January 14, 2015

European Banking Authority
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Submitted via www.eba.europa.eu

Re: Comments on "EBA Discussion Paper on simple standard and transparent securitisations"

The Structured Finance Industry Group ("**SFIG**")[1] appreciates the opportunity to offer some general comments on, and respond to the questions raised by, the October 14, 2014 discussion paper (the "**Discussion Paper**") of the European Banking Authority (the "**EBA**") that sets forth the proposed characteristics that should define a "simple, standard and transparent" securitization and the requirements that could justify a preferential regulatory capital treatment in the European Union for certain "qualifying" securitizations. SFIG acknowledges the efforts of EBA that produced the Discussion Paper and strongly supports initiatives to strengthen the global securitization markets.

I. Introduction and General Comments

We recognize and support efforts aimed at addressing the need to develop in the European Union a more robust fixed-income investor base willing to invest in EU securitization transactions and prepared to participate in the global securitization markets. Due to the global nature of our financial system, we believe that a well-functioning EU securitization market will positively impact the global financial markets by increasing the diversity and supply of high-quality, tradable financial assets available to all investors and financial intermediaries, as well as broadening the global investor base for securitization products originating from a variety of jurisdictions.

[1] SFIG is a member-based, trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization markets. SFIG provides an inclusive network for securitization professionals to collaborate and, as industry leaders, drive necessary changes, be advocates for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. Members of SFIG represent all sectors of the securitization market including issuers, investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers and trustees. More particularly, SFIG membership includes US-, Canada- and Australia-based issuers of and investors in asset-backed securities ("**ABS**") that from time to time participate in the EU securitization markets either as sellers of ABS issued or sponsored by them, or as purchasers of ABS issued or sponsored by EU financial institutions. Further information can be found at www.sfindustry.org.

Likewise, well-functioning securitization markets in non-EU jurisdictions increase the investor base for EU securitization products and provide financial institution investors in the European Union with a greater supply and diversity of securitization products to hold.

More importantly, as recognized in the Discussion Paper, well-functioning securitization markets help the real economy and strengthen the resilience of the financial system. Given the interconnectedness and complexity of today's financial system, and the reciprocal dependence of economic actors situated in opposite ends of the world, regulatory positions targeted at one jurisdiction frequently have effects (often not fully anticipated) beyond the enacting jurisdiction's frontiers. For this reason, we believe that any regulatory changes that may be adopted in the EU (including those contemplated by the Discussion Paper), even if they are only intended to address concerns particular to the EU securitization market, will likely have an impact, directly or indirectly, on the global securitization markets.

Divergent regulatory approaches across jurisdictions could negatively impact the global securitization markets by increasing the costs of financing and compliance for securitizers and ultimately decreasing credit availability to consumers. We applaud and support efforts by the EBA and other EU regulators to coordinate with their counterparts in other key jurisdictions the development and implementation of regulatory changes in order to identify and mitigate any potentially negative effects of inconsistent regulatory regimes domestically and globally. In this context, we encourage the EBA to insure that the "systemic review of the entire regulatory framework applicable to securitizations" referred to in the Executive Summary of the Discussion Paper be conducted with a global perspective.

A necessary first step towards the harmonization of regulatory regimes is the development of a common set of basic concepts that can be used in different jurisdictions to achieve substantially equivalent goals. In this respect, the Discussion Paper, as well as the Consultative Document issued for comment on December 11, 2014, by a joint task force of the Basel Committee on Banking Supervision and the International Organization of Securities Commissions (the "**BCBS/IOSCO Paper**"), constitutes a valuable contribution to that end. The following comments, derived from discussions with representatives of the different constituencies comprising our membership, seek to help regulators in the EU with the task of delineating the contours of simple, standard and transparent securitizations ("**SSTS**").

1. *Identification of the regulatory purposes to be served by SSTS framework*

The appeal of the SSTS concept is self-evident. What is not clear to our members, and may be contributing to the regulatory uncertainty that the Discussion Paper correctly identifies as one of several factors operating as impediments to the development of a post-crisis EU securitization market, is the scope of application that the concept will have. Clearly, the intended regulatory use will determine how the concept should be framed. The main objective of the Discussion Paper is to address the relatively narrow question of the securitization prudential regulatory capital framework currently in force in the EU.[2] However, we understand that the SSTS concept (or equivalents) is also being actively considered as a framework for the wider regulation of

[2] Discussion Paper, Section 6 (*Analysis on the capital treatment of qualifying securitisation positions*), page 50.

securitization activity. While securities regulators focused on the strength of markets, and prudential regulators focused on the strength of banking institutions, insurance companies and the overall financial system, may each have an interest in securitization, the different purposes to be served by their respective regulatory regimes will call for different approaches.[3]

For example, an investor-focused securities regulator may be primarily interested in encouraging greater *simplicity* in the terms of ABS permitted to be sold to retail investors who may be least capable of evaluating complex structures, greater *standardization* for ABS of mature asset classes (such as residential mortgage-backed securities ("**RMBS**") and credit-card receivables backs securities ("**Card ABS**")) so as to promote easy comparison of those products and enhance primary and secondary market liquidity of those asset classes, and increased *transparency* across-the-board, so that all investors, regardless of their sophistication, have access to the information necessary to make informed decisions about the ABS they seek to acquire. Alternatively, a banking or insurance regulator may seek to balance these considerations (which, we believe, are less pressing in the case of banks or insurance companies that hold ABS) with a regime that *facilitates appropriate risk-transfer and funding activity* via securitization by the banking institutions and insurance companies under its supervision, allowing these regulated entities to maximize scarce capital by disposing a wider range of financial assets and other exposures to the capital markets via securitizations. The real economy as a whole benefits from the development of well-functioning securitization markets and the manner in which SSTS are defined needs to be flexible enough to adapt to these different objectives. [4]

As noted above, the Discussion Paper, consistent with the mandate received by the EBA from the European Commission, understandably focuses its objective on the analysis of the regulatory capital treatment that certain ABS held by financial institutions in the EU may receive. In this context, we agree with the Discussion Paper's analytical approach of focusing on the core *credit quality* of the underlying assets and the resultant ABS once any additional risks that result from the process of securitizing assets (such as, for example, servicer or hedge counterparty default risk, underlying pool claw-back risk, etc.) have been appropriately mitigated. We are of the view, however, that for the purposes of determining which securitizations should be entitled to preferential capital treatment, features such as compliance of any related offering document with the requirements of the Prospectus Directive, the scope of the legal opinions delivered at closing, the structure of the payment waterfall, the extent of the investors' voting rights or the diversity of governing laws applicable to the underlying assets (all of which may be desirable in ABS sold to

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[3] Even the same regulatory authority may need to keep in mind the different purposes to be served by different regulations, as evidenced by the European Commission's adoption of slightly different criteria for "high quality" securitizations in the liquidity coverage requirement regulation and the Solvency II regulation applicable to insurance and reinsurance businesses. See European Commission Memo/14/578, paragraph 13.

[4] We note that the Discussion Paper uses the terms "simple standard and transparent" to establish a framework of analysis. While we support the three-part framework set out in the Discussion Paper, we note that the characteristics of "simple" and "standard" in a securitization do not ensure the results sought by the Discussion Paper, as evidenced by the fact that many of the most problematic pre-crisis ABS issuances were relatively "simple" in structure and "standard" in terms of features, while many well-performing ABS have what may be considered more "complex" structures and/or more "non-standard" features intended to mitigate or otherwise address particular risks or features of an asset class or atypical situation. As indicated in the text, both the financial sector and the real economy benefit from a vibrant market for securities that transfer (and offer exposure to) a wide range of underlying financial assets. Accordingly, as set out in more detail below, we seek a more flexible approach to the application of the Discussion Paper criteria.

retail investors) may, in many instances, be irrelevant and that, accordingly, for purposes of determining the capital treatment given to a particular securitization, the evaluation of whether these or similar features need to be considered should be made on a case-by-case basis.

Of course, the type of individualized evaluation that we advocate in the preceding paragraph is very difficult, if not virtually impossible, when the regulatory framework adopted follows a prescriptive or "rules-based" approach (as the Discussion Paper does), as opposed to a more "principles-based" approach.[5] We believe that the U. S. Securities and Exchange Commission correctly summarized the pitfalls of the prescriptive, rules-based approach when (referring to the application of that regulatory model to the accounting regulation at the time prevailing in the U.S.) it indicated that:

> "Unfortunately, experience demonstrates that rules-based standards often provide a roadmap to avoidance of the accounting objectives inherent in the standards. Internal inconsistencies, exceptions and bright-lines tests reward those willing to engineer their way around the intent of standards. This can result in financial reporting that is not representationally faithful to the underlying economic substance of transactions and events. In a rules-based system, financial reporting may well come to be seen as an act of compliance rather than an act of communication. Moreover, it can create a cycle of ever-increasing complexity, as financial engineering and implementation guidance vie to keep up with one another."[6]

Accordingly, we urge the EBA to consider the merits of a more principles-based approach to the formulation of the criteria that are relevant to the determination of what constitutes an SSTS.

2. Administration of the SSTS standard

Our members strongly believe that each prospective investor must be responsible for the determination of whether or not a particular transaction in which they hold an interest meets the SSTS standard.[7] In other words, while each investor should be free to decide whether it will

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[5] As used in this letter, a "principles-based" approach to regulation has the characteristics described in the U.S. Securities and Exchange Commission *Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based Accounting System* (the "**SEC 2003 Study**", available at http://www.sec.gov/news/studies/principlesbasedstand.htm last visited on January 8, 2015). While (confusingly) the SEC 2003 Study refers to the approach as "objectives oriented" (to distinguish it from an approach that would only provide "high-level standards with little if any operational guidance"), the approach we endorse is characterized by: (i) being based on a clearly articulated conceptual framework; (ii) clearly stating the regulatory objective of the standard; (iii) providing sufficient detail and structure so that the standard can be operationalized and applied on a consistent basis; (iv) minimizing the use of exceptions from the standard; and (v) avoiding use of "bright-line" tests that allow financial engineers to achieve technical compliance with the standard while evading the intent of the standard.

[6] SEC 2003 Study, Part I.C.

[7] Needless to say, in the case of a European bank (or other investor subject to prudential regulatory oversight due to the nature of its business or for any other reason), the appropriateness of such determination will always be subject to review by the EBA or other supervising authority and any abuse or other misfeasance in the application of the standard would trigger application of the corresponding disciplinary or punitive regime.

evaluate for itself a transaction's compliance with the standards for qualification or, alternatively, whether it will take into account the determination of a third party credentialing agency retained by the transaction sponsor, the ultimate responsibility for the consequences of the characterization should rest with the investor alone. In the case of banking institutions having to apply the SSTS standard to the determination of their capital requirements for securitization exposures, the proposed approach would be entirely consistent with the way in which such risk capital determinations are currently made for all other assets.

Any alternative approach that results in the insertion between banks and their regulators of a third party credentialing agency with regulatory authority for ascertaining the substantive merits of a bank investment (and on whose determinations banks would be entitled to rely) would be, not only an unprecedented departure from the existing bank regulatory framework, but also likely to result in an inappropriate dilution of the banking regulators' exclusive authority to conclusively pass upon the nature and quality of a bank asset and its corresponding capital charge. Moreover, the introduction of a system in which there is a *de facto* single credentialing agency whose conclusions on a transaction-by-transaction basis as to qualifying status are widely publicized (*e.g.*, on the front cover of a prospectus and/or on Bloomberg or other electronic information systems used by traders) risks a reiteration of unfortunate experiences exposed during the 2008 financial crisis, such as:

- the blind and potentially irresponsible reliance of investors (including banks seeking favorable capital treatment for their investments in securitizations) on third parties for the evaluation of compliance with regulatory requirements;

- the creation of incentives for the credentialing agency or agencies to increase volume or market share by accommodating the demands or perceived business needs of their customers;[8]

- the creation of a "chokepoint" potentially resulting in a critical reduction of the speed to market for transactions, especially those sold as the result of a reverse inquiry; and

- most importantly, the potential for devolving responsibilities for the consequences of an erroneous or fraudulent application of the standards to an entity or entities that will likely have limited liability.

To disregard the lessons of the financial crisis in these respects would be unfortunate indeed.

3. SSTS jurisdictional issues

As indicated above, we believe that the impact of any decision taken by EU-based regulatory authorities concerning the adoption of an SSTS standard will reach securitization markets around

[8] The existence of third-party credentialing agencies would, of course, raise the issue of whom these agencies would work for. Whether they will be paid for their services by the financial institutions seeking favorable capital treatment for ABS in their portfolios or by the issuers or sponsors of such ABS would necessarily raise the same kinds of issues that have impacted the use of external credit ratings.

the globe. Given the interconnected nature of the global securitization market and the importance of securitization both as a source of financing for the real economy and as a tool for capital raising for providers of credit, we believe that any proposed regulatory policies aimed at promoting securitization activity in the EU (or in any other jurisdiction) should be developed and implemented in a manner that does not unduly prejudice one group of transactions over others of equivalent quality and safety on a purely regional basis. For this reason, we believe that limiting SSTS to those ABS with underlying assets originated in the European Economic Area (the "**EEA**"), EEA-established originators, issuers or sponsors, or EEA law-governed transfers, is not only unnecessary, but may also have unintended consequences that could hinder or delay the development of EU securitization markets.

Although unquestionably the securitizations triggering the 2008 financial crisis originated primarily if not exclusively in the United States, the criteria listed in the Discussion Paper correctly identify and eliminate the deficiencies and anomalies that allowed those securitizations to come to market in the first place.[9] That being the case, we do not believe that a valuable purpose is advanced by excluding from SSTS status securitizations of assets originated in, governed by the laws of, or sponsored or issued by entities organized in, jurisdictions with mature securitization markets such as Australia, Canada and the United States.

The exclusion of non-EEA securitizations from SSTS status would strongly discourage EU-based investors (including, quite likely, non-financial institution investors) from purchasing well-structured ABS backed by a wider range of assets that could allow them to diversify their exposures. Further, should other international regulators decide to follow a similar regionally-biased approach, effective access of EU-based securitizers to other global markets (including the deep and liquid US fixed-income markets) could be significantly impaired, thereby increasing the cost of funding real economy assets in the EU and limiting or frustrating the ability of EU-based securitizers to transfer risks to the global capital markets, which is one of the acknowledged advantages of securitization.

We understand that some jurisdictional limitations are necessary, however. It would not be reasonable to expect EU regulators to open their doors to securitizations originated in countries with weak or undeveloped legal systems or where enforcement of contractual rights or application of the rule of law may be an issue. With this in mind, in our answer to Question 4 we recommend that SSTS status initially be limited to securitizations involving assets or originators/sponsors based in the EEA and other OECD countries.

4. Our thoughts on the proposed regulatory approach outlined in the Discussion Paper

We generally agree that the creation of an SSTS standard can help in re-establishing market confidence towards securitization products in the EU. However, we are also mindful that there may be other negative consequences, particularly if the regulatory purposes to be advanced by the application of the standard are not adequately explained to the investment community and the criteria determining its application are not carefully circumscribed to advance only the particular

[9] See, in particular, Criterion 7 (addressing the originate-to-distribute model), and Criteria 1 and 2 (which, together, exclude leveraged and maturity-transforming securitizations).

regulatory purposes to be served.

Although the proposed SSTS criteria would only apply to EU-based financial institutions, given the particular importance of these entities as a source of demand in a revitalized EU securitization market, making certain "non-qualifying" securitizations – even those products and asset classes that performed well throughout the significant stress of the financial crisis period – relatively more expensive for financial institutions to hold (and possibly stigmatized as an exposure class) will inevitably significantly reduce the demand for (and liquidity of) these "non-qualifying" securitizations across-the-board. Such well-performing but non-qualifying securitizations will thus likely also be subject to increased financing costs given reduced buy-side interest, which would paradoxically reduce the supply of credit to the real economy and increase the cost of that credit which is provided.

In particular, we note that the framework proposed in the Discussion Paper does not contemplate making distinctions for different classes of securitizations (such as RMBS, auto loan- and lease-backed securities ("**Auto ABS**") and Card ABS). This approach has the benefit of simplicity; however, it gives rise to the challenge of developing a common set of criteria across ABS asset classes that, on the one hand, are not over-inclusive and yet, on the other hand, are sufficiently open-ended and flexible to encompass the broad spectrum of ABS that our membership believes should merit SSTS treatment.

A clear advantage we see in the three-prong approach common to the Discussion Paper (and the BCBS/IOSCO Paper) is that it allows the different "pillars" (*i.e., simple*, *standard* and *transparent*) potentially to be combined in different ways for different regulatory purposes. For example, if this approach was adopted by a market regulator such as ESMA, securitizations sold to retail investors may have to comply with all three pillars. For regulatory capital purposes (*i.e.,* the stated main objective of the Discussion Paper), however, we believe only the criteria relating to *transparency* and *credit risk* should be necessary requirements (with the other criteria being required on a case-by-case basis as appropriate on a judgmental basis to different classes of securitizations).[10] For this purpose, however, transparency should not be focused on the kind of disclosure document prepared by the issuer, but on the overall mixture of information provided by originators or sponsors to the financial institution seeking the preferential capital treatment. It should be self-evident that financial institutions investing in securitizations do not need the type of protections that a disclosure document delivered to retail investors (*e.g.*, under the Prospectus Directive) is designed to provide.

With respect to the specific criteria comprising each pillar, we are concerned that their often detailed and prescriptive nature may significantly limit innovation or reduce flexibility for issuers who seek to finance high-quality assets, and potentially divert to foreign markets investors who

[10] As noted in the recently published paper entitled *"Securitisations: tranching concentrates uncertainty"* by Adonis Antoniades and Nikola Tarasheve (BIS Quarterly Review, December 2014) (the "**Anotoniades/Tarasheve Paper**"), the uncertainty inherent in estimating asset-level defaults in securitizations will concentrate in mezzanine tranches, even in the context of extremely simple and transparent asset pools which the authors noted should otherwise have been expected to "bring to a minimum the scope for estimation uncertainty". We believe that the view that financial institutions should be actively discouraged from investing in ostensibly "complex" or "non-standard" securitization transactions may deprive them from the opportunity to invest in a wide variety of high-quality, low-risk assets. Simplicity and creditworthiness are not synonymous.

seek exposure to more diversified products. This prescriptive approach may, in hindsight, prove to have been an "attempt to fight the last war" and leave regulators without adequate tools to address future developments that do not fit the model on the basis of which the regulatory framework was built.

A related point of concern in the markets is the uncertainty surrounding the regulatory capital treatment of certain other securitizations deliberately excluded from the SSTS definition outlined in the Discussion Paper: "managed" securitizations, such as CLOs, synthetic securitizations and short-term ABCP. While we understand that each of these financial instruments presents features that separate them from other types of more traditional securitizations, none of those distinctive features, in our view, automatically and unequivocally result in a *per se* reduction of the credit quality of the underlying assets that would justify a discriminatory treatment for regulatory capital purposes. A separate consultation to produce additional or different criteria for these asset classes would be welcome by the markets.

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Part II of this letter provides responses to the questions asked in the Discussion Paper. Part III provides additional feedback on some of the criteria set out in the Discussion Paper that we believe require further consideration but which are not covered in the specific questions presented. Finally, recognizing the importance of the SSTS framework (or its equivalent) in the global policy debate around securitization, Part IV of this letter then discusses our broader concerns relating to the application of the framework at the global level. In addition, in Annex A, based on input provided by several issuers, we set out examples of a number of different ABS asset classes that our members believe clearly merit "qualifying" treatment for purposes of the benefits set out in the Discussion Paper but which would not meet one or more of the standards as proposed.

II. Comments on behalf of SFIG's members pertaining to the questions for consultation

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

- We generally agree with the identified impediments in the EU securitization market, with a particular focus on factors "(c)" (availability of lower-cost central bank funding), "(e)" (lack of sufficient fixed income investor base in the EU), and "(f)" (regulatory uncertainty). We note that while post-crisis "stigma" may still be present among some potential market participants, the ABS markets in the United States were also subject to similar (if not greater) reputational concerns but have nevertheless rebounded significantly.

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

- We recognize the inherent differences of synthetic securitizations from "traditional" securitizations that involve the sale of financial assets to affect risk transfer. However, we also believe that criteria could be developed focusing on the transparency of such structures which, when combined with a rigorous approach to the credit risk of the underlying assets,

would make certain synthetic securitizations appropriately eligible for a capital treatment that is aligned with that of well-structured traditional securitizations. Our members would welcome a separate consultation on developing such criteria.

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 very concerned about the "one size fits all" approach to defining defaults in Criterion 5(ii). The definition of "default" can vary significantly among asset classes and across jurisdictions. For example, exposures are considered "defaulted" in most Card ABS only when they are 180 days past due and in some Auto ABS when they are at least 150 days past due. Likewise, certain government supported ABS, such as US student loans in FFELP transactions, are clearly high-quality and should not be impacted in treatment due to defaults on underlying exposures which do not impact investors. What constitutes a "defaulted exposure" can be very technical and is inevitably driven by local market practice and regulation.

- In addition, certain originators, in the Card ABS sector in particular, do not track whether a debtor is unlikely to pay its obligations without realization to any collateral and therefore may not be able to correctly make representations about this point.

- Accordingly, we would recommend a more flexible and principles-based definition of "default" that is aligned with relevant market and, where applicable, regulatory standards for the relevant class and jurisdiction of the underlying assets.[11] Under this approach, the subject financial institution applying the SSTS criteria would be charged with determining compliance with the criterion (and retaining appropriate support for this determination for the examining supervisor to review).

- An alternative to the approach suggested above would be for the regulators to adopt a broad palette of specific definitions of "default" on a jurisdiction-by-jurisdiction basis (with appropriate variances by asset class).

Question 4: Do you believe that, for the purposes of standardization, 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

[11] We note that BCBS/IOSCO Paper uses a more principles-based approach on this point, stating,

> "Non-performing credit claims and receivables are likely to require more complex and heightened analysis. In order to ensure that only performing credit claims and receivables are assigned to a securitisation, credit claims or receivables being transferred to the securitisation may not include obligations that are in default, delinquent or obligations for which the transferor or parties to the securitisation are aware of evidence indicating a material increase in expected losses or of enforcement actions." (Footnotes omitted.) They go on to add, "The terms "default", "delinquent" and "material increase" may need to be defined depending on the application of the criterion."

BCBS/IOSCO Paper, Annex, paragraph A.3.

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?

- As discussed in greater detail above, we suggest that, in addition to countries that are members of the EEA, the eligible jurisdictions be expanded at least to include other countries that are one of the OECD jurisdictions. A process by which other countries could from time to time be added to the list of eligible jurisdictions would also be supported by our members.

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

- While this criterion generally fits most ABS transactions, it is not clear to our members why it should be given particular significance in the EBA's framework. There may be cases where non-sequential voting is more appropriate to one or more elements of a particular transaction (such as determining the replacement of a "special servicer" whose identity could have a greater impact on the more risk-sensitive junior securities). So long as voting rights are clearly set out in the relevant offering materials, we do not think the "qualifying" status of an ABS should be impacted by non-sequential voting.

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?

- As a practical matter, underlying transaction documents are finalized only after the marketing of an ABS transaction has commenced. So long as the relevant offering document describes all material aspects of the underlying transaction documents (and that document is generated under a legal system that imposes effective liability on the transaction parties for the failure to adequately describe such transaction documents), we do not believe that the EBA's criteria should disrupt market activity by requiring that these documents be provided some number of days in advance of an investment decision. We do not believe that the highly technical matters contained in ABS transaction documents and not typically described in an offering document should be considered critical to "qualifying" treatment of the ABS for regulatory capital purposes.

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 securitization transactions in any specific asset class? Would another threshold value be more appropriate?

- We have significant concerns about the proposed 1% granularity requirement. It effectively limits "qualifying" status to consumer asset-backed ABS. This means that key areas of the real economy that could benefit from the increased supply of credit, such as lending to small and medium-sized businesses and loans to corporate borrowers, which generally performed well throughout the period of the financial crisis, would be excluded. As noted in the Discussion Paper, most losses from securitizations during the financial

crisis related directly or indirectly to ABS backed by highly granular assets (sub-prime RMBS and CDOs backed primarily by sub-prime RMBS). Furthermore, the Anotoniades/Tarasheve Paper raises questions about the effective modeling of mezzanine tranches of even highly granular pools backing ABS. We believe that a more even-handed approach would be to require that the granularity of the asset pool be correlated to the amount of credit enhancement provided. For example, no single obligor (or group of obligor) could be permitted to constitute more than 25% of the minimum credit enhancement allowed under the transaction documentation.

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

- See Section III below for our more detailed commentary.

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

- As discussed in our general comments above, we believe that the proposed criteria, if adopted as set out in the Discussion Paper, would have significant adverse market consequences. In particular: (i) if all criteria are applied strictly, very few (if any) ABS even originating from the EU would achieve "qualifying" status, frustrating the purpose of the initiative; (ii) even if the criteria are broadened to address technical issues in the EU, limiting the criteria to EEA-related underlying assets (and using European-centric regulatory definitions) will inhibit cross-jurisdictional activity, harming overall liquidity and price transparency for financial assets on a global basis; and (iii) even a more multi-jurisdictional approach to the criteria that places specific requirements around the "*simple*" and "*standard*" pillars, when applied to sophisticated (and well-regulated) financial institutions, will inhibit innovation and flexibility in the financial markets without providing a related benefit in risk reduction for the financial system.

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

- As indicated above, we agree with the Discussion Paper's analytic approach that seeks to characterize as SSTS only a securitization from which the additional risks resulting from the process of securitizing assets have been appropriately mitigated. Consistent with this approach, we believe that the extent to which such mitigation is successfully achieved should lead to the convergence of the regulatory treatment of the resulting SSTS and the underlying assets.

Question 11: What is a reasonable calibration across tranches and credit quality steps for qualifying securitizations? 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?

- Our members recognize the difficulties of allocating risk weights across tranches of a given

securitization. Conceptually, however, the answer should embody the same principle set forth in the answer to Question 10 above.

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

- We note that regulations in the United States can no longer use credit ratings as a measure of credit quality, which makes this question one that is more appropriately responded to by interested parties in Europe.

III. Additional feedback on proposed criteria

a. Criterion 1

As discussed above, we believe that European-centric criteria (such as requiring a qualifying securitization to meet the CRR definitions of "securitisation" and "traditional securitisation", and not to be a "re-securitisation"), may unduly restrict the range of ABS which regulated banks may hold, and will potentially encourage other jurisdictions to adopt similar regionally-focused approaches, ultimately damaging the global securitization market and real economy. For example, the definition of "re-securitization" could potentially capture certain multi-tier US structures. In addition, some US asset classes, such as Auto ABS, may utilize special units of beneficial interest ("**SUBIs**") that may not meet the required definitions. If express reference to designated statutory regimes is preferred, and alternative could be the adoption of a "substituted compliance" approach where a securitization that meets the requirements of a regulatory regime in another jurisdiction (such as Regulation AB in the United States), would be deemed to satisfy this criterion (although we note that a number of major jurisdictions do not have in place equivalent sweeping securitization regulation (largely due the absence of significant defaults in that market, such as term ABS from Canada)).

Preferably, however, we would recommend for this criterion (as we do for other of the "*simple*" and "*standard*" criteria), the adoption of a principles-based approach that allows regulated banks to determine on a case-by-case basis whether high-quality securitizations from jurisdictions outside the EU could still be treated as "qualifying" (if they comply with a set of agreed principles defining "securitization"), even if they do not satisfy corresponding criteria in the CRR definition.

b. Criterion 2

While we recognize that securitizations involving active portfolio management (such as collateralized loan obligation ("**CLO**") transactions) have certain inherent differences from traditional securitizations, we also believe that many such transactions also have exhibited the steady and strong performance characteristics that should entitle them to "qualifying" status. We recommend developing a separate set of criteria specifically targeted at these types of actively managed securitizations.

More specifically, standard ABS structures with revolving pools (which include Card ABS and dealer floor plan ABS, among others) may have eligibility criteria for asset inclusion but included assets may not always be strictly randomly selected, as other weighting factors may be applied, such as the legal entity originating the receivables, the product type, or other features. Likewise, upon pool replenishment, variations on the method by which additional receivables are included may not necessarily be strictly "random". Issues can also arise when accounts (and related receivables) are removed from the pool, for example due to the disposition of the originator/servicer of part of its business.

Regarding "active portfolio management", our members anticipate circumstances in which further guidance as to the intended meaning of this term would be helpful. For example, in a Card ABS, the accounts from which receivables are selected for the pool are under constant monitoring by the originator/servicer, which will adjust its underwriting and servicing standards in response to changes in the economy, in the industry, in trends in customer behavior and/or in regulation. So long as such adjustments are consistent with the originator/servicer's normal business practices (and are applied to all similar accounts managed by the servicer), our members do not believe that this type of activity should be considered "active portfolio management".

We recommend that, rather than this being a strict criterion, regulated banks should be required to make an evaluation of the entirety of the structure, taking into account the particular circumstances of an ABS, to determine whether any "cherry-picking" concerns are in fact present.

c. Criterion 3

"True sale" may not always be achieved in all jurisdictions. As the BCBS / IOSCO Paper notes in their proposed criterion 5, "[i]n applicable jurisdictions, securitizations employing transfers of credit claims or receivables by other means" should be permitted so long as the existence of obstacles preventing true sale at issuance are demonstrated. We would recommend adopting a similar degree of flexibility. We also note that law firm opinions on these matters are generally addressed to specific recipients and not intended to be relied upon beyond that specific group.

Special circumstances can also apply in certain jurisdictions. For example, in the U.S., banks were typically able to isolate the receivables backing Card ABS from insolvency risk without a "true sale" based on guidance by the Federal Deposit Insurance Corporation. A number of these structures are grandfathered and continue to be active prime issuers. The final criteria need to be flexible enough to not inadvertently exclude such structures.

d. Criterion 4

We are concerned about the "homogenous" standard as proposed. The mere presence of assets originated in more than one jurisdiction (or with more than one currency of denomination) should not prevent a sophisticated financial institution from evaluating whether the ABS is appropriate for "qualifying" treatment. In some countries (such as Canada) there can be significant differences in the legal regime between one sub-jurisdiction and others (such as is the case in Canada with the Province of Quebec). Also, this standard does not suit relatively less granular

asset classes (such as commercial mortgage backed securities ("**CMBS**")) in which the underlying exposures, while all of high credit quality, may not necessarily be considered "homogenous". The same concern may be present in other classes as well, such as transportation ABS, in which different vehicle types (such as autos, trucks and other equipment) or different aircraft types may be included in a common pool.

Regarding the requirement for "consistent standards" of underwriting, we note that in revolving pools that involve asset replenishment (such as Card ABS), underwriting standards may vary over time and revised standards may adjust for relevant market factors, and thus it may be difficult to require that underwriting is "non-deteriorating" over time. However, where the required "skin in the game" (risk retention) is present, a track record of performance has been demonstrated and the relevant asset replacement eligibility criteria require compliance with the originator's then in effect underwriting standards, we believe that an evaluating financial institution applying the criteria on a judgmental basis should be able to conclude that this criterion has nevertheless been met in principle.

With respect to the requirement that the underlying exposures be "full recourse" to the relevant obligors, we note that several jurisdictions in the United States and Canada do not permit full recourse to the obligors in the case of RMBS and certain other asset classes. Assets subject to these legal limitations have historically been included in securitizations without adversely affecting the quality of the relevant asset pool.

Finally, we note that there has been much discussion in the United States about what "self-liquidating" means, particularly in the context of equipment lease securitizations, and we recommend substituted compliance to relevant U.S. definitions and/or judgmental application of this term by financial institutions, taking into account the specific characteristics of given asset pools so that, on a principles basis, the institution has concluded that there is not significant refinancing risk present.

e. Criterion 5

As noted above, we have significant concerns regarding the definition of "default". Because of the very asset-specific and jurisdiction-specific nature of what assets may be appropriately characterized as "defaulted" we strongly recommend a principles-based approach (this point is specifically noted in criterion 3 ("Payment Status") of the BCBS / IOSCO Paper). In addition, with respect to other requirements of this Criterion we note:

- Monitoring the various standards at the time of inclusion (*i.e.*, transfer to the relevant SPV) may be difficult or impossible for many originators. A better approach would be to test for the agreed criteria as of the "cut-off date" for any proposed transfer.

- Few, if any, originators have the ability to track all "disputes" with the borrower (which disputes could entail issues wholly unrelated to the borrower's ability or willingness to pay).

- The relatively lower credit score of a certain portion of borrowers in an otherwise prime portfolio may often be mitigated by other factors, such as a relatively low loan-to-value

ratio. Originators may appropriately include such assets in prime portfolios and may not have systems to exclude these assets from portfolios supporting ABS marketed both in Europe and in jurisdictions other than Europe.

- As a technical matter, underlying exposures at the time of inclusion may include transferrable securities if there are "permitted investments" held in a reserve account.

In sum, as shown in Annex A, certain prongs of the proposed definition of "default" would exclude some classes of clearly well-performing ABS.

f. Criterion 6

Besides credit card receivables and personal overdraft facilities, the requirement that at least one payment has been made on the underlying asset does not necessarily suit other types of well-performing underlying asset classes, such as Auto ABS and Student Loan ABS. Interpretation to allow ABS not meeting this criterion but otherwise demonstrating qualities meriting "qualifying" treatment should be provided (or judgmental application by financial institutions allowed). Attempting to enumerate the relevant classes in advance will potentially limit the supply of credit to these sectors without a regulatory benefit.

g. Criterion 7

We agree that the presence of risk retention should be a key element of a "qualifying" ABS. We recognize that, to the extent that the Discussion Paper applies to European financial institutions, Article 405 of the CRR will apply to any securitization exposures held. That said, to the extent that similar criteria were to be applied to entities other than those already required to comply with Article 405 of the CRR, we would urge an approach that permits application of any local risk retention requirements, if in place (such as is the case in the United States).

h. Criterion 8

We note this item as a good example of a more open-ended and principles-based criterion that may be applied sensibly across a wide variety of asset classes and jurisdictions.

i. Criterion 9

We are concerned about the difficulty in interpreting the terms "commonly encountered market interest rates" and "complex formulae". For purposes of this criterion, we would recommend allowing any interest rate for which historic data is publicly available. For consumer assets that accrue interest based on a given financial institution's internal rate (such as "prime"), historical data could be provided to investors to allow them to determine the correlation of this rate to other rates with which they may be more familiar.

j. Criterion 10

Transactions featuring a revolving period will, of necessity, also feature a set of events which cause the revolving period to conclude ahead of the otherwise scheduled termination date

(*i.e.*, "early amortization events"). However, we have concerns about a prescriptive set of required early amortization events. While many early amortization events will be linked to an overall deterioration of the asset pool, the connection may be indirect (for example, the reduction of "excess spread" below a required threshold). The specific "credit quality" of underlying exposures (particularly, consumer exposures) typically by itself would not give rise to an early amortization event, particularly given credit enhancement embedded within a structure.

k. Criterion 11

While this criterion is principles based, not all well-structured securitizations will be subject to sequential amortization based on the seniority of the tranche. In some cases, other amortization "rules" may apply (for example, a short-term A-1 tranche normally paid in first position and a longer term A-2 tranche normally paid in second position may be repaid on a *pari passu* basis upon default or early amortization). So long as the cash flow allocations during both normal periods and following an early amortization event or default are clearly set out in the offering document, we do not believe that the allocation of cash other than on a strict seniority basis following an early amortization or default should impact an ABS's "qualifying" status.

l. Criterion 12

We are supportive of requiring that the transaction documentation clearly specify the relevant contractual obligations and other features noted. We note that in the United States, the securities liability regime effectively requires that all such material terms are clearly described in the relevant offering document.

m. Criterion 13

We would like to confirm that the existence of an independent "accounting control party" (as such term is used under IFRS for purposes of determining if a securitization receives sale treatment, asset de-recognition and deconsolidation) would suffice for purposes of this criterion. Moreover, we note that the documentation of many existing prime ABS programs (such as for Card ABS) do not contain provisions "facilitating the timely resolution of conflicts between different classes of noteholders by the 'identified person'". A securitization should not be excluded from SSTS treatment solely because it does not have such a provision.

n. Criterion 14

We agree generally that the servicer of the securitization should be able to demonstrate expertise in servicing the underlying loans, supported by a management team with extensive industry experience and that the servicer's policies and risk management controls should be well-documented. However, it will likely be difficult for the relevant investor to make a consistent assessment of this criterion across various asset classes and jurisdictions without some further guidance being provided.

o. Criterion 15

We believe that this criterion that securitizations should meet the requirements of the Prospectus Directive is too narrow and, as noted above, we recommend adopting a "substituted compliance" approach where a securitization meets the requirements of a regulatory regime in another jurisdiction (such as Regulation AB in the United States).

p. Criterion 16

We believe that this criterion that securitizations should meet the requirements of Article 409 of the CRR and Article 8b of the CRA (disclosure to investors) is also too narrow. As noted above, we recommend adopting a "substituted compliance" approach where a securitization meets the disclosure requirements of a regulatory regime in another jurisdiction (such as Regulation AB in the United States).

q. Criterion 17

We support access of investors to the underlying transaction documentation. In the United States, material transaction documentation for registered transactions is on file with the Securities Exchange Commission and publically available. For privately placed transactions, material documentation is generally available upon request. The EBA should be aware that certain commercially sensitive non-material information may need to be excised from any private documentation provided to investors.

r. Criterion 18

Our members have different views on the usefulness of liability cash flow models. Requiring the originator or sponsor to provide investors with a liability cash flow model, both before the pricing of the securitization and on an ongoing basis, would raise significant liability concerns for the originators and the sponsor. Furthermore, they are not currently required in the United States. Therefore, given our members' varying views and the complexity of the issues surrounding this criterion, we believe no such requirement should be imposed in Europe without a specific and detailed consultation on the risks and benefits of such a construct.

s. Criterion 19

The underwriters for many securitization transactions obtain pool audit and agreed upon procedures ("AUP") letters from accounting firms in connection with their overall due diligence exercise for a transaction. These letters typically (i) sample-check the data tape (or other source) of statistical information on the underlying pool assets against the originator's financial control and management information systems and (ii) tie all the data in the offering document provided to investors back to the sample-checked source. However, although the practice of obtaining such letters is common, there are many variations on the scope and type of work performed. In addition, these letters are generally private in nature and not intended to be shared with others as the result of liability concerns on the part of the preparing accounting firm. We believe that, so long as the transaction parties are subject to potential liability for false or misleading statements in the offering memorandum, requiring third party data verification will raise more challenges for identifying an SSTS than it will provide benefits. If it is felt that data verification by a third party is critical, then

the criterion should permit a capsule statement by the originator/sponsor in the offering document summarizing the work performed and any material data deficiencies identified by the process.

t. Criterion 20

We agree that investors and prospective investors should have readily available access to data on the historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitized. However, many issuers across asset classes do not have at least five years of historical performance. If this requirement is to be retained, we believe it should call for "appropriate" data in light of the underlying assets, with separate guidance as to what may be appropriate in a given circumstance.

u. Criterion 21

We agree that investors and prospective investors should have readily available access to data on the underlying assets; however, we believe that the requirement that data be provided on a loan-by-loan basis should be dependent on the type of asset. For example, in certain jurisdictions (such as the United States), asset-level disclosures are not yet required for all asset classes. We appreciate that, for European financial institutions, Article 409 of the CRR already requires certain loan-level data to be provided. In the absence of an existing regime for providing loan-level data, we do not believe that a further requirement is justified.

v. Criterion 22

We believe that investor reporting on a quarterly basis generally should increase transparency. No issuers, however, provide data related to modifications, such as debt restructuring or debt forgiveness.

w. Credit Criterion A

Our members agree that the underwriting of the underlying credit exposures should be made consistent with sound and prudent credit-granting criteria. However, for assets not originated in the EU, a more principles-based approach will be required as non-EU originators will not necessarily be complying with criteria applicable in the EU. For example, we note that some originators use proprietary credit scoring systems that would not necessarily meet the prescriptive requirements contained in this proposed criterion.

x. Credit Criterion B

See our response to Question 7.

y. Credit Criterion C

See our response to Question 4 regarding the jurisdictional requirements for underlying exposures. Also, we note that high-quality ABS (with virtually no loss history) that are largely backed by prime portfolios in some jurisdictions have also included a small portion of subprime

loans. It may not be practical for originators in these jurisdictions to structure ABS differently just to meet the requirements of the European market.

In addition, in Canada, it is common for even very high quality pools backing Auto ABS to include loans with LTVs over 100% at closing, due to the convention of lenders financing taxes and certain other amounts in addition to the purchase price of the relevant vehicle. Nevertheless, these portfolios have exhibited very low losses over time (including through the financial crisis of 2008-09).

IV. Comments on behalf of SFIG's members pertaining to their interests in the European ABS market

We are mindful that regulators in key jurisdictions outside of Europe are also considering adopting similar regulatory changes that would distinguish between certain "high quality" securitizations that meet standards similar to those applicable to SSTS as set out in the Discussion Paper and that, therefore, would potentially merit preferential capital treatment, differentiated treatment under the LCR rules and/or other benefits, and other securitizations that do not meet such standards. We are not advocating that these jurisdictions adopt a similar distinction, but we do believe that, as these potential policies are being discussed by EU and non-EU regulators, it is important to bear in mind that any regulations that may be adopted should be workable for as many assets, issuers and investors as possible both inside and outside of the home jurisdiction adopting such regulations.

As discussed above, it is also important that any such regulations focus on the required use of the SSTS concept – be it for the prudential regulation of regulated financial institutions, in the context of market regulation for retail and sophisticated investors, or otherwise. In the context of regulations that would apply to already heavily-regulated financial institutions, we believe that the wide diversity of securitizations potentially meriting of being characterized as "qualifying" necessitates a system in which the "*simple*", "*standard*", and "*transparent*" criteria are defined on a principles-based fashion that allows for the evaluation of the specific circumstances of each transaction by the financial institution working under the interpretive guidance from its relevant regulator.

V. Conclusion

In summary, our responses to the Discussion Paper include, among others, the following key recommendations:

- Broaden the specific criteria as discussed above to allow for an effective use of the "qualifying" standard among the full range of well-structured ABS with strong indicia of high credit quality.
- Preserve banking institutions' ability to determine for themselves the proper classification of their assets (including in respect to compliance with SSTS standards) and the corresponding regulatory capital treatment.

- Allow non-EEA assets to be included in qualifying ABS transactions so long as appropriate local regulatory and market standards are met and include mechanisms for the addition of new eligible jurisdictions in the future.
- Allow financial entities not subject to Article 405 of the CRR to satisfy SSTS risk retention requirements by complying with corresponding requirements in effect in their respective jurisdictions.
- Allow regulated European financial institutions greater flexibility in applying the relevant criteria, in particular, those relating to a securitization being "*simple*" and "*standard*", so long as the supervising authority monitors the application by the financial institution on an on-going basis.
- Continue the process of coordinating with other European and global regulators to insure that well-intended regulatory initiatives aimed at fostering growth of healthy securitization markets (such as the criteria for qualifying securitizations in the Discussion Paper) are not impeded by cross-jurisdictional frictions that do not have a commensurate regulatory benefit.

We greatly appreciate your consideration of our members' comments. Please do not hesitate to contact the undersigned at +1 (202) 524-6301 should you have any questions in connection with this letter.

Very truly yours,

Richard Johns
Executive Director

Annex A: Evaluation of Typical ABS Transactions

		US Equipment ABS	US Auto ABS	US Credit Card ABS	CAD Auto ABS	CAD ABS - Other
Pillar 1: Simple Securitization Criteria						
Criteria 1	Should be a securitization as defined in the CRR (as per Article 4 (61));	Yes	Yes (1)	Yes	Yes	Yes (2)
	Should be a 'traditional securitization' as defined in the CRR (as per Article 242(10));	Yes	Yes	No (3)	Yes	Yes
	Should not be a 're-securitization' as defined in the CRR (as per Article 4 (63)).	Yes	Yes	Yes	Yes	Yes
Criteria 2	Should not be characterized by an active portfolio management on a discretionary basis.	Yes	Yes	Unclear (4)	Yes	Unclear (4)
	Assets transferred to a securitization 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.	Unclear (5)	Yes	Unclear (6)	Yes	Unclear (6)
	Substitution of exposures that are in breach of representations and warranties should in principle not be considered as active portfolio management.	Yes	Yes	N/A	Yes	Yes
Criteria 3	The securitization should be characterized by legal true sale of the securitized assets and should not include any severe insolvency clawback provisions.	Yes	Yes	Yes (7)	Yes	Yes
	A legal opinion should confirm the true sale and the enforceability of the transfer of assets under the applicable law(s).	Yes	Yes	Yes	Yes	Yes

	Severe clawback provisions should include rules under which the sale of cash flow generating assets backing the securitization 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.	Yes	No	No	Yes	Yes
Criteria 4	The securitization should be backed by exposures that are homogeneous in terms of asset type, currency and legal system under which they are subject.	Unclear (8)	Yes	Yes	Unclear (9)	Unclear (8)
4.i	The exposures should 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.	Yes	Yes	Unclear (10)	Yes	Unclear (10)
4.ii	The exposures should be consistently originated in the ordinary course of the original lender's business pursuant to uniform and non-deteriorating underwriting standards.	Unclear (11)	Yes	Unclear (12)	Unclear (13)	Unclear (12)
4.iii	The exposures should 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	Yes	Yes	N/A (14)	Yes	Unclear (14)

	pay interest on overdue amounts).					
4.iv (a)	The exposures are underwritten with full recourse to an obligor that is an individual or a corporate and that is not a special purpose entity.	Unclear	Yes	Unclear (15)	No (16)	Unclear (16)
4.iv (b)	The exposures are underwritten on the basis that the repayment necessary to repay the securitizations 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.	Yes (17)	Yes	No (18)	Yes	No (19)
Criteria 5	At the time of inclusion in the securitization, the underlying exposures:					
5.i	Should not include any disputes between original lender and borrower on the underlying assets.	Yes	Yes	Unclear (20)	Yes (21)	Yes (21)
5.ii (a)	Should not include any exposures more than 90 days past-due (considered in default).	Yes	Yes (22)	No (23)	Yes (24)	No (25)
5.ii (b)	Should not include exposures where the debtor is assessed as unlikely to pay its credit obligations in full without realization of collateral, regardless of the existence of any past-due amount or of the number of days past due (considered in default).	Yes	Yes	Unclear (26)	Yes (27)	Yes (27)
5.iii	Should not include any exposures to a credit-impaired borrower. For these purposes, a borrower should be deemed as credit-impaired where:	Unclear (28) (29)	No	No (30) (31) (32)	Unclear (28)(33)	Unclear (28)

	-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. -He is, to the knowledge of the institution at the time of inclusion of the exposure in the securitization, 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. -He has a credit assessment by an ECAI or a credit score indicating significant risk of default.					
5.iv	Should not include 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 securitization. The original lender should provide representations and warranties that assets being included in the securitization are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due.	Yes	Yes	Yes	Yes	Yes
Criteria 6	At the time of inclusion in the securitization, the underlying exposures are such that at least one payment has been made by the borrower, except in the case of securitizations backed by	Yes	No	N/A	Yes (34)	Yes (34)

	personal overdraft facilities and credit card receivables.					
Pillar II: Standard Securitization Criteria						
Criteria 7	The securitization should fulfill the CRR retention rules (Article 405 of the CRR).	Yes (35)	Yes (36)	Unclear (37)	Unclear (38)	Unclear (39)
Criteria 8	Interest rate and currency risks arising in the securitization 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.	Yes	Yes	Unclear (40)	Yes	Yes
Criteria 9	Any referenced interest payments under the securitization 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.	Yes	Yes	Yes (41)	Yes	Yes
Criteria 10	Should include provisions for appropriate early amortization events and/or triggers of termination of the revolving period, which should include, at least, each of the following: - A deterioration in the credit quality of the underlying exposures. - A failure to generate sufficient new underlying exposures of at least similar credit quality. - The occurrence of an insolvency-related event with regards to the originator or the servicer.	Unclear (42)	No	Yes (43) (44)	N/A	Unclear (45) (46)
Criteria 11	Following the occurrence of a performance-related trigger,	Yes	Yes	Yes (47)	Yes (48)	Yes

	an event of default or an acceleration event: -The securitization positions are repaid in accordance with a sequential amortization payment priority, whereby the seniority of the tranches determines the sequential order of payments. -A repayment of note holders in an order of priority that is 'reverse' with respect to their seniority should not be foreseen. -There are no provisions requiring immediate liquidation of the underlying assets at market value.					
Criteria 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: -The default or insolvency of the current servicer does not lead to a termination of the servicing of the underlying assets; -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 securitization; and -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 securitization.	Yes	Yes	Yes (49)	Yes	Yes

Criteria 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 securitization transaction to the extent permitted by applicable law and in accordance with the terms and conditions of the securitization 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 securitization.	Yes	Yes	No (50) (51)	Yes (52)	Yes (52)
Criteria 14	The management of the servicer of the securitization 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.	Unclear (53)	Yes	Yes	Yes	Yes

Pillar III: Transparent Securitization Criteria						
Criteria 15	The securitization should meet the requirements of the Prospectus Directive.	Unclear (54)	No (54)	N/A	Unclear (55)	Unclear (55)
Criteria 16	The securitization should meet the requirements of Article 409 of the CRR and Article 8b of the CRA (disclosure to investors).	No (56)	Unclear (57)	N/A (58)	Unclear (59)	Unclear (59)
Criteria 17	Investors should have access to all underlying transaction documents where legally possible.	Unclear (60)	Yes (61)	Yes	Unclear (60)	Unclear (60)
Criteria 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.	Unclear (62)	Unclear (63)	Unclear (64)	Unclear (62)	Unclear (62)
	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.	Yes	Yes	Yes	Yes	Yes
	Any change in the waterfall should be reported on a timely basis, at the time of its occurrence.	Yes	Yes	Yes (65)	Yes	Yes
	The originator or sponsor should provide investors a liability cash flow model, both before the pricing of the securitization and on an ongoing basis.	No (66)	No	No	No (67)	No (67)
Criteria 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	Unclear (68)	Yes	No (69)	Unclear (70)	No (71)

	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.					
Criteria 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 securitized, covering a historical period representing a significant stress or where such period is not available, at least 5 years of historical performance.	Yes	Yes	Yes (72)	Unclear (73)	Unclear (73)
	The basis for claiming similarity to exposures being securitized should also be disclosed.	Yes	Unclear (74)	Unclear (75)	No (76)	No (76)
Criteria 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 securitization, and on an ongoing basis. Cut-off dates of this disclosure should be aligned with those used for investor reporting purposes.	No (77)	No	No (78)	Unclear (79)	Unclear (79)
Criteria 22	Investor reporting should occur at least on a quarterly basis. As part of investor reporting the following information should also be disclosed:	Yes		Yes (80)		
	All materially relevant data on the credit quality and performance of underlying assets, including data	Unclear (81)	No	No (82)	Unclear (83)	Unclear (83)

	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 securitization, including separate disclosure of the securitization's income and disbursements, i.e. scheduled principal, scheduled interest, prepaid principal, past due interest and fees and charges;	Yes	Yes	No (84)	Unclear	Unclear
	The breach of any waterfall triggers and the changes in waterfall that this entails.	Yes	Yes	No (85)	Unclear	Unclear
Credit Risk Criteria						
Criteria A	Credit rating 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.	Unclear (86)	Unclear (87)	Yes	Unclear (86)	Unclear (86)
Criteria B	Pool of exposures to be securitized should be such that the largest aggregated exposure to a single obligor does not exceed 1% of the value of the aggregate outstanding balance.	No	Yes	Yes	Yes	No (88)
	For calculations, loans or leases to a group of connected clients (per Article 4(39) under CRR) would be considered exposures to a single obligor.	Yes	No	No (89)	Unclear (90)	Unclear (90)
Criteria C.i	Underlying exposures must be to individuals or undertakings that are resident, domiciled or	No	No	No	No	No

	established in an EEA jurisdiction.					
C.ii	At the time of inclusion they have to meet the conditions for being assigned, under the Standardized Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than: [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; [50%] on an individual loan basis where the exposure is a loan secured by a commercial mortgage; [75%] on an individual loan basis where the exposure is a retail exposure; [100%] on an individual loan basis for any other exposures. Under (a) and (b) loans secured by lower ranking security rights on a given asset should only be included in the securitization if all loans secured by prior ranking security rights on that asset are also included in the securitization. Under (a) no loan in the securitized portfolio should be characterized by a loan-to-value ratio higher than 100%.	Unclear	N/A	N/A	No (91) (92)	N/A (92)

Notes

1 A single tranche offering would make part (b) non-applicable.

2 National Housing Act MBS (Agency) is structured with single tranche.

3 The ownership of the credit card accounts is generally not transferred. However, the issuing entity has security interest in the trust assets, as defined in the securitization documents. But it is correct that the securities issued by the issuing entity do not represent payment obligations of the originator institution.

4 It will be helpful to define "active portfolio management". In Card ABS, the portfolio is a revolving pool of credit card receivables, the performance of which will be subject to the ongoing underwriting and servicing of the servicer. Typically, the Servicer makes no distinction between securitized receivables and non-securitized receivables and services all receivables in the same way. The originator/servicer, in its normal course of business, is able to adjust and make changes to its underwriting and servicing standards in response to changes in the economy, industry, consumer behavior, laws and regulations, etc. It will be helpful if such normal business practices would not be considered "active portfolio management".

5 In equipment ABS, the securitization pool is a subset of the total managed portfolio of the originator (not the whole portfolio). Satisfying eligibility criteria and concentration limits “random selection” so definition/limits on random selection is important.

6 In most Card ABS, the securitization pool is a subset of the total managed portfolio of the originator (not the whole portfolio). The originator is able to select any credit card accounts to be added to the securitization trust from time to time, as long as those accounts satisfy the eligibility criteria defined in the securitization documents. There is generally no limitation on the method of account selection for account additions. However, it is worth noting that most Card ABS programs have some limiting provisions relating to removal of accounts from the trust. Accounts to be removed from a trust are required to be randomly selected, or be removed pursuant to an arrangement with a third party (e.g. co-branding or affinity arrangements) which by its terms permits a third party to repurchase specific accounts, or to be selected using another method that would not negatively impact the sale accounting treatment set forth in SFAS 140 as in effect prior to November 15, 2009.

7 Most US Card ABS programs are grandfathered under the FDIC Safe Harbor, as long as the transfer of assets to the issuing entity continues to satisfy all conditions for sale accounting treatment set forth in SFAS 140 as in effect prior to November 15, 2009.

8 How narrowly is "homogeneous" defined?

9 Quebec legal system different from rest of Canada. Some differences in laws between other provinces.

10 Not sure what this criterion means. The pricing terms on the revolving credit card accounts may change from time to time per the cardholder agreements.

11 Depends on how "nondeteriorating" is defined.

12 It will be helpful to clearly define "consistently originated" and "uniform and non-deteriorating" underwriting standards. Most US Card ABS programs have highly seasoned accounts in their securitization pools. Some accounts are as seasoned as 10-15+ years. In response to changing economic conditions, consumer behavior, rules and regulations, credit card originators will need to be able to adjust its underwriting standards in order to maintain credit quality, profitability, market shares, etc. It will be impractical to expect that underwriting standards remain stagnant for a revolving asset pool. In addition, portfolios may be sold from one lender to another, and it will also be impractical to expect that the underwriting standards of the seller and buyer are "consistent" or "uniform".

13 Difficult to confirm loans originated pursuant to uniform and non-deteriorating underwriting standards.

14 Given the revolving nature of credit card receivables, there is no fixed "sums of money specified" in the cardholder agreements.

15 US Card ABS programs typically contain consumer credit card accounts and/or small business credit card accounts that satisfy this requirement.

16 Certain provinces have seize or sue legislation.

17 Unless transaction includes leases where residual is securitized.

18 Credit card receivables are underwritten in accordance to the originator's underwriting policies. Securitization activities are not relevant to and should not have any impact on the originator's underwriting standards.

19 Issue for auto lease, RMBS, and CMBS transactions.

20 The transaction documents typically define the requirements that make an account eligible to be added to the trust.

21 May be difficult to monitor depending on definition of "dispute".

22 Underlying assets are eligible for transfer into a securitization if they are less than 30 days past due.

23 Per FFIEC guidelines, credit card receivables are considered in default and are charged off when they become 180 days past due. Not all the Card ABS trusts have a delinquency threshold in its eligibility criteria.

24 Although auto loans not considered in default if more than 90 DPD. Market convention is generally 150 days and a time period is not generally included in definition of defaulted loan.

25 May have longer periods in other assets, for example, credit cards are generally 180 DPD before being considered in default.

26 "Ability to pay" typically is not one of the eligibility criteria under the securitization documents.

27 However may be difficult to monitor if loan is current at time of pool selection.

28 Difficult to monitor.

29 Clarification needed on what is “adverse” and what is standard for “significant risk”.

30 Bankrupt accounts are generally not eligible accounts, as defined in securitization documents, and therefore will not be added.

31 "Adverse credit history" is typically not one of the eligibility criteria under the securitization documents.

32 The credit score on an obligor may impact the underwriting decision of the originator, but it is typically not an eligibility criteria under securitization documents.

33 Transactions have included up to 25% of the pool with no credit score as loans were made to small businesses or individuals that don't have a credit score. Pools have also included obligors with low credit scores where risk was mitigated by other means such as co-signer or higher down payment.

34 Yes, generally pools have been selected requiring at least one payment. Could be a concern for revolving transactions.

35 Does this include residual risk/loss exposure?

36 Interest retained is satisfied by 1. (b.). Numbers 2, 3 and 4 under this criterion are non-applicable.

37 US Card ABS programs are expected to comply with the US Risk Retention rule, which has similar risk retention requirements as Article 405 of the CRR.

38 Uncertain as need to determine whether OC would qualify and whether risk retention rules are similar to other jurisdictions.

39 Need to determine if Seller's Interest in credit card ABS would qualify.

40 It will be helpful to define "appropriately mitigated". There is typically some interest rate mismatch between the underlying credit card assets and the Card ABS. However, that risk is typically already accounted for in the determination of credit enhancement levels of the securitization trust. Currency risk arises if the Card ABS is denominated in a different currency from that of the underlying Card assets. Such currency risk is typically mitigated by cross-currency swaps.

41 The interest rate on card ABS is typically fixed, or floating based on common indices such as 1-month USD LIBOR or 3-month USD LIBOR.

42 It would be helpful to define “deterioration in credit quality” and “appropriate early amortization events”.

43 Card ABS typically has an early amortization trigger based on the 3-month average excess spread of the trust.

44 The "at least similar credit quality" test is not typical. Generally, the inability of the originator to add more receivables to the trust when required (to maintain minimum seller's interest or minimum receivables balance requirements) constitutes an early amortization event.

45 Should this be performance? Early Am events have not been linked to credit quality of pool such as credit bureau scores or LTVs.

46 No current requirement.

47 The liquidation of the underlying credit card assets is typically only allowed if, following an event of default and acceleration, the consent of a large majority of noteholders has been obtained or if a note has not been paid in full on the legal final maturity date of that note.

48 Class A2 and A3 are repaid pari passu.

49 Typically, a notice from or certain action by the indenture trustee or a majority of the noteholders will be required to terminate the servicer following a servicer default or insolvency. The transaction documents typically include provisions on the appointment of successor servicer, and, specify, if applicable, any back-up servicer. The documents will also state if, in the case of the conservatorship or receivership of the current servicer, the conservator or receiver may have the power to prevent the termination of the current servicer.

50 Re: timely resolution of conflicts between different classes of noteholders by the 'identified person', currently no such provision. But the newly adopted amendment to Regulation AB will require issuers using shelf registrations to include provisions the facilitate investor communications and dispute resolutions.

51 All third party noteholders of any affected class or tranche of notes have equal voting rights, regardless of the credit tranche they hold. For example, if the issue affects all noteholders, then all third party noteholders, regardless of whether they are holding the subordinated or the senior tranches, will be able to vote. The indenture typically specifies the percentage of votes required to effect an action that will be binding on all holders of the affected notes or class or tranche of notes.

52 Senior and sub investors have equal voting rights.

53 Is there a definition for “”expertise” in servicing?

54 Offering complied with prospectus disclosure requirements in Regulation AB.

55 Uncertain as need to determine whether requirements are met with existing offering documents.

56 Existing disclosures are not at loan level in part due to wide differentiation in types of equipment securitized.

57 This response is broad and subjective. However, Regulation AB II loan level disclosures will include a wide variety of metrics that may satisfy requirement.

58 US Card ABS Issuers of publicly registered securities have to comply with disclosure rules adopted by the US Securities and Exchange Commission. US Card ABS issuers are not subject to CRR or CRA.

59 Existing structures likely don't meet criteria.

60 Transaction documents not provided in advance. Offering document summarizes all material terms.

61 All underlying documents are available once deal is closed.

62 Uncertain as need to determine whether existing disclosure would meet criteria.

63 Transaction documents specify in clear and consistent terms the remedies relating to asset performance and default/delinquencies. However, actions relating to debt forgiveness, forebearance and payment holidays are discussed only in general terms.

64 The securitization transaction documents typically only require that the servicer services the credit card receivables in the securitization trusts in accordance with its normal business practices. The population of credit card accounts subject to debt restructuring, payment holidays, etc. are usually very small at any point in time. A high-level description of any debt restructuring or payment holidays programs is usually included in the securitization disclosure documents.

65 The waterfall normally does not change. Any amendment to the waterfall will likely require rating agency consent or in some cases noteholders' consent.

66 Additional work/concerns with liability - too prospective, too much reliance - OM should provide sufficient data to model.

67 Liability cash flow model not provided and significant concerns regarding this requirement.

68 Scope/extent of verification?

69 Not required. A review of a sample of underlying assets is more typical for amortizing assets like mortgages.

70 AUP completed by audit firm prior to issuance. Need to confirm whether procedures meet requirements.

71 AUP for asset eligibility not completed for all asset classes. Example is credit cards.

72 It is industry practice for credit card ABS issuers to provide monthly investor reports which include all key performance metrics. Publicly registered US Card ABS's performance is also available on SEC's website and may also be found on Bloomberg.

73 Uncertain as need to determine what data is required. Certain data such as static pool has not been provided.

74 It is not clear if the question is referring to a representative sample which some auto issuers do not use.

75 Not sure what this means.

76 Not currently disclosed.

77 Loan level is not provided for equipment.

78 Loan level disclosure is not currently required for card issuers in the U.S.

79 Uncertain as need to determine what data is required. Loan level data has not been provided.

80 Publicly registered Card ABS programs are required to file investor reporting monthly.

81 Not on a loan level basis, aggregate for pool.

82 It is standard industry practice for credit card ABS issuers provide monthly investor reports, which include all key performance statistics (loss, delinquencies, yield, payment rate, excess spread). For publicly registered Card ABS deals, such performance data is publicly available on a monthly basis. The other data listed (namely debt restructuring, debt forgiveness, forbearance, payment holidays) are not currently disclosed and it is typically not material.

83 Uncertain as need to determine what data is required.

84 The concepts of scheduled principal, scheduled interest, prepaid principal, past due interest and fees and charges are not applicable to credit card ABS. The cash flow collected on the credit card receivables is reported on a monthly basis in the form of finance charge collections and principal collections.

85 Typically no waterfall triggers.

86 Loans were originated in accordance with sound and prudent credit granting criteria, however, need to determine whether it meets requirements of EU directives.

87 Many issuers use a proprietary credit scoring model to determine an applicant's creditworthiness, which may not satisfy Article 8 Council Directive.

88 Issue for dealer floorplan and CMBS transactions.

89 Credit card receivables are serviced on an account by account basis, and not on an obligor basis. An obligor can have multiple credit card accounts, each offering different pricing terms, credit lines, rewards programs, etc. However, it is worth noting that a credit card originator, when originating any new accounts, do take into consideration any outstanding debt by the obligor, including any other existing credit card account such obligor may have from the originator.

90 Need to determine whether basis to determine connected client complies with CRR requirements.

91 LTVs on auto loans have been significantly higher than 100%.

92 Pools may contain small portion of near or subprime obligors.