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European Banking Authority
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Re: Response to EBA Discussion Paper on simple standard and transparent securitisations

The Association for Financial Markets in Europe (AFME), the British Bankers' Association (BBA), the International Capital Market Association (ICMA) and the International Swaps and Derivatives Association (ISDA) (together the "**Joint Associations**") welcome the opportunity to respond to the discussion paper (the "**DP**") entitled "EBA Discussion Paper on simple standard and transparent securitisations" published by the European Banking Authority (the "**EBA**") on 14 October 2014.[1]

The Joint Associations and their members would like to thank the EBA for producing a carefully thought-out and constructive discussion paper. In the last twelve months it has become apparent that policy-makers within the European Union now recognise the positive benefits of securitisation. That realisation has been achieved, in our view at least in part, because the seven years or so that have passed since the financial crisis now provide strong evidence of how well most European securitisation have performed, both in credit and in price terms, as well as examples of securitisation's importance as a funding tool for Europe's banks and major corporates who employ thousands of European citizens, such as Europe's world-class auto manufacturers.

We agree with the EBA's statement in the Executive Summary to the DP that "a well functioning and prudentially sound securitisation market in the EU will contribute to strengthening the resilience of the European financial system by providing an alternative funding channel to the real economy and enhanced risk-sharing."

In his September 2014 public letter to Commissioner Jonathan Hill, Commission President Jean-Claude Juncker said "I would like you to focus on … jobs, growth and investment … to improve … the long-term financing of the economy. This will include seeking appropriate ways to revive sustainable and high quality securitisation markets, to reduce the cost of raising capital in the Union and to develop alternatives to our companies' dependence on bank funding."

The discussion paper on "The case for a better functioning securitisation market in the European union" issued by the Bank of England and the European Central Bank in May 2014 (the "**ECB/BoE DP**") also echoed similar sentiments.

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1 See attached Annex 1 for a description of each of the Joint Associations.

Market participants are very encouraged that the EBA is now taking the next step to develop a set of criteria for simple, standard and transparent securitisations that should contribute to the basis for future regulation of securitisation within the European Union which avoids the harsh and inappropriate "one-size-fits-all" regulatory approach of the recent past, which acknowledges the policy objective of reviving safe and stable securitisation markets in Europe and which recognises the evidence of the strong credit and price performance of European securitisation since the crisis.

Our substantive response consists of overall comments, followed by our answers to the 12 specific questions posed by the DP. Annex 2 contains our detailed thoughts on the 25 proposed criteria set out in the DP for determining whether a particular transaction is "simple", "standard", "transparent" and whether it meets the minimum levels of credit quality set out by the EBA. Some of our comments reiterate or build on the AFME response to the ECB/BoE DP, a further copy of which is attached as Annex 3.

Should the EBA wish to discuss any aspect of our response in further detail, we would be pleased to arrange this.

A. **Overall Comments**

1. *We agree with the need for a holistic, transaction-based (not tranche-based) approach*

   The Joint Associations and our members agree with much of the analysis presented in the DP. In particular, we welcome the recommendation for a holistic (cross-product and sector) review of the regulatory framework for securitisation and other investment products although it should be stressed that many of the issues which currently hinder the recovery of the securitisation market are already well known and remediable by the European authorities. The taking of a holistic approach should therefore not be at the expense of delay in addressing these issues as a matter of urgency. As the EBA is aware, securitisation is currently subject to a wide variety of regulations, many of which seek to achieve similar goals, often in very similar terms. Such regulations are, unfortunately, generally characterised by inadvertent and/or unjustified mis-alignments between different regimes with the result that the costs of compliance multiply creating confusion for, and little or no additional benefit to, investors. The mis-aligned risk retention and investor due diligence regimes under the CRR (for bank investors), AIFMD (for AIFMs) and Solvency II (for insurers) regimes is one important example. Another is the varying reporting templates used for purposes of the Article 8b RTS under the Credit Rating Agencies Regulation, the ECB loan-level data requirements for its repo operations within the Eurosystem and the Bank of England's requirements for eligibility under its Discount Window Facility - none of which is harmonised with the disclosure regime under the Prospectus and Transparency Directives. The market would benefit from a harmonisation of these regimes so as to ensure that there is a logical and proportionate relationship maintained between the cost of compliance and the resulting benefit to investors. To quote Yves Mersch, Member of the Executive Board of the ECB, "Some creative thinking on how to present the information in an accessible manner may help preserve legal precision while avoiding information overload."

   The review should also cover the relative regulatory treatments of other products. As the DP points out, the regulatory treatment of, e.g. investment in covered bonds or directly in whole loan portfolios is very different from that of investment in securitisations. These differences are not always justified by the different characteristics and risk profiles of the products themselves. Change is needed in order to align the regulatory treatment - disclosure and transparency requirements, direct constraints and regulatory capital treatment of investment products - more closely with the risks they present and the actual evidence of their performance through and since the crisis.

It is also helpful that the EBA's approach, like that of the ECB/BoE DP, is largely transaction-based. A number of previous proposals have been tranche-based, with only the most senior tranche of any given transaction being allowed to qualify. This tranche-based approach implies that the purpose of qualification is to reduce or eliminate risk. One of the chief virtues of the transaction-based approach to qualifying securitisation is the focus on transparency and the ability to understand and model risk, rather than an attempt to reduce or eliminate risk. The function of any efficient market is to price and allocate risk, not to eliminate it. In the case of the securitisation markets, the risk that ought to be priced and allocated is the credit risk of the underlying assets, as modified by the structuring of the transaction (via tranching and credit-enhancements such as swaps and liquidity facilities). It follows that investors need the information necessary to properly assess those risks and their ability to bear them so they can price the risk accurately. That makes requirements relating to simplicity, loan-level data and general ability to model the risk sensible and appropriate. Qualifying securitisations should not be risk-free, and should not give the impression of being risk-free. Rather, the badge of "qualifying securitisation" ought to represent a belief that the risks are capable of being modelled reliably by the targeted investor base using the information made available to them.

2. *We are disappointed that asset-backed commercial paper is out of scope*

The DP states explicitly that securitisations using asset-backed commercial paper ("**ABCP**") are outside its scope. While we understand why this may be the case, and that an analysis of ABCP requires consideration of different factors from those for term securitisation, this is disappointing. In the context of statements made by the EBA at the Open Hearing held on 2 December 2014 (the "**Open Hearing**"), we would like to stress that the ABCP market is a very important – although sometimes unjustifiably neglected - part of the overall securitisation market in Europe as well as being a critical tool in funding the real economy. ABCP is the principal way certain asset classes (e.g. trade receivables) are securitised, predominantly for corporates, making it a significant contributor to working capital supporting trade and business in the European Union. Although ABCP securitisation is structured differently from term securitisation markets, so that the criteria set out in the DP are not necessarily appropriate for ABCP, we believe that ABCP should be subject to a similar regime to the one described in the DP, but with criteria adapted to suit the specific characteristics of this form of securitisation financing. In this way, ABCP that is simple, standard and transparent can continue to support trade and the real economy.

We would note, in particular, that the BCBS/IOSCO Consultative Document dated 11 December 2014 and entitled "Criteria for identifying simple, transparent and comparable securitisations" supports our view in the following terms:

"The BCBS and ISCO work thus far has focused on term securitisations. Short-term securitisations (eg ABCP), are therefore out of the scope of the current STC criteria. **However, they are a key part of securitisations markets and provide an important source of funding to the real economy**." (emphasis added)

The members of the Joint Associations would welcome a further consultation on the criteria for ABCP eligibility more specifically, but we would suggest that they should include the following requirements: (i) that the ABCP transaction be sponsored by a credit institution that is subject to the liquidity coverage requirement; (ii) that the sponsoring institution provides full liquidity support to the transaction; and (iii) that the maximum maturity for any instrument be 397 days (or two years with a rate reset within 397 days). More information about the Joint Associations' positions on ABCP is available upon request.

3. *We believe the benefits of managed CLOs risk being lost as a result of their exclusion*

A separate but perhaps related issue is that of managed CLOs which, while not out of scope of the EBA's current consideration, do seem unlikely, on the current proposals, to qualify as simple standard and transparent securitisations. Managed CLOs serve the useful purpose of adding to the supply of credit available to the real economy, including for SMEs, and in many cases they have performed very well through the financial crisis.

The Joint Associations are in favour of a principles-based, not an asset-class based, approach to the definition of SST. We also believe that the definition should be as inclusive as possible (see our comments under point 6 below about avoiding a "gold standard" approach). To the extent therefore that there are structures backed by CLOs or any other asset class which meet these principles then in our view they should qualify.

If not, then another option for managed CLOs would be to address them through a separate regime. A reasonable case can be made that they should be treated differently from "traditional" securitisations. A regime tailored to the specificities of managed CLOs would serve to address the issue without unnecessarily cutting off the benefits provided by this product.

4. *It would be helpful to have a better understanding of the effects of being (or not being) a qualifying securitisation*

Our third general comment is that it would be helpful for market participants to understand the consequences of being (or not being) a "simple, standard and transparent ("**SST**") or a "qualifying" securitisation. The DP helpfully suggests that differentiated regulatory capital treatment in the hands of institutions is one possible consequence, but presumably the consequences would not be limited to this. If nothing else, it would seem logical for there to be differentiated regulatory capital treatment for other categories of regulated investors such as insurers as well, and that the rules for inclusion of securitisations as HQLA under the LCR should be aligned with the same concepts. Having a clearer idea of the authorities' views on the possible outcome if a securitisation is SST or "qualifying" would allow market participants to more helpfully comment on the types of criteria that are relevant.

5. *Need for a modular approach to qualifying securitisation to ensure the concept is appropriate to each of the circumstances to which it is likely to be applied*

Bearing in mind that the criteria being considered by the EBA are likely to have a diversity of applications (indeed, we understand this is the intention), the Joint Associations would like to emphasise their members' view that a "modular" approach would be most appropriate and we appreciate that the EBA is taking steps in this direction by separating out the criteria for simplicity, standardisation, transparency, on the one hand and credit risk on the other, and also by suggesting slightly different criteria for bank capital as compared to those proposed for Solvency II and the LCR.

That said, it will, of course, be important to standardise certain of the criteria that apply in more than one regime so that, e.g. the requirement for "no credit impaired obligors" or for "no defaulted assets" carries the same meaning, regardless of whether it is being considered for purposes of bank capital, insurance capital or the LCR. This will significantly simplify both the structuring process and the consequent and necessary investor due diligence process for transactions intended to be eligible for recognition under more than one regime and make it much easier for, say, asset managers to determine what assets qualify for each of the portfolios for which they are responsible.

We are also of the view that the list of "core" criteria with application to all areas (including bank capital, insurance capital, the LCR liquidity buffer and any other future areas of application) should be much shorter. Core principles should properly include, in particular, criteria related to simplicity and transparency such as a requirement for broad homogeneity of asset class, compliance with applicable risk retention and loan-level data disclosure requirements, publication of transaction documents and exclusion of credit-impaired obligors. On the other hand, the requirements around how voting rights are allocated and for compliance with the Prospectus Directive (thereby excluding all private transactions) seem excessive in the light of the fact that these criteria are likely to be "read across" to a number of regimes where they may not always be appropriate.

6. *Criteria are highly detailed and risk inappropriately excluding a large number of securitisations. They should be more principles-based.*

There is a further concern among the members of the Joint Associations that the criteria are so lengthy and complex as to make them very difficult to comply with. They also risk being so specific and prescriptive as to risk excluding a large number of transactions and structures in the market. Based on the EBA’s comments at the Open Hearing, we do not believe this is the intention. We therefore recommend that the EBA undertake a market analysis comparing the criteria against transactions already in the market to determine the proportion of existing structures that might qualify and use the results to calibrate the final criteria so as to achieve the desired outcome.[2] As we said at the Open Hearing, the revival of the securitisation market

[2] In order to illustrate the necessity of this exercise, certain AFME members have undertaken a preliminary analysis of asset classes in order to determine which are likely to qualify under the proposed criteria and this is attached as Annex 4. The table in Annex 4 attempts to give a fair interpretation to each of the criteria in order to predict as accurately as possible the likely qualification outcomes, but please note that AFME

will not be achieved if the proposed new approach amounts to a "gold standard" encompassing only, say, 10 per cent. of the market. The objective should be not to eliminate all risk, but (as we said in our response to the ECB/BoE DP (page 3) that "investors need the information to properly assess ... risks and their ability to bear them so they can price the risk accurately ... Qualifying securitisations should not be risk-free, and should not give the impression of being risk-free. Rather, the badge of "qualifying securitisation" ought to represent a belief that the risks are capable of being modelled reliably by the targeted investor base using the information made available to them." It also seems to our members that limiting qualifying securitisations to transactions meeting all these criteria will discourage banks from providing financing to clients in ways that might fall within the very broad definition of securitisation but not within the strict requirements of qualifying securitisation. Admittedly, this is at least partly a problem to do with the definition of "securitisation", but it is nonetheless a likely consequence of taking such a complex and prescriptive approach to defining the criteria for qualifying securitisations. Instead, the criteria should be made simpler, more general and more principles-based, akin to the approach taken by the BCBS and IOSCO in their consultation paper on simple, transparent and comparable securitisations, with regulators given the ability to provide technical guidance in order to allow them to ensure that the purposes behind the regulations are met and to allow more flexibility as market practices evolve. This approach will have the advantages of resolving much of the current regulatory uncertainty, allowing the criteria to be applied in a flexible, purposive manner and prevent "gaming" of the regulatory framework by virtue of the technical guidance provided following adoption of the overall framework.

7. *The EBA should provide a degree of transitional relief*

Because of the complex and highly detailed nature of the criteria proposed, a large number of transactions already in the market that are broadly simple, standard and transparent will almost certainly fail to meet at least one of the criteria proposed, even under a principles-based set of rules. This may result in a speedy sale of these positions at inappropriately low prices purely on the basis that a later-issued transaction structured to the new specifications would have better capital treatment. More broadly, it would be perverse if these transactions continued to be subject to the same relatively more punitive regulatory treatment as truly complex, opaque securitisations of the type the EBA is trying to discourage via the introduction of the qualifying securitisation framework.

The EU Commission and EIOPA granted a form of transitional relief in the development of the Solvency II criteria by applying only certain criteria to securitisations issued before the entry into force of the Solvency II Delegated Regulation and we would suggest the EBA follow the same approach. The criteria chosen by the EU Commission and EIOPA include broad ones such as true sale, homogeneity of the pool, exclusion of resecuritisations and synthetic securitisations, and exclusions of securitisations backed by transferable financial instruments or derivatives. Subject to our answer to question 2 in respect of synthetics, these seem like a sensible set of criteria to require of "grandfathered" securitisations, with the

members prepared their analysis without the benefit of any guidance from regulators or external counsel, so the analysis will necessarily be subject to refinement in the light of such guidance and general market views.

other criteria applying only to securitisations issued after the introduction of the qualifying securitisation framework.

8. *Determinations about whether securitisations qualify must be made prior to pricing and must be able to be relied upon by investors*

Related to the concern about too much detail is a concern about certainty. The DP does not address the question of who will be responsible for determining whether a given securitisation exposure is a SST or indeed a qualifying securitisation. From the perspective of the members of the Joint Associations, there would ideally be a central register of qualifying securitisations that all market participants are entitled to rely on. This register would say which transactions are qualifying securitisations meeting the "core" criteria as well as which additional criteria (e.g. those required for bank capital, Solvency II, LCR) each transaction meets. Transactions would be added to this central register prior to the marketing in order that investors would have the information available to them when making a decision about whether to invest at issuance.

This could possibly be achieved by the authorities playing a supervisory role in determining the criteria for a qualifying securitisation, and then appointing and regulating one or more independent, credible bodies to issue certifications. A number of bodies already exist to assign similar labels in the debt capital markets. To the extent that they are willing and able to administer the criteria for qualifying securitisations eventually decided upon, they are natural candidates to act as certifying bodies. Of these bodies, the PCS label is the only Europe-wide securitisation label and resulted from the work undertaken from 2009 to 2012 involving a broad range of European market participants (arrangers, originators, investors and legal experts) led by EFR and AFME. As such, and also because PCS has been designed to be responsive to the needs of issuers and investors in terms of giving certainty around the receipt of the label prior to pricing (as mentioned above), PCS is an obvious and strong candidate to act as a certifying body. True Sale International (TSI) and the Dutch Securitisation Association (DSA) are other securitisation labels but currently only have a national scope. The lead regulator should also play a supervisory role, reviewing the criteria regularly to adapt to market evolutions, ensuring that standards are applied uniformly and regulating the conduct of the certifying bodies generally.

9. *The criteria should bear in mind the needs of investors but not at the cost of the needs of originators*

Finally, there is an inferred emphasis in the criteria proposed on the benefit to the investor. This is right, in that reassuring investors regarding the simplicity, standardisation and transparency of the securitisation assets that they invest in is invaluable in ensuring that the securitisation market can be re-invigorated. However, balancing this with the benefits of securitisation to the originator (in particular ensuring that significant risk transfer is possible in the context of an SST or qualifying securitisation) is crucial to ensure a continuing healthy supply side of the securitisation market. Ignoring this part of the market would frustrate the goal, and prevent the realisation of the fundamental benefits, of re-establishing a well-functioning and prudentially sound securitisation market in the EU.

Securitisation is seen by the DP "as opening an alternative funding channel to fund the economy, and realising increasing levels of credit risk transfer and hence sharing risk in the financial system". This means that two of the benefits of the securitisation are intrinsic to the benefit of the originator, not the investor. If the direct funding benefit is not achievable for the originator, the wider economy will suffer and economic growth will be restricted. If risk transfer is not achievable for the originator, its balance sheet will remain constrained as will the originator's capacity to provide new funding by originating new assets in the wider economy. This means that the interests of the originator, as well as the investor, are critical and cannot be ignored. If meaningful benefits to the wider economy are to be realised, securitisation must regain its traditional function as a tool not just for direct funding but also for risk transfer achieving capital relief for the originator. If securitisation remains as only a direct funding tool (as it has been, by and large, since the onset of the financial crisis) its potential ability to contribute more strongly to European growth, and broaden and deepen our capital markets, will not be realised and it will remain solely as a relatively expensive funding tool compared to other fixed income options.

B. **Answers to Specific Questions**

1. *Do you agree with identified impediments to the securitisation market?*

Broadly, yes. Regulatory uncertainty, especially around capital requirements, risk retention and disclosure, has been particularly problematic and we believe that it is important for this to be resolved quickly. We are pleased that there has been a largely positive resolution for the treatment of securitisation as HQLA under the LCR (although some details remain to be clarified).

In addition to the factors mentioned in the DP, central bank collateral programmes and broader historically exceptionally loose monetary policy conditions have reduced the attractiveness of securitisation for private investors by bringing down the cost of alternative funding sources. This has been true of the general open market operations of both the ECB and the Bank of England, but is particularly true of the ECB's TLTRO, ABSPP and CBPP. While the broader macro-economic need for this kind of extended intervention in particular is understood, and the positive signalling effect of the ECB's ABS PP intervention is appreciated, a consequence is that investors are forced to move on to other products or (if they can) down the risk spectrum, with the result that investor interest and expertise generally has begun to atrophy. The longer public investment "crowds out" private investment in securitisation in this manner, the more likely these programmes are to risk a permanent reduction in private demand for securitisation products.

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?*

The members of the Joint Associations believe that synthetic securitisations are perfectly capable of being designed in a manner that would allow them to be simple, standard and transparent. That said, quite a number of the criteria set out in the DP would exclude synthetic securitisations by their terms (notably Criterion 1 that excludes anything that is not a "traditional securitisation" and Criterion 3 that requires legal true sale).

It is important to note that the reason members of the Joint Associations are concerned to ensure synthetic securitisations qualify is mainly to ensure that retained tranches of transactions that aim to achieve significant risk transfer can benefit from improved regulatory treatment. It would also be helpful in encouraging securitisation of assets when it might not otherwise be possible e.g. in respect of assets with restrictions on transfer where legal true sale is prevented.

Even where it is possible to do a true sale securitisation for certain underlying assets (e.g. SME loans), true sale securitisations are often uneconomic. This is because a synthetic securitisation of the same portfolio will achieve at least as beneficial a capital treatment at lower cost. Of particular note, the structural costs of a synthetic securitisation are much lower than the structural costs associated with a true sale securitisation of the sale portfolio. Unless and until the overall costs of a true sale securitisation (taking into account both transaction/structural costs and capital treatment) are corrected by any special SST capital treatment such that they are low enough to make them economic as compared to a synthetic securitisation, banks will continue to need to use synthetic securitisations in order to achieve the risk transfer that is one of benefits of securitisation the DP aims to encourage via the SST regime. Achieving this risk transfer goal is an important reason the EBA should design an SST regime that accommodates synthetic securitisations.

Because this is the primary concern of the members of the Joint Associations for ensuring that synthetic securitisations qualify, we would not expect transactions to qualify where e.g. the originator did not hold the reference portfolio. The Joint Associations acknowledge that there are legitimate concerns about certain features of some synthetic securitisations, but we submit that these concerns would be better dealt with by allowing synthetics to be qualifying securitisations on the criteria/conditions outlined below rather than by excluding them entirely:

- **Reference portfolio to comply**: All of the criteria applicable to the nature of the underlying assets for SST cash securitisations would apply to the reference portfolio of a synthetic securitisation.

- **Ownership of reference portfolio**: The reference asset portfolio is owned by the originator of the synthetic securitisation on day 1 of the transaction and the transaction documents contain an undertaking by the originator not to dispose of the reference assets during the life of the transaction.

- **No synthetic re-securitisations**: Synthetic securitisations would only be able to be considered SST if the reference asset portfolio excluded securitisation exposures and transferable securities.

- **Collateralisation**: The notes issued in connection with a synthetic securitisation should be collateralised by cash or such other collateral as may be approved by the competent authority. This will serve to eliminate the counterparty risk that would otherwise result from the synthetic nature of the transfer of credit risk on the reference portfolio. Tranches of a synthetic securitisation need not, however, be collateralised for so long as (and to the extent that) they are retained by the originator.

- **Transparency**: Synthetic securitisations should provide at least the same level and frequency of information in respect of the reference portfolio as an SST cash securitisation would be required to provide in respect of its portfolio of underlying assets.

- **Simplicity of terms**: The key terms for sale of the risk on the reference portfolio, such as credit events, loss determination and resulting note payout profiles, should be simple, clear, straightforward and transparent and disclosed in the same way as an SST cash securitisation.

- **Servicing standards**: The reference assets underlying the synthetic securitisation should be serviced to the same standard as that required by Criterion 14 for SST cash securitisations.

It should further be noted that allowing synthetic securitisations that meet these criteria to qualify as SST will help to contribute funding to the real economy. They would ease the execution of securitisations of more challenging asset classes such as SME loans and trade credit (both of which often contain clauses preventing legal true sale of the loan or are otherwise difficult to fund through cash securitisations) by transferring risk and freeing up bank capital to make additional loans. This is especially true for SME loans which carry relatively high capital requirements when held on balance sheet (compared with, say, residential mortgages).

Finally, an alternative proposal that the EBA may wish to consider if it decides against allowing synthetic securitisations to qualify is "deeming" any retained tranches of a synthetic securitisation to be SST for so long as they are retained. While the merits of this approach may not be intuitively obvious from a regulator's perspective, it is very logical when the purposes of the SST regime are taken into account. The transparency concerns of the SST regime, after all, are addressed by the fact that the originator is holding the underlying assets. It is therefore familiar with all of the data on those underlying assets an investor in the securitisation would require by virtue of its role as the originator. The simplicity and standardisation of the SST regime are concerned either with facilitating understanding by an outsider of the portfolio (the role of originator obviates this need) or with ensuring that structural risks associated with the securitisation process itself are minimised and well understood. Since the originator will be holding the underlying assets directly rather than being exposed to them via a securitisation structure, these concerns are effectively addressed too. Of course the same logic could not apply to any sold tranches, but as an approach for retained tranches of synthetic securitisations, it is a logical and reasonable outcome.

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 members of the Joint Associations believe the default definition in Article 178 of the CRR would be more appropriate. Please see our comments on Criterion 5 in Annex 2 to this letter.

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?*

On the basis that the criteria are supposed to ensure securitisations have predictable cashflows and risk profiles, we do not believe that geographical limitations on transactions are required or helpful. As a general matter, geography is not a very sensitive criterion on which to assess credit risk, certainly when the geographical restrictions are drawn on the basis of historic political or economic groupings. Australia and New Zealand are just two excellent examples of countries with stable and predictable legal systems and developed securitisation markets that would be excluded on the basis of the geographic criteria set out above, even drawn in the widest of the ways suggested. While the poor performance of US sub-prime mortgages is well known, several other asset classes in the US have performed well, such as auto and credit card securitisation. Indeed, the inclusion of this criterion would, if anything, be harmful to the securitisation markets. It would create a regional bias in demand that could damage market liquidity and depth.

If the EBA is nonetheless minded to include a criterion related to geography, the Joint Associations respectfully submit that it should extend, so much as possible, to all countries with developed legal systems and securitisation markets. We would therefore suggest that, in addition to EU member states, at a minimum all non-EU OECD member states should be included and that a process for establishing eligibility for further countries on a case-by-case basis be established.

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?*

We are not aware of any specific provision of national law that would conflict with this requirement. However, we would expect that determining whether such a conflict exists would form part of the legislative process undertaken by the European authorities prior to implementing such a requirement.

In any case, the members of the Joint Associations are concerned about the possible inclusion of this requirement. We believe that it would deter investors in more junior tranches of securitisations if criterion 13 is implemented as currently drafted and is interpreted to require that all voting rights be allocated to the most senior classes. As the market currently stands, securitisations are generally designed to allocate enhanced voting rights to the most senior tranches of credit risk, but certain decisions (e.g. identity of special servicers) are more appropriately allocated to junior classes whose recovery is more likely to be affected than the senior tranches, which may remain intact more or less regardless of the identity of a special servicer. Removing the ability of junior tranches to have at least some influence over the decisions most likely to affect their recovery would be contrary to industry practice and almost certainly lead to reduced demand for those junior tranches. As mentioned above, if the aim of revived securitisation markets is also to allow transactions that achieve significant risk transfer, then disenfranchising junior noteholders will be a significant impediment to achieving that aim.

In addition to decisions allocated specifically to junior tranches because of the relative alignment of economic interests, it is also important to note that some decisions are taken by the noteholders in general and require approval of each class separately. The classic example of such a decision is a basic terms modification, i.e. an amendment that affects the fundamental economic terms on which the notes were issued such as the maturity, the interest rate or the principal amount. It would be fundamentally unjust (and likely to result in drastically reduced demand for mezzanine and junior tranches) to allow the most senior tranche to make basic terms modifications without the approval of the mezzanine and junior tranches, even if only to the senior tranche itself. To take an extreme example, allowing this would permit the most senior class to increase the principal amount and/or the interest rate attaching to its own notes, effectively wiping out the value in the mezzanine and junior tranches.

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?*

The members of the Joint Associations have no objection in principle to the disclosure of transaction documents relevant to the ongoing transaction. From a practical perspective, it is not always possible to finalise all transaction documents with sufficient time before issuance – negotiations between the parties often continue until a very late stage, for example. This raises obvious issues with disclosing this documentation prior to issuance, since to do so could raise issues of liability, or cause confusion among investors as to which version of the documentation should be relied upon. The disclosure of draft documentation, which is a solution adopted in some jurisdictions, is not straightforward and requires an appropriate balance to be struck between the freedom of the parties to negotiate the terms of their contracts (which will be necessarily be restricted following disclosure of any draft) and the need of investors for transparency.

In the short term therefore it seems to the Joint Associations that, from the point of view of a primary investor, full documentation should not be required until after the transaction has settled because by law the prospectus is already required to contain all material information. We would suggest that one month following settlement would be a reasonable deadline for publication of transaction documents, as this is relatively soon after settlement but allows appropriate time for redaction of commercially and personally sensitive items such as personal contact details, bank accounts and fees which are not relevant to continued performance. This is the approach already taken under the Bank of England's requirements for its Discount Window Facility eligibility.

That said, members of the Joint Associations are keen to ensure the highest levels of transparency in securitisation transactions and we intend to continue exploring the options available to improve the quality and timing of disclosure, including the options for providing transaction documentation to investors as soon in the process as it has practical value for investors without increasing risks for issuers.

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?*

The Joint Associations agree that granularity provides benefits but it is not obvious that high granularity is linked with low credit risk. The Basel Committee on Banking Supervision ("**BCBS**") also noted this in their recent consultations on the Basel Securitisation Framework. For example, quite a number of sub-prime RMBS would have easily met this criterion. Duponcheele, Perraudin, Pickett and Totouom-Tangho in their study entitled "*Granularity, Heterogeneity and Securitisation Capital*" (September 2013)[3], conclude that granularity can affect the distribution of capital to the tranches, and can be modelled adequately by making granularity adjustments to the risk parameters. When the pool has effective exposures (N) greater than 10, a simple granularity adjustment to the correlation suffices[4] .

Rather than being linked to credit quality, granularity may facilitate reliable modelling of portfolio cashflows in that a more granular pool is likely, all else being equal, to behave in a statistically predictable way. Note that the effect of granularity on credit risk generally depends on the attachment and detachment points for tranches.

It is likely that the 1% threshold would pose an issue for certain asset classes. Residential mortgage, consumer auto receivables, credit card receivable and other consumer debt securitisations would generally meet these requirements. Most other asset classes would at least sometimes have difficulty fulfilling this criterion. This includes many SME securitisations and trade receivable securitisations as well as a large proportion of commercial auto lease securitisations. What is more, bank investors are already subject to large exposure limits that restrict aggregate concentrations of exposure to obligors in various non-granular transactions, so it is difficult to see what additional benefit would be derived from effectively imposing a separate large exposure limit in the name of ensuring good credit quality (of which granularity is anyway not a good measure).

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?*

See general comments above and specific comments on criteria in Annex 2 hereto.

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3 http://www.riskcontrollimited.com/public/Granularity_Heterogeneity_and_Securitisation_Capital.pdf

4 The correlation ρ should be adjusted to $\rho + \frac{1}{N}(1-\rho)$. For a 10% conditional pool correlation (ρ^*_M), the proposed value of N=100 implies an adjustment of 9% of the correlation (to 10.90%), for N=80 an adjustment of 11.3% (to 11.13%), for N=60 an adjustment of 15.0% (to 11.50%), for N=40 an adjustment of 22.25% (to 12.25%). As the conditional pool correlation increases to 25%, the adjustment for N=100 is 3% of the correlation, N=80 3.8%, N=60 5% and N=40 7.5%. Depending on the regulatory choice for the correlation, a lowering of the value N from 100 down to 80 or even 60 should be considered. Indeed, as conservatism increases (higher conditional pool correlation), the granularity threshold that generates a variation of more than 10% of the correlation diminishes.

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

Yes. The principal concern is, of course, the state of the market for all those securitisation products deemed not to be SST or qualifying securitisations. There is likely to be a cliff effect between investments in qualifying securitisations and non-qualifying securitisations. This is an almost inevitable effect of introducing a regime that divides all of securitisation into two categories: the "qualifying", with more favourable regulatory treatment, and the "non-qualifying".

Large differences in the treatment of products between qualifying and non-qualifying securitisation will create significant cliff effects and cause investor portfolios to be be subject to greater volatility, increasing financial stability risks. For example, such cliff effects will encourage investor fire sales in the event that a transaction ceases to be a qualifying securitisation during its life. This could happen for reasons beyond the control of the transaction parties, such as the insolvency of a currency swap counterparty and the unavailability of a new counterparty, or a redenomination of some of the assets due to a Eurozone exit or a separation of part of a sovereign state. It could also result from commercial pressures, such as a need to change underwriting standards in a manner inconsistent with Criterion 4(ii) or the need to "cherry-pick" assets to achieve appropriate deal economics in a manner inconsistent with Criterion 2. Consequently, investor portfolios will be subject to greater volatility, increasing financial stability risks.

It would be helpful, then, for the language used to distinguish securitisations to be as neutral as possible. In this respect, we find the use of the term "qualifying securitisation" preferable to the more broadly used term "high quality securitisation". The Joint Associations would recommend, however, that this principle be taken even further (resulting in an approach not unlike the EIOPA terminology) and that the labels attached to the different kinds of securitisation be along the lines of "category 1" and "category 2" or "category A" and "category B". This would preserve the ability of regulators and market participants to quickly and easily distinguish between qualifying securitisations and others, which is the key policy driver behind the suggestion. It would also avoid the potential pitfall of the "high quality securitisation" approach which may implicitly shift the burden of stigma from the securitisation market as a whole onto that sector of the market which would fall outside the definition of "high quality securitisation" and hence by implication become "low quality" or "non-qualifying" securitisation even when the actual assets in the ineligible securitisation could not be regarded as problematic or poor quality. A further benefit would be to increase the level of market support for the creation of a qualifying securitisation category because those parts of the market that might not be eligible for better regulatory treatment would be less inclined to oppose it.

The modular approach discussed above in our general comments will also help to mitigate this effect because transactions may qualify for some purposes but not others, thereby creating a more graded effect on demand. Rating, seniority of tranche, average life and granularity are all criteria that are appropriate only in particular contexts and should therefore be reserved for specific applications (e.g. LCR). It is one thing to say that a bank should be encouraged to invest in one particular type of securitisation, but it is a very different thing to say the same about asset managers and

Alternative Investment Funds. These latter entities should retain broader flexibility to invest in structures that do not meet all the criteria set out in the DP. Indeed, pension funds and insurers should also arguably be given less restrictive criteria for qualifying investments than credit institutions, given their longer dated liability profile.

10. *How should capital requirements reflect the partition between qualifying and non-qualifying?*

This is a complex question. We refer to AFME's response in March 2014 to the EBA *Questionnaire on the potential development of a "high quality" securitisation market in the EU*, and to the response of GFMA and joint trades to the BCBS' *Second Consultative document on Revisions to the Basel Securitisation Framework*.

On 11th December 2014 the BCBS published its Final Rules for the revised securitisation framework, although further work is being conducted jointly by the BCBS and IOSCO "to review securitisation markets and to identify factors that may be hindering the development of sustainable securitisation markets." The BCBS and IOSCO have issued a consultative document with proposed criteria "simple, transparent and comparable securitisation" and AFME, through GFMA, plans to respond to that. In 2015, the BCBS will consider how to incorporate such criteria into the securitisation framework.

We believe therefore that a detailed answer to this question is perhaps premature. Further, such an answer must depend in large part on the specific criteria used to determine what are qualifying securitisations for regulatory capital purposes. That said, members of the Joint Associations are of the view that the more favourable treatment of qualifying securitisations should take two broad forms: a move toward capital neutrality, and reduced risk weight floors.

We believe that treatment closer to capital neutrality for the transaction as a whole is a sensible consequence of being a qualifying securitisation since the criteria are broadly designed to ensure that the risks associated with investing in the securitisation reflect the risk of the underlying assets, rather than any extrinsic structuring or counterparty risks. If that is true, then the overall risk of holding the tranches of the securitisation ought to be much closer to being the same as the risk of holding the underlying assets directly and the capital treatment should be adjusted accordingly.

A similar analysis applies to risk weight floors. The risk weight floor associated with securitisation can sometimes be higher than the risk weighting assigned to the underlying assets in the securitisation if held directly. Accordingly, risk weight floors ought to be reduced or eliminated for qualifying securitisations in order to ensure that the capital requirement calculated using the risk weight floor for holding the securitisation notes can be as low as the capital requirements for holding the underlying assets directly.

In addition, the wider dissemination, and greater ease of use, in Europe of capital methodologies which do not depend on external credit ratings would assist. This could include not just wider availability and usability of the Internal Ratings-Based Approach under the BCBS Final Rules, but also alternatives that have been published and widely discussed such as the Conservative Monotone Approach ("**CMA**"), and its more recent variant the "**European SSFA**".

These approaches would be consistent with the continuing work of the Joint European Supervisory Authorities towards reducing "sole or mechanistic" reliance on credit ratings.

11. *What is a reasonable calibration across tranches and credit quality steps for qualifying securitisations? Would re-allocating 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?*

It is difficult to answer this question in detail before understanding the proposal for the overall amount of capital for qualifying compared to non-qualifying transactions. In any case, capital should reflect the true risk of each securitisation exposure. Since most of the proposed criteria apply to the whole transaction, it would make sense that the aggregate capital for the whole transactions should be reduced for qualifying securitisations in line with our response to question 10, not just reallocated away from the most senior tranche.

Regarding re-allocation, a tool for evaluating how capital should be appropriately allocated across tranches of different seniority is the Conservative Monotone Approach ("**CMA**") described and calibrated in Duponcheele, Linden, Perraudin and Totouom-Tangho in their paper "*Calibration of the CMA and Regulatory Capital for Securitisations*" (April 2014).[5]

Further information regarding the European SSFA is available on request.

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?*

See our answers to Questions 10 and 11 above regarding moving away from reliance on credit ratings. However, calibration for qualifying versus non-qualifying on the one hand, and sovereign risk on the other, are different issues.

Having said that, as we stated in our response to the ECB/BoE DP, overall members of the Joint Associations who are users of credit ratings believe that the publication of "uncapped" ratings would be a useful innovation because it provides useful information to investors about the quality of the underlying assets and the credit enhancement applied thereto.

This is clearly an issue for both the originator and the investor sides of the market. Some rating agencies impose ceilings on securitisation ratings that are derived from their rating on the relevant sovereign. These rating ceilings are intended to reflect

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[5] Duponcheele, Linden and Perraudin "*How to revive the European Securitisation Market: a proposal for a European SSFA*" (November, 2014) show how this model can be used to justify modifications in the Basel SSFA that rectify the problems of over-capitalisation of junior mezzanine and under capitalisation of senior mezzanine through the introduction of an AF_{HQS} adjustment factor on the capital input to the formula. The European SSFA is a simplification of the Modified SSFA (MSSFA) methodology which was described (page 12) in the GFMA and joint trades answer to the BCBS' Second Consultative document on Revisions to the Basel Securitisation Framework. The MSSFA calibration was asset-class dependent whereas the European SSFA is not. Further information regarding the European SSFA is available on request.

certain "tail risks" associated with a potential sovereign default, and that cannot be mitigated e.g. by additional credit enhancement, in the agencies' view. Many market participants, however, disagree with the agencies' assessment of the scale of these risks and therefore with the calibration of these rating ceilings. This could be remedied in part by requiring credit rating agencies to publish "uncapped" ratings, which would allow investors to overlay their own view of such sovereign-related risks.

Pursuing this avenue would be a complex endeavour for credit rating agencies because it would require them to analyse every input of sovereign risk into the ultimate rating of the securitisation, e.g. in the rating of the counterparties. Harmonising this approach across rating agencies may be difficult, but would be necessary if the "uncapped" ratings are to be meaningful in the market.

That said, an obvious benefit of publishing "uncapped" ratings would be to allow investors and regulators to readily distinguish between deals which are structured to the relevant sovereign cap rating (which is commonly done because it is known that it will not be possible to achieve a higher rating in any case) from those structured to AAA level but rated lower because of a sovereign cap. This, in turn, would allow regulators to take a view as to the capital that ought to be held against a particular position, with a deal structured to AAA level, but rated A because of a sovereign cap presumably attracting a lower capital charge than a deal structured to A level in the knowledge that that was anyway the sovereign cap. This would also be helpful in creating a level playing field because investors will often have their own views in respect of sovereign exposures.

In closing, we wish to emphasise that the engagement of the EBA with market participants on the revival of the securitisation market in the European Union is greatly appreciated. We hope this response is helpful. We are grateful for the opportunity to comment on the DP and we would be happy to answer any further questions that you may have or develop further issues of interest to you.

Yours faithfully

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ANNEX 1

Description of the Joint Associations

AFME represents a broad array of European and global participants in the wholesale financial markets, and its 197 members comprise all pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME was formed on 1 November 2009 by the merger of the London Investment Banking Association and the European operations of the Securities Industry and Financial Markets Association. AFME provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European and UK capital markets. AFME is the European regional member of the Global Financial Markets Association (GFMA) and is an affiliate of the US Securities Industry and Financial Markets Association (SIFMA) and the Asian Securities Industry and Financial Markets Association (ASIFMA). AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

The **BBA** is the leading trade association for the UK banking sector with more than 200 member banks headquartered in over 50 countries with operations in 180 jurisdictions worldwide. Eighty per cent of global systemically important banks are members of the BBA. As the representative of the world's largest international banking cluster the BBA is the voice of UK banking. We represent our members domestically, in Europe and on the global stage. Our network also includes over 80 of the world's leading financial and professional services organisations. BBA members manage more than £7 trillion in UK banking assets, employ nearly half a million individuals nationally, contribute over £60 billion to the UK economy each year and lend over £150 billion to UK businesses.

ICMA represents financial institutions active in the international capital market worldwide. ICMA's members are located in 54 countries, including all the world's main financial centres. ICMA's market conventions and standards have been the pillars of the international debt market for over 40 years, providing the framework of rules governing market practice which facilitate the orderly functioning of the market. ICMA actively promotes the efficiency and cost effectiveness of the capital markets by bringing together market participants including regulatory authorities and governments. See: www.icmagroup.org.
ICMA is listed on the EU Register of Interest Representatives, registration number 0223480577-59.

Since 1985, **ISDA** has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 66 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, including exchanges, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org

ANNEX 2

Feedback on criteria for qualifying securitisations

Criterion	Comments	Suggested amendments
1. The securitisation should meet the following conditions: • It should be a securitisation as defined in the CRR (as per Article 4(61)) • It should be a "traditional securitisation" as defined in the CRR (as per Article 242(10)) • It should not be a re-securitisation as defined in the CRR (as per Article 4(63)	Please see answer to Question 2 with respect to synthetic securitisations and also general comments with respect to the definition of "securitisation".	No comments.
2. 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 or should be randomly selected from those satisfying eligibility criteria and may not be actively selected or otherwise cherry-picked. Substitution of exposures that are in breach of representations and warranties should in principle not be considered as active	For practical reasons, it is necessary for an originator to depart from a purely random selection process and to exercise some judgment and discretion in some cases. These include: - to ensure correct economics of the transaction are achieved, including capital treatment for the originator being more easily calculated or a consistent approach is used; - to ensure the securitised pool represents assets where the obligor has consented to disclose the features necessary to comply with	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 or should be randomly selected from those satisfying eligibility criteria and may not be actively selected or otherwise cherry-picked. **<u>Selection of exposures to achieve the desired economics (including capital treatment) of the transaction and selection of exposures on the basis of data availability should not in</u>**

Criterion	Comments	Suggested amendments
portfolio management.	regulation; and - to comply with IT system limitations in respect of providing sufficient and robust data to meet ongoing disclosure requirements. The types of securitisation most influenced by these requirements would be SME loan securitisations or social housing securitisations. Please see general comments with respect to the treatment of managed CLOs.	**principle be considered to be cherry-picking.** Substitution of exposures that are in breach of representations and warranties should in principle not be considered as active portfolio management.
3. The securitisations should be characterised by legal true sale of the securitised assets and should not include any severe clawback provisions. A legal opinion should confirm the true sale and the enforceability of the transfer of assets under the applicable laws(s). Severe clawback provisions should include rules under which the sale of cash flow generating assets backing the securitisation can be invalidated by the liquidator solely on the basis that it was concluded within a certain period (suspect period) before the declaration of insolvency of the seller (originator/intermediary), or where such invalidation can only be prevented by the transferees if they can prove that they were not aware of the insolvency of the seller	Please see our answer to Question 2 with respect to the separate treatment of synthetic securitisations. This is in fact two criteria and should be split up as such: (i) on true sale and (ii) on severe clawback provisions. We are suggesting the deletion of the word "legal" before true sale as this is potentially confusing under some legal systems, including English law, where securitisations are normally done via an equitable sale (at least initially) that can be perfected into a legal sale at a later date if necessary. We believe that the requirement for the "true sale" to be supported by a legal opinion should be sufficient to achieve the EBA's intended goal.	***True sale criterion*** The securitisations should be characterised by ~~**legal**~~ true sale **(or similar isolation)** of the securitised assets **such that the underlying exposures are beyond the reach of the seller (originator, sponsor or original lender) and its creditors including in the event of the seller's insolvency.** ~~**and**~~ [A legal opinion should confirm the true sale and the enforceability of the transfer of assets under the applicable laws(s).] ***Severe clawback criterion*** **The securitisations** should not include any severe clawback provisions. Severe clawback provisions should include rules under which

Criterion	Comments	Suggested amendments
(originator/intermediary) at the time of sale.	Equally, some jurisdictions do not achieve the isolation of the assets via a sale *per se* and we believe this criterion should not unfairly discriminate against such jurisdictions. As long as the assets are isolated such that the underlying exposures are beyond the reach of the seller and its creditors through insolvency, it seems to members of the Joint Associations that the policy objective is achieved. Note that the requirement for a legal opinion is not in itself problematic, but law firms will not consent to the public disclosure of their legal opinions, which may present a practical problem for assessing whether a particular transaction meets this criterion.	the sale of cash flow generating assets backing the securitisation can be invalidated by the liquidator solely on the basis that it was concluded within a certain period (suspect period) before the declaration of insolvency of the seller (originator/intermediary), or where such invalidation can only be prevented by the transferees if they can prove that they were not aware of the insolvency of the seller (originator/intermediary) at the time of sale.
4. The securitisations should be backed by exposures that are homogenous in terms of asset type, currency and legal system under which they are subject. In addition, the exposures should meet the following criteria: i) They arise from obligations with defined terms relating to rental, principal, interest or principal and interest payments, or are rights to receive income from assets specified to support such payments;	There are a number of criteria here and it is not clear why they all fall under the same heading. The requirement for homogeneity of asset class makes sense but it should be clear that this is intended to apply in a broad way. So, for example, auto loans and leases could be in the same securitised portfolio, as could a range of consumer receivables. This also aligns with the approach taken in the LCR, so we would recommend making reference to those asset classes instead.	***Homogeneity criterion*** The securitisations should be backed by exposures that are homogenous in terms of ~~asset type~~ **<u>asset class categories defined in the Commission Delegated Regulation (EU) No […/…] with regard to liquidity coverage requirement for Credit Institutions. Nothing in the previous sentence shall limit the underlying exposures to exposures originated in a Member State or to exposures where the obligor is established or resident in a Member State. For these</u>**

Criterion	Comments	Suggested amendments
ii) They are consistently originated in the ordinary course of the original lender's business pursuant to uniform and non-deteriorating underwriting standards; iii) They contain a legal, valid and binding obligation of the obligor, enforceable in accordance with its terms against any third party, to pay the sums of money specified in it (other than an obligation to pay interest on overdue amounts); iv) They are underwritten (a) with full recourse to an obligor that is an individual or a corporate and that is not a special purpose entity and (b) on the basis that the repayment necessary to repay the securitisations 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	It is unclear why it should be necessary that assets all be denominated in the same currency, provided appropriate currency hedging is in place so as to reduce/eliminate exchange rate risk. We would suggest eliminating this element of the criterion given that the hedging point is covered by Criterion 8 already. Similarly, it is unclear why all assets would need to be governed by the same legal system. UK RMBS routinely include assets from two legal different systems (English law and Scots law) with separate enforcement processes and courts and this does not add more complexity to the securitisation. The requirement for consistent origination pursuant to "uniform…underwriting standards" is inappropriate and excludes a number of transactions that should not be excluded. It would almost certainly exclude securitisations of portfolios bought from other banks. It is also not workable as a practical matter in the context of underwriting standards that will naturally and appropriately change over time. It would effectively lock an originator into only ever tightening lending standards. This decision should be left to be	**purposes, references to Union law or to the law of a Member State shall be interpreted as referring to such law or, for securitisations with underlying exposures originated in any non-EEA jurisdiction, to equivalent requirements as set out in law or regulations of that non-EEA jurisdiction**. ~~,~~ ~~**currency and legal system under which they are subject**~~. ***Eligibility/underwriting criterion*** ~~In addition, t~~ **The repayment of the securitisation position is not structured to depend predominantly on the sale of assets securing the underlying exposures; however, this shall not prevent such exposures from being subsequently rolled over or refinanced. T**he **underlying** exposures should meet the following criteria: (i) They arise from obligations ~~**with defined terms**~~ relating to rental, principal, interest or principal and interest payments **or other rights of payment**, or are rights to receive income from assets specified to support such payments; (ii) ~~**They are consistently originated**~~

Criterion	Comments	Suggested amendments
	flexible in the judgment of the originator subject to applicable regulation (e.g. the Mortgage Credit Directive). There is no obvious reason that payment streams should be limited to rental, principal and interest. Why should, e.g. royalty payments be excluded? This should be expanded to cover any income-producing asset. The requirement that the obligations have "defined terms" is potentially confusing. It could be interpreted to mean a defined term as is used in legal documentation (this would mean for example that "rental payments" would need to be a defined term in the securitisation documentation). This language could simply be deleted otherwise something along the lines of "clear provisions" could be used. It is not appropriate to require that obligations of the obligors be enforceable against any third party. That is simply not how loans or other income-producing assets are generally structured. The members of the Joint Associations are concerned with the requirement in paragraph	~~**in the ordinary course of the original lender's business pursuant to uniform and non-deteriorating underwriting standards;**~~ <u>**They are originated in the ordinary course of the original lender's business pursuant to underwriting standards not less stringent than those the original lender applies to origination of similar assets not intended for securitisation;**</u> (iii) They contain a legal, valid and binding obligation of the obligor, enforceable in accordance with its terms against ~~**any third party**~~ <u>**the obligor**</u>, to pay the sums of money specified in it (other than an obligation to pay interest on overdue amounts); (iv) They are underwritten ~~**(a)**~~ with full recourse to an obligor ~~**that is an individual or a corporate and**~~ that is not a special purpose entity<u>**;**</u> ~~**and**~~ (v) ~~**(b) on the basis that the repayment necessary to repay the securitisations was not intended, in whole or in part, to be substantially reliant on the**~~

Criterion	Comments	Suggested amendments
	(iv) that the obligor be an individual or a corporate. This might be read as excluding obligors that are partnerships, social housing organisations or charitable organisations. As to the refinancing criterion, the Joint Associations are of the view that consistency is desirable and that the language included for the purposes of Solvency II achieves the relevant policy objective. We therefore recommend the inclusion of the Solvency II standard with respect to refinancing.	~~**refinancing of the underlying exposures or re-sale value of the assets that are being financed by those underlying exposures**~~
5. At the time of inclusion in the securitisation, the underlying exposures should not include: (i) any disputes between the original lender and borrower on the underlying assets; (ii) Any exposures which are in default. An exposure is considered to be in default if: a. It is more than 90 past due b. The debtor is assessed as unlikely to pay its credit obligations in full without realisation of collateral, regardless of the existence of any past-due amount or of the number of days past due	The requirement for representations and warranties in the closing wording of this criterion is not appropriate. It is inconsistent with the current practice in the markets and impracticable for legacy portfolios. The Joint Associations would also suggest that the EBA uses the definition of default as defined in the CRR, which is consistent with Solvency II and LCR. That said, lenders would not consider a credit card loan in default if it was 90 days past due; they would only consider the loan to be in default if the loans had been charged off. We agree broadly with the inclusion of a "no defaulted loans" approach where relevant;	At the time of inclusion in the securitisation, the underlying exposures should not include: (i) any disputes between the original lender and borrower on the underlying assets; ~~(ii)~~ Any exposures which are in default **<u>within the meaning of Article 178(1) of Regulation (EU) No 575/2013, except for credit card receivables whereby the cash flow generating assets backing a securitisation shall not contain loans which are both charged off and in default as defined in Article 178(1) of Regulation (EU) No 575/2013</u>**. ~~**An exposure is**~~

Criterion	Comments	Suggested amendments
(iii) Any exposures to a credit-impaired borrower. For these purposes, a borrower should be deemed as credit-impaired where he has been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination or he is, to the knowledge of the institution at the time of inclusion of the exposure in the securitisation, recorded on a public credit registry of persons with adverse credit history, or other credit registry where a public one is not available in the jurisdiction, or he has a credit assessment by an ECAI or a credit score indicating significant risk of default; (iv) Any transferable securities, as defined in Directive 2004/39/EC (MIFID) or derivatives, except derivatives used to hedge currency and interest rate risk arising in the securitisation. In addition, the original lender should provide	however, special treatment is required for credit card securitisations and that the requirement might, as currently drafted, exclude all credit card securitisations. The reason for this is that credit card pools are a cross section of the credit card issuer's portfolio and hence always contain loans that are 90 days past due because they are revolving pools and debts are included for as long as the card issuer thinks they are likely to be paid. Even if an individual exposure is in default, though, the pool is sufficiently highly overcollateralised that the pool will not be in default even if individual exposures are. Excluding those exposures more than 90 days past due would therefore distort the securitised portfolio as a cross-section of the originator's overall portfolio in contravention of the criterion that prohibits cherry-picking. It is therefore necessary to add a clarification for credit cards that they are both charged off and in default rather than simply in default as defined by the CRR (i.e. 90 days in default). We note that (i) credit card loans facilitate lending to the real economy; (ii) in Europe, credit card securitisations performed very well from a credit perspective[6]. Similar	~~**considered to be in default if:**~~ ~~**c. It is more than 90 past due**~~ ~~**d. The debtor is assessed as unlikely to pay its credit obligations in full without realisation of collateral, regardless of the existence of any past-due amount or of the number of days past due**~~ ~~**(iii)**~~ Any exposures to a credit-impaired borrower. ~~**For these purposes, a borrower should be deemed as credit-impaired where he has been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination or he is, to the knowledge of the institution at the time of inclusion of the exposure in the securitisation, recorded on a public credit registry of persons with adverse credit history, or other credit registry where a public one is not available in the jurisdiction, or he has a credit assessment by an ECAI or a credit score indicating**~~

[6] European credit card ABS outstanding in mid-2007 had a 0.04% default rate from mid-2007 to Q1 2013

Criterion	Comments	Suggested amendments
representations and warranties that assets being included in the securitisation are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collection due.	considerations also apply to trade receivables, where the definition of default would need to be matched to the specific asset and jurisdiction. We broadly agree with the inclusion of a "no credit-impaired obligors" approach, but again the legal drafting is problematic in practice. Consumer loan ABS transactions would typically fall foul of this requirement. This is because a borrower may have a bad credit history due to default on mortgage payments but they may be granted a loan for a car because the lender makes its own credit assessment that the borrower can make the payments for this smaller, different type of loan. The obligor should not be considered a credit impaired borrower if it has had an assessment of credit worthiness by an accepted market credit agency or by the originator indicating that it does not present a significantly increased risk that contractually agreed payments will not be made compared to the average obligor for the type of loan in the relevant jurisdiction. Moreover, a number of jurisdictions do not have the types of public registers referred to here, meaning that it would be impossible to check, e.g. the three	~~**significant risk of default;**~~ **For these purposes, an obligor is not credit impaired unless that obligor (i) has had an assessment of creditworthiness by the originator or (to the knowledge of the originator) by a market accepted credit agency indicating a significantly increased risk that contractually agreed payments will not be made compared to the obligor's usual underwriting standards for the relevant product; or (ii) in the absence of an assessment of the type referred to in (i), the obligor has, to the knowledge of the obligor having made customary enquiries, declared bankruptcy or agreed with his creditors to a debt dismissal or reschedule or had a court grant his creditors a right of enforcement or material damages as a result of a missed payment within 3 years prior to the date of origination or is on a public credit registry of persons with adverse credit history.** (iv) Any transferable securities, as defined in Directive 2004/39/EC

Criterion	Comments	Suggested amendments
	year history of credit difficulties referred to. The current proposed credit impairment requirement would exclude any securitisation deal that includes a loan whereby the obligor has declared bankruptcy, agreed with his creditors to a debt dismissal or reschedule or had a court grant his creditors a right of enforcement or material damages as a result of missed payment within 3 years prior to the date of origination or is on a state register or has an assessment of credit worthiness indicating a significantly increased risk that contractually agreed payments will not be made compared to the average obligor. This would of course lead to a number of unintended consequences in the consumer credit markets, not the least of which would be an increase in the cost of borrowing for all borrowers of worse than average credit quality. The Joint Associations support the EBA's inclusion of a credit impairment restriction; however, we believe that the currently drafted provision is highly onerous and would exclude outright many types of high performing consumer securitisations such as auto ABS. In the particular context of auto securitisations, we are of the view that exclusion of these transactions from the high	(MIFID) or derivatives, except derivatives used to hedge currency and interest rate risk arising in the securitisation. ~~**In addition, the original lender should provide representations and warranties that assets being included in the securitisation are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collection due.**~~

Criterion	Comments	Suggested amendments
	quality category is contrary to the policy objectives because: (i) they are an important asset class for funding the real economy; and (ii) they have had excellent credit performance throughout the crisis.	
6. At the time of inclusion, the underlying exposures are such that at least one payment has been made by the borrower, except in the case of securitisations backed by personal overdraft facilities and credit card receivables.	The exception should relate to all types of consumer credit, which is consistent with Solvency II/LCR (which relates to loans and credit facilities to individuals for personal, family or household consumption purposes). The exception should also apply to corporate credit cards and trade receivables. Rather than list out specific asset classes to be exempted, our suggested revised formulation of this criterion is based on characteristics of receivables it would be appropriate to exclude.	At the time of inclusion, the underlying exposures are such that at least one payment has been made by the borrower, except in the case of ~~**securitisations backed by personal overdraft facilities and credit card receivables**~~ **exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits**.
7. The securitisation should fulfil the CRR retention rules (Article 405 of the CRR)	No objection to the principle of this criterion but we note that it would be helpful for the European authorities to pursue mutual recognition or substituted compliance of retention requirements globally, to preserve access by issuers and investors to both US and EU pools of liquidity. Also, it is helpful that this requirement is designed specifically by reference to the CRR so far as EU jurisdictions are concerned. AFME has previously raised inconsistencies between the CRR risk retention rules and the	No comments.

Criterion	Comments	Suggested amendments
	risk retention rules set out by the AIFMD and Solvency II regimes. These continue to be a source of concern to the Joint Associations and should be addressed in the overall review mentioned in the DP's Recommendation 1.	
8. Interest rate and currency risks arising in the securitisation should be appropriately mitigated and any hedging should be documented according to standard industry master agreements. Only derivatives used for genuine hedging purposes should be allowed.	This criterion is sensible in principle, but it would be helpful to have a definition of hedging. We have suggested the definition used for EMIR purposes in order to ensure consistency of definition across regimes.	Interest rate and currency risks arising in the securitisation should be appropriately mitigated and any hedging should be documented according to standard industry master agreements. Only derivatives ~~**used for genuine hedging purposes**~~ **that are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the issuer or its group** should be allowed. **For these purposes the phrase "objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity" shall have the meaning assigned to it by Article 10(1) of Commission Delegated Regulation (EU) No 149/2013.**
9. Any referenced interest payments under the securitisation assets and liabilities should be based on commonly encountered market interest rates and may include caps and floors, but should not reference complex formulae and	Interest rates on the assets are not always based on a market standard; this is especially the case for consumer loans that almost invariably have an element of the bank originator's standard variable rate. We have suggested an amendment to the criterion that	Any referenced interest payments under the securitisation assets and liabilities should be based on commonly encountered market interest rates **or sectoral rates reflective of a lender's cost of funds** and may include caps and floors, but should not reference complex

Criterion	Comments	Suggested amendments
derivatives.	attempts to capture this.	formulae or derivatives.
10. The transaction documentation of those transactions featuring a revolving period should include provisions for appropriate early amortisation events and/or triggers of termination of the revolving period, which should include, at least, each of the following: (i) A deterioration in the credit quality of the underlying exposures; (ii) A failure to generate sufficient new underlying exposures of at least similar credit quality; and (iii) The occurrence of an insolvency-related event with regards to the originator or the servicer.	This criterion is reasonable in principle but does need to be adjusted to reflect certain typical features of the market and structures. Firstly, materiality is important: a minor and insignificant deterioration in credit quality will not and should not lead to early amortisation. Secondly, short term assets such as trade and other receivables often experience seasonal variations in amounts outstanding because they are directly connected to the real economy; this should not trigger early amortisation, especially as the structures financing such assets contain dynamic credit enhancement as a mitigant for the risk. Lastly, other types of transactions such as granular consumer portfolios are unlikely to reference credit quality specifically. As a proxy for credit quality, certain other ratios and triggers will be included such that the substance of the criterion is nonetheless fulfilled. We would amend to make clear that triggers need to cover these concepts but need not reference these concerns specifically.	The transaction documentation of those transactions featuring a revolving period should include provisions for appropriate early amortisation events and/or triggers of termination of the revolving period, which should include, at least, **provisions which encompass** each of the following: (i) A **material** deterioration in the credit quality of the underlying exposures; (ii) A failure to generate sufficient new underlying exposures of at least similar credit quality; and (iii) The occurrence of an insolvency-related event with regards to the originator or the servicer.
11. Following the occurrence of a performance-related trigger, an event of default or an acceleration event: (i) The securitisation positions are	In the event of the circumstances listed in the criterion, the securitisation should not be forced to switch straight to sequential payments – this is far too blunt, the	Following the ~~**occurrence of a performance-related trigger, an event of default or an acceleration event**~~ **delivery of an**

Criterion	Comments	Suggested amendments
repaid in accordance with a sequential amortisation payment priority, whereby the seniority of the tranches determines the sequential order of payments. In particular, a repayment of noteholders in order of priority that is "reverse" with respect to their seniority should not be foreseen; (ii) There are no provisions requiring immediate liquidation of the underlying assets at market value	requirements should allow for firms to be able to use other solutions to resolve problems. We suggest that the EBA use the Solvency II language instead, whereby sequential payment is triggered when there is an acceleration or enforcement notice (except the point on securitisations without a revolving period). If this is not remedied, then master trust structures may be excluded from qualifying under this criterion, a result we do not believe the EBA intends. Also, it should be clear that liquidation at market value can be both beneficial and possible in some circumstances, particularly if investors vote for it. Automatic liquidation can also be a reasonable option where there are physical assets (for example, cars) which can be sold on liquid secondary markets. This can be a feature of, for example, auto lease securitisations which can be repaid from the proceeds of sale of the underlying cars. Adjustment of this criterion is therefore required to take account of these typical features of markets and structures.	**acceleration or enforcement notice**: ~~(i)~~ ~~**The securitisation positions are repaid in accordance with a sequential amortisation payment priority, whereby the seniority of the tranches determines the sequential order of payments. In particular, a repayment of noteholders in order of priority that is "reverse" with respect to their seniority should not be foreseen**~~ **principal receipts from the underlying exposures are passed to the holders of the securitisation positions via sequential amortisation of the securitisation positions and no substantial amount of cash is trapped in the SSPE on each payment date;** (ii) **Except where the underlying exposures are themselves backed by physical assets that can be sold on a liquid market, t**~~T~~here are no provisions requiring ~~**immediate**~~ **automatic** liquidation of the underlying assets at market

Criterion	Comments	Suggested amendments
		value.
12. The transaction documentation should clearly specify the contractual obligations, duties and responsibilities of the trustee, servicer and other ancillary service providers as well as the processes and responsibilities necessary to ensure that: (i) the default or insolvency of the current servicer does not lead to a termination of the servicing of the underlying assets; (ii) upon default and specified events, the replacement of the derivative counterparty is provided for in all derivative contracts entered into for the benefit of the securitisation; and (iii) upon default and specified events, the replacement of the liquidity facility provider or account bank is provided for in any liquidity facilities or account bank agreements entered into for the benefit of the securitisation.	The Joint Associations have no objection to the content of this criterion but we believe that the suggested wording is more reflective of the policy objective, which is presumably to ensure the documentation reflects the steps to be taken, rather than the internal processes of the entities carrying out those steps.	The transaction documentation should clearly specify the contractual obligations, duties and responsibilities of the trustee, servicer and other ancillary service providers as well as the ~~processes and responsibilities necessary~~ **<u>steps to be taken by the relevant parties</u>** to ensure that: (i) the default or insolvency of the current servicer does not lead to a termination of the servicing of the underlying assets; (ii) upon default and specified events, the replacement of the derivative counterparty is provided for in all derivative contracts entered into for the benefit of the securitisation; and (iii) upon default and specified events, the replacement of the liquidity facility provider or account bank is provided for in any liquidity facilities or account bank agreements entered into for the benefit of the securitisation.
13. The transaction documentation contains provisions relating to an "identified person" with fiduciary responsibilities, who acts on timely basis and in the best interest of investors in the securitisation	This is in fact three criteria: (i) requirement for a fiduciary and setting out their responsibilities, (ii) a requirement for provisions facilitating the timely resolution of conflicts between different classes of	The transaction documentation contains provisions relating to an "identified person" with fiduciary responsibilities, who acts **~~on timely basis and~~** in the best interest of investors in the securitisation transaction to

Criterion	Comments	Suggested amendments
transaction to the extent permitted by applicable law and in accordance with the terms and conditions of the securitisation transaction. The terms and conditions of the notes and contractual transaction documentation should contain provisions facilitating the timely resolution of conflicts between different classes of noteholders by the "identified person". In order to facilitate the activities of the identified person, voting rights of the investors should be clearly defined and allocated to the most senior credit tranches in the securitisation.	noteholders; and (iii) a requirement as to the definition and allocation of voting rights. It is not clear to members of the Joint Associations how requirements (i) and (ii) differ from the documentation currently commonly found in the market. To the extent that this does not require any change from what is currently the practice in the market, we would suggest removing it as it is likely to cause significant difficulties with trustees, who will be unwilling to take on roles with perceived additional responsibility for resolving conflicts in a timely fashion. We would also note that the obligation for persons with fiduciary duties to act in the best interests of the client is superfluous as the basic nature of a fiduciary responsibility is to require that very thing. As to requirement (iii), we would refer you to our answer to Question 5 in the main body of this letter. We suggest that the voting rights should simply be clearly defined. This also excludes private transactions which typically do not have an independent trustee. See our comments on Criterion 15.	the extent permitted by applicable law and in accordance with the terms and conditions of the securitisation transaction. ~~**The terms and conditions of the notes and contractual transaction documentation should contain provisions facilitating the timely resolution of conflicts between different classes of noteholders by the "identified person".**~~ In order to facilitate the activities of the identified persons with fiduciary duties, voting rights of the investors should be clearly defined ~~**and allocated to the most senior credit tranches in the securitisation**~~.
14. The management of the servicer of the securitisation should demonstrate expertise	It is not clear to members of the Joint Associations how this expertise would be	No comments.

Criterion	Comments	Suggested amendments
in servicing the underlying loans, supported by a management team with extensive industry experience. Policies, procedures and risk management controls should be well documented. There should be strong systems and reporting capabilities in place.	measured and by whom. It is possible that this criterion might be appropriate as drafted, but technical guidance by the authorities would be needed to ensure it can be implemented in practice.	
15. The securitisation should meet the requirements of the Prospectus Directive	This criterion is problematic for private placements. The members of the Joint Associations are concerned about this because excluding private transactions would be contrary to the growth objectives. EU policy in general has been to encourage private placements and it would seem curious to restrict them in the context of a securitisation. It is also unclear why a high quality private deal that meets all the other requirements should not be high quality because it does not have a prospectus. The EBA suggested at the Open Hearing that its objection to private deals qualifying was due to a lack of transparency. This objection is unfounded. It is in private deals that investors tend to have the highest degree of transparency. Although such transparency is not regulated in the same way as a public securitisation is under the Prospectus Directive, the relationship between the originator and the investor tends to be a very	~~The~~ **<u>Publicly offered</u>** securitisations should meet the requirements of the Prospectus Directive. **<u>Alternatively, publicly offered securitisations with underlying exposures originated in any non-EEA jurisdiction should meet equivalent requirements as set out in law or regulations of that non-EEA jurisdiction.</u>**

Criterion	Comments	Suggested amendments
	close one in a private deal and investors typically have access to more information than in a public securitisation. The private nature of transactions also means there is not a need for public disclosure in order to inform potential investors. If the EBA's concern is that regulators should have access to this information as well, members of the Joint Associations would be pleased to discuss alternative methods of achieving that goal, as we have no objection to providing the same level of transparency to regulators as we do to investors in private transactions. We would further suggest that mutual recognition or substituted compliance should be provided for.	
16. The securitisation should meet the requirements of Article 409 of the CRR and Article 8b of the CRA (disclosure to investors)	The Joint Associations support the inclusion of this criterion in principle, but we would suggest that it should provide for substituted compliance. We would also suggest that Article 409 of the CRR is an appropriate and complete disclosure standard for these purposes. Article 8b of the CRA Regulation is still developing and it would appear that it will be developing for some time to come. Its scope is limited to those securitisations that fall neatly within the asset classes for which there are disclosure templates. Furthermore,	The securitisation should meet the requirements of Article 409 of the CRR ~~**and Article 8b of the CRA**~~ (disclosure to investors) **Alternatively, securitisations with underlying exposures originated in any non-EEA jurisdiction shall meet equivalent requirements as set out in the law or regulations of that non-EEA jurisdiction where these exist. In the absence of equivalent requirements set out in law or regulation, the securitisation should comply with disclosure practices customarily**

Criterion	Comments	Suggested amendments
	the disclosure template for credit cards is new and untested. All of these factors are likely to lead to unintended consequences, and adding compliance with Article 8b to the criteria is likely to magnify those unintended consequences. Restricting this criterion to Article 409 of the CRR would provide more certainty and create more of a level playing field as that applies to all securitisations in the same way.	**observed for securitisations in the local market**.
17. Where legally possible, investors should have access to all underlying transaction documents	No objection to this criterion in principle, however, it should provide for redaction of commercially and personally sensitive items such as personal contact details, bank accounts and fees which are not relevant to continued performance.	Where legally possible, investors should have access to all underlying transaction documents **relevant to the continued performance of the securitisation, subject to redaction of commercially and personally sensitive items such as personal contact details, bank accounts and fees.**
18. The transaction documentation should provide in clear and consistent terms definitions, remedies and actions relating to delinquency and default of underlying debtors, debt restructuring, debt forgiveness, forbearance, payment holidays and other asset performance remedies. The transaction documents should clearly specify the priority of payments, triggers, changes in waterfall following trigger breaches as well as the	The Joint Associations have no objection to this criterion in principle, but it would be helpful if the EBA could clarify whether there is a practice in the market currently that it is seeking to alter as members of the Joint Associations consider that market documentation broadly provides for these matters already. Obviously documents must continue to provide for commercial discretion in managing delinquencies and defaults of underlying debtors in order to ensure that any	The transaction documentation should provide in clear and consistent terms definitions, remedies and actions relating to delinquency and default of underlying debtors, debt restructuring, debt forgiveness, forbearance, payment holidays and other asset performance remedies **(without prejudice to the originator's right to restrict access to information relating to its credit risk management strategy)**. The transaction documents should clearly specify the priority

Criterion	Comments	Suggested amendments
obligation to report such breaches. Any change in the waterfall should be reported on a timely basis, at the time of its occurrence. The originator or sponsor should provide investors a liability cash flow model, both before the pricing of the securitisation and on an ongoing basis.	enforcement action taken in individual cases is appropriate to the circumstances and complies with applicable regulation e.g. relating to treating customers fairly. The only area of slight concern is that it ought to be clear that commercially sensitive information related to credit risk management strategy can be excluded in order to preserve competition in the marketplace. Finally, we have suggested some changes to the wording in order to allow originators some flexibility in the way they deliver their liability cash flow model (e.g. via Bloomberg).	of payments, triggers, changes in waterfall following trigger breaches as well as the obligation to report such breaches. Any change in the waterfall should be reported on a timely basis, at the time of its occurrence. The originator or sponsor should ~~**provide investors**~~ **make available** a liability cash flow model **to investors via an appropriate medium**, both before the pricing of the securitisation and on an ongoing basis.
19. The transaction should be subject to mandatory external verification on a sample of underlying assets (confidence level of at least 95%) at issuance, by an appropriate and independent party or parties, other than a credit rating agency. Confirmation that this verification has occurred should be included in the transaction documentation.	This requirement will need to be further specified. The members of the Joint Associations do not understand what, precisely, needs verification, although we have suggested appropriate wording representing our best guess as to what is intended. A customary verification of the pool tape via a standard securitisation AUP letter would be a sensible approach. We would note, however, that AUP letters, like legal opinions, are not generally disclosable.	~~**The transaction should be subject to mandatory external verification on**~~ A sample of the underlying assets (confidence level of at least 95%) **should be subject to external verification prior to** ~~**at**~~ issuance by an appropriate and independent party or parties, other than a credit rating agency **to verify to that confidence level that the data disclosed to investors in any formal offering document in respect of the underlying assets is accurate**. Confirmation that this verification has occurred should be included in

Criterion	Comments	Suggested amendments
		the transaction documentation.
20. 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 historical period representing a significant stress or where such period is not available, at least 5 years of historical performance. The basis for claiming similarity to exposures being securitised should also be disclosed.	Disclosure requirements are already addressed by Article 409 of the CRR, supplemented by Article 8b of CRA3 and the RTS issued by ESMA. Including additional disclosure requirements here is confusing and creates a separate layer of compliance. Moreover, this represents a substantive new disclosure requirement that cuts across the Prospectus Directive regime and should not be introduced without the significant discussion and consultation of the main legislative process. The requirement for at least 5 years of historical performance on similar assets would mean it would be very hard for any new asset classes or even traditional asset classes in new jurisdictions to be treated as SST. We would therefore suggest deleting this criterion. To the extent it is retained at all, it should simply cross refer to existing regulation on disclosure, and not seek to create a new and parallel requirement.	Suggest deletion of the criterion. To the extent it is retained at all, it should simply cross refer to existing regulation on disclosure, and not seek to create a new and parallel requirement.
21. Investors and prospective investors should have readily available access to data on the underlying individual assets on a loan-by-loan level, at inception, before the pricing	Disclosure requirements are already addressed by Article 409 of the CRR, supplemented by Article 8b of CRA3 and the RTS issued by ESMA. Including additional disclosure	Suggest deletion of the criterion. To the extent it is retained at all, it should simply cross refer to existing regulation on disclosure, and not seek to create a new and parallel

Criterion	Comments	Suggested amendments
of the securitisation, and on an ongoing basis. Cut-off dates of this disclosure should be aligned with those used for investor reporting purposes.	requirements here is confusing and creates a separate layer of compliance. There is also an ongoing debate about the helpfulness of loan-by-loan disclosure in respect of highly granular consumer portfolios. That debate should be resolved in the context of existing and ongoing discussions regarding disclosure requirements before any new requirements are implemented in these criteria. Moreover, this represents a substantive new disclosure requirement that cuts across the Prospectus Directive regime and should not be introduced without the significant discussion and consultation of the main legislative process. If this is to be introduced, it would require a great deal of thought about what data is required and a consideration of bank secrecy regimes that vary by jurisdiction even within the European Union. We would suggest deleting this requirement. To the extent it is retained at all, it should simply cross refer to existing regulation on disclosure, and not seek to create a new and parallel requirement.	requirement.
22. Investor reporting should occur at least on a quarterly basis. As part of investor reporting the following	Disclosure requirements are already addressed by Article 409 of the CRR, supplemented by Article 8b of CRA3 and the RTS issued by	Suggest deletion of the criterion. To the extent it is retained at all, it should simply cross refer to existing regulation on disclosure,

Criterion	Comments	Suggested amendments
information should also be disclosed: • All materially relevant data on the credit quality and performance of underlying assets, including data allowing investors to clearly identify debt restructuring, debt forgiveness, forbearance, payment holidays, delinquencies and defaults in the pool; • Data on the cash flows generated by underlying assets and by the liabilities of the securitisation, including separate disclosure of the securitisation's income and disbursements, i.e. scheduled principal, scheduled interest, prepaid principal, past due interest and fees and charges; • The breach of any waterfall triggers and the changes in waterfall that this entails.	ESMA. Including additional disclosure here is confusing and creates a separate layer of compliance. We would suggest deleting this requirement. To the extent it is retained at all, it should simply cross refer to existing regulation on disclosure, and not seek to create a new and parallel requirement. Moreover, this represents a substantive new disclosure requirement that cuts across existing legislated disclosure regimes and should not be introduced without the significant discussion and consultation of the main legislative process. Finally, members of the Joint Associations would have difficulty disclosing to the level of detail suggested in this criterion as their IT systems are not designed to report to this level of detail for some asset classes, particularly highly granular ones.	and not seek to create a new and parallel requirement.
Criterion A: Underlying exposures should be originated in accordance with sound and prudent credit granting criteria. Such criteria should include at least an assessment of the borrower's creditworthiness in accordance with paragraphs 1 to 4, 5(a) and 6 of Article	The credit assessment requirements mentioned apply to specific asset classes. They will not be appropriate for other asset classes, so it should be made clear that they only apply as criteria for being a qualifying securitisation where they would anyway be applicable to the	Underlying exposures should be originated in accordance with sound and prudent credit granting criteria. Such criteria should include at least an assessment of the borrower's creditworthiness in accordance with paragraphs 1 to 4, 5(a) and 6 of Article 18 of

Criterion	Comments	Suggested amendments
18 of Directive 2014/17/EU or Article 8 of Directive 2008/48/EC, as applicable.	underlying assets. Also, it should be made clear that where the underlying assets were grandfathered out of the credit assessment requirements, that grandfathering applies in respect of this criterion as well.	Directive 2014/17/EU or Article 8 of Directive 2008/48/EC, ~~as applicable~~**<u>, to the extent such standards would according to their terms in any case apply to the individual underlying exposures</u>**.
Criterion B: The pool of exposures to be securitised should be such that the largest aggregated exposure to a single obligor does not exceed 1% of the value of the aggregate outstanding balance. For the purposes of this calculation, loans or leases to a group of connected clients, as referred to in Article 4(39) of the CRR, should be considered as exposures to a single obligor.	See our response to Question 7.	Suggest deletion of this criterion.
Criterion C: The underlying exposures should fulfil each of the following criteria: (i) They have to be exposures to individuals or undertakings that are resident, domiciled or established in an EEA jurisdiction, and (ii) At the time of inclusion they have to meet the conditions for being assigned, under the Standardised Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than: a) [40%]	The limitation to obligors in EEA jurisdictions is inappropriate. See our response to Question 4 in respect of geographical requirements. The requirement for specific risk weights based on CRR risk weightings is problematic as drafted. The proposed method for allocating risk weightings using regulatory formulae is used only by banks (and not other types of investors) and then only because of regulatory requirements. The BCBS consultation on revisions to risk weightings	**~~The underlying exposures should fulfil each of the following criteria:~~** **~~(i) They have to be exposures to individuals or undertakings that are resident, domiciled or established in an EEA jurisdiction, and~~** **~~(ii) At the time of inclusion they have to meet the conditions for being assigned, under the Standardised Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller~~**

Criterion	Comments	Suggested amendments
on a weighted average basis where the exposure is a loan secured by a residential mortgage or fully guaranteed residential loan, as referred to in paragraph 1(e) of Article 129 of the CRR; (b) [50%] on an individual loan basis where the exposure is a loan secured by a commercial mortgage (c) [75%] on an individual loan basis where the exposure is a retail exposure (d) [100%] on an individual loan basis for any other exposures. (iii) Under (a) and (b) loans secured by lower ranking security rights on a given asset should only be included in the securitisation if all loans secured by prior ranking security rights on that asset are also included in the securitisation. Under (a) no loan in the securitised portfolio should be characterised by a loan-to-value ratio higher than 100%.	under the Standardised Approach [7] is essentially based on the idea that such weightings are not very risk sensitive and seeks to find more appropriate risk drivers in order to assign representative risk weights. At the very least, the credit quality criteria should be measured at a portfolio level, rather than an individual asset level, and ought to be based on more risk-sensitive criteria. It is possible that the results of the BCBS consultation will produce a suitable alternative, but this will need to be examined once published. Finally, the LTV ceiling in (iii) requires significant refinement in the light of particular arrangements of residential mortgage markets in particular EU member states. This issue arose in the context of the discussions on the LCR as well and Article 13(2)(g)(i) and (ii) of the LCR delegated act deal with this in some detail. We would suggest replicating the language agreed in the context of the LCR for this purpose.	~~**than: a) [40%] on a weighted average basis where the exposure is a loan secured by a residential mortgage or fully guaranteed residential loan, as referred to in paragraph 1(e) of Article 129 of the CRR; (b) [50%] on an individual loan basis where the exposure is a loan secured by a commercial mortgage (c) [75%] on an individual loan basis where the exposure is a retail exposure (d) [100%] on an individual loan basis for any other exposures.**~~ **Where the underlying loans are residential loans, they must meet one of the following conditions:** **(i) the loans in the pool meet on average the loan-to-value requirement laid down in point (i) of Article 129(1)(d) of Regulation (EU) No 575/2013;** **(ii) the national law of the Member State where the loans were originated provides for a loan-to-income limit on the amount that an obligor may borrow in a residential loan, and that Member State has notified this law to the Commission and EBA. The loan-to-income limit is calculated on the**

[7] http://www.bis.org/bcbs/publ/d307.htm

Criterion	Comments	Suggested amendments
		<u>gross annual income of the obligor, taking into account the tax obligations and other commitments of the obligor and the risk of changes in the interest rates over the term of the loan. For each residential loan in the pool, the percentage of the obligor's gross income that may be spent to service the loan, including interest, principal and fee payments, does not exceed 45%; or</u> **<u>(iii) the loans in the pool are fully guaranteed residential loans referred to in Article 129(1)(e) of Regulation (EU) No 575/2013, provided that the loans meet the collateralisation requirements laid down in that paragraph and the average loan-to-value requirement laid down in point (i) of Article 129(1)(d) or Regulation (EU)_No 575/2013.</u>** **~~(iii) Under (a) and (b)~~** **<u>Underlying</u>** loans secured by lower ranking security rights on a given asset should only be included in the securitisation if all loans secured by prior ranking security rights on that asset are also included in the securitisation. **~~Under (a) no loan in the securitised portfolio should be characterised by a loan-to-value ratio higher than 100%.~~**

ANNEX 3

AFME response to the ECB/BoE DP

afme/ Finance for Europe

7 July 2014

To: The Bank of England and the European Central Bank
Submitted via email to:
Securitisation2014@bankofengland.co.uk and
Securitisation2014@ecb.europa.eu

Re: Response to the Discussion Paper: The case for a better functioning securitisation market in the European Union

On behalf of the Association for Financial Markets in Europe ("**AFME**")[1] and its members, we welcome the opportunity to respond to the discussion paper (the "**DP**") entitled "The case for a better functioning securitisation market in the European Union" published by the Bank of England (the "**BoE**") and the European Central Bank (the "**ECB**" and, together with the BoE, the "**Central Banks**") and finalised on 29 May 2014.

AFME and its members would like to thank the Central Banks for producing a carefully thought-out and constructive discussion paper. Even though many discussion papers and consultation papers on individual pieces of legislation and policy affecting the securitisation markets have been published over the last several years, the DP makes a particularly worthwhile contribution because it examines the broader landscape and contributes significantly to encouraging the creation of vibrant, meaningfully reformed securitisation markets as a tool for funding the real economy. Although it has been apparent for some time that policy-makers within the European Union have recognised the positive impact securitisation can make market participants are very encouraged that the Central Banks have taken this concrete step to identify the factors preventing a revival of a sustainable securitisation market and to address the relevant impediments.

It is also worth noting that the DP is perhaps the most evolved attempt thus far to bring together disparate conversations that have been taking place about the concept of "high quality" or "qualifying" securitisation, how it should be defined and the consequences of falling in (or out) of such a classification. While it has been useful to date for that conversation to be wide-ranging and inclusive, it is necessary

1 AFME represents a broad array of European and global participants in the wholesale financial markets, and its 197 members comprise all pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME was formed on 1 November 2009 by the merger of the London Investment Banking Association and the European operations of the Securities Industry and Financial Markets Association. AFME provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European and UK capital markets. AFME is the European regional member of the Global Financial Markets Association (GFMA) and is an affiliate of the US Securities Industry and Financial Markets Association (SIFMA) and the Asian Securities Industry and Financial Markets Association (ASIFMA). AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

in order for it to bear fruit that discussions should be brought together in a forum that is capable of producing credible policy proposals with the necessary political backing to produce real outcomes in a relatively short timeframe. The forum created by the Central Banks via the DP is clearly very helpful in this regard.

Finally, AFME welcomes the IOSCO and the Basel Committee on Banking Supervision market survey on broadly similar themes to those touched on in the DP, albeit at a more general level. We believe both exercises are beneficial, with the DP more likely to produce concrete results in Europe in the near to medium term and the IOSCO/BCBS survey likely to influence the long term direction of regulation at a global level.

Our substantive response consists of overall comments, followed by our answers to the 18 specific questions posed by the DP. The annex hereto contains our detailed thoughts on the proposed criteria set out in Box 3 of the DP for determining whether a particular transaction is a "qualifying securitisation". Should the Central Banks wish to discuss any aspect of our response in further detail, we would be pleased to arrange this.

A. Overall Comments

As a general matter, AFME and its members agree with the analysis presented by the Central Banks in the DP. We believe it effectively sets out the principal benefits of a well-functioning securitisation market and the principal impediments to the development of such a market.

It is, of course, important to AFME and its members that this important work being undertaken by the Central Banks should be coordinated with other workstreams already in existence. Not least of these are EIOPA's development of level 2 standards under Solvency II for investments by insurance undertakings, the workstreams of the EBA on defining "high quality securitisation" and on the recognition of significant risk transfer in securitisations, continuing analysis of the eligibility of securitisations as HQLA in the LCR and the ongoing revisions to the Basel Securitisation Framework by the Basel Committee on Banking Supervision (and the EU's eventual implementation thereof) and the FSB's ongoing work on shadow banking (and its securitisation workstream in particular). If the thinking developed via the DP and the responses thereto is to be effectively implemented, the themes developed will need to feature in the final rules resulting from these workstreams (among others) as well.

AFME and its members also agree in broad terms that defining a sub-category of securitisations for differential treatment on the basis of transparency and predictability (which, for the sake of simplicity, we will call "qualifying securitisations" or "QS", though please note our comments on the neutrality of terminology below) would be a helpful development. Indeed, the objectives and the achievement of the joint work undertaken from 2009 to 2012 by the European Financial Services Round Table ("**EFR**") and AFME to develop and launch the European Prime Collateralised Securities ("**PCS**") label were based on and consistent with this principle. Further thoughts on this are reflected in our detailed responses below, but we feel it helpful to outline the broad features that we feel are important to make the most of this development:

a) The first of these features is that the language used to describe qualifying securitisations should be as neutral as possible. In this respect, we find the Central Banks' use of the term "qualifying securitisation" preferable to the more broadly used term "high quality securitisation". AFME would recommend, however, that this principle be taken even further (resulting in an approach not unlike the proposed EIOPA terminology) and that the labels attached to the different kinds of securitisation be along the lines of "category 1" and "category 2" or "category A" and "category B". This would preserve the ability of regulators and market participants to quickly and easily distinguish between qualifying securitisations and others, which is the key policy driver behind the suggestion. It would also avoid the potential pitfall of the "high quality securitisation" approach which may implicitly shift the burden of stigma from the securitisation market as a whole onto that sector of the market which would fall outside the definition of "high quality securitisation" and hence by implication become "low quality" or "non-qualifying" securitisation even when the actual assets in the ineligible securitisation could not be regarded as problematic or poor quality. A further benefit would be to increase the level of market support for the creation of a qualifying securitisation category because those parts of the market that might not be eligible for better regulatory treatment would be less inclined to oppose it.

b) The second key positive evolution in the Central Banks' proposals for qualifying securitisations as compared to previous proposals is the Central Banks' transaction-based approach. Previous proposals have almost uniformly been tranche-based, with only the most senior tranche of any given transaction being allowed to qualify. This tranche-based approach implies that the purpose of qualification is to reduce or eliminate risk. One of the chief virtues of the Central Banks' proposals is their focus on transparency and the ability to understand and model risk, rather than an attempt to reduce or eliminate risk. The function of any efficient market is to price and allocate risk, not to eliminate it. In the case of the securitisation markets, the risk that ought to be priced and allocated is the credit risk of the underlying assets, as modified by the structuring of the transaction (via tranching and credit-enhancements such as swaps and liquidity facilities). It follows that investors need the information necessary to properly assess those risks and their ability to bear them so they can price the risk accurately. That makes requirements relating to simplicity, loan-level data and general ability to model the risk sensible and appropriate. Qualifying securitisations should not be risk-free, and should not give the impression of being risk-free. Rather, the badge of "qualifying securitisation" ought to represent a belief that the risks are capable of being modelled reliably by the targeted investor base using the information made available to them.

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c) The third broad area on which AFME and its members wish to comment is to note that the term "securitisation" used in its CRR sense, is a very broad term and the criteria suggested, while broadly sensible, do not always take full account of this. An example of an important area that may not have been given full consideration by the Central Banks is asset-backed commercial paper. Although ABCP conduits are "securitisations" in the regulatory sense, they do not fit the paradigm of a securitisation we imagine the Central Banks will have had in mind when developing the criteria in Box 3. As a result, ABCP would not be a QS under the Central Banks' proposals despite the fact that it delivers many of the benefits of securitisation outlined in the DP (e.g. funding trade receivables and other real economy assets, diversification of funding sources for non-bank clients and warehouseing of assets for later ABS transactions), its robust structure (featuring, e.g. significant overcollateralization and retention by originators of a dynamically adjusted first-loss tranche) and the fact that most conduits are supported by strong sponsor banks. The definition of "securitisation" has long caused problems of this sort, so adjusting that regulatory definition may be the most sensible solution to this issue. Alternatively, AFME would urge the Central Banks to adjust the criteria to recognise positively the special structural considerations associated with the ABCP market.

d) The fourth key aspect of an effective regime for qualifying securitisations is that there should be certainty surrounding the categorisation of each transaction. Given the importance of the mooted effects of being a qualifying securitisation (or not), parties to a securitisation transaction need to be able to have a high degree of certainty early on as to whether the transaction is likely to fall within that category. This will affect structuring, marketing and a host of other matters that become much more difficult and costly to change after the initial steps of putting together a transaction have taken place. Equally, it is crucial that investors know early in the investment decision process whether they are reviewing a qualifying securitisation or not and that they should be able to rely on that categorisation absent a subsequent change in the transaction itself (e.g. the failure of the transaction parties to provide ongoing asset disclosure).

e) The fifth key aspect of an effective regime for qualifying securitisations is that determinations should be timely. The categorisation process should not unduly delay the overall issuance process and it should be clear at the beginning of the marketing process for any securities whether a securitisation will be a qualifying securitisation or not. To draw an analogy, at the moment, it can sometimes take up to several weeks after issuance before it becomes clear whether a securitisation will be accepted as eligible collateral for the purposes of either of the Central Banks' liquidity operations. This is not helpful, so if the concept of qualifying securitisations is to have an effect on marketing, pricing and initial liquidity of an instrument, it must be clear based on formal feedback from the certifying body that it will be a qualifying securitisation prior to the marketing process. In this context, we would note that if private sector involvement in the administration of QS were to be adopted by the relevant authorities then it would be relevant that this is how the PCS scheme currently operates and we understand that the infrastructure that it has in place for certifying compliance with PCS criteria could readily be adapted to the proposed criteria for QS in the DP.

In order to address points (d) and (e) above, AFME recommends as a general matter that the criteria should be clear and precise so that, so far as possible, a "tick box" approach to compliance can be used. Clearly, a level of discretion and judgment will be required in order that any new innovation in the securitisation market should not immediately cause transactions to fall out of the category of qualifying securitisations.

AFME would urge the Central Banks to bear the above in mind when formulating a mechanism for categorisation of transactions. See our response to question 7 below for more detail on this point.

B. Answers to Specific Questions

1. Do respondents agree with the benefits of a well-functioning securitisation market as outlined in Section 2?

Yes, we believe the benefits outlined are comprehensive and thoughtful.

Paragraph 37 notes the relatively short maturities of market-placed ABS. The European ABS market is of course almost entirely floating-rate. It is difficult to place bonds with maturities of more than say, a weighted average life of 7 years with bank or other funded investors as their risk appetite tends to peter out beyond this maturity. From a structural point of view, creating a fixed rate issue with predominantly floating rate assets (as most European assets are, ultimately) is difficult outside master trusts, which in turn place heavy reliance on substitution. The reduced availability and increased cost of interest rate and currency swaps further reduces structuring flexibility. Increasing insurer investment appetite is probably more easily achieved by going down the credit spectrum than by seeking to create a fixed-rate market.

Paragraph 39 Encumbrance: it is particularly encouraging to see this noted as a "benefit" of (or being less significant for) securitisation as we believe this positive aspect of securitisation as a technique is not sufficiently noted by regulators.

Paragraph 50: we agree that different objectives may require different market characteristics. AFME is in favour of a "modular" approach to the definition of "qualifying securitisations", namely a "core" definition comprising key principles, to which could be added additional requirements or "filters" intended to address specific requirements. For example, an entire transaction might qualify as QS but only the senior tranche would qualify as being HQLA under the LCR.

2. *Do respondents agree with the impediments to and economic concerns of investors that have been identified? Do respondents think that there are any additional impediments to investors, and if so, what are they?*

Broadly, yes. We believe the paper identifies the key impediments which are also listed in AFME's June 2014 paper: "High quality securitisation for Europe: the market at a crossroads." We are encouraged by the progress that has been made to date in the discussions around Basel 269, Solvency II and (we hope, although official information has not been published) the inclusion of a wider range of securitisations than just some forms of RMBS as HQLA in the LCR.

Paragraph 74 risk retention: this rightly identifies inconsistent implementation of risk retention requirements across jurisdictions. However, impediments also exist within the EU but across different types of investors, for example between the CRR rules for bank investors, the AIFMD rules for AIFMs and the Solvency II rules (still relatively nascent) for insurers. There is no sensible reason why these could not be made entirely consistent save for adjustments necessary to reflect the unique characteristics of the different types of investors involved. Please refer to AFME's "Initial response to EBA questionnaire on the securitisation risk retention, due diligence and transparency requirements" dated April 22nd 2014 for more detail on this point.

Paragraph 77 behavioural constraints: this again makes a good point. Within investor firms, greater participation in securitisation investment has been far from a career-enhancing recommendation in recent years. The stigma needs to be removed and replaced by more positive signalling. This is beginning to happen and the recent announcement by the ECB of their consideration of an ABS purchase programme will no doubt help in this regard (even if there are some longer term reservations about the possible "crowding-out" effects).

Paragraph 78 risk assessment and management: it is axiomatic that securitisation is (and should be) a data-rich form of investment.

Indeed, standards of disclosure have always been very good in mainstream securitisation. Problems emerged during the crisis in CDOs: drilling down into the underlying data of dozens of different ABS issues was not possible – or practical – encouraging over-reliance on credit ratings. AFME's members support sensible, useful and practical disclosure in compliance with the Prospectus Directive, the CRR and other applicable legislation. However, over-emphasis on "transparency" as the single answer to the industry's problems – especially repeated new transparency regulation of areas already regulated for transparency - can risk diverting attention from other issues holding back the market.

Information disclosure has also increased markedly in recent years: ECB and Bank of England loan-level data requirements; investor reports, cashflow models and transaction summaries; underlying legal documentation (suitably redacted to protect reasonable commercial confidentiality); CRR requirements supported by EBA "principles-based" guidance.

However, rather than repeated new regulation from different sources, we believe future attention in this area should be focused on improving compliance with and consistency of existing requirements; improving the quality of data, not just the quantity; making the data already available more "user-friendly" for investors; and facilitating, rather than hindering, cross-border flows between regions, through mutual recognition or substituted compliance of loan-level data templates and other requirements.

Paragraph 82 long-dated fixed or predictable cashflows: this can prove challenging – see the structuring challenges listed in the answer to question 1, Paragraph 37 above.

The newly announced TLTRO is the latest proposal that industry fears could have the unintended consequence of reducing issuance even further with the knock-on effect of discouraging the entry of new investors who will not commit resources for investments in a tiny market. Established investors may also consider exiting the market for the same reason.

A final impediment to the development of sustainable securitisation markets is capital treatment and the lack of a level playing field between investors in the current legislative proposals. Capital treatment of securitisation investments is clearly a major factor in investment decisions. Despite some progress, both the latest proposals for a revised Basel Securitisation Framework and the proposed treatment of securitisations under Solvency II remain unfairly punitive and create an unlevel playing field both between different kinds of investors and between different kinds of assets with similar credit risk.

3. *Do respondents agree with the impediments to and economic concerns of issuers that have been identified? Do respondents agree that the infrastructure concerns raised above affect the economics of securitisation? Do respondents think that there are any additional impediments to issuers, and if so, what are they?*

Broadly, yes. We believe the paper identifies the key impediments.

Paragraph 89 reliance on CRAs: See answer to question 13 below.

Paragraph 91 availability of ancillary facilities: on swaps, it is critical that an appropriate exemption is created for securitisation swaps (as it has been for covered bonds) in EMIR. This is an issue which AFME is addressing in detail in its response to the joint ESAs consultation on draft Regulatory Technical Standards on risk-mitigation techniques for OTC-derivatives not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012 which has significant implications for swaps entered into in connection with securitisation transactions. Responses are due by July 14th 2014.

On issuer accounts and GICs: To the extent it is practical and the cost of implementing it is proportionate in the specific jurisdiction, any specific legislation to facilitate the creation of bankruptcy-remote accounts would be of great assistance. It would reduce legal uncertainty, help simplify structures and lower required enhancement levels thereby increasing the attractiveness of securitisation for both investors and issuers. The recent changes made in Italy and France in this context are instructive, as is the US concept of segregated trust accounts in a bank's trust department.

Paragraph 92 alternative funding conditions: while the reasons for the official sector schemes are understood, and are driven by wider macro-economic policy objectives, their effect in dampening securitisation issuance should not be underestimated. Funding and capital pressures will only intensify if a framework to encourage the recovery of securitisation in Europe is not in place in time to play a larger role, as such schemes are withdrawn.

4. Do respondents agree that market liquidity may be a barrier to a well-functioning securitisation market?

We believe the question should be read as asking "Do respondents agree that the *absence of* market liquidity may be a barrier to a well-functioning securitisation market?" If so, the answer is no.

As AFME has argued many times in the context of the LCR, liquidity is not the same as secondary trading. The securitisation market may function perfectly well with relatively little secondary trading and still be liquid in the sense that assets can be converted into cash in a short (say, 30 day) period if this is required.

A number of regulators have disagreed with AFME over this issue in recent years, citing the financial crisis and SIV unwind as evidence of the fact that securitisation is a fundamentally illiquid product. Much can be said in response to this view: selective use and partial interpretation of data, failure to take into account institutional support for secondary trading in certain other fixed income sectors, and so on. At the end of the day, during the deepest phases of the financial crisis, high quality short-dated ABS not linked to mortgage risk was one of the easiest asset classes to sell. See "AFME briefing note on market behaviour and securitisation price volatility" dated March 2014 for further comment on this topic. Also, Perraudin "Covered Bond versus ABS liquidity" (January 24th 2014) and "High quality securitisation: an empirical study of the PCS definition (May 2014) available here

5. The view of the Bank of England and the ECB is that a 'qualifying securitisation' should be defined as a security where risk and pay-offs can be consistently and predictably understood. Do respondents agree with this definition? What characteristics of a 'qualifying securitisation' not already included in the principles in Box 3 should warrant such treatments? Do respondents have any comments on the principles in Box 3?

See overall comments above and the annex to this letter.

6. Do respondents think that a liquid market for 'qualifying' securitisations used for funding would result from a 'qualifying certification'?

A "liquid market" is difficult to define, and in any event it is difficult to predict the future. As stated above, a "liquid market" is not necessarily the same thing as a market in which frequent secondary trading occurs. Many investors in European ABS are buy and hold investors, who are not concerned by the need to trade their investments actively. Having said that, even buy and hold investors need access to liquidity to protect them from market volatility during stressed market conditions. Considerable assistance in the recovery of the market in this regard would be provided by a positive outcome in the treatment of ABS under the LCR (at the time of writing this remains uncertain). If, as AFME has consistently argued for many months, a broad rather than a narrow range of high quality, or qualifying, securitisations were included as HQLA in the LCR, a virtuous circle would be created and more active trading could result. In a similar vein an ABS purchase programme for qualifying securitisations with the Central Banks acting as "purchasers of last resort", could underpin banks' market making activities, sending a powerful message to encourage more active participation in the market. After all, the bulk of losses on European securitisation incurred during 2007-08 were due to mark-to-market requirements rather than actual credit losses.

7. These principles may then provide a framework to aid various authorities and market participants to set their own eligibility criteria. How might such a framework be developed? What role could the appropriate authorities play in the process of certifying that a transaction is a 'qualifying securitisation'? What are the associated risks?

AFME very much welcomes the interest of the authorities in developing a framework based on defined principles of QS. It is crucial for industry and policymaker discussions of the concept of QS to converge in a single forum, where we can all work together constructively in a co-ordinated way. The objective will be to reach an agreed standard that can be applied widely, usefully, easily and clearly to help revive the market.

We suggest the authorities first appoint a single regulator or supervisor to lead and co-ordinate the work (for example, the EBA – who have already begun this work). Secondly, such lead authority should engage widely and extensively with issuers, originators and sponsors as well as investors, underwriters and important third party advisers such as law and accounting firms. If it would be helpful for AFME to establish a small technical working group selected from its members and reflecting the diversity of our membership to assist in these discussions we would be delighted to do so. This need not, of course, rule out selected bilateral discussions that the lead authority might wish to initiate. Thirdly, we suggest that a timetable should be established with a target date for conclusions to be reached, and regular meetings scheduled to achieve this. Discussions should use as a good starting point the criteria developed by EIOPA in its December 2013 report.

In terms of a role for the authorities, it is suggested that the authorities should play a supervisory role in determining the criteria for a QS, and then appointing and regulating one or more independent, credible bodies to issue certifications. A number of bodies already exist to assign similar labels in the debt capital markets. To the extent that they are willing and able to administer the criteria for qualifying securitisations eventually decided upon, they are natural candidates to act as certifying bodies. Of these bodies, the PCS label is the only Europe-wide securitisation label and resulted from the work undertaken from 2009 to 2012 involving a broad range of European market participants (arrangers, originators, investors and legal experts) led by EFR and AFME. As such, and also because PCS has been designed to be responsive to the needs of issuers and investors in terms of giving certainty around the receipt of the label for marketing purposes (as mentioned above), PCS is an obvious and strong candidate to act as a certifying body. True Sale International (TSI) and the Dutch Securitisation Association (DSA) are other securitisation labels but currently only have a national scope. The lead regulator should also play a supervisory role, reviewing the criteria regularly to adapt to market evolutions, ensuring that standards are applied uniformly and regulating the conduct of the certifying bodies generally.

Regarding the risks: much work remains to be done, and there remain difficult challenges to resolve – for example, how to avoid cliff effects; how to address the different motives and requirements of different stakeholders; and how to strike the right balance between meeting the needs of the real economy while maintaining high quality. There will also be a need to avoid political interference: the history of the growth of the sub-prime mortgage market in the US is instructive in this regard. It needs to be very clear that the definition of QS is not a "badge of regulatory approval" or a rating, and that it should not be used as a substitute for proper due diligence and credit analysis.

8. Do respondents think that harmonisation and further conversion software could bring benefits to securitisation markets? If so, which asset classes should be targeted? How can accessibility to the existing loan level data be improved, so that it provides most value to investors?

AFME believes that harmonisation of data templates and formatting would be a positive development. Investors frequently point out to us that while it is useful having loan-level data available from the European DataWarehouse or the Bank of England, the data is not always available in a user-friendly format. The differences (IT, technical and in substantive content) between the two platforms are also not helpful and it is good that this is noted in your paper. We have also heard that technical difficulties have sometimes resulted in data being corrupted when being uploaded to the European DataWarehouse.

Clearly, more work needs to be done to resolve these practical and technical issues, and perhaps further discussion is required around the incentives necessary to encourage private-sector solutions to the absence of user-friendly software to assist in the ease of digestion, and proper understanding, of data.

9. *Do respondents think that initiatives currently undertaken by authorities in the area of standardisation of prospectuses and investor reports and trade transparency are sufficient or is there scope for further improvements? Would the availability of prospectuses and standardised investor reports in a single location be helpful to securitisation markets?*

Cash securitisations have to be structured around the cash flows of the securitised assets, the needs and capabilities of originators and their systems, and commercial terms. There will therefore always be natural limits to the degree of standardisation that can be achieved.

Commercial pressures have already produced considerable standardisation of transaction structures and documentation - neither issuers nor investors seek inconsistency for its own sake.

Standardisation should not lead to "box-ticking", detract from the need for sensible flexibility (the "comply or explain" principle), unreasonably restrict the freedom of commercial parties to agree suitable terms or unreasonably restrict the choices of consumers.

Having said that, we agree that further simplifying work could be undertaken regarding prospectuses and investor reports. However, a balance will need to be struck between the need to achieve greater standardisation (and simplicity) on the one hand and the legal obligation to make appropriate disclosure under the terms of applicable legislation on the other.

Securitisation is captured under the new transaction reporting and pre- and post-trade transparency requirements for fixed income under MiFID II. Following implementation of these requirements, there will be a high-level of European-wide harmonised public trade transparency in the securitisation secondary markets.

We also agree that, provided the cost is proportionate, having prospectuses and investor reports collected in a single repository would be a useful evolution. It seems to us, however, that such a repository is already being considered in the form of the website to be established by ESMA under Article 8b of the Credit Rating Agencies Regulation.[2] To the extent that a single repository is created under that regime, it should be coordinated with the single repository suggested by the Central Banks in the DP so as to avoid duplication of efforts.

10. *Do respondents agree that facilitating investors' access to credit data in an appropriate manner could support the emergence of securitisation markets? Would credit registers be helpful in this respect? If so, which asset classes should be targeted? In what form could access be granted to ensure that borrowers' confidentiality is preserved?*

Yes, facilitating access to such data for certain asset classes such as loans to SMEs or certain types of leasing transactions would make securitisation of these assets

2 In this respect we would note that AFME and its members still have significant concerns with the Article 8b regime. These have been summarised in the AFME response (dated 10 April 2014) to ESMA's Consultation paper on CRA3 implementation – Draft regulatory technical standards on information on structured finance instruments (SFIs), available here.

easier. See "ABLe – an agency for business lending", a report prepared by AFME for the UK Department of Business Skills and Innovation in October 2012.

For other asset classes such as residential mortgages, auto loans and leases, consumer loans and credit card receivables we believe that the credit data available already is sufficient, although we note the importance of harmonisation of reporting regimes in this respect.

Preserving borrower confidentiality is challenging, and has been a difficult issue to resolve in the context of the existing ECB and Bank of England loan-level data templates. The solution adopted has been to anonymise or disguise data in various ways: for example, not just by hiding borrower names but also by truncating postcodes, approximating up or down amounts outstanding, etc. The legal requirements which need to be satisfied vary from one country to the other, but in the UK (for example) the key criterion is the extent to which the information published, *when read with other data already in the public domain*, could cause a breach of confidentiality. Given the severity of the sanctions on originators for breach, both legal and reputational, this is a difficult issue.

AFME does not believe that credit registers would be helpful for asset classes other than SME loans. Data on underlying obligors is already reported by transaction parties and creating another source for the same data would not produce benefits commensurate with the cost of establishing credit registers. Rather, it is important to simplify and harmonise the formats in which information is reported to ensure it can be easily analysed and compared by investors.

11. In order to aid performance measurement and to provide investors with industry-level data, would it be helpful if certain macro-economic data were disclosed or if banks/ non-banks published certain aggregated standardised data? What are the challenges of providing potential investors with sufficient borrower and loan-level data to enable them to model credit risk, and how can these be overcome? What other elements would in your view help to improve secondary market functioning for high-quality securitisation?

We believe that sufficient macro-economic data is already available from many sources, including from originators, the rating agencies and other sources.

Much securitisation-specific data is of course already disclosed pursuant to the existing ECB and Bank of England requirements and European DataWarehouse. Article 8b of the Credit Rating Agencies Regulation contemplates further similar (and in some cases overlapping) disclosure. In principle, a single repository for relevant data would be helpful to all market participants: to issuers and originators by reducing costs and removing overlapping compliance and filing requirements (thereby making securitisations easier to execute), and to investors and credit rating agencies in providing a single source of information for their initial investment or rating decision as well as ongoing credit assessment. However, we are concerned by what appear to be competing initiatives in this area. We urge all the different authorities involved to focus on harmonising and simplifying both data reporting templates (where possible) and also formats (there seems to us no sensible reason for competing formats in data files, for example), so that information only needs to be submitted once, in one place and in a single format.

12. *Do respondents think that authorities should consider encouraging the industry to develop such benchmark indices? What risks might these give rise to? What indices would be useful and which could be easily produced?*

It is possible that these could be helpful, but only if the relevant indices are supported by a meaningful volume of transactions that is characteristic of a liquid market. AFME would therefore recommend a "wait and see" approach in order to allow this to be assessed in the light of evolutions in the secondary market for securitisation assets following the implementation of any initiatives resulting from the DP.

13. *Do respondents agree that additional information in the form of a matrix showing implied ratings if the sovereign and ancillary facilities rating caps were to be set at higher levels would be helpful in supporting the investment process and contribute to increased transparency and liquidity?*

Overall, AFME members who are users of credit ratings believe that the publication of "uncapped" ratings would be a useful innovation because it provides useful information to investors about the quality of the underlying assets and the credit enhancement applied thereto.

This is clearly an issue for both the originator and the investor sides of the market. Some rating agencies impose ceilings on securitisation ratings that are derived from their rating on the relevant sovereign. These rating ceilings are intended to reflect certain “tail risks” associated with a potential sovereign default, and that cannot be mitigated e.g. by additional credit enhancement, in the agencies’ view. Many market participants, however, disagree with the agencies’ assessment of the scale of these risks and therefore with the calibration of these rating ceilings. This could be remedied in part by requiring credit rating agencies to publish "uncapped" ratings, which would allow investors to overlay their own view of such sovereign-related risks. This would, however, only be of limited usefulness because investors would presumably still be required to use the lower, capped rating e.g. for purposes of capital allocation.

It is also worth noting that pursuing this avenue would be a complex endeavour for credit rating agencies because it would require them to analyse every input of sovereign risk into the ultimate rating of the securitisation, e.g. in the rating of the counterparties. Harmonising this approach across rating agencies may be difficult, but would be necessary if the "uncapped" ratings are to be meaningful in the market.

That said, an obvious benefit of publishing the matrix suggested by the Central Banks would be to allow investors to readily distinguish between deals are structured to the relevant sovereign cap rating (which is commonly done because it is known that it will not be possible to achieve a higher rating in any case) from those structured to AAA level but rated lower because of a sovereign cap.

14. *How important do respondents see the impediment related to the availability of ancillary facilities? Would the benefits of facilitating SPV bank accounts that fall outside the originator's insolvency estate outweigh the costs of such an initiative? Are there other initiatives in this area that would be beneficial?*

This is a significant issue in part because the cost of ancillary facilities is so high. These costs arise in part because of the contingent liquidity outflows arising from minimum required credit ratings for providers of ancillary facilities such as bank accounts and interest rate or currency swaps ("**Ratings Triggers**"). These Ratings Triggers typically require ancillary service providers to find a replacement provider or collateralise the relevant exposure if they fall below the required rating. In both cases, there is a contingent outflow that drains the provider's liquidity assets.

The cost of Ratings Triggers could be reduced (and thereby the universe of possible ancillary service providers presumably expanded) via adjustments to the LCR (e.g. reducing the factor applied to outflows for qualifying securitisation Rating Triggers to less than 100% or allowing greater amounts of qualifying securitisations as HQLA) or via more direct central bank support (e.g. allowing emergency funding drawing capacity to be allocated to qualifying securitisations or providing bank account and swap capacity directly to bank-sponsored qualifying securitisations).

This is also a significant issue particularly in jurisdictions where the sovereign cap is materially higher than the ratings of providers of ancillary facilities. In such jurisdictions the market expectation is that transactions will be rated at or, if possible, above the sovereign cap and reaching that rating level can therefore be challenging if the providers of ancillary facilities have materially lower ratings.

For certain categories of issuers, particularly large commercial banks with significant bank account business, the risk of losing cash collections can materially increase the operational inefficiencies of securitisation transactions and the cost of credit enhancement for the structure. Moreover, investor concerns around bank issuers (and negative rating agency assumptions) are exacerbated in times of financial stress as a result of such issues, thereby adversely affecting the effectiveness of securitisation as a counter-cyclical tool for bank issuers.

Given the pressure on counterparty ratings, and the small number of counterparties available, consideration should be given to a possible role for a suitably rated public sector entity to provide guarantees of swaps or other ancillary facilities. This is not without risk to the guarantor, and adjustments to mandates might be required, but the market impact of this type of public sector intervention could be considerable.

15. *With regard to the policy options mentioned, are there any other considerations authorities should be mindful of?*

See the responses of AFME (and GFMA) to recent consultations of the BCBS and European authorities on capital, liquidity, risk retention and high quality securitisation, *passim*. Several of these are referred to in this paper and can be found at www.afme.eu.

16. Do respondents think there are other policy options authorities should consider to support the emergence of simple, transparent and robust securitisation markets?

The recently announced (in principle) ECB purchase programme, if correctly structured and targeted to support qualifying securitisations, could provide a cornerstone to support market making by banks, re-building confidence and sending positive signals to the wider non-bank investor base. However, we would note that the purchase programme if not targeted properly risks "crowding out" investors from the market, in the short term as well as doing potentially permanent damage to private investment demand. In order to avoid that negative outcome, we would recommend designing the programme with one or more of the following features:

- make public placement of a minimum proportion of the securities an eligibility criterion for the purchase programme; and/or
- target some of the purchases at the mezzanine tranches of ABS transactions therefore limiting the impact of the programme on the availability of highly-rated ABS in the public markets; and/or
- place strict limits on the amount of ABS collateral that can be purchased so as to ensure continuing availability of ABS in the hands of private investors.

Otherwise the DP seems wide-ranging and comprehensive.

17. Beyond securitisation, might there be other ways of achieving (some of) the benefits of securitisation as outlined in Section 2? What might be the associated risks of such options?

AFME believes that securitisation is the best way to achieve these benefits.

18. Do the principles set out in Box 3 seem broadly sensible given the objective of encouraging a set of securitisations that are more amenable to risk assessment? Are there any obvious unintended consequences?

See annex.

In closing, we wish to emphasise that the engagement of the Central Banks with market participants on the revival of the securitisation market in the European Union is greatly appreciated. We hope this response in helpful. We are grateful for the opportunity to comment on the DP and we would be happy to answer any further questions that you may have or develop further issues of interest to you.

Yours faithfully

Richard H. Hopkin

Richard Hopkin, Managing Director
Association for Financial Markets in Europe

ANNEX

Feedback on criteria for qualifying securitisations (Box 3)

AFME believes that the principles set out in Box 3 are broadly sensible given the objectives set out in the DP. The principles are a good starting point but are, in many cases, very general and will need further refinement and specification in order to allow for predictability in the assignment of a QS certification. We have the following specific comments on the principles as set out in the DP:

Paragraph 128: This is broadly sensible, though we would note that derivatives should be acceptable in a qualifying securitisation to the extent they are present for hedging purposes. We would note further that many of our members see no reason why synthetic securitisations should necessarily be excluded from the qualifying securitisation category. They are important risk and capital management tools for AFME's bank members and, provided they meet the requirements of simplicity, structural robustness and transparency requirements imposed, a number of our members believe they should be eligible for QS. We note, however, that certain of our investor members have concerns relating to the control investors have over the underlying assets in synthetic securitisations.

Paragraph 129: This will be difficult to provide as proposed. In particular, consistent and comparable data will not necessarily be available because underwriting standards change over time. Requiring data over a long period of time means that assets with substantially different underwriting criteria would be compared without a practical way of reflecting the underlying differences in assets.

Paragraph 130: This is broadly sensible, although note our comments in respect of synthetic securitisations on paragraph 128. Also, some flexibility will be required in this criterion as concerns structures such as master trusts and originator trusts where the issuer will not necessarily have direct recourse to the underlying obligors.

Paragraph 131: Further guidance will be required on the meaning of "homogenous", but this criterion is sensible provided it is intended to refer to relatively high-level homogeneity (e.g. residential mortgages, rather than something as specific as, say, buy-to-let mortgages in the London market). Also, we wonder how an obligor's "volition" to make timely payments can be assessed beyond checking their having entered into a contract to do so (the asset sold into the securitisation). Is this meant to ensure that affordability has been checked?

Paragraph 132: This is again a broadly sensible criterion but needs to be addressed more specifically to exclude excessive reliance on market-based refinancing risk. For example, an RMBS is highly unlikely to have a life longer than seven years, but the underlying assets will likely have a WAL of 25-30 years. This is nonetheless acceptable because refinancing of residential mortgages is a normal feature in the life of the product and is highly unlikely to be problematic at a level that would impact the cashflows on the transaction in a material way.

Paragraph 135: See our comments on synthetic securitisations in respect of Paragraph 128. This is broadly sensible, but it should be noted that any legal opinion will be subject to customary assumptions and qualifications in respect of these items appropriate for the relevant market. These should not be a barrier to the transaction being a qualifying securitisation.

Paragraph 144: While we understand the reason for including this criterion, we question its appropriateness in all circumstances. Firstly, the direction of travel in financial services regulation generally (not just in securitisation) is to reduce undue mechanistic reliance by investors on external credit ratings through transparency - a principle we support. Secondly, a "one-size- fits-all" approach here may not be appropriate: in private transactions (for example) the transaction parties may wish to make their own arrangements for ongoing credit assessment: this may be "independent" or not, and may involve an ECAI or not. It is important to note that recent legislation in the form of Article 8c of the Credit Rating Agency Regulation does not mandate the involvement of at least two ECAIs for all issues of structured finance instruments; it simply requires two ECAIs if the transaction is rated at all. To require two ECAIs in order to qualify as QS seems to us to widen this legislative requirement "by the back door" – at least at the "core" level of any QS definition. Of course it may be sensible at a "modular" level (for example, additional requirements for central bank repo eligibility) for a dual ECAI requirement to apply. There is detail and subtlety here which requires further discussion.

Paragraph 146: We are not clear as to the intended meaning of this requirement. If it is a requirement for an audit of the reports from the transaction, we are unsure whether auditing firms would be willing to provide this or what value this would add

ANNEX 4

Table analysing eligibility of asset classes against criteria as proposed by the EBA

COMPLIANCE WITH CRITERIAS

The anwers provided in this table represent the participants' views on the general feasibility of structuring future securitisation transactions respecting the criteria proposed by the EBA. This feasibility would require a flexible implementation and interpretation of the criteria. It is highly likely that detailed prescriptive rules will not fit every type of portfolio. If deemed necessary, detailed criteria, or detailed rules implementing these criteria should be adapted as much as possible to each type of portfolio, each jurisdiction etc..

Yes	A positive answer does not mean that existing transactions would necessarily qualify, but that the criterion could generally be respected in future transactions
	A lack of answer (yellow) indicates that the criterion would work for certain assets or investors but not for others
No	A negative answer signifies that the criterion cannot be respected in a great majority of cases and would most likely prevent a securitisation from qualifying

	UK Prime Mortgages	UK Prime Mortgages	French Residential mortgage or fully guaranteed loans	Auto Loans	Credit cards / Consumer Loans	Equipment or Vehicle Leases	Auto Fleet Leases	Trade Receivables	Large Corporate Loans
Securitization Structure	Master Trust RMBS Public issue	Standalone RMBS Public issue	RMBS Public Issue	ABS Public Issue	ABS Public Issue	ABS Public Issue	ABS Private Issue	Usually funded by ABCP	Private Synthetic Risk Transfer
Issuer / Borrower	Bank	Bank	Bank	Bank	Bank	Bank	Bank / Corporate	Corporate	Bank
Overall Eligibility	No	No	No	No	No	No	No	No	No
Pillar I: simple securitisations									
Criterion 1	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Criterion 2	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Criterion 3	Yes	Yes	Yes	Yes	Yes	Yes	Yes		No
Criterion 4	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
4 i)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4 ii)	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes
4 iii)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4 iv)	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No
Criterion 5									
5 i)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
5 ii)	No	Yes	Yes	Yes	Yes	Yes	Yes		Yes
5 iii)	No	No	No	No	No	No	Yes	No	Yes
5 iv)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5, addition	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Criterion 6	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Pillar II: standard securitisations									
Criterion 7	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Criterion 8	Yes	Yes	Yes	Yes		Yes	Yes		Yes
Criterion 9	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Criterion 10									

10 i)	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes
10 ii)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
10 iii)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Criterion 11									
11 i)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
11 ii)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Criterion 12									
12 i)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
12 ii)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
12 iii)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Criterion 13	Yes	Yes	Yes		Yes	Yes	Yes	No	Yes
Criterion 14	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pillar III: transparent securitisations									
Criterion 15	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Criterion 16	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes
Criterion 17	Yes	Yes	Yes		Yes	Yes	Yes		Yes
Criterion 18			Yes	Yes	Yes	Yes	Yes		Yes
Criterion 19	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes
Criterion 20	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Criterion 21	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes
Criterion 22	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes
Credit risk criteria									
Criterion A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Criterion B	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
Criterion C									
C i)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
C ii)				Yes	Yes	Yes	Yes		Yes
C iii)	No		Yes	Yes	Yes	Yes	Yes		Yes

COMMENTS ON THE OBSTACLES CREATED BY PROPOSED SST CRITERIA

ASSET	SECURITISATION TYPE	PURPOSE	TARGET OF SST ELIGIBILITY	OBSTACLES IDENTIFIED IN PROPOSED CRITERIA	CONCLUSION
UK Prime Mortgages	Master Trust RMBS Public Issue	Common form of financing for UK bank mortage originators with similar features to the structure most commonly used for credit card receivables.	Treatment of senior tranches by investors	As a master trust, the pool could easily contain assets more than 90 days past due, violating Criterion 5(ii). Also 5(iii) would also be problematic as with the other classes noted here. Criterion C(ii) will also become problematic with the new proposed Standardised Approach risk weights. Criterion 18 may be problematic unless models posted to accessible sites, such as Intex, meet the requirement.	Criterion 5(iii) needs to be redrafted. This cannot be structured around. C(ii) should be eliminated.
UK Prime Mortgages	Standalone RMBS Public Issue	The most common and traditional structure for securitisation of UK mortgages.	Treatment of senior tranches by investors	Criterion 5(iii) is problematic. Criterion C(ii) and C(iii) could also be problematic, as could Criterion 18, unless models posted to accessible sites, such as Intex, meet the requirement.	Criterion 5(iii) needs to be redrafted. This cannot be structured around. C(ii) should be eliminated.
French Residential mortgage or fully guaranteed loans	RMBS Public Issue	One of the most traditional asset classes for securitizations. RMBS offer a **funding tool** of the large volumes of retail clients' loans weighing on European banks' balance sheets. RMBS structures can also be used for **risk transfer** purposes, with investors also purchasing junior tranches	Treatment of Tranches held by investors Treatment of residual securitisation positions held by the originator in RMBS with risk transfer	It will be impossible for issuers of securitisations in a number of juridictions to know with certainty if a borrower has not been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination. Criterion C ii will become problematic with the new proposed Standardised Approach risk weights. It would be better to avoid references to bank prudential risk weights and only use objective criteria such as the residential loans average LTV, which could be set at 90% (average LTV amount currently corresponding to a 40% risk weight under the standardized approach)	Criterion 5 iii) needs to be significantly redrafted, or cancelled Criterion C ii) needs to be redrafted
Auto Loans	ABS Public issue	One of the traditional asset classes for securitisation. Lenders are often specialised with limited access to general-purpose funding. Securitization offers a proven **funding tool**.	Treatment of Senior Tranche(s) for investors	It is usually not possible in many jurisdictions to confirm that a borrower has not been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination. For example, in Germany the information is not available. In France, payments incidents must legally be removed from registry when the incident is closed.	Criterion 5 iii) needs to be significantly redrafted, or cancelled
Credit cards / Consumer loans	ABS Public Issue	One of the most traditional asset classes for securitizations and traditional **funding tool** for retail clients.	Treatment of Senior Tranche(s) for investors	Identifying clients with financial difficulties over the past 3 years is often not possible. Some revolving credit cards (as well as some auto loans) securitisations are structured without interest hedging.	Criteria 5 iii) to be excluded or amended.
Equipment Leases	ABS Public Issue	Another traditional **funding tool** for SMEs and Retail clients, with well-established securitization history	Treatment of Senior Tranche(s) for investors	Equipment residual values are always an accepted component of the repayment risk. Identifying clients with financial difficulties over the past 3 years is often not possible.	Criteria 4 iv) and 5 iii) need to be amended.
Auto Fleet Leases	ABS Private Issue	Securitization of the leased fleet is a well-adapted **funding tool** for this capital-intensive business	Treatment of Senior Tranche(s) for investors	Leases are exposed to residual-value risk on the vehicles. But this a well-established market and diversified risk over many different vehicles sold at different dates. Fleet clients concentration will not fit the proposed granularity criterion	Criterion 4 iv) needs to be amended to allow well-diversified residual-value risk. Granularity rules also need to be adapted to this customer type.

Trade Receivables	usually funded by ABCP	Securitisation of Trade Receivables is a tried and tested **funding tool** for the working capital needs of many corporates. Multi-seller ABCP conduits offer the most efficient, flexible and cheapest solution.	Treatment of Senior Tranche for banks financing the receivables or extending liquidity line to the ABCP conduit. Treatment of ABCP for investors (senior tranche protected by bank liquidity line)	<u>Simplicity</u>: the proposed criteria are not well adapted to short-term, revolving receivables purchased based on a statistical portfolio analysis, often from multiple jurisdictions, and with dynamic credit protection. True sale is not always possible. <u>Standardization</u>: there is no trustee in ABCP transactions. <u>Transparence:</u> receivables transactions are subject to strict confidentiality clauses protecting corporates and cannot fulfill transparency rules for ABCP holders. These investors are protected by the bank sponsoring each ABCP vehicle. Bank sponsors, exposed to the senior tranche securitisation risk, have access to the required information, but not necessarily in the same form as public transactions. <u>Credit risk</u>: the 1% granularity limit does not work for most corporates who extend trade credit to some large clients. Some of these clients may also be located outside the EEA.	As currently drafted, SST rules would not work for trade receivables or multi-seller ABCP vehicles. This could cause significant damage to this important funding source. Specific rules should be developed for these asset classes and securitisation structures.
Large Corporate Loans	Private Synthetic Risk Transfer	Banks extend significant amounts of credit to large corporates and on large specialised-lending projects (infrastructure, energy finance, asset finance) and often seek to **transfer some of their risk (and reduce regulatory capital)**. Investors are attracted by the risk characteristics, long-maturity profiles or specific sector exposures of these loans, often not available in the capital markets. Synthetic risk transfer is usually the only practical solution for investors unable or unwilling to purchase whole loans.	Treatment of residual tranches held by banks (mainly senior, with some junior amounts held in particular for risk-retention purposes)	<u>Simplicity</u>: Portfolios of large loans are not homogeneous in terms of jurisdictions, sectors, currencies, maturities, amounts etc.. Asset selection must remain flexible to make transactions feasible. <u>Standardization</u>: synthetic transactions obey a different logic from public ABS, for example in the case of protection buyer/servicer default <u>Transparence</u>: need to be adapted to the specific assets. <u>Credit risk</u>: large corporate loans portfolios cannot benefit from the same granularity as retail exposures and often extend beyond the EEA.	Proposed SST rules are not adapted to large corporate loan portfolios to investors. Banks exposed to residual tranches of risks on such portfolios should not be penalized by the fact that they did not transfer the securitized assets. Lack of direct control by the investor over the assets is compensated by other structural features (collateral..)

proposed in EBA Discussion Paper EBA/DP/2014/02
dated 14 October 2014

Pillar I: simple securitisations	
Criterion 1	The securitisation should meet the following conditions: - It should be a securitisation as defined in the CRR (as per Article 1 (61)) - It should be a traditional securitisation as defined in the CRR (as per Article 242(10)) - It should not be re-securitisation as defined in the CRR (as per Article 4(63))
Criterion 2	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 or should be randomly selected from those satisfying eligibility criteria and may not be actively selected or otherwise cherry-picked. Substitution of exposures that are in breach of representations and warranties should in principle not be considered as active portfolio management.
Criterion 3	The securitisation should be characterised by legal true sale of the securitised assets and should not include any severe insolvency clawback provisions. A legal opinion should confirm the true sale and the enforceability of the transfer of assets under the applicable law(s). Severe clawback provisions should include rules under which the sale of cash flow generating assets backing the securitisation can be invalidated by the liquidator solely on the basis that it was concluded within a certain period (suspect period) before the declaration of insolvency of the seller (originator/intermediary), or where such invalidation can only be prevented by the transferees if they can prove that they were not aware of the insolvency of the seller (originator/intermediary) at the time of the sale.
Criterion 4	The securitisation should be backed by exposures that are homogeneous in terms of asset type, currency and legal system under which they are subject. In addition, the exposures should meet the following criteria:
4 i)	i) They arise from obligations with defined terms relating to rental, principal, interest or principal and interest payments, or are rights to receive income from assets specified to support such payments;
4 ii)	ii) They are consistently originated in the ordinary course of the original lender's business pursuant to uniform and non-deteriorating underwriting standards;
4 iii)	iii) They contain a legal, valid and binding obligation of the obligor, enforceable in accordance with its terms against any third party, to pay the sums of money specified in it (other than an obligation to pay interest on overdue amounts);
4 iv)	iv) They are underwritten: (a) with full recourse to an obligor that is an individual or a corporate and that is not a special purpose entity, and (b) on the basis that the repayment necessary to repay the securitisations 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.
Criterion 5	At the time of inclusion in the securitisation, the underlying exposures should not include:
5 i)	i) Any disputes between original lender and borrower on the underlying assets;
5 ii)	ii) Any exposures which are in default. An exposure is considered to be in default if: a. it is more than 90 days past-due; b. the debtor is assessed as unlikely to pay its credit obligations in full without realisation of collateral, regardless of the existence of any past-due amount or of the number of days past due.
5 iii)	iii) Any exposures to a credit-impaired borrower. For these purposes, a borrower should be deemed as credit-impaired where he has been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination or he is, to the knowledge of the institution at the time of inclusion of the exposure in the securitisation, recorded on a public credit registry of persons with adverse credit history, or other credit registry where a public one is not available in the jurisdiction, or he has a credit assessment by an ECAI or a credit score indicating significant risk of default;
5 iv)	iv) Any transferable securities, as defined in Directive 2004/39/EC (MIFID) or derivatives, except derivatives used to hedge currency and interest rate risk arising in the securitisation.
5, addition	In addition, the original lender should provide representations and warranties that assets being included in the securitisation are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due.
Criterion 6	At the time of inclusion, the underlying exposures are such that at least one payment has been made by the borrower, except in the case of securitisations backed by personal overdraft facilities and credit card receivables
Pillar II: standard securitisations	
Criterion 7	The securitisation should fulfill the CRR retention rules (Article 405 of the CRR).
Criterion 8	Interest rate and currency risks arising in the securitisation should be appropriately mitigated and any hedging should be documented according to standard industry master agreements. Only derivatives used for genuine hedging purposes should be allowed.

Criterion 9	Any referenced interest payments under the securitisation assets and liabilities should be based on commonly encountered market interest rates and may include terms for caps and floors, but should not reference complex formulae or derivatives.
Criterion 10	The transaction documentation of those transactions featuring a revolving period should include provisions for appropriate early amortisation events and/or triggers of termination of the revolving period, which should include, at least, each of the following:
10 i)	i) A deterioration in the credit quality of the underlying exposures;
10 ii)	ii) A failure to generate sufficient new underlying exposures of at least similar credit quality; and
10 iii)	iii) The occurrence of an insolvency-related event with regards to the originator or the servicer.
Criterion 11	Following the occurrence of a performance-related trigger, an event of default or an acceleration event:
11 i)	i) The securitisation positions are repaid in accordance with a sequential amortisation payment priority, whereby the seniority of the tranches determines the sequential order of payments. In particular, a repayment of noteholders in an order of priority that is 'reverse' with respect to their seniority should not be foreseen;
11 ii)	ii) There are no provisions requiring immediate liquidation of the underlying assets at market value.
Criterion 12	The transaction documentation should clearly specify the contractual obligations, duties and responsibilities of the trustee, servicer and other ancillary service providers as well as the processes and responsibilities necessary to ensure that:
12 i)	i) the default or insolvency of the current servicer does not lead to a termination of the servicing of the underlying assets;
12 ii)	ii) upon default and specified events, the replacement of the derivative counterparty is provided for in all derivative contracts entered into for the benefit of the securitisation; and
12 iii)	iii) upon default and specified events, the replacement of the liquidity facility provider or account bank is provided for in any liquidity facilities or account bank agreements entered into for the benefit of the securitisation.
Criterion 13	The transaction documentation contains provisions relating to an 'identified person' with fiduciary responsibilities, who acts on a timely basis and in the best interest of investors in the securitisation transaction to the extent permitted by applicable law and in accordance with the terms and conditions of the securitisation transaction. The terms and conditions of the notes and contractual transaction documentation should contain provisions facilitating the timely resolution of conflicts between different classes of noteholders by the 'identified person'. In order to facilitate the activities of the identified person, voting rights of the investors should be clearly defined and allocated to the most senior credit tranches in the securitisation.
Criterion 14	The management of the servicer of the securitisation should demonstrate expertise in servicing the underlying loans, supported by a management team with extensive industry experience. Policies, procedures and risk management controls should be well documented. There should be strong systems and reporting capabilities in place.
Pillar III: transparent securitisations	
Criterion 15	The securitisation should meet the requirements of the Prospectus Directive.
Criterion 16	The securitisation should meet the requirements of Article 409 of the CRR and Article 8b of the CRA (disclosure to investors).
Criterion 17	Where legally possible, investors should have access to all underlying transaction documents.
Criterion 18	The transaction documentation should provide in clear and consistent terms definitions, remedies and actions relating to delinquency and default of underlying debtors, debt restructuring, debt forgiveness, forbearance, payment holidays and other asset performance remedies. The transaction documents should clearly specify the priority of payments, triggers, changes in waterfall following trigger breaches as well as the obligation to report such breaches. Any change in the waterfall should be reported on a timely basis, at the time of its occurrence. The originator or sponsor should provide investors a liability cash flow model, both before the pricing of the securitisation and on an ongoing basis.
Criterion 19	The transaction should be subject to mandatory external verification on a sample of underlying assets (confidence level of at least 95%) at issuance, by an appropriate and independent party or parties, other than a credit rating agency. Confirmation that this verification has occurred should be included in the transaction documentation.
Criterion 20	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 historical period representing a significant stress or where such period is not available, at least 5 years of historical performance. The basis for claiming similarity to exposures being securitised should also be disclosed.
Criterion 21	Investors and prospective investors should have readily available access to data on the underlying individual assets on a loan-by-loan level, at inception, before the pricing of the securitisation, and on an ongoing basis. Cut-off dates of this disclosure should be aligned with those used for investor reporting purposes.

Criterion 22	Investor reporting should occur at least on a quarterly basis. As part of investor reporting the following information should also be disclosed: - All materially relevant data on the credit quality and performance of underlying assets, including data allowing investors to clearly identify debt restructuring, debt forgiveness, forbearance, payment holidays, delinquencies and defaults in the pool; - Data on the cash flows generated by underlying assets and by the liabilities of the securitisation, including separate disclosure of the securitisation's income and disbursements, i.e. scheduled principal, scheduled interest, prepaid principal, past due interest and fees and charges; - The breach of any waterfall triggers and the changes in waterfall that this entails.
Credit risk criteria	
Criterion A	Underlying exposures should be originated in accordance with sound and prudent credit granting criteria. Such criteria should include at least an assessment of the borrower's creditworthiness in accordance with paragraphs 1 to 4, 5(a) and 6 of Article 18 of Directive 2014/17/EU or Article 8 of Directive 2008/48/EC, as applicable.
Criterion B	The pool of exposures to be securitised should be such that the largest aggregated exposure to a single obligor does not exceed 1% of the value of the aggregate outstanding balance. For the purposes of this calculation, loans or leases to a group of connected clients, as referred to in Article 4(39) of the CRR, should be considered as exposures to a single obligor.
Criterion C	The underlying exposures should fulfil each of the following criteria:
C i)	i) They have to be exposures to individuals or undertakings that are resident, domiciled or established in an EEA jurisdiction, and
C ii)	ii) At the time of inclusion they have to meet the conditions for being assigned, under the Standardised Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than: a) [40%] on a weighted average basis where the exposure is a loan secured by a residential mortgage or fully guaranteed residential loan, as referred to in paragraph 1(e) of Article 129 of the CRR; (b) [50%] on an individual loan basis where the exposure is a loan secured by a commercial mortgage (c) [75%] on an individual loan basis where the exposure is a retail exposure (d) [100%] on an individual loan basis for any other exposures.
C iii)	iii) Under (a) and (b) loans secured by lower ranking security rights on a given asset should only be included in the securitisation if all loans secured by prior ranking security rights on that asset are also included in the securitisation. Under (a) no loan in the securitised portfolio should be characterised by a loan-to-value ratio higher than 100%.