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***Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of some 4,500 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU alone.***

## EBF response to the EBA Discussion Paper on Simple Standard and Transparent Securitisations

The EBF welcomes the opportunity to express the views of the EU banking industry on the discussion paper published by the European Banking Authority (EBA) at the behest of the Commission following its call for advice[[1]](#footnote-1) on the identification of simple standard and transparent securitisations. The EBF appreciates the determined resolution of European policy makers to put in place policy actions that can help overcome the obstacles to the proper functioning of the European securitisation market from the beginning of the crisis.

The EBF notes that the EBA paper distills the essence of other papers recently issued[[2]](#footnote-2) and puts forward a pragmatic solution to identify simple standard and transparent securitisations which is a necessary step to move forward and take concrete actions. Importantly, the proposals have to be assessed together with the revisions to the Securitisation Framework which latest version has been published by the BCBS in December 2014 after two consultations. Additionally, the Committee and IOSCO have issued a consultative document with proposed criteria for identifying simple, transparent and comparable securitisations. Moreover, it has been announced that the Committee will consider in 2015 how to incorporate such criteria into the Securitisation Framework.

The identification of simple standard and transparent securitisations in Europe is a necessary step but not sufficient to revive the European securitization market. It needs to be coupled with slight changes to the capital requirements framework that would permit the revival to happen. For that purpose, the EBF response begins with a section of introductory remarks on the securitisation prudential framework including a plausible proposal to promote the EU qualifying securitisation market with no further delay.

This EBF response document is based on the EBF stance elaborated in previous answers to relevant consultations on the subject by the Basel Committee[[3]](#footnote-3) and the BoE and the ECB[[4]](#footnote-4). The EBF position is enhanced with specific suggestions as to the questions raised in the EBA Discussion Paper.

We aim at providing pragmatic views within the general lines of the EBA rightly proposed initiatives that could make upcoming actions timely and effective.

## Introductory remarks on the securitisation prudential framework

* The EBA analysis of the situation of the securitisation market rightly starts with a first recommendation for a holistic review of the regulatory framework which includes a number of policy measures of different nature that have been (or are to be) enacted with a direct effect on diverse securitisation instruments. Only in the light of that information the effects of new initiatives could be rightly construed.
* Evidence suggests that the current prudential framework implies capital for all tranches that is a large multiple of the capital required for holding the underlying assets. For many asset classes, the multiplying factor is more than 2 in all EU countries and it scales up to 4 or 5 in some countries. This is clearly reflected in the EBA analysis of SME retail portfolios[[5]](#footnote-5). Against this background, it is imperative to address this issue in the first place.
* The EBF has long advocated approaches based on the concept of capital neutrality pre-and post-securitisation, Arbitrage-Free-Approach (AFA)[[6]](#footnote-6) as well as its conservative calibrated version, the Conservative Monotone Approach (CMA)3 for the prudential treatment of securitisations3. In this vein, the EBF, with the agreement of the vast majority of its members[[7]](#footnote-7), would like to propose as an effective and immediate measure that European policy makers can take without any significant departure from the international standards, to put in place with no delay a European Simplified Supervisory Formula Approach (SSFA)[[8]](#footnote-8) for qualifying securitisations. The use of an European SSFAwill set a more stable and fair prudential scheme for European originated securitisations for the following reasons:
  + It will remove the uncertainty entailed in sudden rating fluctuations;
  + It will limit the pro-cyclicality associated to credit ratings;
  + It will avoid the bias implied by the domicile effect of external ratings documented in the EBA analysis.
* European policy makers should play a crucial role in the international debate to ensure that the European case is carefully taken into account by the Basel Committee in the design of a prudential framework for securitisations that incorporates a preferential treatment for Simple Standard and Transparent Securitisations.
* The tradability of securitised instruments is important for the sustainability of a liquid market. For that purpose, the prudential rules of the wider scope of financial institutions should be revised including those of asset managers and insurers.

## EBF comments on the specific questions of the EBA Discussion Paper

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| **Question 1: Do you agree with identified impediments to the securitisation market?** |

From our perspective, access to securitisation markets is mainly limited by:

* The regulatory uncertainty that affects both investors and issuers as well as the currently proposed risk weights;
* The relevancy of the several data-requests for transparency purposes from different authorities (ECB, ESMA …) and the costs involved due to the lack of harmonisation of different applicable regulations;
* The stigma created after the crisis;
* The macro-economic impact over securitisations in some jurisdictions, namely in countries hit by the Euro Area sovereign predicament;
* The restrictive and opaque rating criteria and methodology used by credit rating agencies;
* The funding alternatives at the disposal of financial institutions;
* The associated funding levels; and
* The transformation of the investor base of this type of instrument.

We agree with the identified impediments with the following remarks:

* Firstly, regarding the external rating process the tightened rating methodologies have created negative effects through various aspects including sovereign rating ceilings, counterparty risk criteria, or credit enhancements required. As a result the ability to access the market of originators based in harder-hit countries has been undermined. Moreover the massive downgrading of credit institutions during the financial crisis has dramatically decreased the number of eligible counterparties. This has contributed to the contraction of market supply.
* Secondly, the wide and still ongoing reshaping of the regulatory framework for securitisations generates uncertainty and concerns regarding the final treatment emerging from the process, particularly in terms of capital requirements. In addition, It is not entirely clear what level of harmonisation, i.e. EU only or global, is being pursued and the consistency degree among different pieces of regulation. A wider regulatory coordination to reduce the uncertainty among market participants would thus be highly desirable. Finally the frequent use of rating benchmarking in regulations has had and still has dangerous pro-cyclical effects.

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| **Question 2: Should synthetic securitisations be excluded from the framework for simple standard and transparent securitisations? If not, under which conditions/criteria could they be considered simple standard and transparent?** |

We believe that synthetic securitisations should be allowed within the framework for simple standard and transparent securitisations insofar as they comply with certain conditions.

We believe the arguments used to exclude synthetic transactions from the scope of “simple securitisations” are questionable. In particular the EBA proposed criterion 1 for identifying a simple securitisation (p. 39) states that: “The transfer of the assets to be securitised ensures that securitisation investors have recourse to those assets should the SSPE not fulfil its payment obligations. Such recourse cannot be granted in non-traditional transactions, i.e. synthetic transactions, due to the fact that only the credit risk associated with the underlying assets, rather than the ownership of such assets, is transferred to the SSPE. In addition, most synthetic structures add to the complexity of the securitisation in terms of counterparty credit risk and risk modelling.”

It is clear that, due to the lack of legal recourse to the securitised assets, the investor in a synthetic transaction may bear a counterparty risk that would not be borne by an investor in a traditional securitisation. Nonetheless, counterparty risk can be eliminated by placing the cash invested in the transaction with a custodian that is bankruptcy remote vis-à-vis the originating bank[[9]](#footnote-9).

Synthetic securitisations would then need comply with the other general criteria mentioned by EBA for Simple, standard and transparent securitisation, as any other securitisation, except a few criteria which make sense only in the context of cash securitisation and are not appropriate for synthetic securitisation. For example, Criterion 1 (legal transfer of the asset), criterion 3 (true sale).

More generally, the framework should not ex ante exclude securitisation transactions which are structured to precisely transfer risk from bank’s balance sheet, thereby reducing risks for the originating banks. The originator should benefit from favourable treatment when the securitisation is simple and transparent, regardless if it is a synthetic or cash securitisation.

Finally, we believe that there is a significant difference between some synthetic securitisation that have been issued in the past which incurred big losses (especially the ones with US subprime collateral and some CDO of subprimes) and the synthetic transactions which have been used for banks to manage and effectively reduce their portfolio credit risk with true risk transfer mechanisms. The SST framework should attempt to exclude the former, and include the latter.

Regarding the statement that synthetic structures add complexity in terms of risk modelling we would like to comment on the following:

Synthetic structures can be structured in a simple and transparent way. Indeed, synthetic securitisations are often structured in the form of “tranched cover”, i.e. transactions where credit protection is bought directly from investors in the form of a financial guarantee backed by cash collateral or of a personal guarantee, without issuing notes. This structure ensures some advantages and a certain degree of convenience in comparison to traditional securitisations (e.g. no need to create an SSPE, no need to sell the underlying loans and no need to issue notes). Moreover tranched cover transactions are characterised by specific features that ensure maximum transparency:

1. simplicity of transaction documentation which may consist of one single contract constituted by no more than 20 pages;
2. possibility for the original investor to thoroughly negotiate the terms governing the credit protection instrument;
3. possibility for the original investor to carry out a due diligence on the securitised assets and on the protection buyer, before entering into the transaction;
4. also due to the extension of the due diligence carried out, possibility for the original investor to price at best the insolvency risk of the protection buyer, namely due to the extension of the due diligence carried out.

Given all the above, we would therefore strongly support the inclusion of synthetic securitisations in the framework of “qualifying” securitisations, as long as these structures comply with the final criteria set for traditional securitisations that can possibly be applicable to the synthetic ones as well.

If necessary an additional “simplicity” criteria could be added with regard to the specific instruments used to achieve the credit risk transfer, possibly ruling out the use of credit derivatives.

In particular we deem that - among the proposed criteria - the following ones could be applicable to synthetic securitisations:

1. Pillar I: Simple securitisations
   * The absence of an active portfolio management on a discretionary basis and/or a cherry-picking practice;
   * Underlying exposures homogeneous, in terms of asset type and standard obligations;
   * Underlying assets whose credit risk has not been affected by negative events (i.e. credit impaired borrower, delinquency, default, etc).
2. Pillar II: Standard securitisations

* The fulfilment of retention rule (Article 405 of the CRR) in order to ensure the alignment of the originators’ and investors’ interests;
* The appointment of a servicer (generally the originator bank itself) with expertise and supported by policies, procedures and risk controls well documented;
* The presence of a sequential amortisation payment priority in case of a default, no provisions requiring immediate liquidation of the underlying assets at market value;
* Simple referenced interest payments under the securitisation.

1. Pillar III: Transparent securitisations
   * With respect to the relevant criteria, we note that also synthetic securitisation could be considered ‘transparent’ because the originator ensures the disclosure to investors of data on underlying exposures on a loan-by-loan level as well as disclosure to investors of underlying transaction and quarterly reporting.
2. Credit Risk Criteria: all three proposed criteria would be applicable.

In conclusion, synthetic securitisations could be structured so as to be simple and transparent transactions (such as bilateral tranched cover) allowing protection sellers and investors involved to fully evaluate the risk they will undertake by underwriting the transaction. As such they should actually be encouraged, as they allow banks to better manage the risk associated with illiquid underlying assets.

We would also like to draw the attention to another type of transaction that is specifically excluded from the framework but we believe should be covered by it, namely that of the Asset Backed Commercial Paper (ABCP).

ABCPs’ historical performances demonstrate the generally high quality of the instruments, grounded also on their specific characteristics of:

* + having as collateral a revolving portfolio of short term assets chosen according to strict eligibility criteria;
  + generally featuring a significant over-collateralisation and the originator’s retention of a dynamically adjusted first loss tranche and
  + taking care of risks different from those related to the underlying portfolio (such as the seller’s risks of dilution) through consolidated practices.

This type of transactions shouldn’t be ruled out a priori, but simply structured so as to comply with the various criteria proposed for simplicity, standardisation, transparency and credit risk.

For further comments on ABCP please see Annex 1 at the end of this document.

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| **Question 3: Do you believe the default definition proposed under Criterion 5 (ii) above is appropriate? Would the default definition as per Article 178 of the CRR be more appropriate?** |

The CRR is the framework for capital requirements in the EU and it should be generally respected. Article 178 of CRR foresees a series of conditions and caveats for the consideration of default of an obligor that we believe to be more appropriate as it takes care of the specific repayment features of certain asset classes like exposures secured by residential or SME commercial real estate in the retail exposure class, as well as exposures to public sector entities.

In most securitisation transactions, the eligibility criteria exclude receivables with missed payments. However, we believe the default definition in article 178 of the CRR should be retained: If the regulators in a given jurisdiction have decided to use 180 days past-due for certain asset classes, there is no reason why another definition should be used. The default criteria to define Simple standard and Transparent Securitisation should be consistent with the practice of CRR. The case of Public Sector is a good example.

Delinquencies and defaults which are clearly fully funded by the originator (this is often the case for trade receivables) should not be excluded from the underlying exposures of SST.

In addition, the exclusion of credit impaired borrowers as defined in criterion 5 (iii) needs to be reviewed as it would exclude all assets in jurisdiction where it is not possible to control potential default in the past 3 years in public historical registers, and its language (“debt restructuring”) would exclude corporate borrowers.

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| **Question 4: Do you believe that, for the purposes of standardisation, there should be limits imposed on the type of jurisdiction (such as EEA only, EEA and non-EEA G10 countries, etc): i) the underlying assets are originated and/or ii) governing the acquisition process of the SSPE of the underlying assets is regulated and/or iii) where the originator or intermediary (if applicable) is established and/or iv) where the issuer/sponsor is established?** |

We believe the range of jurisdictions allowed, both in terms of where the assets are originated and where the originator/issuer/sponsor are established, should be as wide as possible so as to extend the area of coverage of the “qualifying” securitisation framework and the associated preferential regulatory capital treatment to transactions structured through any branch or legal entity of a bank international network.

We therefore favour a scope of jurisdictions comprising both EEA and non-EEA countries, provided equivalent origination and transparency rules are applicable in these countries, and the assets of the underlying transaction are coming from one market.

However, the priority should be EEA. It is preferable not to jeopardise the implementation of a simple standard and transparent framework in Europe which helps funding European SMEs and economy, if an extension to other countries means it is more complex to define criteria which includes European assets with low loss history and exclude assets classes which have had significant losses.

Therefore in priority, the framework should be implemented for EEA countries for:

1. underlying assets originated in these countries, or;
2. governing the acquisition process of the SSPE of the regulated underlying asset, or
3. where the originator or intermediary is established, or
4. where the sponsor is established

Pools with pan-European assets should not be excluded since exposure to multiple European countries provides diversification advantages, with the associated reduction in credit risk. This pan-European feature is essential for certain securitisation segments such as trade receivables.

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| **Question 5: Does the distribution of voting rights to the most senior tranches in the securitisation conflict with any national provision? Would this distribution deter investors in non-senior tranches and obstacle the structuring of transactions?** |

No, we believe this is not an obstacle to structuring, although investors in non-senior tranches may demand higher spreads which will be significantly detrimental to the economics of the securitisations. In addition, we have signals that originators could feel deterred because they are afraid that third parties could take influence not only after a default or insolvency event but even before, which would not be acceptable for them and the bank-customer relationship.

Distribution of voting rights to the most senior tranches is good practice for Simple Standard and Transparent Securitisation, as long as it does not impede junior tranche holders to help manage the risks. For example in Commercial real estate, Junior tranche holders can inject equity to increase the renting potential and the value of the property, which is long term positive for the transaction.

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| **Question 6: Do you believe that, for the purposes of transparency, a specific timing of the disclosure of underlying transaction documentation should be required? Should this documentation be disclosed prior to issuance?** |

We believe that any disclosure of the transaction documents prior to issuance should only be made after the respective signature, save for the “red” prospectus. Indeed, disclosure of the transaction documents (as defined in the prospectus) should be seen as for future and more detailed reference. The prospectus should remain the central decision-tool when it comes to understanding the fundamental features of the transaction and its legal structure.

The timeframe for closing transactions is usually very short, and legal documents are prepared until the closing date. There have not been difficulties caused by this, as the Offering Circular / Prospectus already provides detailed description of the transaction. Therefore there is little value to provide legal documentations prior to issuance. A timeframe of 1 month after issuance to obtain legal documentation seems reasonable.

Regarding Criterion 17, that stipulates that where legally possible, investors should have access to all underlying transaction documents, we agree, in principle, provided that the transactions documents refer to the defined term “Transaction Documents”.

Regarding Criterion 20, that stipulates that investors and prospective investors should have readily available access to data on the historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, covering a representative time period, we also agree in principle, subject to the form such information is required to be presented. For example, originator’s aggregated vintage analysis is possible, whereas loan-by-loan consistent recovery data information can present a substantial challenge.

Regarding Criterion 22 that stipulates the content of the information to be disclosed to investors, at least on a quarterly basis, we also agree in principle, subject also to the form such information is required to be presented.

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| **Question 7: Do you agree that granularity is a relevant factor determining the credit risk of the underlying? Does the threshold value proposed under Criterion B pose an obstacle to the structuring of securitisation transactions in any specific asset class? Would another threshold value be more appropriate?** |

While we believe that granularity is a significant factor in assessing the diversification and therefore the credit risk of the underlying, we think that its relevance and explanatory power differs across different asset classes and that, also because of this, setting a fixed percentage maximum threshold to individual loan exposures might be too limiting for the structuring of transactions in certain asset classes. For homogeneous asset pools and asset classes (e.g. residential mortgages in a country), granularity is an important factor. For pools of corporate loans other factors such as geographical or industry diversification have an equal or greater bearing than granularity on the riskiness of the portfolio.

In addition, it is difficult to compare the credit risk of very granular portfolios (mainly retail borrowers) which are by essence measured with statistical approaches, to the credit risk of non-granular pools (e.g. CLOs, Commercial real estate, infrastructure projects, etc.) for which a very detailed credit analysis is thoroughly performed at individual loan level.

Therefore granularity should be considered a relevant factor determining credit risk only for specific consumer asset pools such as RMBS, consumer loans, small businesses loans etc., which are concentrated in one country. Moreover we believe that a threshold on individual exposures of 1% can be appropriate at inclusion of an asset (at origination or replenishment) but should not be a criterion during the life of a transaction.

For other asset pools such as corporates and SMEs, granularity per se is less relevant, and should not be considered the main driver of risk of the underlying but would better be considered in conjunction with other diversification indicators. As such, the individual exposure threshold could also be less stringent.

Only about 40% of the SME securitisations issued in the past 2 years in Europe (rated by Fitch) would pass the proposed top borrower concentration criterion. For SMEs and CLOs, not only the threshold for individual borrower exposure should be raised to 3%, but it could also be considered in conjunction with thresholds criteria for geographic and industry concentration.

For example: top 3 industries weight less than [50%] of the total, and no more than [20%] for the top industry.

European Trade receivables and lease transactions may also have top borrower concentrations above 1%. In the case of trade receivables, the short maturity and other simple subordination / credit enhancement reduce the risk so that there has been no loss on European securitisation deals.

As apparent from the above, the 1% individual exposure threshold can be an obstacle in some cases to structure efficient risk sharing transactions on large corporates, and on special asset classes (e.g. infrastructure finance, trade finance, etc.) also due to granularity’s limited explanatory power of the underlying’s risk.

It could be more appropriate to use a floor valid across all asset classes. It could be an index measuring the diversification of the collateral pool, such as the inverse of the Herfindhal index used in the determination of the N parameter in the SFA. In this way pool collateral diversification could still be ensured without limiting the exposure of every single loan.

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| **Question 8: Do you agree with the proposed criteria defining simple standard and transparent securitisations? Do you agree with the proposed credit risk criteria? Should any other criteria be considered?** |

We agree with the proposed criteria with the following caveats:

Pillar I: Simple securitisations

* Criterion 1: We question the statement that most synthetic structures add to the complexity of the securitisation in terms of counterparty credit risk and risk modelling (see answer to Question 2 above).
* Criterion 2: We suggest reviewing the wording to read as follows: “The securitisation should not be characterised by an active portfolio management on a discretionary basis. Assets transferred to a securitisation should be whole portfolios of eligible exposures satisfying eligibility criteria (including portfolio replenishment criteria) or should be randomly selected from those satisfying eligibility criteria. Substitution of exposures that are in breach of representations and warranties should in principle not be considered as active portfolio management.

The prohibition of cherry picking should not exclude the compliance to eligibility criteria which could increase or reduce credit risk of the asset pool compared to the overall originator’s portfolio. In particular, there are cases where an originator may want to securitise more risky assets (e.g. LTVs above a threshold) in order to transfer risk, and thereby reduce risk of their portfolios.

What is important is that this is transparent and in the respect of the given eligibility criteria, there is no cherry picking on individual loans, or only to the benefit of the investor (improvement of the asset, for example to improve the quality of the data).

The securitisations for which the underlying asset pool is “cherry picked” or managed should not be excluded if it is clear in the eligibility criteria that the result of the management / cherry picking results in an improved pool of assets (e.g. replacement of an asset by a better rated asset).

* Criterion 3:

This criterion is not applicable for synthetic securitisations where true sale is not an issue.

* Criterion 4:

We note that as underwriting standards may be influenced by many external factors, it can be difficult to identify or check the criteria under which a deterioration would occur.

We believe that – as a matter of fact - it can be difficult to prove that the underlying exposure complies with the conditions laid down under this point.

The reference to the reliance “on the refinancing of the underlying exposures” should be withdrawn.

Referring to the residual value risk (4, iv) it is proposed “on the basis that the repayment necessary to repay the securitisation was not intended, in whole or in part, to be substantially reliant on the refinancing of the underlying exposures or re-sale value of the assets that are being financed by those underlying exposures”. The words “in whole or in part, to be substantially” should be replaced by the word “to be predominantly” to be consistent to the wording in the delegated act to the LCR which was the result of intense deliberations. Otherwise, many securitisations could be excluded due to the wording “in part”.

Credit exposure to Special Purpose Entities should not be excluded from the scope of eligible assets: If such definition covers securitisation vehicle, it covers also the specialised lending portfolio whose definition given by CRR does not imply complex enforceability (article 147 (8) (a) “the contractual arrangements give the lender a substantial degree of control over the assets and the income that they generate”).

It is useful to specify that the required homogeneity in term of asset type does not imply that the exposure should be on a unique geography (national or regional) and industry. Pools of Trade receivables for example can contain assets of medium size corporates who export in other European countries with no particular risk that should prevent such trade receivables to be SST. Similarly, multi currency assets should not be excluded when the FX risk is managed.

* Criterion 5:

As all elements relating to impaired borrowers as described in (iii) cannot be checked, we propose to withdraw (iii).

For sake of consistency, the definition of default should be aligned with the definition of default of article 178 (1). Managing two definitions of default would be burdensome and would not be consistent with the recommendations of the Basel Committee on the harmonisation of the definitions as requested in its guidelines (“Principles for effective risk data aggregation and risk reporting”).

In addition, late arrears or default should not be excluded from the underlying asset pools for SST if they are fully funded by the originator and not by the notes (cases in Trade receivable pools). The definition of default should be able to be adaptable so as to be consistent with market practices of the underlying asset in the given jurisdiction (e.g. trade receivable to government).

It is unclear when a credit assessment by an ECAI or a credit scoring indicates a significant risk. Further, it is not clear what an “adverse history” really means and how long a credit history is deemed adverse or not adverse anymore after a company has recovered or a private person is able to pay after a phase of unemployment. The clarification of this point is important, because otherwise it will not be possible to select the right underlying assets at the time of the pool-cut that fulfil the non-impairment requirements.

With respect to Criterion 5 iii) we believe that the definition of credit impaired borrower would need to be generally reviewed as its current formulation would exclude all assets in jurisdictions where it is not possible to control potential default in the past 3 years using only public historical registers. Moreover, a creditor is deemed Credit impaired and transactions would be excluded if he has been the subject of insolvency or debt restructuring process in the past 3 years. We believe debt restructuring process should not be an exclusion criterion for non-retail borrowers: If the delinquencies have been cured after debt restructuring, there is no reason to exclude the borrower. For example in the case of commercial real estate, the borrower may have injected equity. Therefore debt restructuring should be a criterion applied to retail consumers only.

Finally, we believe that only adverse credit history on loans should be considered. For example, a borrower is not paying telephone bills because of disputes would be registered as having an adverse credit history. However, this borrower should not necessarily be excluded from securitisation if all his other loans are paid.

* Criterion 6:

This criterion is useful for many types of loans. However it cannot work for short term assets such as trade receivables. It is the same situation as for credit cards receivables which are mentioned by the EBA and for which EBA recommends that they should not be excluded on this basis. Short term assets like trade receivables are likely not to have had any individual payment before they are securitised. As a result, trade receivables should not be excluded if there has not been a payment yet made by the borrower.

Pillar 2: Standard securitizations

* Criterion 8: We agree that only derivatives used for genuine hedging purposes should be allowed in the securitisation. However, it should be allowed as well to hedge or mitigate the interest rate and/or currency risk through internal credit enhancement, as to avoid bringing in counterparty risk in the transaction. We think that besides genuine hedging derivatives also the issuance of floating rate securities with a cap should be admitted as a hedging tool (i.e. to hedge the fixed rate component of the pool). As far as the floating rate component of the pool is concerned we believe that in principle it should not be mandatory to have a hedging in place when, irrespective of the re-pricing dates, the kind of index is the same for both the assets and the notes (e.g. 1-3-6-month Euribor for the pool and 3-month Euribor for the issued notes). As far as the fixed rate component of the pool is concerned we believe that in principle it should not be mandatory to have a hedging in place in the event such component is below a given materiality threshold (e.g. 20% of the whole asset pool).

Criterion 9: is not totally clear. Therefore we propose to add after “commonly encountered market interest rates” “or legally required interest rates”. In addition, some assets interest reference such as prime UK mortgages are based on cost of fund. This is similar for ABCP conduits which often reference funding cost of conduits. Interest rates based on cost of fund should be eligible to SST.

* Criterion 10: is too far going (see comments relating to criterion 4).

“Failure to generate sufficient new underlying exposures of at least similar credit quality” (Criterion 10 (ii)): Credit Cards, Trade Receivables and short term assets (seasonality adjustments) and securitization with an automatic adjustment of the liability size should be removed from criterion 10 (ii).

* Criterion 12(i): It should be clarified, that it is to ensure that the default or insolvency of the current servicer does not automatically lead to a termination of the servicing of the underlying assets without the replacement of the current servicer by a new servicer.
* Criterion 14: We understand the principle of having a robust servicer. However, there are practical issues in assessing the servicer’s ability. For example, it may prove extremely difficult to demonstrate expertise in servicing trade receivables where the servicer is a corporate. On one hand we think that it would be difficult to identify the criteria to be used to demonstrate that expertise; on the other hand we agree that it is necessary to provide as much transparency as possible also on this point (e.g. through a memorandum detailing policies, procedures and risk management controls, including IT and reporting capabilities).

Pillar III: Transparent securitisations

* Criterion 15: ABCP should be excluded from this criterion, as they are not subject to the prospectus directive. Same comment for private transactions.
* Criterion 17: “Access to all underlying transaction documents” should be limited to “ all material and reasonable” underlying transaction documents.

For ABCP, this criterion should be limited to the ABCP conduit documentation, and not to the documentation of the underlying transactions.

* Criterion 18: As it is impossible to provide for transparency purposes in the transaction documentation “definitions, remedies and actions relating to delinquency and default of underlying debtors, debt restructuring, debt forgiveness, forbearance, payment holidays and other asset performance” and since this issue is already dealt with in criterion 14, we propose to delete the first sentence of criterion 18. In our opinion cash flow models should also not be made available to investors. This could lead investors to rely on analysis made by third parties. The availability should rather refer to the inputs (regarding the underlying portfolio and the structure) necessary to the investors for building and running their own models. In this respect, we are of the opinion that the LLD initiative is already providing all the necessary elements to perform cash flow analysis of securitised assets.

For ABCP, no Cash Flow model should be required, as timely payments are simply assured by the liquidity line.

* Criterion 19: On current securitisation transactions, an audit is often performed, but it is not always the case. For example for non-granular pools, or for CLOs where assets are acquired on the secondary market and for pools which need to ramp up, audits are not necessary. The trustee should ensure that the assets are in compliance with the eligibility criteria. The audit on the underlying asset can be done prior to issuance, not at issuance.

Criterion 19 requires that underlying assets should be subject to external verification. The predefined confidence level of at least 95% is not completely clear from our perspective. Does this mean that 95% of all the underlying loans need to be verified by an external party? In particular for short-term receivables (e.g. 3 months) such check is not appropriate against the background of the fast turnover of the receivables. This holds in particular true, since on site audits of the seller are conducted by involved parties regularly (e.g. liquidity facility providers in ABCP programs) and external confirmations (e.g. by audit firms) are obtained.

* Criterion 20: While we appreciate the necessity to foresee a minimum track record of performance data we point out that a period of at least 5 years is excessive for certain asset classes (e.g. factoring). Therefore, we believe it appropriate to differentiate the depth of historical performance data required according to the asset class involved (2 years for assets with short term maturity such as trade receivables).
* Criterion 21: We believe investors should rely on data already available in public data bases, namely in the European Data Warehouse.
* Criterion 22:
  + 2nd sentence, first bullet point: only data on delinquencies and defaults in the pool can be delivered;
  + 2nd sentence, 2nd bullet point: only data on the cash flows of the securitization can be delivered without any separate disclosure on income and disbursements, as well as data on the breach of waterfall triggers and changes in waterfall that this entails.
* Criterion B (Granularity and Group of connected clients): Identification of the group of connected clients can be very challenging in the retail bulk business and can imply high operational costs with little benefit from a risk management perspective. In many cases there are thresholds in place in the retail bulk business to reduce the workload to strike the right balance between operating costs and the necessity to identify single risks to ensure proper risk identification and to comply with requirements. Thus, to ensure that the identification of the group of connected clients can be based on the existing processes of the originator who has to identify group of connected clients it should be added the words “to the best knowledge of the originator”.

As far as the proposed credit risk criteria are concerned, we consider that Criterion C i) should be amended to include exposures to individuals or undertakings that are resident, domiciled or established in EEA jurisdiction**s**, in order to allow exposures to multiple countries (see comments relating to question 4). We would like to stress that criterion C ii) is in our opinion built upon “assumptions” as originating banks which apply the IRB approach can neither comply with this criterion nor check the conditions. In Criterion C iii) the last sentence should be more specific: Under (a) no loan in the securitised portfolio should be characterised by a loan-to-value ratio or loan-to-income ratio at origination, depending on what ratio is more appropriate for each jurisdiction, that exceeds a threshold at inclusion.

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| **Question 9: Do you envisage any potential adverse market consequences of introducing a qualifying securitisation framework for regulatory purposes?** |

We do not envisage any potential adverse market consequences, as long as the proposed criteria – while being prudent – allow for a reasonably wide range of transactions of different credit quality to be included, so as not to partition the market in a sort of “good” and ”bad” categories. If properly defined, a “qualifying securitisation” framework for regulatory purposes would simply represent a way to make the regulatory requirements more risk-sensitive, in that regulatory authorities could guarantee a preferential treatment in terms of liquidity and capital requirements to transactions inherently less risky.

However, there is the risk to implement a 2 tier framework where the market for securitisations which are not deemed qualifying, would collapse. For example, trade receivables are helping funding the European corporates and SMEs, they had very low losses and should not be excluded. The qualifying securitisation framework should aim at excluding only the asset classes which performed very badly during the crisis, as the EBA discussion paper has noted a big difference in performance among asset classes and countries.

The framework should also avoid threshold effects where for example there would be a huge difference in capital requirements between a securitisation of a pool with a certain borrower concentration and a securitisation of an asset pool with a marginally higher borrower concentration. The more so if the securitisation with higher borrower concentration is structured with much higher credit enhancement. There should be a penalty applied proportionally to the assets which are above the threshold.

The ambition should be to include a wide range of securitisations under the qualifying securitisation framework lest the excluded ones would face a competitive disadvantage.

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| **Question 10: How should capital requirements reflect the partition between qualifying and non-qualifying?** |

Given that the partition should properly capture an effective inherent lower riskiness of the “qualifying” transactions, both in terms of model risk and credit risk, capital requirements should be set lower for this type of transactions. In addition, the qualifying securitisation should use a different hierarchy of approaches: The SSFA should be used when possible before the rating based approach.

In particular, capital requirements for this type of transactions should be set so as to reduce the “non-neutrality” of the capital charges, i.e. the misalignment in the capital requirements attracted by the underlying pool and by the total tranches of a securitization of such pool.

In this respect, we deem appropriate to delink the determination of capital charges from external rating based methodologies, so as to avoid situations where - due to credit rating agencies’ methodological changes - predetermined capital charges associated to a certain rating grade aren’t anymore commensurate to the underlying credit risk. A widely documented situation in the securitisation area - especially for certain asset classes and jurisdictions - highlighted also in the current EBA DP which states that: “the application of capital requirements currently in force (i.e. set before 2010) to the new (i.e. post 2010) structuring standards (which imply a significant increase in credit enhancement levels for a certain rating grade) leads to a material departure from the neutrality of the capital requirement”.

We would therefore favour using a formula-based approach to capital charges determination with a specific calibration for “qualifying” securitisations.

More specifically, given the availability under the current framework of only the SFA, an Internal Rating Based (IRB) methodology, as a formula-based approach and the foreseen introduction of different formula based approaches under BCBS 269 (namely the SSFA to be used - with different parameterisations – for both standardised and IRB exposures), and given also our previous support of the suggested calibration of the SSFA on an asset-class basis through the Conservative Monotone Approach (CMA)[[10]](#footnote-10) model , we support the proposal of a “European SSFA”, put forward in a recent paper by a group of industry professionals (*footnote number 7*).

In essence, the European SSFA would be similar to the BCBS 269 SSFA for the SA regime (and to the US SSFA), with specific values of the parameters determining the capital surcharge derived from calibration of the formula through the CMA to a set of key asset classes making up the “qualifying” securitisation segment (Low risk weight RMBS, SMEs and Other Retail).

The formula would result in a capital surcharge respectively of 15% of Kirb and 40% of Ksa for “qualifying” securitisations under the IRB or SA regime.

We would support adding as of now the European SSFA to the current set of approaches in the CRR and treating it as higher in the regulatory hierarchy than the RBA. “Non-qualifying” securitisations would follow the normal hierarchy of approaches.

The European SSFA could moreover be consistent with finalised versions of the SSFA emerging from the work of the Basel Committee and these could then be applied to “non-qualifying” securitisations.

Doing so would definitely unlock the blocking elements of European securitisations whilst broadly complying, like in the US, with the international standards.

We wonder whether no further alignment with CQS1 covered bonds is foreseen implying a risk weight of 10% under the standardized approach and 8% under IRB. A 15% RW for the most senior tranches of qualifying securitisations is still too high: it contributes to non-neutrality and is not commensurate with the observations of almost zero defaults and losses If the RW remains too high, the differentiation between qualifying and non-qualifying securitisations will not help to revive the market because the currently proposed high RW is one the main impediments.

EBF members also believe that the simple, standard and transparent securitization should benefit from a less punishing Capital floor than proposed by Basel.

The recommended floor of 15% is too high for the good quality securitisation, especially the senior tranches: this would multiply current risk weight for senior tranches of high quality deals by a factor of at least 2, while EBA shows itself that all those deals performed very well during the crisis.

In addition, the risk weight for the pool as a whole in the case of good quality mortgage loans can be in the region of 10%: requiring a higher risk weight for senior tranches is not logical.

The Risk weight floor should not exceed 5-10% for senior tranches of high quality securitisations.

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| **Question 11: What is a reasonable calibration across tranches and credit quality steps for qualifying securitisations? Would reallocating across tranches the overall capital applicable to a given transaction by reducing the requirement for the more junior tranche and increasing it for the more senior tranches other than the most senior tranche be a feasible solution?** |

The envisaged calibration of the formula would be unique and tranche capital derived in a standardised manner within the SSFA context, depending on where the attachment and detachment points are with respect to the underlying pool capital requirement.

The application of Simple, Standard and Transparent Securitisation should result in lower risk weights and lower floor for the securitisation which comply with the set of criteria. It should not result in higher risk weights and higher floor from current proposals weights for the securitisation which are not deemed SST.

Refer also to answer to Question 10.

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| **Question 12: Considering that rating ceilings affect securitisations from certain countries, how should the calibration of capital requirements on qualifying and non-qualifying securitisations be undertaken while also addressing this issue?** |

We agree that the securitisation market has unduly and excessively been impacted by the ratings given by agencies which have changed their methodologies and imposed country ceilings which are arbitrary instead of underlying detailed analysis of risk and recoveries. Absolute *a priori* cap limits above the sovereign rating, from a pure methodological perspective, are questionable. Ratings must be based on fundamentals. The criteria of minimum sovereign ratings translates into an additional and unjustifiable disadvantage to European non-investment grade countries, already hurt by overly aggressive ratings which accelerated the European sovereign debt crisis.

Rating ceilings impact the ratings of the tranches, especially the more senior tranches, i.e. only when using the external rating based approach to capital (ERBA). We believe if a particular asset class is impacted by the general economic environment which also triggers the sovereign rating downgrade, there should be a downgrade of the asset without using a cap. The rating agencies should publish the uncapped ratings. There should not be a difference between the securitised assets and the same asset class non-securitised.

Capital requirements should be the same for securitisation tranches with the same level of seniority, notwithstanding the rating of the individual tranches.

Currently, the country risk is already implied in the rating and, accordingly, in the spread demanded by investors of each tranche and should not lead to additional discrimination as implied by the use of different capital requirements.

Additionally, the level of seniority of each tranche is determined by the implied level of credit enhancement, which must be adjusted to the level of the risks of assets domiciled in a specific jurisdiction.

Considering the imposition of such ceilings has a significant distorting effect in the capital charges determination and is a major contributing factor to the “non-neutrality” of the capital charges for securitisations, the adoption of the “European SSFA” would automatically tackle the issue, as its inputs would be only the capital requirement for the underlying portfolio and the attachment and detachment points of the tranches.

In conclusion, we encourage the EBA to recommend the adoption of the European SSFA as an overarching and workable solution.

Annex 1 ABCP

**Asset-backed commercial paper (‘ABCP’) conduits**

Cash securitization using ABCP conduits is a simple tool for banks to provide financing for a wide range of clients and assets. Using conservatively-sized credit enhancement, ABCP programs enable banks to extend low-risk secured financing to their clients, and clients to monetize their assets rather than depend solely on their credit status to raise financing. The tranching technique used here by the securitization process enables banks to leave most foreseeable credit risk with the originator of the assets and play their traditional role of transferring funding to the real economy. The quality of the credit enhancement is always dependent on a thorough analysis of the underlying assets.

Assets financed in ABCP conduits are of good quality, essentially trade and auto receivables. Securitization structures highly mitigate risks on the portfolio and on the sellers. Current regulatory capital immobilized by these transactions already seems to exceed that warranted by their level of risk. That is why we would like to express our deep concerns about the impact that the new securitization framework proposed by the Committee would have on these transactions.

# **ABCP conduits assets are “high quality assets”**

The assets funded in ABCP conduits are simple assets of good quality and short term pretty much like those we can find in factoring activity. The main part of the underlying assets, funded in multi seller ABCP conduit in EMEA, is trade and auto receivables (70%[[11]](#footnote-11)). These assets are not very risky, but in order to be sure the bank which provides the funding does not take risk with the liquidity facility, the credit enhancement is calibrated in a very conservative way following rating agencies criteria.

Because no public data are available on trade receivables, some statistics collected on French banks’ European ABCP conduits have been added in appendix to highlight the quality of this type of asset. The performance data of trade receivables securitizations financed by French banks’ multi-seller conduits demonstrate the quality and resilience of credit enhancement provided to these conduits. No losses have ever been registered by French banks in relation to trade receivables securitization transactions financed through their ABCP conduits.

A securitization of trade receivables provided a stable funding to the corporate. It’s a strong secured funding for banks and, sometimes, the only way for banks to provide also to low credit quality corporate: risks on the assigned receivables is covered by a credit enhancement which highly cover the historical losses and any risk on the sellers are strongly mitigated by several mechanism. That’s why final risk taken by banks is very limited and methodology to size the RWA consumption in front of such type of transaction shall take in consideration all protections of which the Banks benefit.

ABCP have proven to be a very efficient tool to finance short term client assets such as trade receivables. It provides access to various markets that clients could not necessarily reach by themselves. Through a very strong structuring which limit or reduce to zero any risk on the corporate who receives the funding, including dynamic credit enhancement, the credit risk is remote. The investors show a real appetite even in difficult periods, as they value the strength of the structuring and the diversification. The strength of the structuring and the very remote credit risk is recognized today as capital charge is low, enabling the clients to benefit from a very competitive price.

Failing to recognize this low risk in corresponding very low capital charge will have a direct consequence: more capital will immediately increase the price for the clients. In some cases, capital applied to ABCP conduits transactions could be higher than if bank were lending on an unsecured basis to the corporate (see example below). In those circumstances, it is obvious that a structure transaction would no longer make sense, and the client would borrow unsecured, increasing the final risk for the banks sector.

A clear distinction should be made between (i) SIV / Arbitrage conduits and (ii) multi-seller ABCP conduits. SIV structured before the crisis did not benefit from liquidity facilities covering 100% of the paper issued. This was based on the assumption that underlying ABS were liquid enough in case of stress situations. The 2007-2008 crisis has proven it was not sustainable and SIV have disappeared from the market since.

On the contrary multi-seller ABCP conduit covered at least by a 100% liquidity facility did not have commercial paper investors suffer losses due to liquidity crisis. A 100% liquidity facility provided by a bank to the ABCP conduit ensures a reimbursement of commercial papers in full. Moreover due to new regulations (CRD 4 / CRR) the regulator make compulsory for the bank to raise some cash to put in reserve, to cover part of these liquidity facilities (i.e LCR / NSFR ratios). In this regard, it should be noted that ECB legal opinion released on 21 May 2014 on the EC proposal recognizing that “MMFs play an important role as one of the main investors in the market for short-term securitised assets, such as Asset Backed Commercial Papers” encouraged to assess “the contemplated restrictions to investment in ABCPs against their impact on the functioning and depth of the securitisation markets”[[12]](#footnote-12).

As a result, the main criteria for simple, standard and transparent ABCP, at the ABCP level, should be: (a) full support, full coverage (of at least 100% of Commercial Papers issued) by liquidity line ; (b) maturity of Commercial Paper no longer than 397 days ; and (c) underlying assets are SST.

1. Commission’s call for advice of December 2013 related to the merits of, and the potential ways of, promoting a safe and stable securitisation market. [↑](#footnote-ref-1)
2. Notably the Discussion Paper of the Bank of England (BoE) and the European Central Bank (ECB) on the case for a better functioning securitisation market in the European Union. [↑](#footnote-ref-2)
3. [EBF response to the BCBS second consultation on revisions to the Basel Securitisation Framework](http://www.ebf-fbe.eu/wp-content/uploads/2014/03/EBF_007396-EBF-response-to-BCBS-2nd-consultation-on-Revisions-to-Securitisation-Framework.pdf) (March 2014). [↑](#footnote-ref-3)
4. [EBF response to the BoE and ECB Discussion Paper on the case for a better functioning securitisation market in the EU](http://www.ebf-fbe.eu/wp-content/uploads/2014/07/EBF_008877C-EBF-response-to-the-DP-on-securitisation-of-June-2014.pdf) (July 2014). [↑](#footnote-ref-4)
5. [EBA Discussion Paper (figure 20 in page 76)](http://www.eba.europa.eu/documents/10180/846157/EBA-DP-2014-02+Discussion+Paper+on+simple+standard+and+transparent+securitisations.pdf). [↑](#footnote-ref-5)
6. [EBF response to the BCBS first consultation on revisions to the Basel Securitisation Framework](http://www.ebf-fbe.eu/uploads/D2495H-2013%20EBF%20Final%20response%20to%20BCBS%20consultation%20on%20Securitisation%20(2).pdf) (March 2013). [↑](#footnote-ref-6)
7. Proposal not supported by the German Banking Association until careful examination is conducted. [↑](#footnote-ref-7)
8. Solution presented in “How to Revive the European Securitisation Market: A Proposal for a European SSFA”; Duponcheele, Linden and Perraudin (November 2014). Links to [Executive Summary](http://www.riskcontrollimited.com/public/Exec_Sum_How_to_Revive_the_European_Securitisation_Market.pdf) and [Full Paper](http://www.riskcontrollimited.com/public/How_to_Revive_the_European_Securitisation_Market.pdf). [↑](#footnote-ref-8)
9. In particular, the legal systems of Member States may provide regulations carving out from general principles of insolvency law and enabling to materially mitigate or exclude the Deposit Risk embedded in synthetic transactions, even in case the Credit Protection Assets are constituted by cash. [↑](#footnote-ref-9)
10. The Conservative Monotone Approach (CMA) is a closed form analytic capital model that uses an asset class based approach to calibration to achieve better risk-sensitivity (see Duponcheele, G. et al, “Calibration of the CMA and Regulatory Capital for Securitisations”). For calibration of the SSFA to the CMA (under both SA and IRB inputs) refer to Duponcheele, G. et al, “Calibration of the SSFA”. [↑](#footnote-ref-10)
11. Source Moody’s – EMEA ABCP Market Summary: Q3 2013.

    Asset Split by Asset Type – Multi-Seller Portfolios: Trade receivables: 45% + Auto loans: 14% + Auto leases: 11% = 70%. [↑](#footnote-ref-11)
12. EBC Legal opinion point 6.3 “Further, MMFs play an important role as one of the main investors in the market for short-term securitised assets, such as Asset Backed Commercial Papers (ABCPs). The ABCP market is important for the intermediation of short-term credit to the real economy, e.g. trade credit. The proposed regulation sets forth requirements for eligibility of securitised assets for investment by MMFs, including requirements for the underlying pool of assets regarding type, credit and liquidity risk and maturity limit33. While the ECB acknowledges that these requirements will increase the transparency of MMF investment portfolios and improve credit and liquidity risk management, it suggests evaluating the benefits of the contemplated restrictions to investment in ABCPs against their impact on the functioning and depth of the securitisation markets. <https://www.ecb.europa.eu/ecb/legal/pdf/en_con_2014_36_f_sign_2.pdf> [↑](#footnote-ref-12)