afme/ Finance for Europe

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Association for Financial Markets in Europe (AFME)
Comments on
European Banking Authority (EBA) Consultation Paper –
Draft Guidelines on the STS criteria for non-ABCP securitisation

True sale, assignment or transfer with the same legal effect (Article 20(1), 20(2), 20(3), 20(4) and 20(5))

Q1. Do you agree with the interpretation of these criteria, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

As a general matter, AFME members agree with the interpretations set out and the aspects on which that interpretation is focused.

That said, we are concerned by the transformation of the requirement for a true sale into a *requirement* for a legal opinion to that effect. While legal opinions are, in general, the most common mechanism used to confirm a "true sale" in the context of a securitisation, they are not the *only* reasonable means of providing such assurance. Indeed, this is acknowledged in recital (23) of the Securitisation Regulation which says "[a] legal opinion provided by a qualified legal counsel **could** confirm the true sale or assignment or transfer with the same legal effect…" (emphasis added). What is more, "true sale" opinions are not generally provided in the context of most non-securitisation sales, where it is nonetheless crucial that a sale has taken place. A true sale opinion is mainly used to provide assurance that a transaction expressed to be a sale will not be recharacterised as a secured loan and this risk is not seen as being of critical importance in most non-securitisation contexts.

This concern is especially relevant in the context of Article 20(4), where intermediate sales may have taken place many years prior to the securitisation and any legal opinion delivered may not include a true sale opinion because a securitisation was not contemplated at the time. Accordingly, the requirement in paragraph 13 of the Draft Guidelines to confirm the seller has had sight of the legal opinion will in many cases not be practically possible to comply with because no true sale opinion will exist. We would propose instead that the representations and warranties required under Article 20(6) are a better and more obvious way of providing comfort about the true sale without imposing impractical requirements in relation to legal opinions at every stage at which the portfolio has been transferred.

In cases where legal opinions are used to confirm the true sale, we have a number of comments:

- **Risks covered:** As a starting point, the requirement for a legal opinion is a reasonable means of confirming the compliance with the requirements set out in Article 20(1)-(3), which are largely legal in nature. However, the draft Guidelines would require the legal opinion to go beyond confirming the matters set out in Article 20(1)-(3) in that they require an assessment of "commingling risks and set-off risks related to the securitisation transaction" (*emphasis added*), neither of which is part of true sale nor has any basis in the level 1 text. These risks are not normally assessed in a securitisation legal opinion (though they would routinely be dealt with in other ways e.g. via additional reserves or credit enhancement), and introducing a requirement for them to be addressed in a legal opinion should have a sound basis in primary legislation. Instead, these requirements appear to be totally novel in the draft Guidelines. For these reasons, we believe that the reference to commingling risks and set-off risks is inappropriate and should be deleted from paragraph 10b of the draft Guidelines.

- **Meaning of "same legal effect":** These words would benefit from some explanation, in particular given the distinction in certain EU Member States' laws between law and equity. We believe that the correct explanation – that accurately interprets the intention of the co-legislators – is already contained in the draft Guidelines at paragraph 11a. Consequently, we believe that the appropriate result can be achieved by the following minor drafting amendment:

  "for the purposes of Article 20(1) of Regulation (EU) 2017/2402, where the title to the underlying exposures is not acquired by the SSPE by means of a true sale or assignment, a legal opinion should be provided which confirms and provides evidence that the transfer has the same legal effect as a true sale ~~**and**~~ <u>**in**</u> that the segregation of the underlying exposures from the seller, its creditors and liquidators including in the event of the seller's insolvency is equal to that achieved by means of true sale or assignment, under the applicable national legal framework governing the securitisation transaction;"

- **Material obstacles:** Like the requirement to address set-off and commingling risks in paragraph 10b, the requirement in paragraph 11b for legal opinions to confirm and provide evidence of material obstacles to perfection of the true sale on closing is also novel in the draft Guidelines and has no basis in the level 1 text. This is not typically included in securitisation legal opinions and there is no reason to include it now. It is and should be sufficient that the true sale opinion confirms the effectiveness of the true sale, regardless of the possible need for later perfection.

- **Requirement for a "reasoned" opinion:** The requirement at paragraph 12 that the legal opinion should be "reasoned" is unclear and we would recommend that it should be omitted. Whether an opinion is reasoned or not is a matter of subjective judgment, and is anyway not a binary question, making it extremely difficult to assess compliance. Further, the manner in which legal opinions are drafted changes significantly from firm to firm and transaction to transaction based on a wide variety of factors including risk appetites, rating agency requirements and client demand.

- **Audience for legal opinions:** Legal opinions can be very sensitive documents and are, in general, subject to strict confidentiality requirements. This is for a variety of commercial and liability reasons, including the fact that the ability of law firms to limit their liability to parties who have (legitimately) had sight of their opinions is not clear in all jurisdictions. The requirement, therefore, that they "should be accessible and made available to <u>third parties including</u> third party certification agents and competent authorities" (*emphasis added*) is troubling. There are, however, obvious reasons why third party certification agents and competent authorities would need to have sight of the true sale opinion. Accordingly, we would recommend the following drafting change to address the concerns around third party certifiers and competent authorities without unnecessarily expanding the potential liabilities of law firms issuing these opinions

"Such legal opinion referred to in paragraphs 10 and 11 should be accessible and made available to ~~**third parties including**~~ **<u>any relevant</u>** third party ~~**certification agents**~~ **<u>contemplated under Article 27(2) of Regulation (EU) 2017/2402 and any relevant</u>** competent authorities. Where the seller is not the original lender…"

Q2. Do you agree with the clarification of the conditions to be applicable in case of use of methods of transfer of the underlying exposures to the SSPE other than the true sale or assignment? Should examples of such methods of such transfer be specified further?

See answer to Q1 above.

Q3. Do you believe that in addition to the guidance provided, additional guidance should be provided on the application of Article 20(2)? If yes, please provide suggestions of such severe clawback provisions to be included in the guidance.

AFME members believe the guidance provided is sufficient.

Q4. With respect to the interpretation of the criterion in Article 20(5), should the severe deterioration in the seller credit quality standing, and the measures identifying such severe deterioration, be further specified in the guidelines? Do you believe that the interpretation should refer to the state of technical insolvency (i.e. state where based on the balance sheet considerations the seller reaches negative net asset value with its the liabilities being greater than its assets, without taking into account cash flows or events of legal insolvency), and if yes, should it be specified whether it should or should not be considered as the trigger effecting perfection of transfer of underlying exposures to SSPE at a later stage?

In relation to Article 20(5)(a), AFME members would suggest an amendment to paragraph 14 of the draft Guidelines. We believe the requirement to reference "credit quality thresholds related to the financial health of the seller that are generally used and recognised by market participants" is too restrictive. While credit ratings (perhaps the only metric that would meet this description) would clearly fall into this category and would be appropriate measures, many seller entities will not be rated, which makes the use of this guidance more difficult. Therefore, it should be possible for transaction parties to choose other measures of "severe deterioration in the seller credit quality standing" provided they are objectively observable and related to the financial health of the seller. Accordingly, we would recommend the following amendment to paragraph 14:

"For the purposes of Article 20(5) of Regulation (EU) 2017/2402, the transaction documentation of a securitisation should identify, with regard to the trigger of "severe deterioration in the seller credit quality standing"**<u>,</u>** credit quality thresholds **<u>that are objectively observable and</u>** related to the financial health of the seller ~~**that are generally used and recognised by market participants**~~."

In relation to Article 20(5)(b), given the lack of harmonisation of substantive insolvency law across the EU, AFME members believe that the deference to national insolvency frameworks contained in paragraph 15 of the draft Guidelines is appropriate. However, we would amend slightly to remove the word "the" as follows, since not all insolvency events will necessarily be appropriate to reference in this circumstance:

> "For the purposes of Article 20(5) of Regulation (EU)2017/2402 the trigger of "insolvency of the seller" should refer to **~~the~~** events of legal insolvency as…"

This is a minimum standard, and parties are free as a commercial matter to set more easily triggered perfection events if they so choose. In any case, the perfection events should only ever be events that permit investors (or a trustee or other representative on their behalf) to perfect the true sale, rather than requiring immediate perfection or indeed causing an automatic perfection process to take place.

The reference, however, to Article 32 of Regulation Directive 2014/59/EU (the "**BRRD**") is inappropriate as it is inconsistent with Article 68(3) of the BRRD. Article 68 of the BRRD makes clear that a resolution action under Article 32 (or any other crisis management measure or crisis prevention measure) may not, in and of itself, lead to certain consequences listed in Article 68(3) provided that the substantive obligations under the contract continue to be performed. The requirement to make an Article 32 resolution a perfection trigger, therefore, is inappropriate and it should be deleted.

In relation to Article 20(5)(c), it would be very useful to have further guidance as to the meaning of "unremedied breaches of contractual obligations by the seller, including the seller's default" for these purposes. In particular, it would be useful to know what kinds of breaches must constitute perfection triggers and how long breaches must remain unremedied before they must constitute perfection triggers. Given the obvious difficulty of formulating rules of general application in this respect, AFME members would suggest the use of a materiality standard. For example, a contractual breach must be sufficiently serious and persistent as to be materially prejudicial to the interests of the secured creditors in a securitisation transaction. Where appropriate, this should be certified by a trustee on behalf of the secured creditors.

Finally, AFME members have concerns about the perfection triggers as they apply to mutual societies, such as building societies. Building society transactions will typically include a more limited range of perfection events than other (e.g. bank) transactions given that the society will want (indeed, may be under a regulatory obligation) to restrict negative effects on its members' rights in connection with a transfer of mortgage loans and that perfection of title will result effectively in cancellation of membership for borrowing members (as membership will typically end when the person no longer owes the society money on a mortgage loan). On this basis, there will not normally be a rating related perfection event under existing rules and we fear building societies would struggle to address the required severe deterioration and unremedied breach events referred to in article 20.5(c).

In order to address this concern and ensure that the basic operating principles of mutual societies do not prevent them from executing STS securitisation transactions, AFME members would be grateful if the EBA could issue guidance clarifying that "where the relevant seller is a mutual society and by its status should limit negative effects on its members' rights and perfection of the assignment would result in cancellation of private membership rights, it shall not be necessary for the triggers in the transaction to include events corresponding to sub-paragraphs (a) and (c) of Article 20(5)”.

Representations and warranties (Article 20(6))

Q5. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

No. Where the seller is not the original lender, the representations and warranties the seller will have obtained in connection with its own acquisition of the securitised assets will vary widely depending on the conditions under which the assets were acquired and it is inappropriate to require that they obtain any particular representations and warranties in connection with their own acquisition of the assets. Where the portfolio has been bought and sold more than once, the seller may have no relationship with the original lender, and the original lender may have no commercial incentive to provide the seller with the requested representations and warranties. Where the seller acquires the securitised assets from the insolvent estate of the original lender, insolvency officials are unlikely to provide the representations and warranties required by this criterion. The same is true where the seller acquires a portfolio from, e.g. a resolution authority set up by a sovereign. If the original lender no longer exists at the time the seller acquires the assets, it will clearly not be possible for the proposed guidance to be complied with. While sellers will always wish to satisfy themselves that they have acquired good title to the assets, they may do so through due diligence or other processes that do not require representations and warranties from the original lender.

None of the circumstances described above, however, should have any bearing on the ability of the transaction to comply with the level 1 criterion that the seller must provide the relevant representations and warranties. The purpose of that criterion is to allocate the commercial risk of any encumbrance on the assets to the seller rather than to the investors in the securitisation. Sellers will of course wish to mitigate such risks by whatever means available to them, but the means they choose to do so are not relevant to investors, who only need know that those risks rest with the seller rather than with them.

Eligibility criteria for the underlying exposures/active portfolio management (Article 20(7))

Q6. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

In respect of active portfolio management, please see our response to Q7 below.

In respect of eligibility criteria, AFME members would like to emphasise that the interpretation set out in paragraph 20 of the draft Guidelines is very helpful and we strongly support the inclusion of this guidance in the final Guidelines. We believe, however, that the proposed interpretation (also suggested by Prime Collateralised Securities (PCS)), of "clear" criteria as "criteria the compliance of which can be legally determined, as a matter of law, rather than as criteria which can be easily understood", needs further clarification. We would suggest amending the criterion to say that an eligibility criterion is "clear" for this purpose if a court or other tribunal could determine whether the criterion was met or not, whether as a matter of fact or law or both. This retains the essence of the guidance suggested in the draft Guidelines but acknowledges that there are significant questions of pure fact or mixed fact and law which are not appropriate for a purely legal determination. Placing strict requirements on the character of eligibility criteria, as well as requiring that the criteria may not be relaxed during the term of a transaction, may lead parties to leave out proposed criteria that, if included, would have made transactions safer and stronger.

As to paragraph 21 of the draft Guidelines, AFME members have certain concerns. The guidance in this paragraph will generally be appropriate for standalone securitisations that acquire assets only once and issue only once. For such transactions, it is generally possible to fix eligibility criteria at a given moment in time safe in the knowledge that few if any adjustments will be required before the expected maturity of the transaction.

For repeat issuance structures such as master trusts, however, this is not the case. Where the same securitisation structure is used to securitise assets over many years or even decades, eligibility criteria will inevitably change to accommodate changes in origination (e.g. variation in the precise products offered) prevailing market conditions including changes to rating agency criteria and changes to underwriting standards. A requirement that eligibility criteria for such structures can only ever be made stricter (a term that itself will not always have clear application) is unworkable.

However, where changes to eligibility criteria are made, these invariably must be reflected in changes to the transaction documentation that must be agreed by or on behalf of investors. Unsurprisingly, these changes are typically made and disclosed in view of a new issuance by the repeat issuance structure.

AFME members would propose, then, that the final Guidelines should clarify the situation for repeat issuance structures such that exposures transferred to the SSPE *after any given closing* of a transaction should have to meet the eligibility criteria applied as at the most recent closing, but that (with the agreement of transaction parties in accordance with transaction documents) eligibility criteria may be varied from closing to closing.

Q7. Do you agree with the techniques of portfolio management that are allowed and disallowed, under the criterion of the active portfolio management? Should other techniques be included or excluded?

Paragraph 19a of the draft Guidelines, which says that any "sale of the underlying exposure(s) for reasons other than those described in the paragraph 18" should be considered as active portfolio management, is unnecessary and too restrictive. For example:

- Clean-up calls are commonly used and widely accepted features of transactions that we do not believe are intended to be excluded in STS transactions. Nonetheless, it is not clear how they would pass the test in paragraph 19a of the draft Guidelines.

- Provisions allowing the seller to repurchase defaulted receivables (or allow those receivables to be sold to a debt collection agency) are a common feature of many securitisations, usually in order to facilitate the recovery process, and should not be treated as active portfolio management.

- Sellers will sometimes repurchase or substitute receivables subject to regulatory dispute or investigation, even when this is not formally required (as it would be if it rose to the level of being a breach of representations and warranties), as a matter of facilitating the dispute resolution process.

- Exposures are sometimes substituted for technical or commercial reasons arising in the normal course of business (e.g. a lease is novated to a new obligor because of a change of lessee).

- Repurchase rights are sometimes provided to sellers in the event of a change of IT systems in order to facilitate the fulfilment of reporting obligations on the securitised portfolio.

- Repurchases of receivables or other securitised exposures are also sometimes permitted if they are selected randomly and not at the discretion of the seller. Such repurchases could be used, for example, in a revolving transaction to adjust the amount of purchased receivables according to the amount of funding required by the seller.

- Repurchases pursuant to a repurchase obligation agreed at the outset of a transaction for the purposes of removing residual value risk from the investors in a securitisation (see further our response to Question 17 below).

AFME members are of the view that all of the above are consistent with the spirit of the requirement in Article 20(7), which is to ensure that investors are investing in a portfolio of assets they can model and understand for themselves, rather than in the investment expertise of a portfolio manager. Given the varied nature of sale/repurchase rights that are widely recognised and accepted in the market and that are consistent with this, AFME members would suggest that the Guidelines should set out the purpose of the requirement along with a series of illustrative examples of permitted sale/repurchase rights that are consistent with that purpose. This is more likely to produce the desired market outcomes than the blanket prohibition with narrow exceptions proposed in the draft Guidelines.

Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 20(8))

Q8. Do you agree with the interpretation of this criterion, and the aspects that the? interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Yes, AFME members agree with the guidance provided in paragraphs 22-24 of the draft Guidelines. In particular, it is extremely helpful that paragraph 23 clarifies the meaning of "contractually binding and enforceable" and AFME members strongly support the interpretation given to that term in paragraph 23. This is consistent with the generally understood legal meaning of that expression and it is important that this criterion should not be expanded to go beyond this.

It should be clarified that "with full recourse to debtors" (Article 20(8)) should not be read to exclude:

- Leases where the lessee has the option to return the vehicle under certain conditions during the life of the lease or at maturity; or
- Other specific limitations on recourse in certain jurisdictions (e.g. loans potentially subject to "voluntary termination" rights in the UK).

Q9. Do you believe that additional guidance should be provided in these guidelines with respect to the homogeneity requirement, in addition to the requirements specified in the Delegated Regulation (EU) 2018/.... further specifying which underlying exposures are deemed homogeneous?

No. AFME members believe it is preferable that the rules relating to homogeneity should all be contained in the RTS contemplated under Article 20(14) of the Securitisation Regulation.

Underwriting standards, originator's expertise (Article 20(10))

Q10. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

In respect of issues relating to "similar exposures" see our answer to Q12 below. In respect of issues relating to "originator expertise, see our answer to Q11 below.

In respect of the other matters in Article 20(10):

- **No less stringent underwriting standards:** We would note, as a general matter, that this element of the criterion would appear to be redundant because of the requirements of Article 9(1) of the securitisation regulation that requires originators, sponsors and original lenders to "apply to the exposures to be securitised **the same** sound and well-defined criteria for credit-granting which they apply to non-securitised exposures" (emphasis added). Indeed, the Article 9(1) criterion would appear to be even more restrictive, as Article 20(11) merely requires that the underwriting standards be "no less stringent".

  In any case, it is very helpful that paragraph 27 of the draft Guidelines confirms that it is unnecessary for the originator or original lender to hold similar exposures on its balance sheet at the time of selection or securitisation, nor does it require similar exposures to have actually been originated at the time of origination of the securitised exposures. It remains unclear, however, how to apply this criterion in the case, e.g. of a mortgage origination platform where all (or all eligible) exposures originated are securitised. AFME members request that the EBA clarify that – where the originator or original lender (as the case may be) securitises all or substantially all of the exposures (or eligible exposures) it originates – this element of Article 20(10) does not apply.

  We would note further that it would be helpful if the final Guidelines could confirm the position, consistent with recital (14) to the Securitisation Regulation, that the criterion related to credit-granting does not apply in respect of the securitisation of trade receivables that are not originated in the form of a loan.

Finally, it would be helpful if the EBA could clarify in the final Guidelines that, for these purposes, the word "originated" in the opening words of Article 20(10) refers to the acquisition of the asset where the underlying asset of the securitisation is being transferred to the securitisation from someone other than the original lender. In other words, so-called "limb (b) originators" would comply with an adjusted requirement to ensure that they apply due diligence standards that are no less stringent to its securitised assets as compared to non-securitised assets. Otherwise there would be significant uncertainty about how to apply this criterion in the context of wholly or partially acquired portfolios.

- **Material changes to underwriting standards:** The requirement to track and report every material change to underwriting standards going back 5 years or to the age of the oldest exposure in the pool is impractical and would not be helpful to investors. Investors are interested in the data on underlying exposures that would allow them to assess credit quality for themselves, rather than abstract standards applied on a historical basis to individual underlying exposures. Instead, the requirement to disclosure material changes to underwriting standards should be forward-looking only (as contemplated in paragraph 28b) from the date of establishment or last disclosure in an offering document. This, when combined with a summary description of the underwriting standards disclosed before closing (in the offering document or similar) would achieve the relevant regulatory objectives.

  As to the definition of materiality, we would propose a modification to the standard set out in paragraph 28b of the draft Guidelines. We would suggest that a modification should be disclosed when it would constitute a "significant new factor, material mistake or material inaccuracy" as compared to the underwriting standards disclosed before closing.

- **Residential loans:** This clarification is very helpful and AFME members strongly support its inclusion in general. However, we are of the view that paragraph 33 is overly specific and prescriptive. For example, a buy-to-let mortgage might be underwritten without regard to rental income on the basis that the borrower would be able to repay regardless of the level of rental income. We request that paragraph 33 be amended as follows:

  "As a result, relevant information for **~~the~~** general non-income generating residential mortgages **~~should be considered to be~~** **<u>would normally include</u>** income, and relevant information for buy-to-let (income generating) residential mortgages **~~should be considered to be~~** **<u>would normally include</u>** rental income. Information that is not useful…""

- **Equivalent requirements in third countries:** AFME members disagree in general with the approach set out in this respect. It is not practicable or desirable as a policy matter for individual originators to be making decisions about whether regulatory regimes in third countries are equivalent (in the sense that the Commission would normally make such an assessment) and we do not believe that this can plausibly have been the intention of the co-legislators. In our view, the reference to "where applicable, equivalent requirements in third countries" is meant to reflect only a requirement that the relevant assessments of creditworthiness comply with local standards in the relevant country, and no more. That is to say, where local laws covering the same general subject matter exist, they are followed. Where no local laws cover that subject matter, that aspect of the criterion becomes irrelevant.

Q11. Do you agree with this balanced approach to the determination of the expertise of the originator or original lender? Do you believe that more rule-based set of requirements should be specified, or, instead, more principles-based criteria should be provided? Is the requirement of minimum of 5 years of professional experience appropriate and exercisable in practice?

In general we agree with the approach set out in paragraphs 37-39 of the draft Guidelines. Our only comment on these is that the references throughout to "the" members of the management body suggests that ***all*** members of the management body must have such experience – which would be inappropriate especially in a large financial institution where the management body will be made up of people with a wide range of backgrounds, experience and skills. It also seems at odds with the test in paragraph 38b(i) that would suggest that only two members need have such experience. Accordingly, AFME members would recommend replacing references to "the members of the management body" with simply "members of the management body".

Q12. Should alternative interpretation of the "similar exposures" be provided, such as, for example, referencing the eligibility criteria (per Article 20(7)) that are applied to select the underlying exposures? Similar exposure under Article 20(10) could thus be defined as an exposure that would qualify for the portfolio, based on the exposure level eligibility criteria (not portfolio level criteria) which has not been selected for the pool and which was originated at the time of the securitised exposure (e.g. an exposure that has repaid / prepaid by the time of securitisation). Similar interpretation could be used for the term "exposures of a similar nature" under Article 20(10), and "substantially similar exposures" under Article 22(1). The eligibility criteria considered should take into account the timing of the comparison. Please provide explanations which approach would be more appropriate in providing clear and objectively determined interpretation of the "similarity" of exposures.

AFME members think the definition of "similar exposures" provided in paragraph 25 of the draft Guidelines is sensible.

No exposures in default and to credit-impaired debtors/guarantors (Article 20(11))

Q13. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

See the section entitled "Inapplicable to Ineligible Receivables" in the general comments in AFME's response to the ABCP Guidelines. While primarily relevant to ABCP, the same considerations could apply to some non-ABCP securitisations and the same approach should be taken of permitting ineligible receivables into the securitised pool provided they are sold into the pool on a zero funding basis.

In general, these clarifications are helpful and AFME members agree with them. We note that Article 20(11) requires that underlying exposures be transferred "without undue delay" and that the draft Guidelines do not provide any guidance as to the meaning of "undue delay". It would be helpful if the EBA could confirm the meaning of "undue delay" in this context. AFME members would suggest it should be defined as "within a reasonable period taking into account the broader commercial considerations applicable in the context of the relevant transaction". We would further suggest that any period of up to 6 weeks after selection be deemed reasonable, with any longer period being acceptable as well if it satisfies the principle set out above.

Some areas of particular note are as follows:

- **To the best of the originator's or original lender's knowledge:** The guidance in paragraphs 44 and 45 of the draft Guidelines is in general very helpful and AFME members strongly support it. Our only concern is with the words "including publicly available information" at the end of paragraph 44. This language is taken from recital (26) of the Securitisation Regulation but the reference to publicly available information is added in the draft Guidelines. We are concerned that this addition will mean that originators and original lenders are effectively deemed to know any information that is "publicly available" whether or not they did actually know it. We would suggest omitting these words from the end of paragraph 44. We would also note that the opening words of paragraph 44 should refer to Article 20(11) and not Article 24(9) of the Securitisation Regulation.

- **Credit registry:** This guidance is very helpful and AFME members strongly support its inclusion, however, we believe the reference to the "time of origination" in Article 20(11)(b) is intended to refer to origination of the asset rather than origination of the securitisation. This would explain the different wording to the "time of selection" used in the opening passage of Article 20(11) and would be more consistent with market practice. Requiring this to be re-checked at the time of origination of the securitisation would be very onerous and at odds with established market practice.

  AFME members would further suggest that the principles underlying paragraph 47 and 48 should be further explained. The example provided in paragraph 48 (of a debtor with missed payments resolved within two payment periods) is helpful, but not sufficient without an explanation of the underlying principles. We would suggest that the final Guidelines should make clear that the reference to "adverse credit status" means the obligor in question was, at the time of origination of the asset, noted on a public credit registry with a status meaning that they could not realistically obtain credit from a mainstream lender.

- **Significantly higher risk of contractually agreed payments not being made:** This standard is difficult to apply and AFME members welcome guidance to assist them in doing so. However, the comparison of the specific credit score of each underlying asset against the average credit score of non-securitised assets is problematic without a specific standard. AFME members would suggest that, in this context "significantly higher" should mean having been mapped to or classified under readily determinable criteria. Depending on what is appropriate for the originator, its systems and the transaction, this could be an accounting classification of "doubtful receivables" or similar under the relevant accounting principles, or it could be a set statistical test for risk of non-payment (e.g. two standard deviations below the mean credit quality of comparable non-securitised exposures).

Q14. Do you agree with the interpretation of the criterion with respect to exposures to a credit impaired debtor or guarantor?

It is very helpful that paragraph 42 confirms that other possible circumstances not captured in points (a) to (c) should be outside of the scope of this requirement and AFME members strongly support the inclusion of this clarification. However, AFME members disagree with the proposed clarification in paragraph 43. In general, the purpose of a guarantor is to "cure" a situation where the primary debtor may not have sufficiently strong credit to undertake the obligations on its own. To say that assets should be excluded from STS even where the primary debtor is able to procure a guarantee that addresses the credit issues is unduly restrictive. Rather, the words "exposures to a credit-impaired debtor or guarantor" should be interpreted to refer to the situation where the debtor (in the absence of a guarantor) is credit-impaired or the guarantor (where there is one) is credit-impaired.

Q15. Do you agree with the interpretation of the criterion with respect to the exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process?

While AFME members acknowledge that paragraph 46 of the draft Guidelines is a reasonable interpretation of the level 1 text, on its own, it does seem at odds with the third paragraph of recital (26) of the Securitisation Regulation which refers to taking a prudent approach "to **exposures** which have been non-performing and have subsequently been restructured" (emphasis added) rather than to obligors who have such exposures generally.

In addition we would note that this interpretation is prejudicial to consumers who have had specific credit problems that have since been fully remediated (e.g. due to temporary loss of employment following a redundancy or consumers who have been subject to restrictions resulting from over-indebtedness but are once again eligible for new lending). The proposed guidance will tend to drive up their cost of borrowing unnecessarily and out of proportion to their actual credit risk. For these policy reasons, we would suggest restricting the exclusion to restructured assets (which seems more consistent with the level 1 text when recital (26) and Article 20(11) are read together).

At least one payment made (Article 20(12))

Q16. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

AFME members agree with the proposed guidance set out in the draft Guidelines and have no comments on it.

No predominant dependence on the sale of assets (Article 20(13))

Q17. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or *additional aspects be covered? Please substantiate your reasoning.*

In relation to paragraph 55 of the Guidelines, which would restrict the availability of the exemption for certain repurchase obligations and value guarantees, the credit quality test for third parties is inappropriate. In many cases (especially in relation to high quality auto transactions) the seller's parent company, its majority shareholder or some other affiliate grants this repurchase obligation. It is also sometimes the car dealers who have these repurchase obligations. Most of these parties will not be eligible as third party guarantors under the CRR credit risk mitigation framework, for example due to rating requirements, but it is clear that the level 1 text was drafted with the intention that their guarantees should be effective for the purposes of this exemption.

That said, AFME members acknowledge the need for some form of requirement in order to avoid the situation where, e.g. an empty shell company takes on this obligation with no realistic prospect of being able to comply. We would suggest that, in order to be an eligible value guarantee or repurchase obligation, the entity providing the guarantee or undertaking the repurchase obligation must have a capacity to pay that is consistent with a broader commercial enterprise.

This is also consistent with the spirit of the criterion. The purpose of a repurchase obligation is not to absolutely guarantee repayment, but to meaningfully reduce the reliance on sale of assets securing the underlying exposures. It is effectively substituting exposure to the resale value of the underlying exposures for exposure to the party with the repurchase obligation.

Further, the exemption should also apply where the repurchase obligation is to repurchase the underlying exposure at its outstanding amount, (rather than the asset securing the underlying exposure) as this is functionally a better guarantee of repayment for the liabilities of the securitisation and this approach is common in e.g. French auto transactions. More broadly, the EBA should clarify that any mechanism which economically fully guarantees the residual value or otherwise mitigates the residual value risk should be acceptable (for example, a put option granted to the SSPE). This is necessary because there may be restrictions on the use of some forms of repurchase in some jurisdictions, for true sale or other reasons. It should also be made clear that the repurchase obligation (or economically similar mechanism) should not require any obligation to repurchase defaulted receivables.

Finally, we would note that this repurchase obligation is another example of repurchase that should not be viewed as "active portfolio management" for the purposes of Article 20(7).

Q18. Do you agree with the interpretation of the predominant dependence with reference to 30% of total initial exposure value of securitisation positions? Should different percentage be set dependent on different asset category securitised?

We believe that a 30% limit on residual values is unduly restrictive, and is incompatible with the plain meaning of the level 1 text. What is more, this would prevent many market-standard and high-quality auto and equipment leasing transactions from qualifying as STS. We believe that "predominant" dependence should be interpreted as the "main" or "largest" source of payments, i.e. that sale proceeds would be required for more than half of the funds used to repay investors.

Further, we consider it is necessary to adjust both the numerator and the denominator in this percentage.

Changes required to the numerator

The guidelines as drafted use as the numerator the value, at the time of transfer, of the assets whose sale is relied on. This is not the appropriate measure, because it does not fairly reflect extent of the reliance upon sale proceeds.

By way of example, consider a transaction in which, at the time of transfer, every exposure is to an auto lease transaction in which the customer pays a contractual rental for a fixed period, and then has the option, but is not obliged, to purchase the car for a "balloon payment" – with the balloon payment set below the projected future value of the vehicle at expiry of the lease. Suppose the transaction has the following metrics:

- Total market value of financed vehicles €105m (A)
- Total value of contractual lease receivables €80m (B)
- Total value of optional balloon payments €20m (C)
- Total of projected residual values at time of lease maturity €25m (D)
- Total value of liabilities = total value of assets = B+C = €100m (E)

All of the vehicles are assets whose sale is relied on as a source of repayment for the securities. The total market value of these vehicles is €105m, and the initial value of all securitisation positions is €100m. Therefore, to use the phraseology in the guidance, the transaction relies on the sale of assets the value of which at the time of transfer of the exposures corresponds 105% of the total initial exposure value of all securitisation positions held in this securitisation. 105% > 30% and so the test is failed. However, only 20% of the anticipated cash flows come from asset sales, and therefore the extent of dependence on asset sales is very low.

The numerator should be defined in terms which reflect the extent of the assumed cash flows which are dependent on asset sales – in this case €20m – rather than the market values of assets at the time of transfer, where those assets are depreciating assets to be sold at a later date.

Changes required to the denominator

The denominator in the calculation should be modified to exclude securitisation positions retained by the originator, such as subordinated notes or deferred purchase price obligations.

This is illustrated by the following example:

Transaction	A	B
Total value of contractual lease receivables	€80m	€80m
Total value of optional balloon payments	€20m	€80m
Total value of asset pool	€100m	€160m
Notes sold to third party investors	€90m	€70m
Sub note retained by originator	€10m	€90m
Total value of securitisation positions	€100m	€160m

The payments from asset sales comprise 20% of the value of all securitisation positions in transaction A, and 50% of the value of securitisation position in transaction B. Therefore, the ratio is worse in transaction B. But there is less dependency on asset sales in transaction B, because the contractual lease receivables cover 114% of securities sold to investors (80m/70m), whereas in case A they cover 89% of them (80m/90m).

It would be more logical for the calculation to reflect the fact that, in transaction A, investors are reliant upon asset sales delivering €10m out of a total of €90 (11%), and in transaction B, where all of the securities can be repaid without any asset sale proceeds, the dependency should be zero.

Hence, the relevant ratio should be:

> 100% – (CR / TPI)
>
> Where:
>
> CR = initial value of receivables which are not dependent upon sales of assets (e.g. the contractual lease receivables)
>
> TPI = initial value of all positions in the securitisation held by third party investors

We understand that the fact that any of the debtors has the option to return the financed asset (as in the case of "voluntary termination" under the UK Consumer Credit Act) and be released from its obligation to repay the related financing should not of itself be considered as making repayment depending on the sale of assets. In those cases the return option is a required term of the financing contracts, but resale of returned assets is not intended to be a predominant source of repayment. It would be helpful if the Guidelines confirmed this view.

The materiality threshold in paragraph 53b has not been defined. This requirement could be difficult to satisfy during a replenishment period. Also, there might be a few peaks in terms of sale of assets (e.g. as a result of targeted commercial campaigns for selling new cars). This should not be disallowed (and typically there would be additional protection in the transaction for this).

The granularity threshold of 500 exposures is too high. There are good arguments for the view that granularity effects begin to take hold in pools as small as 10 assets[1] and AFME members would argue that this is sufficient for the purposes of avoiding excessive reliance on the sale of underlying assets, provided the relevant sales are sufficiently well-distributed in time, as to which see above. At most, however, this should require 100 obligors, so as to be consistent with the threshold in other analogous contexts such as the rules applying to large exposures in securitisations, and investment funds taking on exposures to underlying assets.

It should be clarified that the three requirements in paragraph 53 are applicable (i) at the transaction inception in case of amortising securitisation or (ii) during the revolving period only for replenishing transactions.

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[1] See Duponcheele, Perraudin, Pickett and Totoum-Tangho, "Granularity, Heterogeneity and Securitisation Capital" (2013).

Appropriate mitigation of interest-rate and currency risks (Article 21(2))

Q19. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

The requirements of the draft Guidelines in this respect go well beyond market practice in a manner that is extremely onerous and impractical to comply with in a number of ways:

- **Paragraph 57e:** The requirement for a "concise sensitivity analysis that illustrates the effectiveness of the hedge under extreme but plausible scenarios" represents a significant element of additional work to be done presumably in the offering document (where there is such a document) and the ongoing reporting. It also does not provide market participants with clarity as to whether they are complying correctly. Further, it is not clear what level of interest rate or currency exchange rate stress should be used.

- **Paragraph 58:** The requirement that non-derivative forms of mitigation always meet one of the criteria in points a or b of this paragraph is overly restrictive. Provided that the mitigation put in place is sufficiently robust to cover the relevant risks and it is clearly disclosed to investors, that ought to be sufficient. The requirement that interest rate and currency risks be mitigated by dedicated and funded reserves is, in particular, inappropriate. Parties should be permitted to cover those risks by subordination or overcollateralization or other mechanisms such as minimum martgin maintenance. For example, for certain asset classes with a rapid amortisation profile (e.g. dealer floorplan receivables), it is usual to cover the interest rate risk with subordination. It should also not be necessary to have separate reserves covering only interest rate and currency risks. Having reserves, subordination or overcollateralisation covering multiple risks is better for the investor, as if one of the multiple risks does not materialise, this is additional reserve/subordination for the mitigation of the other risks. In revolving securitisations of short-term assets such as credit cards or trade receivables, the level of required overcollateralisation can be adjusted dynamically over time to take account of changes in interest rates, default rates and other factors. Parties should also be permitted to have interest rate and currency risk mitigated partly by a dedicated reserve and partly by subordination/overcollateralisation.

- **Paragraph 59:** The requirement for continuous disclosure following the initial transaction documentation is extremely onerous and not justified by the level 1 text. Initial disclosure of measures put in place combined with information available through standard investor reporting and event-driven reporting requirements (under Article 7(1)(f) or 7(1)(g) of the Securitisation Regulation) are more than sufficient to provide the relevant information to investors without the need to impose yet another disclosure requirement on securitisations.

Finally, it would be helpful to clarify in the Guidelines that, where the securitisation does not create interest rate or currency risks (because the assets and liabilities of the securitisation are matched in any of these respects) there are no risks to mitigate and this requirement therefore does not apply.

Referenced interest payments (Article 21(3))

Q20. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

In general this guidance seems broadly sensible. However, AFME members have a serious concern about the restriction inserted in paragraph 62b. In particular, AFME members are concerned that this definition may not be sufficiently broad as to encapsulate standard variable rates, which are the basis on which a large portion of the residential mortgage markets operate. A significant portion of the RMBS portfolios in the EU are made up of assets that depend on a standard variable rate as the basis of setting the interest rate. AFME members also understand that the purpose of the inclusion of the words "generally used sectoral rates reflective of the cost of funds" was specifically to permit the use of SVR on assets in STS portfolios.

Accordingly, AFME members would suggest amending paragraph 62 of the draft Guidelines to clarify that standard variable rates are permissible reference bases for assets in an STS portfolio.

Requirements in case of enforcement or delivery of an acceleration notice (Article 21(4))

Q21. Do you agree with the interpretation of this criterion, and the aspects that the interpretation? is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

See AFME response to Q20 in ABCP Guidelines.

In general this guidance seems sensible and AFME members are supportive, with the exception of the guidance in paragraphs 66 and 67. We also have comments on paragraphs 68 and 69.

In paragraph 66, the requirement for the trustee to agree any amount of cash to be trapped in the SSPE is, in practice, unhelpful. It is based on English law structures and may not apply in the same form in other jurisdictions. For example, in French securitisation structures, a management company has a significant role. Even in English law structures with a trustee, trustees are unlikely to feel comfortable playing this role and may well refuse to express a view one way or the other. It would be more appropriate for the issuer (in practice via one of its agents) to disclose what cash was being trapped in the SSPE and for what reason. Any investor who objects could then do so via the channels open to it in the transaction documentation.

In paragraph 67, the reference to "in the next payment period" is unhelpful. We believe that it is intended that the reserve fund could be kept as long as necessary, with payouts being made to investors as soon as possible. This could be clarified by the insertion of numbering, as follows:

"For the purposes of Article 21(4) of Regulation (EU) 2017/2402, it should be allowed to trap the cash in the SSPE in the form of a reserve fund for future use, as long as the use of the reserve fund is exclusively limited **(i)** to the purposes set out in Article 21(4)(a) of Regulation (EU) 2017/2402**;** or **(ii)** to the orderly repayment to the investors in the next payment period."

Further, on paragraph 67, moneys retained for expenses of liquidation etc. should be identified and recorded, but it should be made clearer there is no regulatory requirement to keep them in a segregated account; rather they can be retained in the SSPE's operating account and any balance included in available funds for the next period.

The reference in paragraph 68 to sub-classes needs to be clarified. While terminology may differ between transactions, very often sub-classes within a single class have the same seniority and degree of exposure to credit risk, but are distinguished from each other by other features (such as currency or interest rate) and would be paid rateably, not sequentially. Sub-classes of a single class may also be "time-tranched" – that is scheduled to mature on different dates, and paid sequentially so long as no credit trigger event has occurred, but paid *pro rata* in the case of an early amortisation or enforcement event.

Also, at the beginning of paragraph 69, the reference to "a situation of a seller's default" is incorrect, as the level 1 text refers only to circumstances where an enforcement or an acceleration notice has been delivered. A seller's default is not, in and of itself, relevant here and the reference should be deleted. At the end of paragraph 69, the EBA should add "or pro rata amortisation between the different classes of notes may be accepted".

Non-sequential priority of payments (Article 21(5))

Q22. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

AFME members agree with this illustrative list on the understanding that not all triggers set out in paragraph 71 need be included in every transaction.

Early amortisation provisions/triggers for termination of the revolving period (Article 21(6))

Q23. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

AFME members have a number of comments in relation to this:

- The occurrence of an insolvency event with respect to the servicer should trigger early amortisation but should not necessarily trigger the replacement of the servicer, especially where the servicer continues to operate as a going concern.

- Paragraph (c) could helpfully be clarified. Transactions in the market use a number of different approaches to this general concept depending what is appropriate in the circumstances. Some will use an absolute nominal value of assets. Some use a "principal deficiency ledger" concept that seeks to compare (usually by means of a ratio) performing assets in the transaction against unamortised liabilities. Some will adjust amounts to remove loss-absorbing equity tranches from the liabilities side of the ratio. It would be helpful if the final Guidelines could clarify that a range of approaches to this would be acceptable, provided there is an early amortisation trigger that is reasonably designed to reflect this requirement.

- Finally, it would be useful to clarify in respect of both paragraphs (c) and (d) that a temporary seasonal shortfall should not be sufficient to trigger early amortisation. Instead, this should be measured at a fixed time annually in order to avoid problems relating to seasonal variations in some asset classes.

Transaction documentation (Article 21(7))

Q24. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

AFME members request the deletion of the guidance in paragraph 73 as it is confusing. The standard setting out what documents must be disclosed is contained in Article 7(1)(b) as those documents "essential for the understanding of the transaction" including those documents listed. There is no basis for or need to create a separate disclosure standard in this context.

Expertise of the servicer (Article 21(8))

Q25. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Is the requirement of minimum of 5 years of professional experience appropriate and workable in practice? Please substantiate your reasoning.

In respect of the requirement for well-documented and adequate policies, procedures and management controls, AFME members are concerned that this may prove extremely burdensome. In respect of entities subject to supervision in the Union, it is not necessarily the case that all entities subject to such supervision will have been assessed in respect of their servicing of exposures of the type they are servicing in respect of a particular securitisation. In addition, it is not clear that this could always be easily checked by a third party.

In respect of non-supervised entities, the requirement for third-party review is burdensome, unsupported by the level 1 text and it is anyway unclear what the content of the third-party review would be.

Q26. Do you agree with this balanced approach to the determination of the expertise of the servicer? Do you believe that more rule-based set of requirements should be specified, or, instead, more principles-based criteria should be provided? Is the requirement of minimum of 5 years of professional experience appropriate and exercisable in practice?

Our comments above in response to Q11 in respect of originator's expertise apply *mutatis mutandis* to the provisions on servicer expertise. In addition, paragraph 75b(iii) makes reference to a "back-up servicer compliant with paragraph 7(a)", which appears to be an incorrect cross-reference, perhaps to paragraph 75(a).

Remedies and actions related to delinquency and default of debtor (Article 21(9))

Q27. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Paragraph 79 of the Guidelines covers the meaning of "clear and consistent terms" but does not bring additional guidance on "remedies and actions relating to delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge offs, recoveries and other asset performance remedies."
Additional guidance would be helpful on the following items in particular:

- Whether a generic description of the origination/servicing process in the servicing or purchase agreement is sufficient.

- When there are several generations of contracts or different contractual terms in the underlying pool (e.g. for payment holidays), it may not be manageable to list all the possible cases for all the underlying contracts as this would basically require parties to disclose all the possible templates included in the portfolio.

- The templates and processes may change over time, without the changes being necessarily material. It should be clarified that no update is necessary unless the change is significant.

Resolution of conflicts between different classes of investors (Article 21(10))

Q28. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

AFME members agree. We would, however, delete the words "resolution of such conflicts by means of" in paragraph 80e. Resolving conflicts is of course the purpose of such meetings or conference calls, but it is impossible to guarantee resolution of the conflict by those means.

Data on historical default and loss performance (Article 22(1))

Q29. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

AFME members broadly support the draft guidance provided. However, in respect of paragraph 82, we would note that the cross-reference to the forthcoming risk retention RTS uses as a basis of comparison only assets that are held by the originator which are not securitised. In this context, we do not believe it is the intention of the EBA to limit the comparable assets to those held by the originator and not securitised (indeed, the explicit permission to use external data in paragraph 81 supports our conclusion in this respect). Therefore, we would suggest that the EBA amend the guidance in paragraph 82 slightly to make clear that the test is used only to identify which exposures are "comparable" and that the historical data required by Article 22(1) may relate to assets regardless of whether they are held by the originator, securitised, or indeed purchased from third parties.

In addition, market practice is generally to provide static data for defaults and recoveries and dynamic data for prepayments and delinquencies. It would be helpful if the final Guidelines confirmed that this market practice was acceptable.

Verification of a sample of the underlying exposures (Article 22(2))

Q30. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

The proposals here are sensible in part, but the elements of verification required and the type of disclosure contemplated are both significantly at variance with existing market practice. In particular:

- pool audits are performed to check the accuracy of the information in the loan database/data tape, not to confirm eligibility requirements;
- it should also be clarified that such verifications need be done only before the initial issuance of securities;
- the representative pool sample used for the purpose of the pool audit is extracted from a preliminary pool (not the final one), as the audit is generally performed some months before the closing of the securitisation;
- the 95% confidence level relates to the pool audit (and determines the size of the sample to be audited) and therefore should be mentioned in paragraph 85a, not 85b

The type of verification proposed would likely add significant costs to the external verification process without adding corresponding value for investors in these transactions.

Liability cash flow model (Article 22(3))

Q31. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

In respect of paragraph 87 of the draft Guidelines, AFME members believe this guidance is helpful in general. However, as a result of discussions with certain national competent authorities, AFME members believe it would be useful to clarify that a model may include algorithms permitting investors to model a range of different prepayment rates, default rates and other factors that will affect cashflows and that this will not prevent the model from "precisely" representing the contractual relationship between the underlying exposures and the payments.

Environmental performance of assets (Article 22(4))

Q32. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

AFME members strongly support the guidance provided in the draft Guidelines. However, significant elements of this requirement remain uncertain, including:

- What information is to be reported when information is available and captured in the relevant databases or IT systems? Is a stratification of the pool by reference to e.g. energy performance rating sufficient?

- What if information is only captured on some assets in the pool? Is it appropriate to disclose that partial information?

Q33. Please provide further details and suggestions what type of information is available for residential loans and auto loans and leases that could be provided under this requirement.

AFME members have no further suggestions in this respect.

Compliance with transparency requirements (Article 22(5))

Q34. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

AFME members have no comments on this.

STS criteria not specified above (i.e. no resecuritisation requirement (Art. 20(9)) and risk retention requirement (21(1))

Q35. Do you agree that no other requirements are necessary to be specified further? If not, please provide reference to the relevant provisions of the STS Regulation and their aspects that require such further specification.

Subject to the comments made above, AFME members believe that the guidance provided is sufficient and will help to promote the success of the STS securitisation markets.