted by the conditions to replenishment or the portfolio criteria (as the case may be and howsoever described) at the scheduled end of the replenishment period. The IACPM believes that the market should then be permitted to decide which option is most suited to any given transaction on a case-by-case basis.

The IACPM would be grateful if the EBA could clarify that a transaction involving an SSPE may be terminated by either the originator or the investors in circumstances where there is an event outside the control of the SSPE or the originator, such as an illegality, force majeure or tax event in respect of any payment owed to investors by the SSPE (and the originator is not required to pay any additional amount in order to enable the SSPE to make the payment gross of tax). Similarly, Article 26e(5)(b) should be deemed to include a reference to the SSPE where the investor(s) face an SSPE rather than the originator directly.

The IACPM does not believe that it is necessary to provide any interpretation of the terms "material obligation" or "material breach" other than it may be helpful to clarify for good order that a material breach of an obligation by the originator includes such a breach by the originator acting in any capacity in respect of the relevant securitisation on the basis that the bank's role in the transaction as originator *per se* is limited.

The IACPM would also like to note that it would prefer not to include the conditions for the eligibility of a guarantee as a protection provider in any guidance provided in respect of Article 26e(5)(f), as suggested in paragraph 109(c) of the CP, on the basis that its strong preference is not to duplicate CRR rules and/or guidance in the Guidelines, even where there is no obvious conflict, in case of confusion and/or inconsistency.

Q39 Synthetic excess spread – Article 26e(7)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

The IACPM was pleased to hear at the public hearing held on May 30, 2023 that the EBA will revisit the draft Guidelines in respect of Article 26e(7) in light of the RTS on SES. In addition, it would be helpful to clarify whether it is permissible (which we assume it is) to take the 1YR EL determined at closing for each future SES period even if it subsequently changes. Among other things, this enables investors to model the transaction more accurately at the outset. For the avoidance of doubt, the IACPM agrees with the AFME response to this question.

The IACPM also wishes to highlight its agreement with the AFME response in relation to the fact that, where an originator not using the IRB approach calculates its 1YR EL at closing, the result may be too low and may not provide an accurate indication of the lifetime expected losses. The IACPM believes that it would be very helpful if Standardised Approach originators were allowed to specify at closing (and in the transaction documentation) either a different rate for different accrual periods or to specify a fixed rate that is lower than a blended 1YR EL that reflects the expected lifetime losses more accurately. The IACPM would welcome such clarification but is agnostic as to what forum any such clarification is provided in, whether it may be in the SES RTS itself or in paragraph 203 of the Guidelines.

Q41 Specific type of the credit protection agreement – Article 26e(9)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Legal opinion on the enforceability of the credit protection in all relevant jurisdictions

The IACPM agrees with the AFME response in relation to paragraph 205 of the Guidelines.

Qualified legal counsel

The IACPM notes that this guidance covers the same material as the CRR and related EBA guidance and recommends it is deleted. As a principle, the IACPM's preference is not to duplicate CRR rules, particularly where such rules are rephrased (even where the differences are *prima facie* minor and absent obvious conflicts) in order to avoid unintended and unforeseen problems.

Q42 Requirements for recourse to high-quality collateral – Article 26e(10)

Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Payment frequency of the acceptable high-quality collateral

The requirement for payment dates to be quarterly is too restrictive given that the Level 1 text only requires the collateral to mature by no later than the next payment date. The IACPM does not think that Article 26e(10)(a)(i) requires clarification and paragraph 208 of the Guidelines should be deleted.

Investments in credit-linked notes

The IACPM believes that this clarification is unnecessary as the Level 1 text is very clear and this should be deleted from the Guidelines.