BLACKROCK

14 January 2015

European Banking Authority (EBA)
Tower 42 (level 18)
25 Old Broad Street
London EC2N 1HQ

Submitted online

RE: EBA Discussion Paper on simple standard and transparent securitisations

Dear Sirs,

BlackRock is pleased to have the opportunity to respond to the EBA Discussion Paper on simple standard and transparent securitisations.

BlackRock is a premier provider of asset management, risk management, and advisory services to institutional, intermediary, and individual clients worldwide.

BlackRock has a pan-European client base serviced from 22 offices across the continent. Public and private sector pension plans, insurance companies, third-party distributors and mutual funds, endowments, foundations, charities, corporations, official institutions, banks and individuals select BlackRock to manage their investments on their behalf.

BlackRock represents the interests of its clients by acting in every case as their agent. It is from this perspective that we engage on all matters of public policy. BlackRock supports policy changes and regulatory reform globally where it increases transparency, protects investors, facilitates responsible growth of capital markets and, based on thorough cost-benefit analysis, preserves consumer choice.

Executive summary

BlackRock agrees that the regulatory approach to securitisations should incorporate a distinction between qualifying securitisations and other securitisations. However, we would strongly underline the risk presented if different standards are adopted by different policymaking organisations (e.g. the EBA, BCBS-IOSCO, the ECB/Bank of England), or in different pieces of sectoral legislation (e.g. Basel III or Solvency II). This could balkanise an already small market, thereby further impairing secondary market liquidity. We would recommend the following guiding principles that could serve as a useful tool for policymakers to promote a sound, consistent and streamlined regulatory framework:

1. Set out high-quality, prudent underwriting standards that are evaluated and administered properly.
2. Establish quality servicing standards.
3. Ensure transparent and accessible asset and transaction information.
4. Ensure conflicts of interest are identified and managed properly.
5. Ensure structures are clear, complete and presented in an understandable manner.
6. Appropriately align originator, sponsor or original lender and investor interests (with originator, sponsor or original lender risk retention, where applicable).

BlackRock believes that the regulatory regime around securitisation is not always coherent and supportive of investor capital allocation to securitisations. We would strongly support a clear definition of qualifying securitisation – jointly adopted by European policy makers, regulators and central bankers – as the appropriate basis for the myriad of European legislation covering securitisation. This would set a clear distinction between appropriately structured qualifying securitisations, which should benefit from more favourable regulatory treatment.

To give a brief summary of our views developed in the attached response, BlackRock agrees with some of the obstacles to the re-launch of securitisation outlined by this Discussion Paper. However we do not believe that the low level of securitisation in Europe is due primarily to a lack of investor confidence following problems that emerged during the financial crisis. The weak macroeconomic context in Europe coupled with European banks' easy access to "cheap funding" from central banks is in our view a more significant impediment.

Finally, we believe that there is a risk of adverse market consequences if the definition and criteria of the qualifying securitisation framework is too restrictive or inappropriately designed. This would potentially exclude certain types of well-structured securitisations from the scope of the qualifying securitisation framework and the related preferential regulatory treatment for the wrong reasons.

We appreciate the opportunity to address, and comment on, the issues raised by this discussion paper and we will be happy to assist the EBA in any way we can on improving final public policies enhancing a better functioning securitisation market in the EU. We would welcome any further discussion on any of the points that we have raised.

Yours faithfully,

Peter Winning
Director
Securitised Assets Investment Fixed
Income Portfolio Management Group
peter.winning@blackrock.com
+44 207 743 5244

Joanna Cound
Managing Director
Government Relations and Public Policy
joanna.cound@blackrock.com
+44 207 743 5579

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BlackRock detailed response to EBA Discussion Paper on "simple standard and transparent securitisations"

Likely impediments in the post-crisis EU securitisation market

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

BlackRock agrees with some of the obstacles to the re-launch of securitisation outlined by this discussion paper. However, we do not believe that investor perception of securitisation as an investment class is a major obstacle. In our experience, investor demand appears to be relatively robust in the EU: investors or potential investors in the EU are not deterred from investing in securitisations because of the misuses of securitisation during the financial crisis but instead because of inappropriate capital requirements or because the risk-reward profile of the securitisation does not meet their requirements. Indeed, pre-crisis originations (banks' "back books") may not have sufficient margins to support post-crisis funding costs (e.g. the margins required on securitised bonds).

The low issuance volume of securitised assets is in our view primarily due to the weak EU macroeconomic context resulting in low volumes of credit originated. Banks remain under pressure to de-lever and improve their capital positions so are reluctant to originate new loans. In the specific case of the Eurozone, consumer and corporate demand for credit was low and banks' credit standards were tight from the financial crisis until the end of last year resulting in low volumes of credit being originated. It is only since the start of this year that consumer and corporate demand for credit has been increasing in certain countries.

Also, European banks' easy access to cheaper sources of funding via the ECB and vehicles such as covered bonds has deterred banks from issuing publicly placed securitisations in any material way as these are seen as a comparatively expensive source of funding. Securitisation has always co-existed with the covered bond and corporate bond markets, giving issuers options for diversity in their funding sources. In respect of these alternative sources, what is critical is that there should be appropriate calibration to ensure that there is no unjustified regulatory burden penalising one asset class over another.

In addition, the Basel III obligation for banks to shrink their balance sheet in order to meet the required leverage ratio also limits the amount of available assets to be securitised. Banks are more focused on reducing their leverage ratio (which will not be reduced with the use of securitisation but increased) than freeing up capital for additional lending via securitisation.

Development of a simple, standard and transparent securitisation market

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

We fully support the requirement that securitisations qualifying for the framework should have recourse to the ultimate obligors and would highlight that the ability to take control over the underlying assets in enforcement scenarios gives much better protection to investors. We are therefore supportive of excluding synthetic securitisation from this framework.

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

We are supportive of Criterion 5, and believe that 90 days past due is the most appropriate threshold to assess whether an underlying asset is in default.

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

We believe that imposing a restrictive territorial scope of issuance of the underlying assets or regulation of the SSPE or the issuer/sponsor domiciliation would unnecessarily limit investor choice and ability to diversify their investment portfolio amongst well-structured securitisations. EU investors often invest in non-EU (e.g. US or Australian) transactions, and we do not see the need to restrict this.

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

We agree with the principle behind having all voting rights related to the assets being transferred to the securitisation with the most senior rights afforded to the most senior liabilities. BlackRock generally expects to see language in the transaction documents that protects mezzanine and junior investors by stipulating that the most senior class of note-holders outstanding cannot enforce the security at a level below the fair market value of the assets at that time (because enforcing the security at below fair market value could mean senior note-holders unfairly wipe out more junior classes of notes in an enforcement scenario).

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

In order for investors to make well-informed decision about the likely credit performance and thus cash-flows from an asset pool, we strongly advocate for the timely disclosure of performance data on underlying assets. Historical performance data must be made available to investors prior to closing. Transaction documents are typically not signed prior to closing, however, investors should also have access to the latest draft of such documents upon request prior to closing (and post-closing, the final suite of transaction documents should be freely available upon request). We therefore agree that specific timing should be required for the disclosure of underlying transaction documentation, as long as the set deadline is operationally reachable for the sponsor.

Furthermore, we believe the commitment to transparency must last for the full life of the transaction. Originator-sponsors should publish regular performance updates on the underlying asset portfolio (typically such updates should coincide with the payment frequency of the notes).

We would, however, like to highlight that data alone is not sufficient. Investors also require qualitative information, for example, regarding a bank's criteria and underwriting processes, in order to reach a credit decision. These should also be disclosed by the sponsors to the investors prior to closing.

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

We agree with the requirement that the obligators have to satisfy prudent and consistent underwriting criteria including an assessment of willingness and ability to meet their obligations. Granularity is important, however it is rarely the driving force in determining the credit risk of the underlying portfolio. For example, moderate obligor exposures are common in trade receivables transactions, however credit enhancement is explicitly sized to address this risk. Consequently the key driver of credit risk is that the obligors to have been prudently underwritten on an individual basis (not the granularity).

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

BlackRock agrees with most of the EBA proposed criteria for "simple standard and transparent securitisations". We provide comments below for each of them.

Pillar I: simple securitisations

While BlackRock agrees that securitisations should have characteristics that are understandable and clear, we believe that the term "simple" could be too vague and too restrictive. What really matters is that the structure is clear and understandable for investors, which does not necessarily equate with "simple". For example, RMBS master trusts could not really be described as 'simple' however they are clear and understandable for investors.

Criterion 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)).*

We fully agree with this criterion.

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.

In our experience, sponsors often “cherry-pick” in order to improve the quality of the securitised portfolios, rather than to put lower-quality assets in the pool. This is because sponsors have generally sought to ensure good securitisation performance so they can return to the markets. We accept that adversely selected pools is a possibility, but suggest addressing any potential agency risk not through disallowing the practice of “cherry-picking”, but rather by ensuring that it is only done to enhance or maintain portfolio quality. Such a “cherry-picking” process (including filters applied) should be documented in the offering circular and confirmed in a seller representation and warranty.

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.

We support the principle of true sale of the securitised assets and that it should not include any severe clawback provisions in the jurisdiction where the seller (originator, sponsor or original lender) is incorporated.

However, we would like to caution that it is possible to achieve a sale under the laws of many jurisdictions without the security interest being perfected. So long as there are appropriate triggers for perfection of security and, prior to this, there is a requirement for the legal title holder to act for the benefit of the beneficial owner, we do not feel that perfection of security should be a requirement at the close of a transaction. For example prime UK RMBS is usually effected by a non-notified true sale where the borrower is not told of the sale and the security interest remains registered to the original lender (i.e. not perfected) but this is subject to trigger events such as originator ratings downgrade, insolvency, change of law, trustee concern for the security.

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:

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;

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.*

We agree that within the "simple, standard and transparent securitisation market the homogeneity of assets should, in addition to asset type, reference one originator group and one jurisdiction and be governed by the laws of and denominated in the local currency of that jurisdiction.

- However, on 4 i), we do not fully understand the rationale behind limiting the underlying assets to rental payments or principal and interest payments although we fully support the requirement for the receivables to have properly defined terms. A broader definition might be warranted here such as "obligations with contractually defined periodic payment streams which could include…".

  We would highlight the very common practice (in very well performing transactions, particularly in the auto sector) of selling zero interest rate loans (and/or those with very low rates) into a transaction at a discount to their face value so that the cash flows from a transaction perspective contain a different principal and interest stream to that seen by the customer. This is designed to allow the derived interest stream to be sufficient to cover the note coupons. We would suggest that any definition in this regard should not exclude these types of assets.

- On 4 ii), BlackRock strongly agrees that the assets should be "consistently originated in the ordinary course of the original lender's business pursuant to uniform and non-deteriorating underwriting standards". The funding and securitisation process must start with the introduction of high-quality underlying receivables. Underwriting standards must be prudent, as well as evaluated and administered properly and disclosed.

- On 4 iv) (a), We agree there should be full recourse, however, the restriction on special purpose entities could rule out investment in some US and possibly Irish RMBS.

- On 4 iv) (b), in terms of assets being self-liquidated from intrinsic cash flows we would like to further understand the thinking behind this and understand the implications for interest-only or balloon loans. The terms of such loans clearly state that the loan is repayable (i.e. an intrinsic cash flow) although there may be cases (such as certain short term commercial real estate loans, working capital SME loans or balloon loans in auto transactions in particular) where the borrower relies on re-financing or an asset sale to meet this obligation. Separately, we are unsure whether limiting the ability to securitise the residual element of leasing contracts is also a deliberate aim of the criteria.

Criterion 5: At the time of inclusion in the securitisation, the underlying exposures should not include:

i) Any disputes between 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 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.

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 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.

We fully agree with this criterion.

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

We agree with the criterion, and specifically with the exception made for personal overdraft and credit card receivables.

Pillar II: standard securitisations

Criterion 7: The securitisation should fulfill the CRR retention rules (Article 405 of the CRR).

We think this criterion is sensible in principle. However, we also agree with the comment made by the ECB-BoE in their discussion paper that “while retention requirements are to be welcomed for better aligning the interests of issuers and investors, they may act as a deterrent to some issuers, particularly non-banks, who may find it problematic to fund retained portions. The inconsistent implementation of retention requirements globally may also result in unequal treatment across different jurisdictions.”

Also, we note that the aims of risk retention in Europe (alignment of interest) are different to those in the US (prudent underwriting). Some of the pre-crisis transactions – the vast majority of which emanated from the US – suffered in part from mis-alignment of interest from investors. In this case, parties within a transaction had no disincentive to behave in a manner which was detrimental to the end-investors (i.e. clients of asset managers, the asset owners). Risk retention, as constructed in Europe, seeks to align interests between the originators / sponsors and investors.

Credit risk retention by originator, sponsor or original lender cannot, however, be a substitute for investors’ robust credit evaluation and structural analysis. Credit risk retention does not prevent losses on securities that do not perform as anticipated. The risk retention requirement should not be viewed as a panacea to the problems of the past. The aim should be to provide a framework that ensures investors have protections against potential abuses as well as the tools necessary to understand the risks involved, but should not prevent non-bank issuers from accessing the securitisation markets for funding – nor reduce the ability of the non-bank sector to finance European economies.

Another way to promote the appropriate alignment of originator, sponsor or original lender and investor interests is to have full and clear disclosure of the nature of all risks in the resultant securities being transferred between the sponsor and the investors, both at the asset level and as a consequence of the structural characteristics of the securitisation's terms.

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.

We fully agree with this criterion

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.

We fully agree with this criterion. Interest calculation on the assets within a deal should not reference exotic 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:

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.

We fully agree with this criterion

Criterion 11: Following the occurrence of a performance-related trigger, an event of default or an acceleration event:

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;
ii) There are no provisions requiring immediate liquidation of the underlying assets at market value.

We fully agree with this criterion. It is critical to preserve creditor hierarchy with respect to seniority in the case of a performance-related trigger, an event of default or an acceleration event, and in ii) to prevent fire-sales of assets.

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:

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.

We fully agree with this criterion. We support full and clear disclosure of all relevant parties, their roles and responsibilities in ensuring the receivables are serviced in accordance with good market practice and all relevant regulatory requirements and codes of conduct.

We would urge for the adoption of best practice requirements for the trustee, servicer and other ancillary service providers as it is key that the potential mis-alignment of interest that can impact servicing decisions is properly mitigated (i.e. if another business area exerts influence over the process for a non-servicing related outcome which works at originator level but would be to the detriment 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.

Agree with this criterion. As mentioned above in our response to Question 5, although we believe that the most senior class of notes outstanding should have the most senior rights (save for entrenched rights / reserved matters which all relevant classes of notes would need to vote on); the most senior class of notes should not be allowed to direct the sale of the secured assets below fair value in an enforcement scenario.

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.

We fully agree with this criterion.

<u>Pillar III: transparent securitisations</u>

BlackRock has been very vocal on the need for investors to have timely and accurate information on the composition and performance of the asset pool, both at the point of issuance and on an ongoing basis. Investor reports should include detailed liability side reporting, allowing all cash flows to be reconciled, as well as details on how the securitisation satisfies any specific regulatory requirements. All underlying transaction documents should be freely available to current and prospective investors.

It is critical that information be made available on a timely basis through means that are not impacted by any conflict with or control by the sponsor, the servicer or other parties to the transaction.

Transparency of information will benefit investors, sponsors and servicers by equalising the data evaluated as part of the investment decision-making process at issuance and during the ongoing servicing of the assets. While we understand the need to protect the confidentiality of certain asset data, this need for protection should be balanced against investors' need for accurate information.

Criterion 15: The securitisation should meet the requirements of the Prospectus Directive.

We support this criterion although we would also welcome a review of the requirements of the various directives and initiatives governing the content of offering circulars. We are concerned that meaningful transparency for the investors is being neglected despite the efforts of full disclosure and that the length of these documents may (unnecessarily) become an impediment to investment.

Criterion 16: The securitisation should meet the requirements of Article 409 of the CRR and Article 8b of the CRA (disclosure to investors).

We fully support this principle. We are very supportive of efforts to enhance disclosure of the underlying data provided to the CRAs during the rating process and on an ongoing basis to investors. We feel that disclosure of all material information on which the rating is based (subject to proprietary and confidential sensitivities) and rating criteria is important.

Also, making the underlying data provided to the rating agencies available to investors contributes to minimise their over-reliance on ratings.

Criterion 17: Where legally possible, investors should have access to all underlying transaction documents.

We fully agree with this criterion.

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.

We fully agree with this criterion and would welcome the thoroughness of the information included on the transaction documentation. We believe that the following fields are the most important in providing information to investors:

- As a rule of thumb, investors should have access to the same suite of documents and performance data that is provided to CRAs (both on closing and on an ongoing basis).
- Most of the performance information (i.e. Account Status, historic Arrears / Litigation, Redemption date, Default and Foreclosure) would contribute to investors' assumptions on the loan's future performance and any likely future prepayments, arrears, defaults or losses.
- Collateral valuation information would help investors form prepayment and "loss given default" assumptions.

- Product information such as interest rate, repayment type, prepayment penalties would also aid investors' prepayment assumptions.
- Any relevant historical performance data that would help predict when certain 'performance' related triggers may be reached during the estimated life of the tranche that an investor is invested in.
- Additionally, for more detailed cash flow analysis independent of third party models, loan characteristics such as rate, term and repayment type would feed base case amortisation assumptions.
- At the tranche level, the disclosure of the amount of credit enhancement (over-collateralisation, subordination, reserves, and excess spread) would also be meaningful for the investors.

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.

We understand this criterion to refer to pool audits. Generally we welcome pool audits, however we do not believe this should be a transaction specific requirement. This requirement is more important for new originators and/or new asset types. For regular issuers a pool audit once every 12-18 months should be sufficient (rather than for every single transaction). Typically regular issues are publically listed and subject to corporate-wide audit requirements so investors can gain some comfort from these publically available reports. Investors can also rely on transaction representations & warranties and repurchase commitments to ensure that the portfolio meets the stated eligibility criteria.

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.

We fully support the requirement for investors to have access to historic performance data and would suggest that this should (where relevant) encompass defaults, recoveries and net losses on a vintage basis together with dynamic arrears and prepayment data. To the extent that the securitised pool contains sub-classes of assets that have (or may be expected to have) performed differently (e.g. consumer vs. corporate leasing, or car loans vs. truck loans) the historic data should be shown separately for these sub-classes since the business mix of the historic data may have changed over time and/or not be consistent with the securitised pool.

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.

As a rule of thumb, we believe that data underlying rating decisions should be given to investors. Rating agencies frequently have access to more information than would generally aid investors. While we appreciate that truly proprietary information must be kept confidential, we believe all other information received by rating agencies during the rating process should be available to investors.

However, there has already been an improvement in information provision on the underlying assets on a loan-by-loan level since the crisis and we therefore believe that focusing now on improved data quality and ease of access will be more beneficial than concentrating on more disclosure. The risk exists that unnecessary levels of poor quality disclosure may actually act as disincentive for new investors by adding complexity and by undermining the ability to come to a holistic and meaningful view of the underlying assets.

The level of detail required by investors varies between asset types. It should not be assumed that, as a general rule, investors require the level of data to re-underwrite all the assets in every pool of every asset type. For example, this is typically not done for every ABS asset type.

In more concentrated or less homogeneous pools (such as SME CLOs or large-loan CMBS), however, it is more important to look at individual loan characteristics. While most investors probably do not want and are not expected to re-underwrite the pool, there should be both sufficient qualitative information available on the borrowers to give investors a good guide to the quality of the pool (such as length of time established, time with bank, historic default performance, security details, underwriting lease / tenant information, credit score etc.) and quantitative data of sufficiently high quality and detail to ensure as robust modelling as individual investors require. It should be noted that with assets such as these, a key part of the credit decision is gaining comfort with the underwriting, servicing and risk and control processes of the originator.

We would be very pleased to see the development of centralised credit bureaux in every jurisdiction with both positive and negative information shared on a standard basis between all lenders. With this in place, originators would be more able to supply the details that investors require on securitised pools. However, we do not think that direct access to such bureaux by ABS investors would be practical or should be necessary.

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*

We agree with this criterion however we would be comfortable for the investor reporting to coincide with the payment frequency of the notes (so in rare cases when notes pay semi-annually it would be acceptable to receive investor reports semi-annually). Please see comments above (as a rule of thumb, investors should receive the same reports as the rating agencies).

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.*

We fully support the aim of this Criterion – that the underwriting standards of the underlying assets should be sound and prudent. This could include compliance with a level of standards such as those laid out in the Mortgage and Consumer Credit Directives – however, we would rather see principles as opposed to specific references to EU legislation as minimum criteria.

As mentioned elsewhere in this response, we do not agree with restricting the territorial scope of qualifying securitisations. We would be concerned that specific references to EU legislation in this instance could have the effect of *de facto* excluding securitisations where the underlying assets originate outside of Europe, even if they are subject to sound and prudent underwriting standards under the law of that jurisdiction (e.g. the US).

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.

Please see our response to question 7.

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%] 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%.

We generally support this criterion. However, as loan-to-value ratios (LTV) change over time, we believe that part iii) should make it clear that this only applies to the LTV when the loan is first added to the portfolio.

Analysis on the capital treatment of qualifying securitisation positions

BlackRock calls for properly calibrated incentives for investors to allocate capital to securitised instruments in the areas of capital (Basel III RWA and leverage ratio and Solvency II Solvency Capital Requirements), liquidity and collateral regulation. To achieve this, clear distinctions are needed between appropriately structured securitisations, which are to benefit from any more favourable treatment, and those reflective of some of the poor practices that were the problem during the financial crisis.

BlackRock is supportive of efforts to establish a more consistent, horizontal approach to the regulation of securitisation in Europe. We do, however, have concerns that poorly-calibrated regulation made on the basis of the poor performance of certain types of securitisation or asset classes in certain geographies during the financial crisis is an approach that has unnecessarily and disproportionately impaired the recovery of a properly functioning securitisation sector.

Properly calibrated regulatory treatment for appropriately structured securitisations will enable those regulated entities to engage in the securitisation market – increasing the range of their investment opportunities and will contribute to a larger, more stable and more liquid securitisation market for all investors.

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

We believe that there is a risk of adverse market consequences if the definition and criteria of the qualifying securitisation framework are too restrictive or inappropriately designed. This would potentially exclude certain types of well-structured securitisations from the scope of the qualifying securitisation framework and the related preferential regulatory treatment for the wrong reasons (e.g. on the basis of credit quality of the underlying assets, as opposed to the ability of the investor to understand the risk-return profile of the securitised assets in which they are investing). Furthermore, if the qualifying securitisation framework is not adopted consistently across different pieces of legislation (Basel II, Solvency II etc.) then it risks further fragmenting the market and damaging secondary market liquidity.

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

We believe that qualifying securitisations should benefit from significantly better capital treatment, in line with covered bonds (for AAA ratings) or equivalently rated corporate bonds (for lower ratings).

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

As above, capital treatment for qualifying securitisations should be in line with covered bonds or equivalently rated corporate bonds.

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

As above, capital treatment for qualifying securitisations should be in line with covered bonds or equivalently rated corporate bonds.