This document provides the responses of the Dutch Securitisation Association on the EBA Discussion Paper on Simple, Standard and Transparent Securitisations

The Dutch Securitisation Association welcomes the opportunity to respond on this Discussion Paper. This response has been drafted in coordination and agreement with securitisation representatives of the NVB Dutch Bankers Association.
In our view, the Paper is a major step forward in the efforts to establish a properly regulated European securitisation market by developing different regulatory requirements for "qualifying" or equivalent securitisations as compared to other securitisations.

General comments

In the Discussion Paper, EBA recommends a systematic review of the entire regulatory framework applicable to securitisations, across regulations and regulators, also in comparison to other instruments like Covered Bonds and Whole Loan portfolios.
The DSA welcomes this approach, but would also like to point to the urgency of such a review and the apparent lack of coordination between several similar regulatory initiatives.

For "Qualifying" Securitisation positions there is, according to the paper, merit to propose for the most senior classes capital charges for RMBS **which more closely mimic** those for Covered Bonds. This is also strongly supported by the DSA.
Qualifying Securitisations would have to meet 2 sets of criteria, one set identifying Simple, Standard and Transparent securitisations, and one set addressing Credit Risk.
Our comments on the criteria and related questions raised by EBA are provided in the remainder of this document.

While we agree with many (but not all) of the criteria, we would like to highlight 2 important issues:
1) Not all criteria apply to all sorts of regulation. For liquidity regulation another subset of requirements will have to apply compared to capital regulation.
2) It is a challenge to make this operational. For many criteria it is difficult to check the boxes: legal opinions are not always black or white and can not be relied on by investors; also different law firms provide different opinions on the same issue; anyway, many interpretation questions may arise. In order for the initiative to be successful, it is key that eligibility is easily verifiable by investors. It would be helpful for instance if an entity (either inside the regulatory world, or a non-profit organisation like PCS) could quickly check all the boxes: an investor cannot wait for weeks, pending confirmation (from whom anyway ?) that a deal qualifies, to make an investment decision.
This also requires that the criteria are described in a way that they can easily be checked. In our comments we have suggested some wording that might be helpful in this respect.

Question 1: Does the DSA agree with the identified impediments to the securitisation market ?

We do not agree with the general assertion that the *stigma* placed on securitisation is the result of insufficient transparency and disclosure. We would like to stress that this stigma is mainly caused in other jurisdictions than the Netherlands by asset classes that could not be considered as prime ABS in the first place. Moreover, through the DSA the Dutch industry has been promoting standardisation and transparency.

The macro-economic environment certainly plays a role in the short run: due to lower demand for loans. funding needs of banks also have been low, and the ample availability of free liquidity through the Eurosystem has not helped either.

The changing rating methodologies have mainly had an impact to the extent that the number of eligible counterparties has diminished.

Although we agree that the investor base has shrunk (a.o. SIV's and arbitrage conduits disappeared), this has not yet been an impediment: there is still not enough paper available to meet investor demand, and the entry of the ECB as major investor will further increase the supply-demand gap.

Regulatory uncertainty has definitely been an impediment. On top of the examples mentioned by EBA (BCBS, Solvency II, LCR, EMIR, Risk Retention and Disclosure), we could add the NSFR, Significant Risk Transfer and in fact also the uncertainty around level playing field/high quality that is being addressed not only by EBA, but also ECB/BofE and BCBS/IOSCO in a seemingly uncoordinated way.

<u>Pillar I Criteria; Simple</u>

Criterion 1: Securitisation as per CRR and no re-securitisation. Agreed. In order to optimize the potential regulatory benefit when comparing calibrations for qualifying and non-qualifying securitisations, we should stay close to the CRR definition.

Question 2: Synthetics to be excluded or not:

While synthetic securitisations may add more diversity and structuring flexibility to the securitisation market, we appreciate that synthetic securitisations may also add to the perceived complexity of the market as a whole. Against this background we fully understand that the criteria presented in the Discussion Paper for now focus on true sale transactions and we therefore agree with the exclusion of synthetic securitisations at this stage.

However, we do believe that synthetics can be a vital component in re-establishing a well-functioning European securitisation market, especially for SME securitisations, and that specific criteria for synthetic transactions (through standardisation of CDS criteria) can be developed, so we recommend to start to work on synthetic criteria soon after completion of the true sale criteria.

Criterion 2: No active portfolio management, only substitution. We agree as long as this rule can be applied with some operational flexibility and this does not exclude revolving transactions that otherwise meet Criterion 10. We would suggest to add the wording of the last sentence of the rationale ("Replenishment practices and practices of substitution of non-compliant exposures in the transaction do not configure as active management of the transaction provided that they would not result in a materially different composition of the portfolio") or similar wording to the actual criterion. In this context replenishment should include replenishment of unscheduled prepayments.

Criterion 3: Legal true sale and enforceability of the transfer; no severe clawback provisions: We do expect serious practical issues around "clean" legal opinions and investor due diligence on this point. How does EBA envision investors to check this ? We propose to delete the sentence "A legal opinion should confirm the true sale and the enforceability of the transfer of assets under the applicable law(s)" and to address this through the reps and warranties and not as an eligibility criterion.

Severe clawback provisions is a concept subject to interpretation. We would recommend that regulators give guidance on the determination in which jurisdictions severe clawback risks exist, by providing a list of eligible or acceptable jurisdictions.

Criterion 4: Homogeneous assets, arising from obligations with defined terms, consistently originated in the ordinary course of business, legal, valid, binding, enforceable, with full recourse and no refinancing risk: Although his excludes certain securitisations supporting the real economy, like multi-family housing CMBS and Infrastructure Securitisation, we do agree with EBA to define this criterion in a narrow way, based on the same argument used for Criterion 1 (optimization of regulatory benefit).
As regards refinancing risk: this should not apply to notes that, if not refinanced because there is no market, will be extended with a step-up coupon; this can be read in "repayment….was not **intended**…..to be….reliant on the refinancing….", but may need some clarification.

Criterion 5: No disputed, defaulted, credit-impaired assets; no derivatives other than hedging the transaction. Agreed.
***Question 3: Is the proposed Default Definition (exposure>90 days past due; debtor unlikely to pay) better than the CRR Default Definition (obligor unlikely to pay; obligor>90 or 180 days past due*)?:**
For operational reasons we strongly prefer to stick to one definition for all regulatory purposes. For the time being we prefer the CRR definition, but this should be reviewed if and when EBA publishes a paper on the definition.

Criterion 6: At least one payment made (except for Overdrafts, Credit Cards). Agreed.

Question 4: Should there, for the purpose of standardisation, be limits imposed on the jurisdictions involved:
We believe in standardisation, but we also would like to include as many countries as possible in order to make the playing field also as leveled as possible.

Pillar II Criteria: Standard

Criterion 7: Fulfill the CRR retention rules: After reading the 22 December 2014 EBA Opinion on retention, we are strongly than ever opposed to the unleveled playing field with the US on retention, especially the exemption for US mortgages as compared to the full 5% retention for prime European RMBS, where loss rates are well below 1%.
However, any redrafting of the retention rules should be done in the CRR. The standardisation criteria should refer to the CRR and not have their own retention rules.

Criterion 8: Interest and currency risk mitigated/hedged: The interpretation of "mitigated" may be problematic. We do support efforts to become less dependent on hedging counterparties, since this would increase transparency and reduce complexity.
Structural protection should be an acceptable mitigant if transactions are not fully hedged.

Criterion 9: Reference only to commonly encountered market interest rates. Agreed, but the interpretation of "commonly agreed" may create problems.

Criterion 10: Appropriate early amortisation events/triggers. Please see our comment on Criterion 2. For trigger (ii), failure to generate sufficient new underlying exposures, we would recommend to allow a grace period.

Criterion 11: Following an Event, sequential amortisation priority according to seniority and no provisions requiring immediate liquidation of the assets. Agreed.

Criterion 12: Certainty over the replacement of crucial roles (Servicing, Hedging, Liquidity, Bank Accounts). Agreed.

Criterion 13: "Identified person" should be able to resolve conflicts. Agreed, except for voting rights. We propose to delete the last sentence of this criterion.
Question 5: Does the distribution of voting rights to the most senior tranches conflict with any national provision and/or deter investors in non-senior tranches:
There is no conflict with any national provisions in The Netherlands.
Tranches without any voting rights have only been structured to be retained. Third party investor are not likely to buy notes that are completely dependent on the voting behavior of holders of other note classes, since senior note holders could completely neglect the interests of junior note holders.
On an associated topic, we would like to point to the fact that voting rights can also be provided to third parties, like swap counterparties.

Criterion 14: Strong and experienced servicer in place. Since critical mass is required, servicing is a market with a limited number of active competitors. New entrants that hire teams of experienced servicing staff, should be recognised as experienced servicing firms.

Pillar III Criteria: Transparent

Criterion 15: Compliance with the Prospectus Directive. Although this will exclude most private transactions, we agree for reasons of transparency

Criterion 16: Meet the CRR and CRA3 disclosure requirements: Please see our comment on Criterion 17.

Criterion 17: Where legally possible, investors should have access to all underlying transaction documentation: Even with the "where legally possible" added, we still have a problem with confidentiality and data protection issues. Full disclosure also excludes non-public transactions (if they would meet Criterion 15 at all).
All material information is available in the Prospectus. We propose to delete this Criterion or at least limit the disclosure of documents to a subset of **material and relevant** documents to be agreed between issuers, investors and regulators.
Question 6: Should transaction documentation be disclosed prior to issuance:
This is not realistic: in practice, documents are often still turned around right before closing of a transaction. Investment decisions should be made on the basis of the Prospectus. Documents, if any, can be provided together with investor reports as part of ongoing transparency.

Criterion 18: The transaction documentation should provide definitions, remedies, actions relating to asset performance, priority of payments, triggers, changes in waterfall following breaches. Originator/sponsor to provide liability cash flow model, both before the pricing and ongoing: Triggers etc. will be provided in the Prospectus. A Cash Flow model will (have to) be available through external providers (Bloomberg, Intex etc.). Two models (one company provided, one external) would also be extremely confusing for investors.
With regard to the approach with respect to asset performance, and more specific arrears and defaults, we agree that the transaction documentation should broadly describe an arrears and default management policy. We would however oppose to a requirement that would be too prescriptive (and too detailed) describing how all types of solutions would be applied. The files and circumstances of debtors in financial distress can vary a lot and servicers should have full discretion to tailor the best possible solution to a specific case in order to regain the performing status and/or to minimize a potential loss.

Criterion 19: Confirmation of external verification by independent party in the transaction documents: This information should be included in the Prospectus, not the transaction documents. What is an independent party and what needs to be done with the findings of the verification? We propose to follow the PCS definition, which also allows for an annual audit on the entire eligible pool of the originator: the assets will, prior to the issue date, be subject to a third-party review according to agreed procedures of a random sample as follows: 1) review of the assets in the securitisation; or 2) a general review undertaken in relation to the originator's general portfolio within the last 12 months prior to the issue date.

Criterion 20: Historic data for at least 5 years. Agreed.

Criterion 21: Loan-by-loan data before pricing and ongoing, and aligned cut-off with investor reports: Ongoing this is possible, before pricing will be an operational challenge.

Criterion 22: Quarterly investor reports with detailed disclosure requirements. Yes, assuming that the DSA standard is acceptable for this purpose. With regard to data with respect to credit quality and performance of the underlying assets, we want to refer to our reply on Criterion 18. Because of the specific nature of each arrears and default management file, we do not think that providing data on debt restructuring, debt forgiveness, forbearance and payment holidays would provide any added value to the investor report.

Credit Risk Criteria

Criterion A: Exposures underwritten according to CRD prudential criteria. Agreed.

Criterion B: Largest obligor <1% of total pool.
Question 7: Does a 1% granularity threshold pose an obstacle for any specific asset class and if so would another threshold be more appropriate:
Granularity is an important criterion. However strict application of the 1% rule might be difficult in certain SME securitisations. We would prefer to stay closer to the existing large exposure limits for banks, instead of defining a new granularity concept.

Criterion C: The underlying exposures should be:
-On EEA entities
-Subject to certain max. risk weights (Res. Mortgages: weighted average [40]%; Comm. Mortgages: per loan [50]%; retail per loan [75]%; other exposures per exposure [100]%) under the Standardised Approach (currently: 35%, single-A: 50%, 75%, 100% resp.)
-If Mortgages, secured by first or first and lower ranking security rights
-If Residential Mortgages, have an LTV<100%
Comments: we see more value in an IRB based risk weight criterion. The Standardised Approach risk weights are more or less fixed..
Also, the 40% for Residential Mortgages may be problematic for Dutch issuers that do not originate (sufficient) NHG guaranteed mortgages.
We do not agree with the LTV criterion.
First of all it discriminates the safest European securitisation class against other asset classes where no such requirements on top of maximum risk weights are stipulated.
Next to that, the 100% is very arbitrarily chosen.
However if an LTV constraint would be applicable, it should be based on the LTV at origination, which provides more certainty to investors on maintaining criteria eligibility on their investments and, in line with the LCR and Solvency II criteria, next to the LTV constraint an alternative through meeting a certain Debtservice-to-Income ratio (again at origination) should be available.

Question 8: Do you agree with the criteria for SST and Credit Risk and/or should any other criteria be considered:
Please see our comments above. No further criteria are required.

Capital Treatment

Question 9: Do you envisage any potential adverse market consequences of introducing a qualifying securitisation framework for regulatory purposes:
The problem with this concept is that it is rather binary. Products that just fall in or out will be faced with huge differences in capital treatment, leading to market imperfections and arbitrage opportunities. In a perfect world each asset class and jurisdiction would have its own capital requirements.

Question 10: How should capital requirements reflect the partition between qualifying and non-qualifying:
Capital requirements for qualifying securitisations should be close to the capital requirements for the underlying exposures (and risk weights for the most senior tranches well below the risk weights for the overall pool). For other securitisations capital requirements could be up to double the underlying exposures' risk weight in order to cover structural and model risk (but with risk weights for the most senior tranches still below the risk weights for the overall pool).
In order to align with the Basel Committee proposed models, we suggest to use a European style, properly calibrated, SSFA formula, as developed by Duponcheele, Linden and Perraudin in their November 7, 2014 proposal for a European SSFA.

Question11: What is a reasonable calibration across tranches (less on junior and senior, more in between ?):
Capital charges for the most senior RMBS should be close to those for Covered Bonds. Any remaining capital requirement can be allocated to the more junior notes on a gliding scale.

Question 12: How to address rating ceilings in the calibration:
We are generally in favor of moving away from any external ratings based approach. However, as long as ratings and rating agencies are needed, rating ceilings have to be accepted as a given. However, the proper calibration of the European SSFA as referred to under Question 10, will be a solution for parties able to use the SSFA.