Securitization and Securitized Debt Instruments in Emerging Markets

Final Report

EMERGING MARKETS COMMITTEE
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

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CONTENTS

Chapter		Page
	List of Figures	**3**
1	**Introduction**	**4**
2	**Executive Summary**	**6**
3	**Benefits of Securitization**	**8**
4	**Lessons From The Crisis**	**10**
	4.1 Challenges	10
	4.2 Key Lessons	11
5	**Current Postion of Securitization Markets in Emerging Mark and Effects of The Crisis**	**15**
	5.1 Market Characteristics and Practices	16
	5.2 Disclosure and Transparency Requirements	26
	5.3 Basic Framework for Key Market Participants	31
	5.4 Business Conduct Obligations	33
	5.5 Credit Rating Agencies	35
6	**A Brief Comparison of Key Market Practices & Market Development**	**36**
	6.1 Placement Method	36
	6.2 Trading Venue	37
	6.3 Transparency Requirements for OTC Markets	38
	6.4 Retention of a Portion of the Issue by the Originator	38
7	**Recommendations**	**39**
	7.1 Recommendations on Enabling Conditions	39
	7.2 Recommendations for Further Development of Securitization Markets	41
	7.3 Moving Forward with these Recommendations	46
	Appendix A – List of Task Force Members	**47**
	Appendix B – Survey Questionnaire	**49**

List of Figures

Fig.	Name	Page
1	Market Size	16
2	Originators	18
3	Buy Side	19
4	Vehicles for Securitization	21
5	Placement Method	22
6	Retention of a Portion of the Issue	23
7	Trading Venues	25
8	Role of the Government in Securitization Markets	26
9	Disclosure Requirements for ABS of Public Offering	27
10	Mandatory Rating	28
11	Transparency in OTC Markets	30
12	Prudential Framework	31
13	Oversight of the Administrator	32
14	Suitability and Due Diligence Provisions	33
15	Size of SFP Markets - Pre and Post Crisis Public and Private Offerings	36
16	Size of the SFP Markets - Pre and Post Crisis	37
17	Size of Market - Pre and Post Crisis, OTC or Exchange Traded - Most Common % Change	37

Chapter 1 Introduction

The recent financial crisis has highlighted the importance of robust regulation for the development of securitization markets.

In order to contribute to the global efforts to understanding the crisis, the Emerging Markets Committee (EMC) of the International Organization of Securities Comissions (IOSCO) established a Task Force on the Current Financial Crisis (Task Force). This Task Force had two mandates:

(i) Assess and identify the impact of the current financial turmoil on emerging markets, the regulatory issues posed and the responses thereto them; and

(ii) review the role of structured financial products (SFP) in the development of emerging markets with a focus on developing principles or best practices for securitization in emerging market jurisdictions.

As a result of the first mandate, the EMC Task Force on the Current Financial Crisis published a Final Report on *Impact On and Responses of Emerging Markets to the Financial Crisis*[1] in September 2009.

In order to carry out the second mandate the Emerging Markets Committee Advisory Board (EMCAB) approved the constitution of a Task Force on Securitization (TFOS) on 9 June 2009. The TFOS has been co-chaired by the National Banking and Securities Commission of Mexico (CNBV) and the Securities and Exchange Board of India (SEBI).[2] The TFOS also benefited from the technical support of the Monetary and Capital Markets Department (MCM) of the International Monetary Fund (IMF).

The TFOS set its main aims as being:

(i) to undertake a fact-finding survey on key topics related to securitization in emerging economies, as well as on the impact of the financial crisis on those markets; and

(ii) to produce a report on principles and recommendations for emerging market jurisdictions, to enable the sound development of a securitization market.

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1 *Impact On and Responses of Emerging Markets to the Financial Crisis*, Report of the Emerging Markets Committee of IOSCO published on 18 September 2009 available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD307.pdf.

2 The TFOS was led by Dr. Carlos Serrano, Vice-President for Regulatory Policy of the CNBV and Dr. K. M. Abraham, Whole Time Member of SEBI. Members of the TFOS included regulators from: Argentina, Bangladesh, Bermuda, Brazil, Bulgaria, Chile, Chinese Taipei, Colombia, Costa Rica, Egypt, Ghana, Hungary, Israel, Jordan, Kenya, Korea, Malawi, Malaysia, Morocco, Oman, Pakistan, Panama, Peru, Poland, Rumania, Sri Lanka, Tanzania, Turkey and the United Arab Emirates.

Thirty-six jurisdictions replied to the survey questionnaire prepared by the TFOS; 27 jurisdictions responded the survey, while nine replied that securitization markets have not developed yet in their jurisdictions and thus did not answer to the survey. The survey provided valuable information regarding the state of development of securitization markets, as well as on the regulatory framework and market practices in place in emerging markets jurisdictions. The survey's main findings have been summarized in this report and detailed information provided by survey participants can be obtained through the IOSCO General Secretariat.

The survey's findings provided the starting point for the development of recommendations by the TFOS. The TFOS looked first at enabling conditions, particularly important for jurisdictions whose markets have not started to develop or are at an early stage. In addition, the TFOS provided recommendations for further deepening securitization markets in emerging markets.

In developing the recommendations the TFOS took into consideration the reports produced by different international organizations in connection with the financial crisis and the lessons emanating from it, and examined the extent to which these reports' recommendations are also applicable to emerging market jurisdictions.

Chapter 2 Executive Summary

The TFOS was constituted in June 2009 to analyze the state of development and effects of the financial crisis on securitization markets in emerging markets jurisdictions, as well as to provide recommendations for their sound development.

The TFOS' first step in carrying out this mandate was to undertake a fact-finding survey. Thirty-six jurisdictions replied to this initial request for information with 27 responding to the survey, while nine replied that securitization markets have not yet developed in their jurisdictions and were thus, not in a position to participate in the survey. The survey provided the task force with valuable information regarding the state of development of securitization markets and the effects of the crisis, as well as on the regulatory framework and market practices in place in emerging market jurisdictions.

Many of the results from the survey were anticipated. In particular, the survey showed that securitization markets are still underdeveloped in the majority of emerging market jurisdictions. It also showed the existence of significant information gaps in regard to the size and market practices in securitization markets of emerging market jurisdictions. The survey also highlighted weaknesses in the regulatory framework for securitization markets in many emerging market jurisdictions, especially with regard to the *quality* of disclosure, a comprehensive framework for key participants in the securitization process and business conduct obligations.

However, other results were less expected. The survey showed that the regulatory framework of a significant number of emerging market jurisdictions already address many of the lessons and recommendations learned from the crisis as summarized in this report. Particularly, in 60% of the jurisdictions, retention of a portion of the issue by the originator is already market practice. While, in 65% of the jurisdictions securitized products are mostly placed through public offerings and in 45% of the jurisdictions they are also traded in public venues (exchanges) which subjects securitization markets to higher levels of disclosure and transparency. In addition, 79% of the jurisdictions have also imposed post-trade transparency requirements in over the counter (OTC) markets for securitized products. Finally, a majority of the jurisdictions already include in the perimeter of regulation key participants of the securitization chain that traditionally have been outside of the perimeter of regulation, or only lightly regulated, such as credit rating agencies (CRAs) (70% of the jurisdictions) and administrators of special purpose vehicles (SPVs) (95% of the jurisdictions).

Furthermore, the EMC did not find strong evidence to suggest that the adoption of more rigorous regulatory frameworks and market practices have stifled the growth of securitization markets where such practices and frameworks are in place.

These findings were the starting point for the development of recommendations by the TFOS. Firstly, given the significant number of jurisdictions where securitization markets have not yet started to develop or are at an early stage, the report encourages authorities to

ensure that enabling conditions are in place.

These enabling conditions refer to the need for:

(i) a stable macroeconomic environment;

(ii) a clear and robust legal framework;

(iii) robust accounting principles;

(iv) a neutral tax system;

(v) and investor education.

Secondly, the report identifies key recommendations to deepen securitization markets in emerging market jurisdictions; in particular it encourages regulators to:

(i) collect a minimum set of data on securitization markets;

(ii) enhance disclosure for both public and wholesale markets;

(iii) foster trading through public venues;

(iv) foster the development of pricing vendors which should be regulated;

(v) develop a basic framework for key market participants;

(vi) enhance business conduct obligations; and

(vii) align credit rating agencies regulation with the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies[3] (IOSCO Code of Conduct).

[3] Code of Conduct Fundamentals for Credit Rating Agencies, Technical Committee of IOSCO published May 2008 and available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD271.pdf.

Chapter 3 Benefits of Securitization

Prior to the financial crisis, the conventional wisdom emphasized the positive role played by securitization for both originators and investors, and more generally for the provision of credit.

For an originator, securitization offers the opportunity to transfer credit risk to other entities, thereby allowing originators to free up capital. In this way, illiquid assets are transformed into liquid ones. Furthermore, funding can be achieved at a cheaper cost, since securitization relies on the quality of specific assets that have been *segregated*, rather than on the overall creditworthiness of the originator. Moreover, for originators with a low capital base or low rating, securitization may be the only way to raise capital.

For an investor, securitization provides access to a wider spectrum of products, with different durations and levels of credit quality that can satisfy different risk appetites, it can also help to diversify portfolios. More generally, securitization can increase the availability of credit and reduce its cost, as originators free their capital, they can turn such capital around and re-deploy it into new credit.

Securitization has been a key funding source for consumer and mortgage lending in many mature market economies. Before the financial crisis, asset backed securities (ABS) and covered bonds provided between 20% and 60% of the funding of new residential mortgage loans originated in the United States, Western Europe, Japan and Australia.[4] There is little empirical research on the impact of securitization on the general economy, however, Sabry and Okongwu demonstrate that in the US context, securitization has increased the availability of credit and decreased its cost.[5]

The financial crisis, however, has raised questions about such positive effects.[6] Indeed, as the crisis showed, without the appropriate incentives securitization can lead to risk concentration, and can even be the source of systemic instability. Securitization remains an essential tool for the provision of credit, however, as the IMF highlighted in its Global Financial Stability Report, without the replacement of maturing securitized products, banks face a contraction of their funding sources, which might exacerbate already tight credit conditions.

Alternatives to securitization such as covered bonds are not an alternative for non-deposit

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4 International Monetary Fund, Restarting Securitization Markets: Policy Proposals and Pitfalls, GFSR, Chapter II, April 2009. p. 78

5 Ibid p.79. Similar conclusions were reached by the National Economic Research Associates Inc (NERA). See NERA, Study on the Impact of Securitization on Consumers, Investors, Financial Institutions and the Capital Markets, 2009.

6 See Hyun Song Shin, Financial Intermediation and the Post-Crisis Financial System, Princeton University, June 2009.

taking primary lenders because they do not have the capital base to retain the loans. At the same time, as banks continue to repair their balance sheet in the current environment, the absence of a risk transfer mechanism can perpetuate deleveraging pressures rather than alleviating them[7]. Thus, the key now is to restart securitization markets under a robust regulatory framework that better aligns participants' incentives with the longer term performance of the securitized assets[8].

7 IMF, Op cit. pp. 78-79

8 On the need to restart securitization markets see also American Securitization Forum, Australian Securitization Forum, European Securitization Forum and Securities Industry and Financial Markets Association, Restoring Confidence in the Securitization markets, December 2008

Chapter 4 Lessons from the crisis

Undoubtedly, flaws in the securitization business model and the regulatory framework were at the epicenter of the crisis. Different international organizations including the Financial Stability Board (FSB), IMF, the World Bank, the Group of Thirty as well as domestic regulatory authorities and think tanks in different jurisdictions have produced reports that identify such flaws and have proposed recommendations to address them. The TFOS has relied on such reports to identify the key lessons and recommendations from the crisis vis-a-vis securitization markets[9]. Furthermore a key goal of the TFOS has been to compare and contrast market practices and regulatory frameworks in place in emerging markets against these lessons and recommendations.

4.1. Challenges

The challenges in the securitization business model and regulatory framework have been grouped into three areas: wrong incentives, inadequate risk management and regulatory structure and oversight.

4.1.1. Wrong Incentives in the Securitization Value Chain

A key problem highlighted in many reports is the misalignment of incentives throughout the securitization value chain, starting with the originators but including also other participants in the process. In the case of the originators the *originate to distribute model*, along with remuneration practices are believed to have led to a deterioration of underwriting practices, and insufficient due diligence. Short term remuneration structures might have also lead to mortgage brokers focusing on originating securitized products without due regard to the longer term performance of the assets. Underwriters might not have had the appropriate incentives to conduct appropriate levels of due diligence, nor servicers to prudently perform their obligations under the servicing agreements. These developments contributed to a sharp decline in asset quality in some securitization markets, and contributed to undermining confidence in global markets.

4.1.2. Inadequate Risk Management Practices

Investors, including banks and institutional investors, did not have in place robust risk management mechanisms to perform their own risk assessments and management of the securitized products they acquired. Rather, in some countries, they over-relied on credit ratings as their main - and even only - tool to determine the quality of the products they

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[9] Financial Stability Forum, Report of the Financial Stability Forum on Enhancing Markets and Institutional Resilience, April 2008; Group of Thirty, Financial Reform: A Framework for Financial Stability, January 2009; IMF, Restarting Securitization Markets: Policy Proposals and Pitfalls in GFSR, Chapter II; April 2009; IOSCO Technical Committee, Unregulated Financial Markets and Products, Final Report, September 2009.

invest in. In turn, the business model of the ratings agencies exacerbated conflicts of interest that were not adequately dealt with by the regulation.

4.1.3. Gaps Related to the Regulatory Structure and Oversight

Much of the analysis of securitization markets has noted that participants in the securitization value chain either fell outside of the regulatory perimeter or were relatively lightly regulated, such as credit rating agencies.

4.2. Key Lessons

4.2.1. Improve Disclosure and Transparency

There is wide consensus on the need to improve disclosure to investors so that they have the necessary information that would allow them to perform robust due diligence. Improvements have been called for in regard to:

(i) initial and ongoing information about the underlying asset pool performance; as well as on the creditworthiness of any person with direct or indirect liability to the issuer; and

(ii) representations and warranties to be provided by the originator to ensure, for example, the buy back of the underlying assets under certain conditions.

As the IOSCO Technical Committee Task Force on Unregulated Financial Markets and Products (TFUMP) highlights, such additional disclosure might have the practical effect of requiring originators to conduct more detailed due diligence and risk assessments as investors may be less likely to purchase securitized products where the disclosure indicates that inadequate due diligence, verification and risk assurance practices have been undertaken.[10]

Different initiatives, both at the regulatory and industry level, are seeking to implement these goals. For the purposes of this Report it is important to highlight the work carried out by IOSCO that has resulted in the development of *Disclosure Principles for Public Offerings and Listing of Asset-Backed Securities*[11]. These Principles provide guidance on the minimum content of the *offering document* to be made available to investors. In addition, IOSCO recently approved a new mandate for its Standing Committee on Multinational Disclosure and Accounting to develop new Principles for Disclosure for On-Going Reporting for ABS.[12]

At the industry level, for example, the American Securitization Forum RESTART Project

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[10] p. 19 Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities, Report of the Technical Committee of IOSCO published 8 April 2010 and is available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD318.pdf.

[11] Ibid.

[12] IOSCO, Final Update, 35th Annual Conference, June 10, 2010

seeks to develop core industry-wide market standards for disclosure, due diligence and quality assurance practices for residential mortgage backed securities (RMBS). It has already produced a disclosure package to be provided by issuers prior to the sale of private label RMBS and a reporting package to be provided on a monthly basis, as well as templates for the representations and warranties to be provided by originators.

At the same time, there has been increased consideration about the need to enhance transparency of secondary markets for structured products, to improve price formation. The Technical Committee Standing Committee on the Regulation of Secondary Markets (TCSC2) in its recent Final Report on *Transparency of Structured Finance Products*[13] has noted that in many developed jurisdictions, structured products have mostly been traded in OTC markets which in most of these jurisdictions have not been subject to transparency requirements. TCSC2, in it's recently, recommends countries to consider the benefits of enhancing post-trade transparency of structured products and sets out a number of recommended approaches for regulators.

4.2.2. Improve Investors' Risk Management Practices

There is also consensus on the need for banks and institutional investors to reduce their reliance on external credit ratings, and in turn, strengthen their risk assessment and risk management mechanisms to select their investments and manage their associated risks.

As part of the work to strengthen the regulatory capital framework, the Basel Committee for Banking Supervision (BCBS) has required banks to conduct their own due diligence on their securitization exposures so that they do not solely rely on rating agencies. It also issued supplemental guidance under Pillar 2 to address flaws in risk management. The proposed measures addressed among others: capturing the risk of off-balance sheet exposures and securitization activities. Enhancements to Pillar 3 include strengthening of disclosure requirements in several areas including securitization exposures in the trading book, sponsorship of off-balance sheet vehicles, re-securitization exposures and pipeline and warehousing risk in regard to securitization.

For institutional investors, IOSCO has recently developed good practices on due diligence for investment managers to be applied when investing in structured products[14]. At the same time, IOSCO is reviewing suitability requirements with a view to strengthening distributors' obligations in connection with the sale of structured products. In such context the definition of sophisticated investors will also be reviewed.

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[13] *Transparency of Structured Finance Products*, Report of the Technical Committee of IOSCO, 9 July 2010, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD326.pdf.

[14] *Good Practices in Relation to Investment Managers' Due Diligence When Investing in Structured Finance Instruments*, Report of the Technical Committee of IOSCO, 29 July 2009, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD300.pdf.

Finally, the FSB has constituted a working group to further review the extent to which regulatory reliance on ratings can be mitigated.

4.2.3. Eliminate Regulatory Arbitrage in Connection with Capital Requirements

There has also been wide consensus on the need to review capital requirements to minimize loophole gaming and incentives for regulatory arbitrage. In this regard, under the approved Basel II enhancements, the Basel Committee on Banking Supervision (BCBS) has strengthened the treatment for certain securitizations in Pillar 2. The BCBS has introduced higher charges for re-securitization exposures. As a result many of the structured financial products (SFP) prevalent before the crisis will now be substantially more expensive to hold on balance sheet in terms of regulatory capital. As indicated above, this change has been accompanied by increased disclosure to investors.

4.2.4. Alignment of Incentives Through Retention and Compensation Practices

There has been wide recognition on the need to better align incentives of different participants in the securitization chain to the longer term performance of securitized assets. In such context, the G-20 has recommended that originators be required to retain a portion of the issue as a key element to align their incentives with the longer term performance of the securitized assets. In connection with such recommendation both the IMF and TFUMP have proposed that such retention requirements be tailored to the securitization structure, rather than be implemented through a one size fits all requirement.[15]

In addition, the Financial Accounting Standards Board (FASB) has recently eliminated *gain on sale* for many securitizations and required consolidation of more securitized assets on the originator's balance sheet. Among other things consolidation will cause the performance of the securitized assets to be reflected in the originator's consolidated financial statements going forward.

There has also been a call for similar performance-based, medium to longer term approaches to securitization fees in order to focus market participants on underwriting quality; for example by requiring commissions received by loan brokers and loan officers to be disbursed over time and reduced if underwriting or asset quality problems emerged, or by requiring strong representations and warranties regarding risks associated with the origination and underwriting practices[16].

4.2.5. Review the Perimeter of Regulation

A final recommendation from the crisis has been the need for regulators to review the perimeter of regulation to determine whether specific participants or products need to be

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[15] See IMF, Restarting Securitization Markets,; and TFUMP.

[16] See for example, US Department of the Treasury, Financial Regulator Reform: A New Foundation, June 2009.

brought into the jurisdiction of the securities regulator.

In this context, the G-20 has recommended that CRAs which are used for regulatory purposes be subject to oversight, based on a registration regime compliant with the IOSCO Code of Conduct[17]. The IOSCO Code of Conduct contains provisions that seeks to address:

(i) the quality and integrity of the rating process;

(ii) the independence of Credit Rating Agencies (CRAs) and the adequate management of conflicts of interest; and

(iii) CRAs responsibilities to the issuer and the investing public.

In addition, the IOSCO Technical Committee approved two new mandates for the Technical Committee Standing Committee on Credit Rating Agencies (TCSC6), one on management of conflict of interests and the other on internal controls.

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[17] Code of Conduct Fundamentals for Credit Rating Agencies, revised May 2008.

Chapter 5 Current Position of Securitization Markets in Emerging Markets and the Effects of the Crisis[18]

A key goal of the EMC has been to explore the level of development of securitization markets in emerging market jurisdictions, as well as the regulatory framework and market practices in place. To do that, the EMC conducted a survey whose main findings are summarized here.

Thirty six jurisdictions responded to the survey questionnaire, and 27 jurisdictions[19] answered the survey questions while nine jurisdictions reported that they did not have securitization markets at all[20], and as a result, did not answer the survey.

The regional breakdown of the responding jurisdictions is as follows: eight jurisdictions from the Inter-American region, four from the Africa and Middle East Region, ten from Asia-Pacific and five from the European Region. While the results of the survey might not be statistically significant, the fact that regulators from all regions have responded including from markets with various levels of development made its findings relevant for all emerging markets jurisdictions[21].

Many of the findings of the survey has been anticipated. In particular, the survey showed that in the majority of the emerging market jurisdictions, securitization markets are still underdeveloped. It also showed the existence of significant information gaps in regard to the size and market practices of securitization markets in emerging markets. The survey also highlighted weaknesses in the regulatory framework for securitization markets in many jurisdictions, in particular with regard to the *quality* of disclosure, prudential provisions and business conduct obligations.

On the other hand, some other findings were less expected. The survey showed that the regulatory frameworks of an important number of emerging market jurisdictions already address many of the recommendations from the crisis summarized in Chapter 2. In particular, in 60% of the jurisdictions, retention of a portion of the issue by the originator is

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[18] The description and findings included in this section are based on the answers provided by regulatory authorities of the corresponding jurisdictions to the Questionnaire developed by the Task Force. No independent verification was made.

[19] Argentina, Bangladesh, Brazil, Bulgaria, Chile, Chinese Taipei, Colombia, Costa Rica, Dubai, Egypt, India, Israel, Kenya, Korea, Malaysia, Morocco, Pakistan, Panama, Peru, Poland, Romania, South Africa, Sri Lanka, Thailand, Turkey, United Arab Emirates (U.A.E.), and Uruguay.

[20] Bermuda, Ghana, Hungary, Jordan, Malawi, Nigeria, Oman, Srpska and Tanzania.

[21] Except otherwise indicated percentages are calculated based on the number of jurisdictions that provided information for a particular question; rather than on the total number of jurisdictions that answered the survey. For purposes of grouping: minor participation includes participation up to nine percent, medium from 10 to 24 percent, and major, 25 percent and up.

already a market practice. Furthermore, in 65% of the jurisdictions securitized products are mostly placed through public offerings and in 45% of the jurisdictions they are also traded in public venues (exchanges) which subjects securitization markets to higher levels of disclosure and transparency. In addition, 79% of the jurisdictions have also imposed post-trade transparency requirements in OTC markets for securitized products. Finally, a majority of the jurisdictions have already included in the perimeter of regulation key participants of the securitization chain that traditionally have been outside of the perimeter of regulation or only lightly regulated, such as CRAs (70% of the jurisdictions) and administrators of SPVs (95% of the jurisdictions).

5.1 Market Characteristics and Practices

5.1.1 Size

The survey showed significant differences in the level of development of securitization markets. For instance, out of 36 jurisdictions, 17% (6 out of 36) reported having markets that either before or after the crisis exceeded USD 6,000 million in issue size. While, 26% (9 out of 36) declined to answer the survey because they did not have securitization markets at all. The remaining jurisdictions that provided data appeared to be located somewhere in the middle: their markets had already started to develop but were not yet significant in size.

The crisis affected securitization markets in emerging market jurisdictions differently. 33% of the jurisdictions (4 out of 13) reported a decrease in the size of their markets (Argentina, Chinese Taipei, India, and South Africa). In contrast 67% (9 out of 13) reported an increase (Brazil, Chile, Colombia, Costa Rica, Egypt, Malaysia, Morocco, Panama and Uruguay).

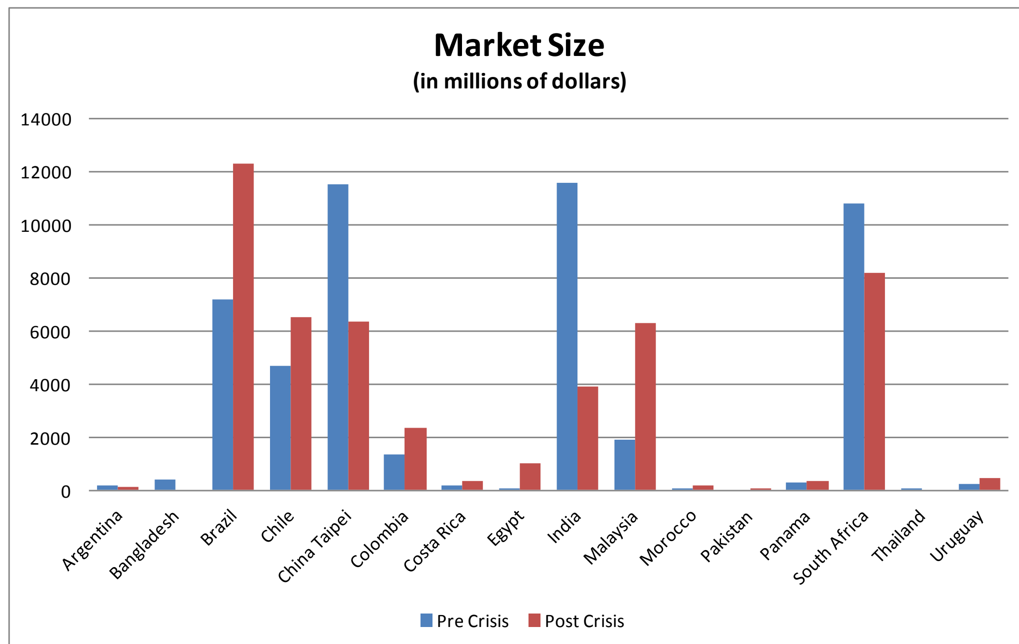

Figure1: Market Size

5.1.2 Instruments

In the majority of the Emerging Markets in the survey - even those with relatively large markets - the structures used and instruments issued are *plain vanilla*.

As will be further explained below, non bank financial institutions are important originators in Emerging Markets in addition to banks and mortgage companies. As a result, in addition to prime RMBS and prime mortgage backed securities (MBS), other types of securitization products are available in these markets, including prime commercial mortgage backed securities (CMBS), credit card ABS, and auto loans ABS. Only three jurisdictions reported the development of more sophisticated instruments such as credit default swaps (CDS) (Brazil, Chinese Taipei, and Turkey).

Very few jurisdictions provided information regarding how the crisis affected the availability of such instruments; however it is worth mentioning that the issuance of CDS decreased in Brazil and Chinese Taipei after the crisis, while in Turkey CDS started to be originated post-crisis.

5.1.3 Originators

The survey showed that in emerging market jurisdictions non-banking institutions have had a key role in the origination of securitized assets, thus providing liquidity to other type of assets in addition to bank loans.

Prior to the crisis, 85% of the jurisdictions (17 out of 20) reported non-banking institutions as major originators, while only 40% of the jurisdictions (eight out of 20) reported banks as major originators.

The relative importance of non-banking originators vis-a-vis banks did not change after the crisis. However, there was a slight decrease in the percentage of countries that reported non-banking entities as major originators, compared to a slight increase for banks. In particular, 78% (14 out of 18) jurisdictions reported non-banking entities as major originators, while 50% of the jurisdictions (9 out of 18) reported banks as major originators. Furthermore, in some particular jurisdictions, specific categories of originators stopped or reduced their activity, thus affecting the relative importance of other originators.

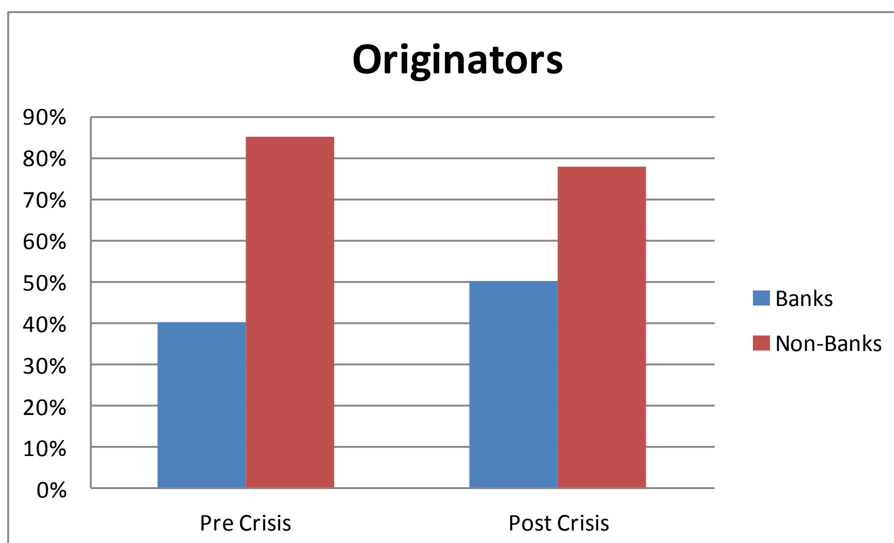

Figure 2: Originators

As of 2009, the following categories of originators were present in emerging markets:

- Banks have a major participation in Brazil, Chinese Taipei, India, Korea, Morocco, Peru, Poland, South Africa and U.A.E, and negligible in Colombia;

- Mortgage companies or securitization companies have a major participation in Colombia, Korea, Thailand, Uruguay, a medium participation in Egypt, and a minor or negligible participation in Brazil, Colombia, and India;

- Manufacturing companies have a major participation in Brazil, Korea, and Malaysia; and minor or negligible in Argentina, Colombia, Chinese Taipei, India and United Arab Emirates (U.A.E);

- Leasing companies have a major participation in Egypt and the U.A.E.; and minor or negligible in Argentina, Brazil, Chinese Taipei, Colombia and Korea;

- Commercial companies have a major participation in Argentina, and medium in Uruguay (construction, farming);

- Utilities have a medium participation in Costa Rica; and

- Other types on non bank institutions have at least a medium participation in Brazil (multi-originators), Chile, Chinese Taipei, Egypt (a governmental body), India (non banking finance companies), Israel, Panama, Peru, and the United Arab Emirates (U.A.E).

5.1.4 Buy Side

As in developed markets, the buy side in emerging market jurisdictions is mostly composed of institutional investors, mainly banks, insurance companies, pension funds, and mutual funds.

Pre-crisis, banks dominated the mix: 44% of the respondents (eight out of 18) reported that banks were major investors; compared to 17% (three out of 18) for pension funds and insurance companies, and 11% (two out of 18) for mutual funds.

Post-crisis, institutional investors remain major investors in securitized products in emerging market jurisdictions. However in some jurisdictions some institutional investors undertook a rebalancing of their portfolios and as a result the importance of particular categories of institutional investors changed. According to the survey, the relative importance of banks vis-à-vis other categories of institutional investors appear to have decreased since only 31% (five out of 16) of the jurisdictions reported banks as major originators, compared to 17% (three out of 16) for insurance companies and pension funds, and 13% (two out of 16) for mutual funds.

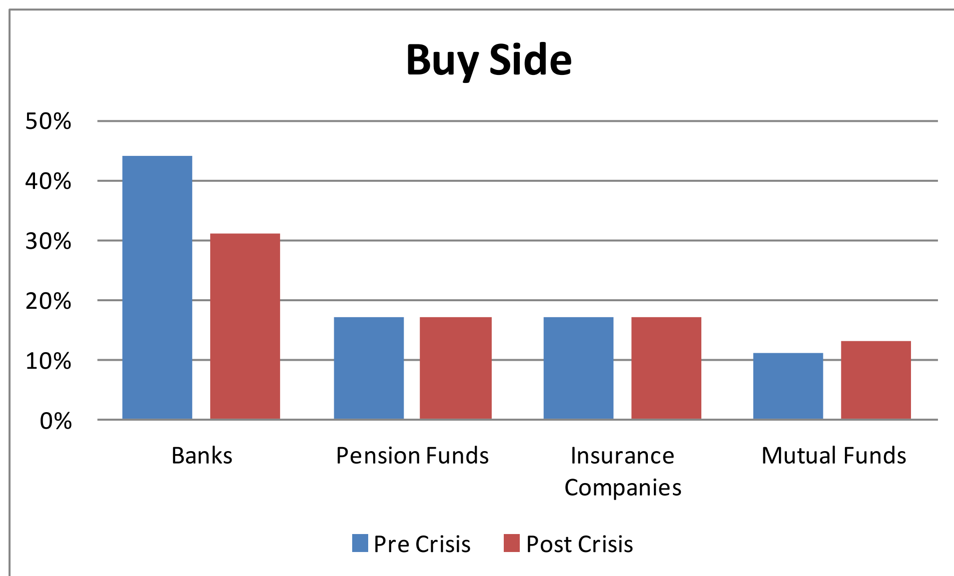

Figure 3: Buy Side

As of 2009, institutional investors had the following involvement in emerging markets:

- Mutual funds have a major participation in Brazil and Thailand; have a medium participation in Argentina, Chile, Egypt, Korea, Malaysia, Morocco, and Peru, and minor participation in Chinese Taipei, Colombia, Costa Rica and South Africa;

- Pension funds have a major participation in Chile, Korea, and Peru, medium participation in Argentina, Costa Rica, Malaysia, Morocco, Poland and South Africa;

and minor or negligible in Brazil, Colombia and Egypt;

- Insurance companies have a major participation in Chile, Chinese Taipei and Korea have a medium participation in Egypt, Malaysia, Morocco and Poland; and minor or negligible participation in Argentina, Brazil, Colombia, and South Africa; and

- Banks have a major participation in Chinese Taipei, Egypt, Malaysia, South Africa, and U.A.E; medium participation in Chile, Morocco and Peru, and minor or negligible participation in Argentina, Brazil, Colombia, Costa Rica, and Korea.

According to the findings of the survey other financial institutions also invest in securitization issues. Pre-crisis 44% of the jurisdictions (8 out of 18) reported other type of financial institutions with at least a medium participation as investors in the market. Overall their importance did not change significantly after the crisis, since 44% of the jurisdictions (7 out of 16) reported them as having at least a medium participation in the market (Chinese Taipei, Colombia, Egypt, Morocco, Poland, South Africa and U.A.E.).

In contrast retail investors had a minor or negligible participation in securitization markets in almost all jurisdictions in the survey pre crisis, and this situation did not change post-crisis. Pre and post-crisis only one jurisdiction (Costa Rica) reported retail investors as major participants, though offering is restricted to high net worth individuals. Other three jurisdictions (Peru, U.A.E and Uruguay) reported that retails investors had a medium participation pre-crisis, and this number decreased to two jurisdictions post crisis (U.A.E. and Uruguay).

5.1.5 Vehicles for Securitization

As is the case in developed markets, the survey showed that different legal vehicles can be used for securitization in emerging market jurisdictions, including trust, limited partnerships, corporations, and funds. In practice, in roughly 42% of the jurisdictions that provided information on vehicles that can be used for securitization (10 out of 24), trusts are the most common vehicle for securitization, with corporations ranking second. The survey did not provide additional information on the reasons for such preference; thus this is an issue that the EMC might wish to further explore. Nevertheless in some jurisdictions the different tax treatment of some of these vehicles versus others might be a key determinant in the decision of what vehicle to use.

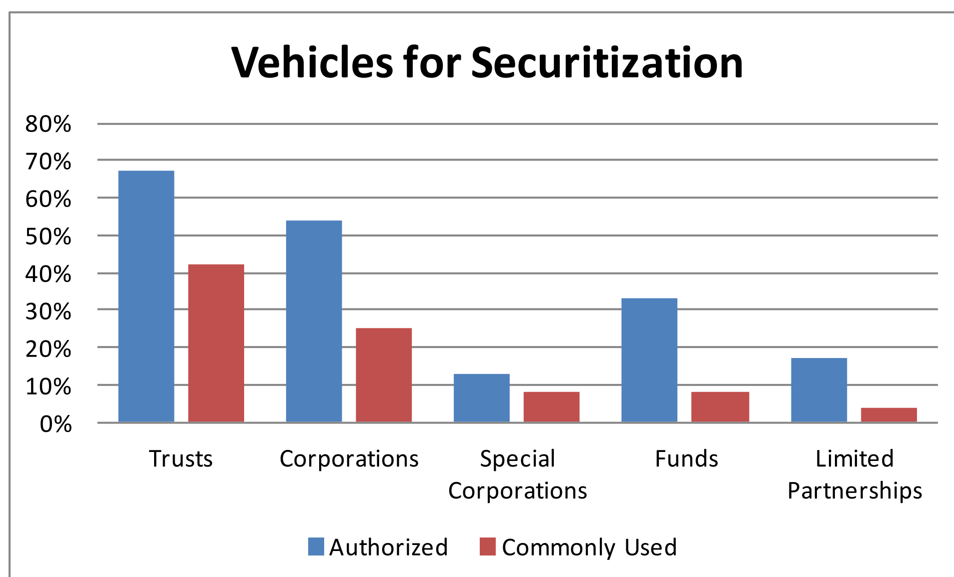

Figure 4: Vehicles for Securitization

The following list summarizes the vehicles that are most commonly used in emerging market jurisdictions:

- Trust: Argentina, Bangladesh, Chinese Taipei, Colombia, Costa Rica, India, Panama, Peru, and South Africa, and Uruguay;

- Corporations: Brazil, Egypt, Israel, Korea, Malaysia, and Pakistan. Special corporations: Chile, and Korea;

- Funds: Brazil and Poland; and

- Limited partnerships: Thailand.

5.1.6 Method of Placement

The survey showed that in the majority of emerging market jurisdictions, securitization issues have actually mostly been placed through public offerings. As will be explained below this method of placement has subjected them to higher levels of disclosure. The survey did not provide information on whether this was a result of legal requirements or market practice; however this is an issue that the EMC might wish to further explore.

Pre-crisis, roughly 60% of the jurisdictions (12 out of 20) reported that all or the majority of the issues had been placed through public offering, compared to 40% who reported that all or majority of the issues were placed through private offerings.

The relative importance of public offering vis-à-vis private offering did not change after the crisis: 65% of the jurisdictions (11 out of 17) reported that all or a majority of the issues are placed through public offerings, compared to roughly 35% for private offerings.

Practices in jurisdictions varied after the crisis, but with no clear pattern. In 12% (2 out of 17) the percantage of issues placed through public offerings decreased (Brazil, Chinese Taipei); while in 18% (3 out of17) it increased (Korea, South Africa and Thailand).

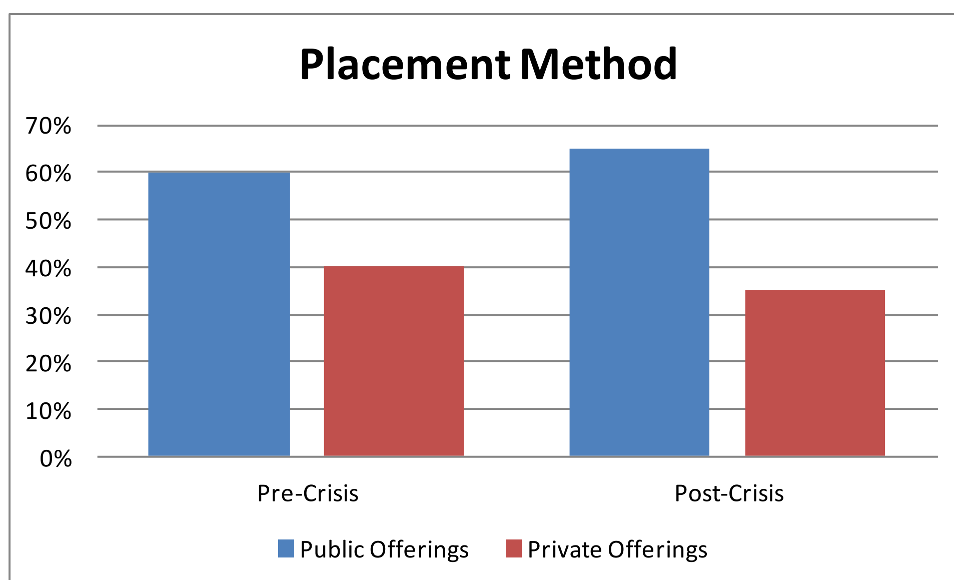

Figure 5: Placement Method

As of 2009, placement practices in Emerging Markets were as follows:

- Public offering is used for all or majority of issues in Argentina, Brazil, Chile, Colombia, Costa Rica, Egypt, Morocco, Panama, South Africa, Thailand and Uruguay; and

- Private offering is used for all issues or majority of issues in Chinese Taipei, India, Israel, Korea, Malaysia and Poland;

5.1.7 Credit Enhancements and Liquidity Facilities

Inclusion of credit enhancements (such as buy-back of non-performing assets) and liquidity facilities (such as credit lines) has been a common practice in 89% of the jurisdictions (17 out of 19).

In 88% of the jurisdictions (15 out of 17) where such arrangements are a market practice, they have been commonly provided by the originators. However, in 53% of the jurisdictions (9 out of 17) it is also common for third parties to provide such facilities through:

- The originator: Credit enhancements are provided in Argentina, Bangladesh, Brazil, Chile, Chinese Taipei, Costa Rica, Egypt, India, Korea, Malaysia, Morocco, Pakistan, Peru, Thailand and U.A.E.; and liquidity support in Egypt, India, Malaysia, Morocco, Peru, and Thailand;

- The group of the originator: Credit enhancements and liquidity support are provided in

Peru; and

- Third parties: Credit enhancements are provided in Colombia, Costa Rica, Korea, Morocco, Peru, South Africa and U.A.E., and liquidity lines in Chinese Taipei, Colombia, Costa Rica, Korea, Malaysia, and U.A.E.

These types of arrangements may have helped investors during the crisis. In this regard, 23% of the jurisdictions (3 out of 13) reported that originators in fact bought back assets of SFPs during the crisis. Such jurisdictions are Chinese Taipei, South Africa and Thailand.

5.1.8 Retention

One of the key lessons from the crisis is the need to align the incentives of the originators with the long term performance of the securitized assets. As part of the measures to achieve such goal the G-20 has recommended the imposition of retention requirements. The survey showed that retention is already a market practice in 60% of the jurisdictions (12 out of 20) in the survey. The survey did not provide additional information on why such a practice has been embedded in the business model of emerging market jurisdictions; however this is an issue that the EMC might wish to further explore.

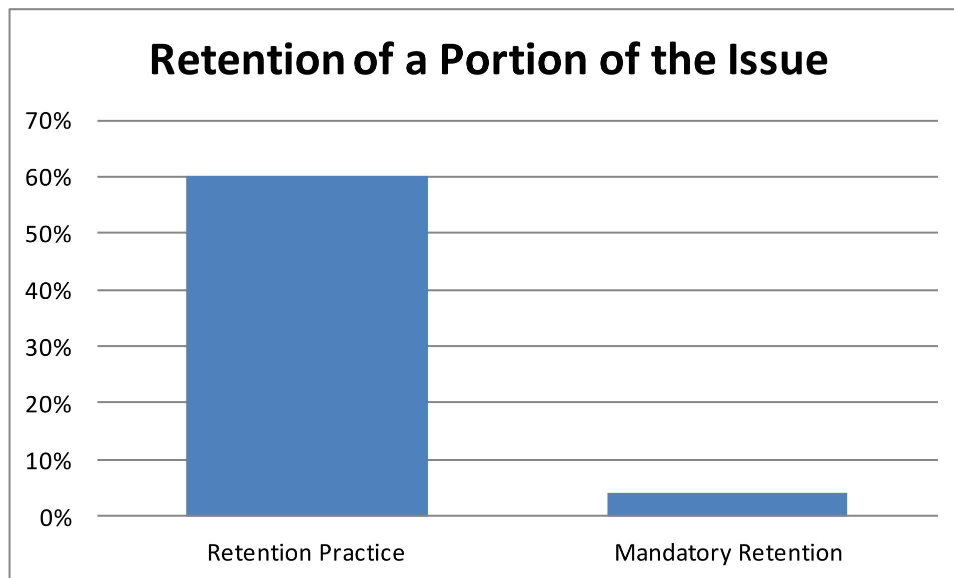

Figure 6: Retention of a Portion of the Issue

The following jurisdictions indicated that retention has been a common practice in their markets: Argentina, Brazil, Chile, Chinese Taipei, Colombia, India, Korea, Malaysia, Morocco, Peru, Sri Lanka and Thailand. In one more jurisdiction (Dubai) retention is a legal requirement imposed on the originator.

5.1.9 Insurance

The use of insurance, either in the form of mortgage or bond insurance has not been a prevalent practice in securitization markets in emerging market jurisdictions, only Egypt

reported the use of mortgage insurance as a common practice and Pakistan the use of bond insurance as a common practice.

5.1.10 Underwriting Practices

In 71% of the jurisdictions (10 out of 14), underwriting is done by a third party not associated with the originator. It needs to be further explored whether this practice has had any positive effect in regard to the scrutiny that the underwriter does of the issue, as well as in regard to compliance with suitability obligations. Underwriting practices for emerging market jurisdictions are as given below:

- By a third party: Argentina, Bangladesh, Chinese Taipei, Colombia, Egypt, Korea, Pakistan, South Africa, Thailand and U.A.E.; and

- By an associate of the originator: Costa Rica, Morocco, Panama and Uruguay.

5.1.11 Servicing Arrangements

As is common in many developed markets, in roughly 83% of the jurisdictions (15 out of 18), servicing arrangements are commonly retained by the originator. As of 2009, servicing arrangements in emerging market jurisdictions which responded the survey were as follows:

- By the originator: Argentina, Bangladesh, Brazil, Chile, Chinese Taipei, Colombia, Costa Rica, Egypt, India, Israel, Korea, Malaysia, Morocco, Thailand, and Uruguay;

- By an associate to the originator: Malaysia; and

- By a third party: Pakistan, Panama, U.A.E., and Uruguay.

5.1.12 Trading Infrastructure

As is the case in developed jurisdictions, the survey showed that in the majority of Emerging Markets, OTC markets are more commonly used to trade securitization issues; nevertheless in a significant number of jurisdictions securitization products are commonly traded in exchanges. The survey did not provide information on whether trading on exchanges has been the result of a legal requirement or a market practice; however this is an issue that the EMC might wish to further explore.

Prior to the crisis in 55% of the jurisdictions (11 out of 20) OTC markets were commonly used to trade SFPs, while in 40% of the jurisdictions (8 out of 20) exchanges were also commonly used to trade SFPs.

The relative importance of OTC vis-à-vis exchanges did not change significantly after the crisis. 58% of the jurisdictions (11 out of 19) reported OTC as commonly used, while a slightly higher percentage of jurisdictions reported exchanges as commonly used (45% or 9 out of 19).

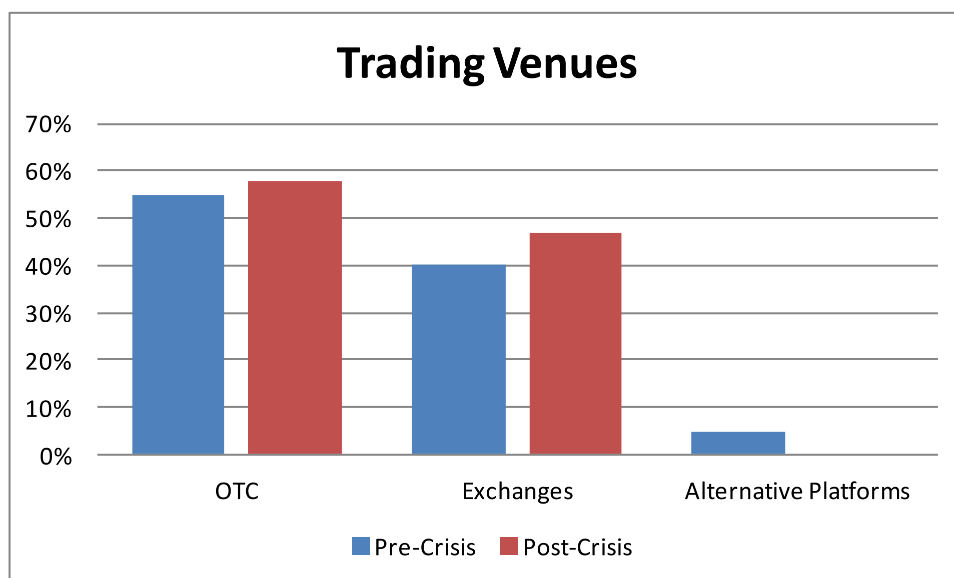

Figure 7: Trading Venues

As of 2009, SFPs were traded through the use of the following venues:

- OTC markets are the only venue or the most commonly venue to trade SFPs in Brazil, Chinese Taipei, India, Israel, Korea, Malaysia, Morocco, Pakistan, Poland, and Thailand; and

- Exchanges are the only venue or the most commonly used venue to trade SFPs in Chile, Colombia, Costa Rica, Egypt, Panama, Peru, U.A.E. and Uruguay. Both exchanges and OTC markets are commonly used in Argentina.

5.1.13 Information Service Providers

Certain information service providers that could have a key role in enhancing disclosure and improving pricing are starting to enter many emerging markets, including data collectors and price vendors. In particular, 39% of the jurisdictions (9 out of 23) reported having private data providers in their jurisdictions, while 42% (8 out of 19) reported the existence of price vendors. In addition, 36% of the jurisdictions (9 out of 25) reported that price vendors have to register with the securities regulator.

The list below summarizes information services available in emerging market jurisdictions:

- Jurisdictions with private data providers include Brazil, Chile, Dubai, Korea, Malaysia, Morocco, Pakistan, South Africa and U.A.E.;

- Jurisdictions with price vendors: Bulgaria, Colombia, Costa Rica, Korea, Malaysia, South Africa, Thailand, and U.A.E.; and

- Jurisdictions where price vendors have to register with the securities regulator: Colombia, Costa Rica, Dubai, Korea, Malaysia, Pakistan, Thailand and U.A.E.

5.1.14 Role of the Government

The role of the Government in the securitization markets in Emerging Markets varies. In 33% of the jurisdictions (4 out of 12) the government has acted as originator (Chinese Taipei, Malaysia, Thailand and Uruguay). In another 25% of the jurisdictions (3 out of 12) it has acted as guarantor (Egypt, Korea, and Pakistan). Finally, in 42% of the jurisdictions (5 out of 12) the Government has been an investor (Argentina, Brazil, India, Korea, and Pakistan).

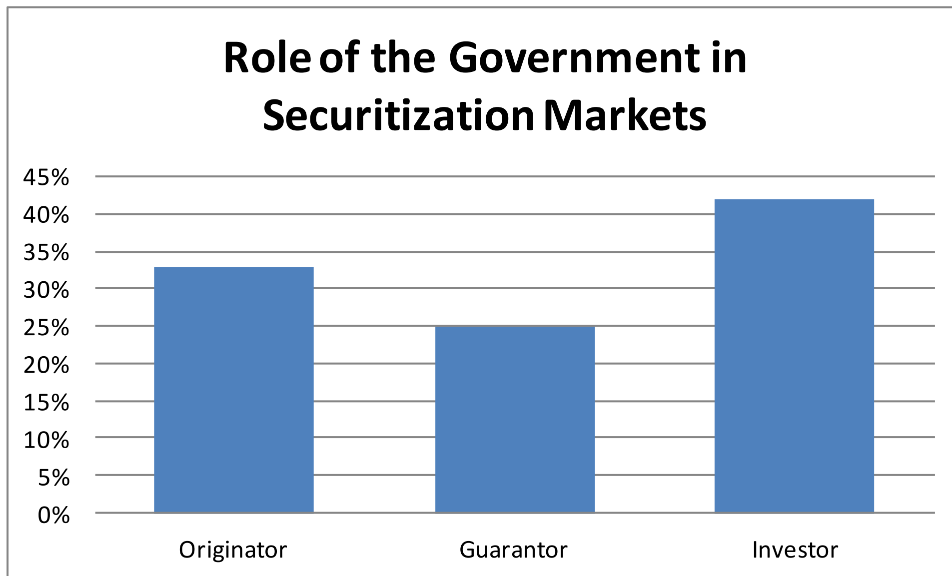

Figure 8: Role of the Government in Securitization Markets

Overall governments in emerging markets did not take extraordinary measures to support securitization markets, which seems consistent with the fact that only in a few jurisdictions the markets were significantly affected by the crisis. From those large markets affected by the crisis only Korea took direct measures, which consisted of an increase in the level of guarantees provided by the government sponsored entities in order to provide SMEs with more financing options during the crisis. A few other jurisdictions (Argentina, Chinese Taipei, and Colombia) strengthened disclosure requirements on SFPs issuance post-crisis.

5.2 Disclosure and Transparency Requirements

5.2.1 Disclosure Requirements

Disclosure of information is key for investors to understand the risks of the products they buy, to price them and based on that to make an informed decision on whether to buy them, hold them or sell them.

As in developed jurisdictions, the survey showed that the level of disclosure for SFPs in emerging markets varies depending on whether the issue would be placed through a public or

a private offering. That different level of disclosure was based on the premise that sophisticated investors - to whom private offerings are usually addressed - were in a position to get any information they need through their own means.

The survey showed that in 88% of the jurisdictions (23 out of 26), public offerings of SFPs are subject to disclosure requirements, starting with the provision of a prospectus at the moment of issue. Moreover, in the majority of the jurisdictions where such requirements is imposed, the content of the prospectus includes the topics that IOSCO has identified as best practices.

Continuous disclosure is more of a challenge for Emerging Markets. For example, only 83% of the jurisdictions (20 out of 24) stated in the survey that they had continuous disclosure requirements, a lower percentage than for initial disclosure. Moreover, the level of information provided is still a challenge, since in many jurisdictions the information is provided only at the pool level. Only in nine jurisdictions information is provided at both the pool and loan level. However as discussed in Chapter 4, it is important to note that ensuring that investors receive the degree of information that is needed for analysis (both at the pool and loan level) is also a challenge for developed jurisdictions, and one of the key lessons from the crisis.

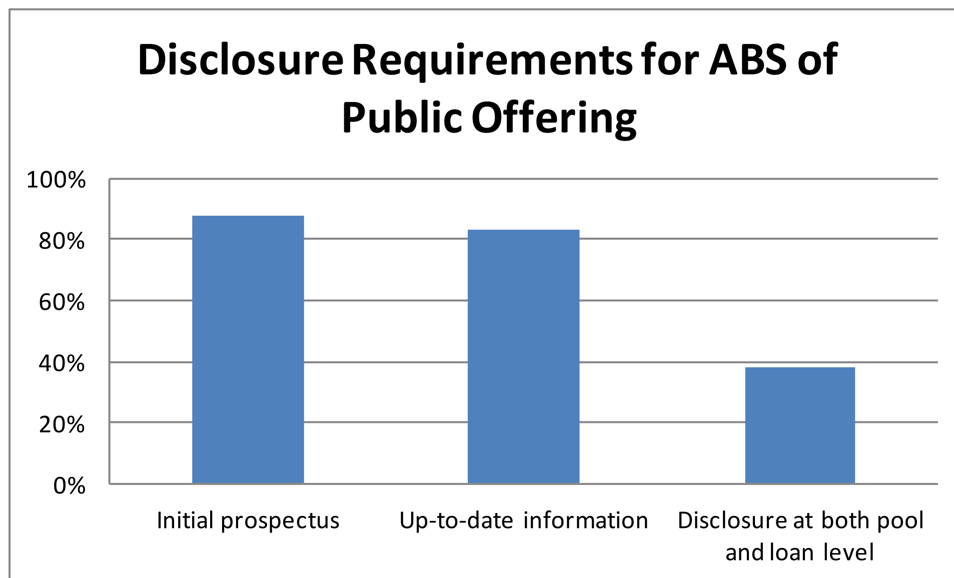

Figure 9: Disclosure Requirements for ABS of Public Offering

The list below summarizes disclosure requirements in emerging market jurisdictions:

- Jurisdictions that have required a prospectus at issuance include: Argentina, Brazil, Chile, Chinese Taipei, Colombia, Costa Rica, Dubai, Egypt, India, Israel, Kenya, Korea, Morocco, Pakistan, Panama, Peru, Poland, Romania, South Africa, Thailand, Turkey, U.A.E. and Uruguay;

- Jurisdictions that required continuous disclosure include: Argentina, Brazil, Chile, Chinese Taipei, Colombia, Dubai, Egypt, Israel, Kenya, Korea, Morocco, Pakistan,

Panama, Peru, Romania, South Africa, Sri Lanka, Thailand, Turkey, and Uruguay; and

- Information at the pool and loan level: Chile, Colombia, Egypt, Pakistan, Panama, Peru, South Africa, Thailand and Turkey.

As has been the practice in developed jurisdictions, in 67% of the jurisdictions (16 out of 24) private offerings are not subject to the same level of disclosure requirements established for public offerings.

Interestingly, 33% of the jurisdictions (8 out of 24) reported that they did impose the same requirements in public and private offerings (Dubai, Egypt, India, Malaysia, Morocco, Poland, Thailand and U.A.E.). And many other jurisdictions reported that they impose some level of disclosure requirements on private offerings, as detailed below:

- At the moment of issue: Chinese Taipei, Malaysia and Romania; and

- On a continuous basis: Bangladesh, Brazil, Chinese Taipei, Malaysia and Pakistan.

The survey showed that in 83% of the jurisdictions (19 out of 23) rating of securitization issues is mandatory for issues of public offer - a characteristic that is more prevalent in Emerging Markets than in industrialized jurisdictions. Furthermore, in 44% of the jurisdictions (8 out of 18) ratings are also mandatory for private offerings. In many Emerging Markets, similar rating obligations are also imposed on corporate bonds. Establishing such rating requirements in Emerging Market jurisdictions has had the goal of reducing information asymmetries between originators and investors in various debt instruments. However, the EMC might wish to explore further whether such mandatory rating has resulted in over-reliance of market participants on such ratings.

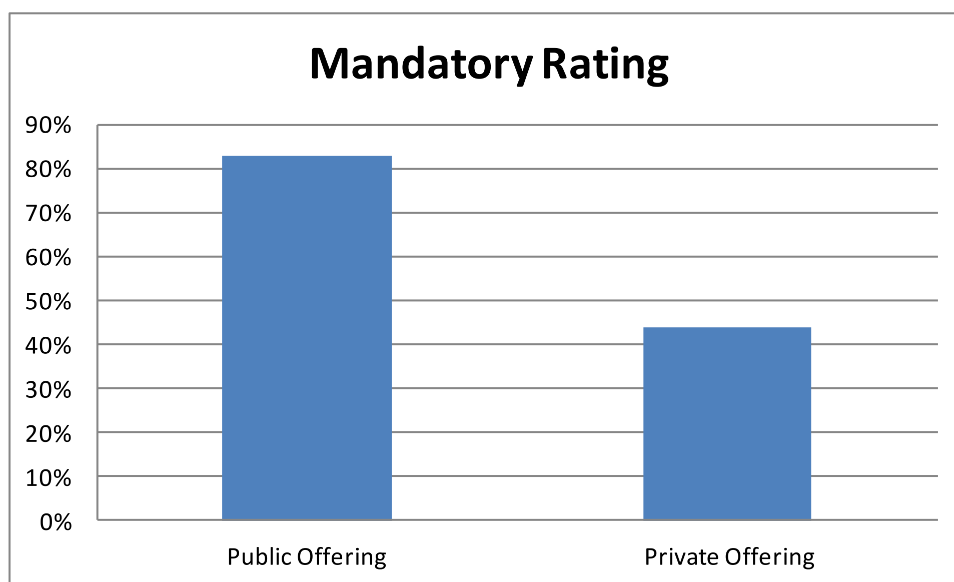

Figure 10: Mandatory Rating

According to the survey, the following countries have imposed mandatory rating:

- For public offers: Argentina, Bangladesh, Brazil, Chile, Chinese Taipei, Colombia, Costa Rica, Egypt, India, Kenya, Korea, Pakistan, Peru, South Africa, Sri Lanka, Thailand, Turkey, U.A.E and Uruguay, but no updates are required in Kenya, Turkey and U.A.E.; and

- For private offerings: Bangladesh, Egypt, India, Korea, Malaysia, Peru, Thailand and U.A.E.

An important challenge in regard to information disclosure and pricing of SFPs is the fact that roughly 46% of the jurisdictions (11 out of 24) still work under local Generally Accepted Accounting Standards (GAAPs). According to the survey local GAAPs are used in Argentina, Brazil, Chinese Taipei, Colombia, Egypt, India, Korea, Morocco, Poland, Romania and Thailand.

Use of local GAAPs raises concerns over the quality of such standards, and thus the extent to which financial statements produced by issuers are robust. In addition, the use of local GAAPs creates a problem of comparability of information that further hinders the ability of investors to compare products available in different jurisdictions.

In addition, only in 12% of the jurisdictions (3 out of 26) regulators have developed specific guidelines for asset valuation (Bangladesh, Chinese Taipei, and South Africa).

5.2.2 Accounting for Profit and Loss

As stated earlier, another lesson from the crisis has been the importance of linking securitizer compensation to the longer-term performance of the securitized assets. According to the findings of the survey in 71% (12 out of 17 of the jurisdictions) gains (or losses) resulting from the sale of the securitized assets are accounted on an amortized basis, rather than up-front, which should lead to better alignment of compensation.

The accounting practices in regard to recognition of gains resulting from the sale of securitized assets are given below:

- Amortized: Argentina, Bangladesh, Chile, Costa Rica, Egypt, India, Morocco, Pakistan, Panama, Thailand, Turkey and U.A.E.; and

- Up Front: Brazil, Chinese Taipei, Israel, Korea, and Peru.

5.2.3 Pre and Post Trade Transparency

As indicated above, in 47% of the jurisdictions, exchanges are commonly used to trade SFPs, which subjects them to high degree of pre-and post trade transparency. In addition, 38% of the jurisdictions (6 out of 16) have imposed some level of pre-trade transparency, and 79% (11 out of 14) have imposed some level of post-trade transparency for SFPs that trade OTC. These requirements, which in Emerging Markets predate the crisis, are in line with the

lessons from the crisis regarding the need to strengthen transparency of OTC markets, and in particular reporting requirements, as a measure to improve price formation, as well as to know obligations of different parties.

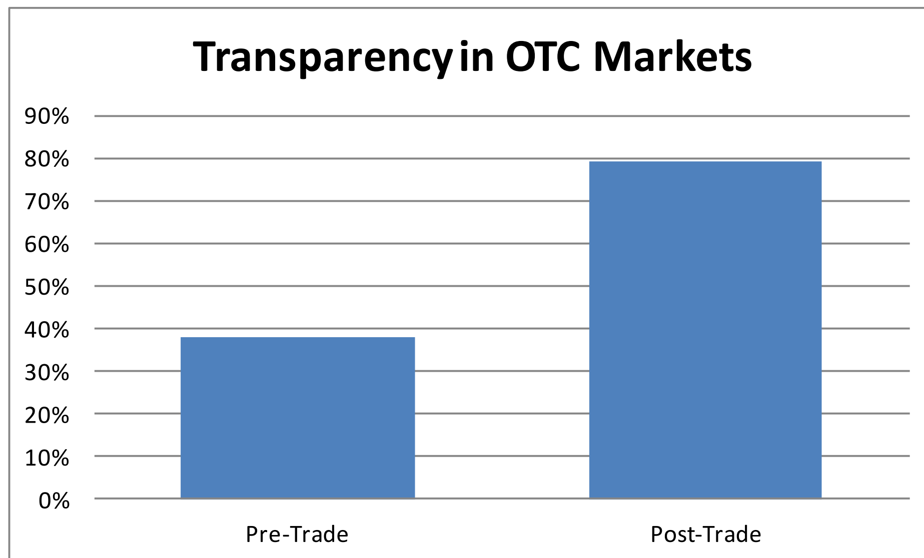

Figure 11: Transparency in OTC Markets

The list below summarizes transparency requirements in Emerging Markets:

- Pre-trade transparency requirements in OTC exist in: Argentina, Bangladesh, Brazil, Korea, Morocco, Poland and Israel; and

- OTC Post-trade transparency requirements exist in: Argentina, Bangladesh, Brazil, Chinese Taipei, Dubai, Korea, Malaysia, Morocco, Poland, Romania and Thailand.

5.3 Basic Framework for Key Market Participants

The existence of a basic framework that explicitly addresses different aspects related to the structure of the SFPs, and the responsibilities of the originator and other entities involved in the securitization process is key for the protection of investors' interests as well as for financial regulators to clearly understand the risks taken by the different financial institutions that participate in a securitization process. Overall the survey showed that many jurisdictions have not developed a comprehensive framework, although many did include provisions governing certain aspects as described below.

5.3.1 Independence of the Legal Vehicle

As described above, different legal structures can be used in Emerging Markets to structure a securitization. Establishing clear provisions in the law regarding the independence of the vehicle, especially in the event of insolvency of the originator, is key to the protection of investors. The survey showed that such provisions do exist in roughly 86% of the jurisdictions (19 out of 22). Jurisdictions where the legal and/or regulatory framework

explicitly deal with independence are: Argentina, Bangladesh, Chinese Taipei, Colombia, Costa Rica, Dubai, Egypt, India, Korea, Malaysia, Morocco, Pakistan, Panama, Poland, Romania, South Africa, Turkey, U.A.E., and Uruguay.

Interestingly, in 22% of the jurisdictions (5 out of 23) those independence requirements have been complemented by restrictions on the possibility that the originators retain the servicing of the issuance (Argentina, Dubai, Kenya, Malaysia, and Morocco).

5.3.2 Obligations of the Originator

In 71% of the jurisdictions (17 out of 24) the legal and regulatory framework allows originators to retain obligations in regard to the assets transferred to the Special Purpose Vehicle (SPV), although in a few of them some limitations apply. Only 4% of the jurisdictions (1 out of 24) require the originator to retain a portion of the issue, and 30% of the jurisdictions (7 out of 23) actually have limitations on the purchase of a portion of the issue by the originator.

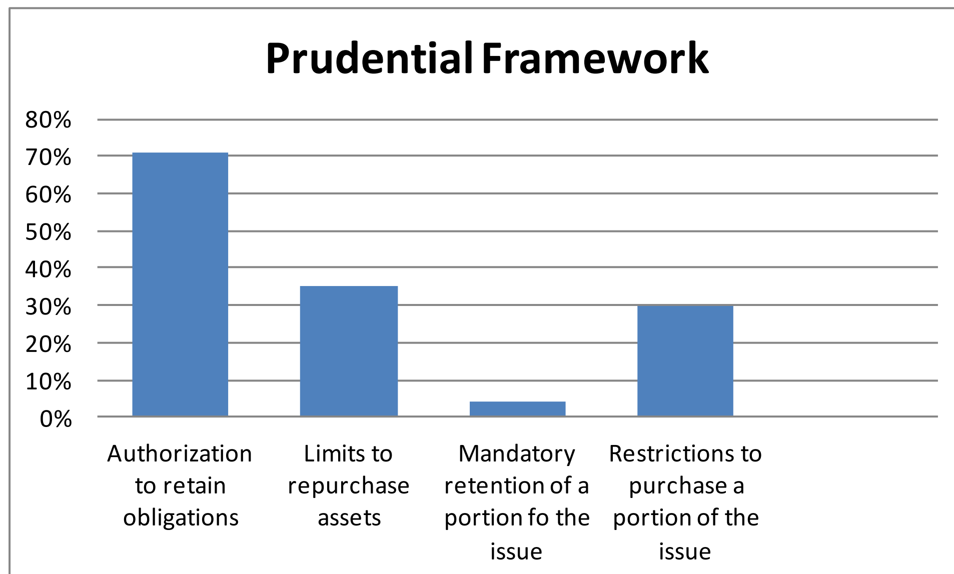

Figure 12: Prudential Framework

The obligations of originators are summarized below:

- Allowed to retain obligations and/or rights in connection to assets: Argentina, Bangladesh, Chile, Colombia, Costa Rica, Dubai, India, Israel, Kenya, Korea, Morocco, Pakistan, Peru, Poland, South Africa, Turkey, and Uruguay;

- Prohibited from retaining obligations and or rights: Brazil, Chinese Taipei, Egypt, Malaysia, Panama, Romania, and Thailand;

- Limits to repurchase assets in: Colombia, Dubai, India, Kenya, Korea, Malaysia, Morocco, and Turkey;

- Required to retain a portion of the issue: Dubai; and
- Restrictions on purchase of issues in: Chinese Taipei, Costa Rica, Dubai, India, Kenya, Korea, and Malaysia.

5.3.3 Representations and Warranties

The inclusion of explicit representations from the originator regarding the assets that are being transferred and their quality is key to establish its responsibility vis-à-vis the investors.

The survey showed that only in 35% of the jurisdictions (8 out of 23) such representations are required by the legal framework. Those jurisdictions are Bangladesh, Costa Rica, Dubai, India, Kenya, Morocco, South Africa and Uruguay. The task force however, noted that the survey did not explore whether in practice such representations are made in the prospectus or relevant documents.

5.3.4 Underwriting Provisions

Only 24% of the jurisdictions (6 out of 25) have established specific provisions governing the underwriting of SFPs (Bangladesh, Chinese Taipei, Egypt, India, Kenya, and South Africa).

5.3.5 Oversight of the Administrator

Given the role that administrators play vis-à-vis investors, it is key that they be subject to oversight by a financial regulator. The survey showed that in 95% of the jurisdictions (20 out of 21) administrators are already subject to oversight by a financial regulator.

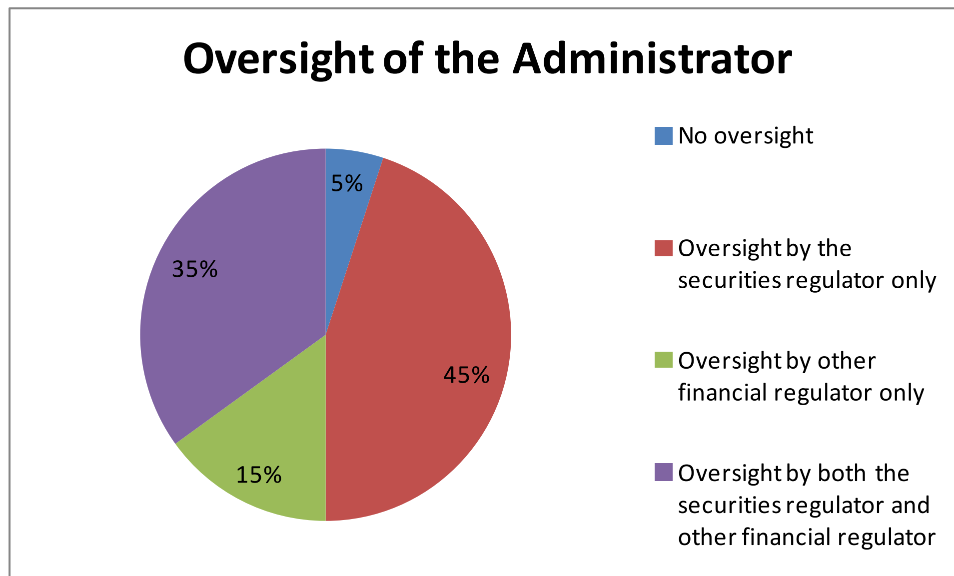

Figure 13: Oversight of the Administrator

According to the survey, oversight of the administrator is carried out:

- By the securities regulator only: Brazil (funds only), Chile, Egypt, Kenya, Malaysia, Morocco, Pakistan, Thailand, Turkey and Uruguay;

- By other financial regulator only: Panama, Poland and South Africa; and

- By both the securities regulator and other financial regulator: Argentina, Bangladesh, Chinese Taipei, Costa Rica, Dubai, Korea, and U.A.E.

5.4 Business Conduct Obligations

As indicated in Chapter 2, over-reliance on ratings exacerbated the challenges posed by the rating process and the conflict of interest that arise from the business model of the CRAs. This underlines the importance of establishing stronger suitability requirements on entities that sell SFPs to the public, as well as due diligence requirements on institutional investors. The survey showed this as a challenging area.

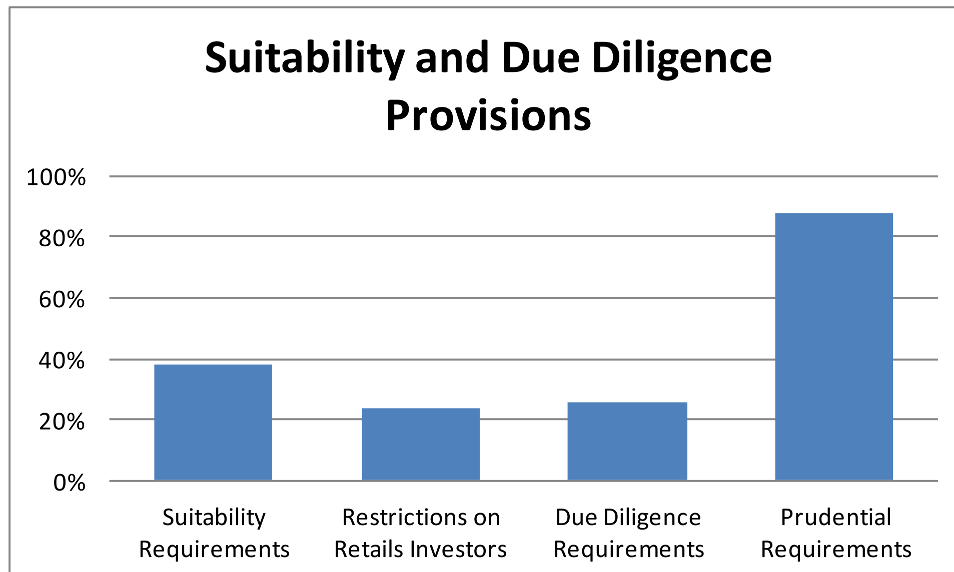

Figure 14: Suitability and Due Diligence Provisions

5.4.1 Suitability

Only 38% of the jurisdictions (9 out of 24) reported the existence of explicit suitability obligations for entities involved in the process of placing SFPs. However, 24% (6 out of 25) of the jurisdictions have established restrictions for the sale of SFPs to retail investors. Below are the requirements in place in Emerging Markets:

- Suitability obligations: Argentina, Brazil, Chinese Taipei, Costa Rica, Egypt, Korea, South Africa, Turkey, and U.A.E.; and

- Restrictions for the sale of SFPs to retail investors: Brazil, Costa Rica, Korea, Morocco, Poland and Sri Lanka.

5.4.2 Due Diligence

The survey also showed that only 26% of the jurisdictions (6 out of 23) have developed specific due diligence requirements for institutional investors who wish to invest in SFPs. However, 88% (15 out of 17) impose certain prudential requirements, such as maximum percentage limits of investment in SFPs, or minimum credit rating. Below are the obligations in place in emerging markets:

- Explicit due diligence obligations: Bangladesh, Costa Rica, Israel, Korea, Malaysia, and South Africa;

- Percentage limits: Bangladesh, Brazil, Chile, Chinese Taipei, Costa Rica, Israel, Korea, Peru, Romania, South Africa, Turkey, U.A.E., and Uruguay; and

- Minimum credit rating: Bangladesh, Brazil, Chile, Chinese Taipei, Costa Rica, Egypt, Korea, Sri Lanka, and U.A.E.

5.5 Credit Rating Agencies

As described in Chapter 2, the crisis has highlighted the need to subject credit rating agencies - in particular those that are used for regulatory purposes - to the oversight of a financial regulator. Such oversight should be based on a registration regime that is in line with the IOSCO Code of Conduct.

The survey showed that 70% of the jurisdictions (19 out of 27) have already established registration regimes for credit rating agencies. Those jurisdictions are: Argentina, Bangladesh, Chile, Chinese Taipei, Colombia, Costa Rica, Egypt, India, Kenya, Korea, Malaysia, Pakistan, Panama, Peru, Romania, Sri Lanka, Thailand, Turkey, and Uruguay.

However even in jurisdictions that do require registration, the framework still needs further enhancements, in particular to align them with the IOSCO Code of Conduct as amended in 2008.

Chapter 6 A Brief Comparison of Key Market Practices and Market Development

As summarized in Chapter 3, the survey highlighted the existence of robust market practices in many emerging market jurisdictions which favour transparency and price formation. The EMC sought to explore whether any relationship exists between the adoption of such more robust practices and the level of development of the markets - measured in terms of size. In particular, the EMC was interested in exploring whether the adoption of a more robust regulatory framework or market practices could stifle securitization markets.

Given data constraints the TFOS was only able to undertake a limited analysis which consisted of exploring the market practices adopted by the jurisdictions with the largest securitization markets to determine whether any pattern exists and, where appropriate, contrast such information with evidence from jurisdictions with less developed markets. In the context of this survey, the jurisdictions identified as the largest are Brazil, Chile, Chinese Taipei, India, Malaysia and South Africa. The market practices explored are: placement method, trading venue, transparency requirements in OTC markets, and retention of a portion of the issue[22].

The EMC did not find strong evidence to suggest that the adoption of more robust regulatory frameworks and market practices has negatively affected the development of securitization markets in emerging markets. In fact, in each case, at least half of the jurisdictions with the largest markets have already adopted a framework that is more rigorous.

6.1. Placement Method

The EMC did not find strong evidence to suggest that the use of public offerings has negatively affected market development. In fact four of the six largest markets use public offering as the main method of placement. Furthermore, markets that use public offerings as the main method of placement performed better after the crisis than those that rely mostly on private offerings.

[22] For the purposes of this section, the term "larger markets" will include the six jurisdictions identified above; and the term "smaller markets" will encompass all the other jurisdictions that provided information for the corresponding topics.

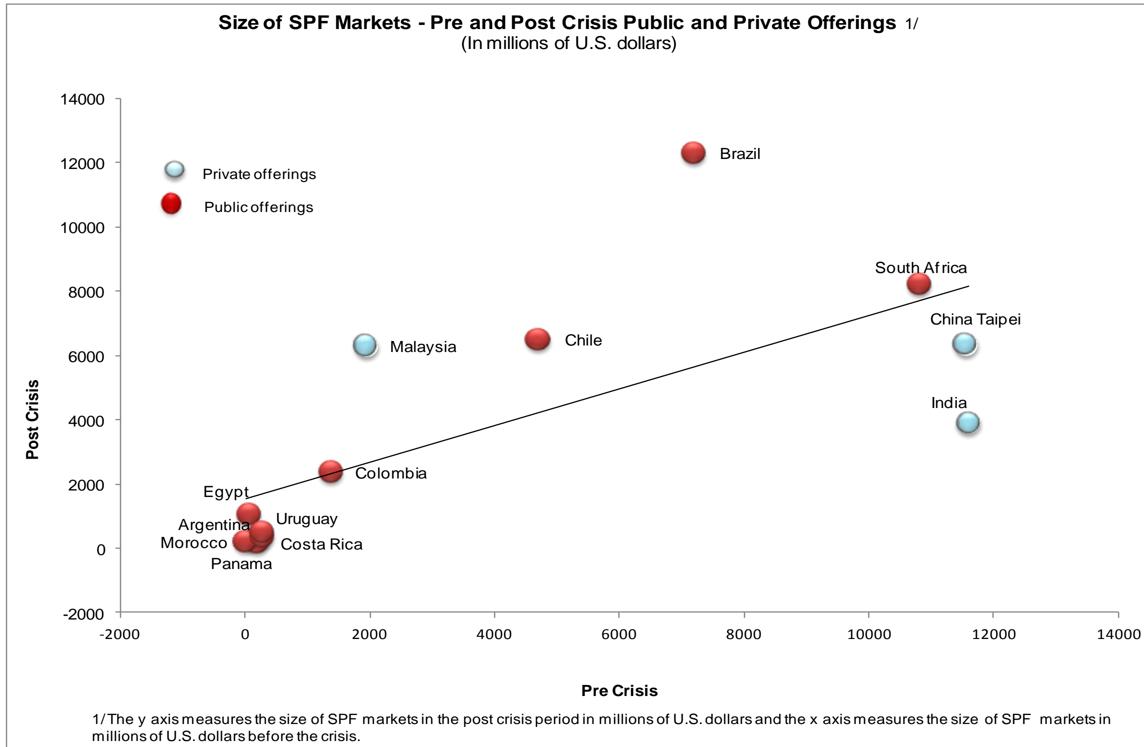

Figure 15: Size of SFP Markets – Pre and Post Crisis Public and Private Offerings

6.2. Trading Venue

There was no clear pattern in regard to trading venues and market development. 3 out of the 6 largest markets commonly used exchanges to trade securitization products. Although, it is difficult to compare jurisdictions based on trading venue, comparisons could be made on their relative behaviour before and after the crisis. On the whole, markets where securitization issues trade on exchanges performed better after the crisis (evidenced by growth), while markets where trading takes place OTC saw their markets decreased in size, with the exception of Malaysia.

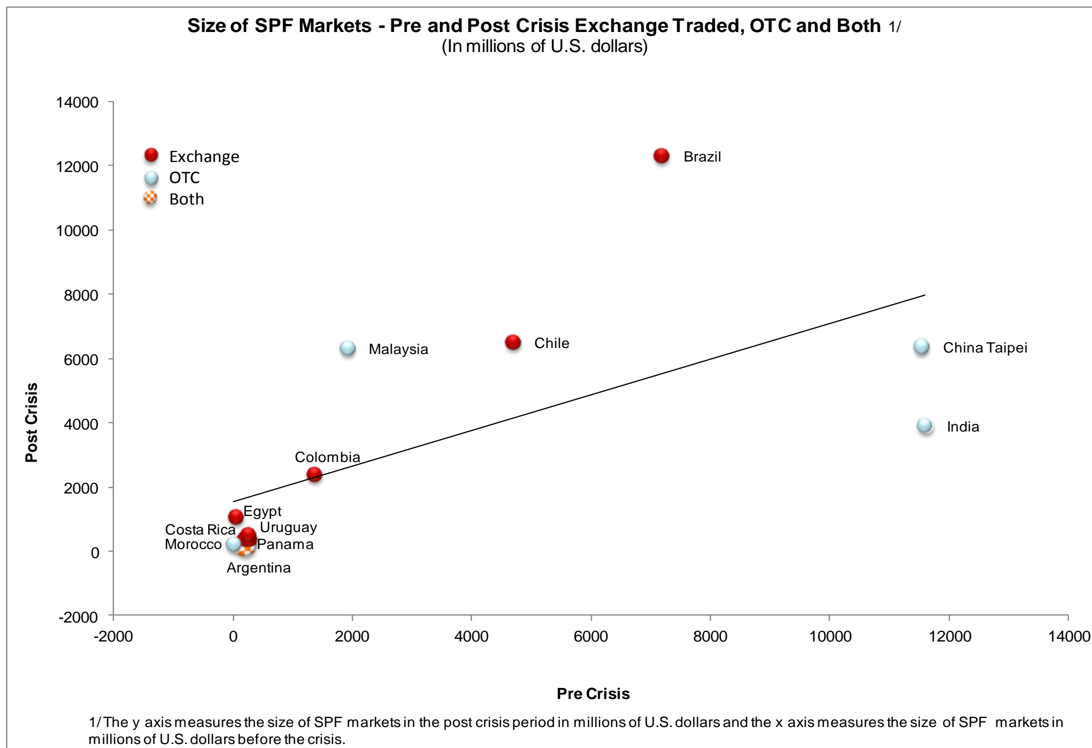

Figure 16: Size of SFP Markets – Pre and Post Crisis

The following graph illustrates the same phenomenon: markets where trading took place on exchanges did better than OTC.

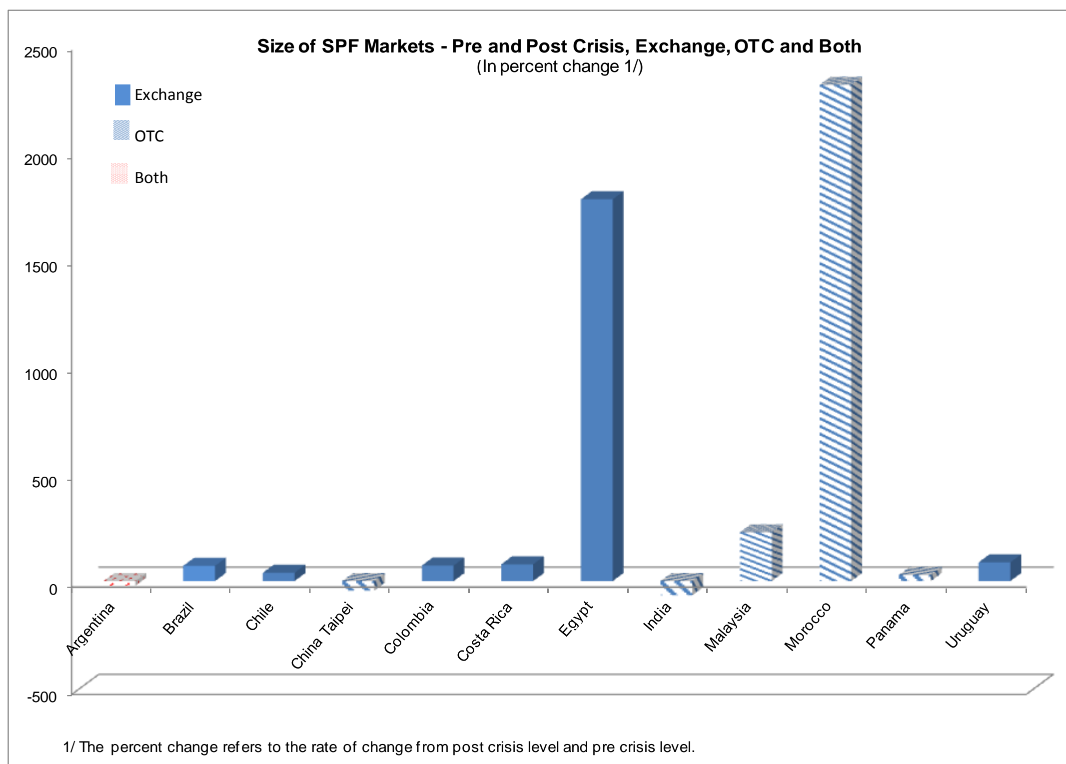

Figure 17: Size of Market – Pre and Post Crisis (OTC or Exchange Traded – Most Common % Change)

6.3. Transparency Requirements for OTC Markets

A higher percentage of smaller markets have imposed this type of requirements, however at least half of the jurisdictions with the largest markets have also imposed them.

Jurisdictions	OTC requirements
Larger markets	50%
Smaller markets	80%

6.4. Retention of a Portion of the Issue by the Originator

The evidence suggests that the imposition of such practice has not negatively affected market development. Furthermore the evidence appears to support the opposite conclusion, since a higher percentage of larger markets has adopted such practice vis-à-vis the smaller markets.

Jurisdictions	Retention practices
Larger markets	83%
Smaller markets	54%

Chapter 7 Recommendations

The survey has shown that securitization markets are still at an early stage of development in emerging market jurisdictions, although significant differences in the size of the markets can be found. On one hand, in many jurisdictions such markets have not begun to develop while on the other, a few markets exhibit a significant level of development in terms of size, while concentrated in *plain vanilla* instruments.

In this context, EMC found it important to divide the recommendations into two parts: the first part, on recommendations on enabling conditions, which are critical for jurisdictions whose markets have not yet started to develop or are at a very early stage of development, and the second part, on recommendations to deepen and strengthen securitization markets, especially important for markets at a later stage of development.

7.1. Recommendations on Enabling Conditions

Securities markets in general and securitization markets in particular, do not exist in isolation from the macroeconomic environment as well as different aspects of the legal and institutional infrastructure of a jurisdiction. The existence of favorable macroeconomic conditions and robust infrastructure (legal, market and otherwise) can enable faster and more robust development of such markets. The TFOS acknowledges that many of these conditions fall outside the scope of authority of securities regulators. Nevertheless, it is important that securities regulators are aware of these enabling conditions so that they can actively encourage the relevant authorities to implement the necessary changes for their achievement.

7.1.1. A Stable Macroeconomic Environment

A stable macro-economic environment fosters long term investment and thus is conducive to the development of capital markets as well as longer-term products, including securitization products. Conversely, the existence of significant fiscal deficits can have a crowding out effect vis-à-vis private sector financing.

7.1.2. A Robust Legal Framework

Experience shows that some jurisdictions have been able to develop their securitization markets based on their general legal framework for contracts and corporations, while others have enacted special securitization laws. Irrespective of the approach, the legal framework should provide certainty in regard to different aspects involved in securitization. The EMC encourages securities regulators in emerging markets to review the extent to which their legal frameworks adequately address key aspects of the securitization process, including:

- A robust framework for SPVs to ensure bankruptcy remoteness. Different legal structures can be used for securitization such as corporations, trusts and funds. No vehicle is inherently *better* than the others. Furthermore a jurisdiction can in fact allow the use of different vehicles. The key concern in this regard is that the legal framework for each SPV explicitly and clearly

separates the SPV and its assets from the originator and the manager, including in the event of their insolvency. As a result of such legal segregation, creditors of the originator or the manager cannot exercise claims against the assets of the SPV in the event of their insolvency. By the same token, the legal segregation protects the assets of the originator from claims of the SPV investors[23]. Provisions to also protect the collection of cash flows from the event of insolvency of the servicer are also desirable;

- Clear and reasonable procedures for the legal transfer of assets from the originator to the SPV. Different legal mechanisms can be used for a transfer of assets; thus it is important that there be clear rules or guidelines on the conditions that a transfer needs to meet to be considered a *true sale*. In addition, requirements for the transfer of assets should not be excessively cumbersome or expensive; otherwise they could significantly affect the development of securitization markets;

- Clarity in regard to the structures that can be used vis-à-vis investors' rights. Experience shows that different structures can be used for securitization, from simple pass-through to more sophisticated pay-through structures that can even lead to synthetic structures. The legal framework should not prohibit prima facie the use of sophisticated structures. However, as the crisis has shown it is important that regulators exercise due care to ensure that such structures are accompanied with sufficient disclosure, including a clear explanation of investors' rights, in particular when an issue has different tranches. Furthermore depending on their complexity, regulators might find it necessary to limit the offering of certain structures to sophisticated investors;

- Clarity in regard to assets eligible for securitization. As in the case of structures, the legal framework should not exclude prima facie categories of assets from securitization. However, securities regulators should exercise due care to ensure that investors are provided sufficient information on the assets being securitized, their nature (homogeneous or heterogeneous) and its implications, and their performance; and

- Expedite procedures for the execution of collateral. In many emerging market jurisdictions procedures for the execution of collateral are long and cumbersome; thus affecting asset recovery. This in turn can discourage investors from investing in securitization products, thereby affecting the development of such markets.

[23] As will be explained later, an originator can retain obligations vis-à-vis the SPV and its investors through the representations and warranties.

7.1.3. A Robust Accounting Framework

The survey showed that many emerging market jurisdictions still work under local GAAPs that are not very robust and therefore raise quality concerns. Furthermore, the use of local GAAPs limit the comparability of the information of issuers and products located in different jurisdictions. Thus, the EMC recommends that securities regulators in emerging markets continue working towards the full implementation of International Financial Reporting Standards (IFRS). As part of such a plan the EMC recommends that regulators make joint efforts with the accounting bodies' existing in their jurisdictions in order to ensure proper training of accountants on the use of such standards.

7.1.4. A Neutral Tax System

The legal framework should strive towards taxation neutrality, so that investors' decisions are based on their own assessments of the risk-return equation. By preserving tax neutrality resource allocation between different sectors of the economy will tend to be optimized.

7.1.5. Investor Education - Financial Literacy

According to the survey retail investors do not play a major role in securitization markets in emerging market jurisdictions. However, overtime this condition might change, at least in regard to the *plain vanilla* instruments. In this context, securities regulators should make a special effort to include structured products in their education campaigns. Authorities and market participants alike should be responsible for promoting financial literacy.

7.1.6. A Robust Framework for the Securities Regulator

The last precondition for the development of sound securitization markets is the existence of a robust framework that provides the securities regulator with enough powers to regulate and supervise securitization markets, including robust enforcement authority. Such framework should be in line with the principles for the regulator included in the IOSCO *Objectives and Principles of Securities Regulation*[24].

7.2. Recommendations for Further Development of Securitization Markets

As indicated in Chapter 2 of this Report there is wide recognition of the importance of developing securitization markets. The crisis has shown, however, that such a development has to be fostered under an environment of robust regulation and sound market practices.

Chapter 3 of this Report provided a summary of key recommendations made by different international bodies, including IOSCO and the IMF, to restart securitization markets under a sound regulatory environment. Such recommendations covered:

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[24] IOSCO *Objectives and Principles of Securities Regulation,* June 2010, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD323.pdf

(i) strengthening disclosure and transparency requirements for offerings of securitized products;

(ii) improving investors' risk management practices;

(iii) eliminating regulatory arbitrage in connection with capital requirements;

(iv) aligning incentives through retention and compensation practices; and

(v) reviewing the perimeter of regulation, in particular in regard to credit rating agencies.

The survey provided very useful insight in regard to the implementation of such recommendations in emerging market jurisdictions. As stated in Chapter 3 of this Report, a key finding from the survey is that the regulatory framework of many emerging market jurisdictions already addresses many of the recommendations from the crisis. Furthermore, it appears that in many jurisdictions market practices favor transparency of securitization markets, as well as better alignment of the interests of the originators with the longer term performance of the securitized assets.

However, as highlighted, there were significant gaps in the information provided by emerging market jurisdictions that prevent the EMC from making definitive conclusions. In addition, progress is uneven. Thus, for some jurisdictions a review of their regulatory frameworks, to ensure that they create the right incentives for alignment of interests of different participants with longer term performance of the securitized assets, is still a work in progress.

The following recommendations have been developed based on the findings of the survey, with special consideration to areas where a majority of the jurisdictions exhibit important gaps:

7.2.1 Regulators in Emerging Markets should collect a minimum set of information on securitization markets to monitor their development and identify potential sources of risk for financial stability or consumer protection

The survey has shown that many regulators in emerging market jurisdictions where securitization markets have already started to develop lack key information on the size of their markets, their characteristics and market practices. The lack of information, in turn, prevents them from forming a comprehensive view as to how their securitization markets are developing, and whether significant risks to financial stability or consumer protection are building up due to specific market characteristics or practices. Thus, the EMC recommends regulators in Emerging Market jurisdictions to require from participants a minimum set of information on the securitization markets to allow them to monitor their development and, when appropriate, make changes in the intensity of regulation and/or supervision. The EMC is aware that in some jurisdictions the ability of the regulator to collect information on

wholesale markets might be limited; thus in these jurisdictions, the perimeter of regulation should be reviewed and expanded accordingly.

7.2.2 Regulators in Emerging Markets should strengthen disclosure requirements for Securitized Financial Products vis-a-vis investors, both in the context of public as well as private offerings.

The survey showed that in a significant number of emerging market jurisdictions, securitization issues are mostly placed through public offerings. Indeed the use of this method of placement has provided investors with a more comprehensive system of disclosure - although there are still gaps in particular regarding the granularity of the information since in many jurisdictions information is only provided at the pool, not the loan level. Nevertheless, the EMC acknowledges the need to maintain room for private offerings, provided that improvements in disclosure requirements are also made for private offerings.

As indicated in Chapter 2 of this Report, IOSCO has done significant work in connection with disclosure for public offerings for ABS. It has approved guidelines on the minimum content of a prospectus, and it is currently working on the development of periodic disclosure requirements for ABS. Such documents should be the starting point for regulators in Emerging Markets. In both cases - strengthening disclosure in both public and private offerings - the EMC sees room for securities regulators to work with industry associations, so that detailed guidelines and templates can be developed to achieve standardization of key documents available to investors. Such work should also cover guidelines in regard to mechanisms to provide investors with access to such information.

At the same time, regulators in Emerging Markets should enhance their review processes of the information submitted by issuers of securitized products, so that they can exercise due care in determining whether the information submitted by them to make available to investors is adequate and sufficient.

7.2.3 Regulators in Emerging Markets should encourage trading of SFPs in public venues, and impose transparency in OTC markets

The survey showed that in many emerging market jurisdictions SFPs are traded on exchanges. Indeed the use of public venues (such as exchanges) brings additional trade transparency to securitization markets and thus should be encouraged. However, there should be a room for the existence of other type of venues for the trading of SFPs in addition to exchanges[25], including OTC, provided that transparency is achieved through other means. In this regard, the EMC supports the imposition of post-trade transparency requirements in OTC markets, as many jurisdictions in Emerging Markets have already done. In jurisdictions where multiple trading venues coexist, such post-trading reporting should be centralized into one entity, preferably a central trade repository.

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[25] Mandatory trading on exchanges can favor the creation of de facto monopolies which in turn can have negative effects on the market due to the lack of competition.

7.2.4 Regulators in Emerging Markets should encourage the development of pricing agencies, which should be regulated

The crisis showed the challenges that market participants faced in pricing bespoke or extremely sophisticated products which by their nature lack active liquid markets. The survey showed that in Emerging Markets this challenge exists for the whole SFPs markets, including plain vanilla products, which in turn creates a problem for the pricing of such products.

Pricing agencies or pricing vendors have started to appear in some emerging market jurisdictions. Such entities provide the prices of illiquid securities to investors (including institutional investors), which in turn use them to value their portfolios and the portfolios of their clients. Such prices are based on methodologies developed by the pricing vendors. The specialization of pricing services can be beneficial for emerging market jurisdictions, given that not all participants would have the technical knowledge and resources required to develop such methodologies. However, when they become the price providers for the entire market (including institutional investors), then they should become regulated entities, as is already the case in some of the emerging market jurisdictions.

7.2.5 Regulators in Emerging Markets should establish a minimum framework for key participants of the securitization process

It appears from the survey that many emerging market jurisdictions do not have comprehensive frameworks that explicitly address the responsibilities of key participants in the securitization process. Addressing this gap is extremely important to align their interests with the long term performance of the securitized assets. At a minimum such framework should include:

- ***Provisions on market representations and warranties:*** Representations and warranties are used to allocate the risk of "defective" assets among the originators, issuers of securities and investors who purchase them. Thus, robust market representations and warranties can be used as a tool to align the incentives of the originators with the longer term performance of assets. The EMC sees room for securities regulators to work with industry associations in their respective jurisdictions, in the development of "templates" that would standardize the representations and warranties to be provided in the context of a securitization. Such standardization would facilitate due diligence processes by potential investors. In addition, the materialization of events that trigger obligations on the part of the originator should be subject to transparency vis-à-vis the investors;

- ***Provisions on retention of a portion of the issue by the originator:*** As indicated in this Report, mandatory retention of a portion of the issue has been recommended by the G-20 as a mechanism to align originators incentives with the longer term performance of the securitized assets. Such alignment, in

turn, should translate into robust underwriting practices and monitoring by the originator. As recommended by the IMF and Bank for International Settlements (BIS) research, regulators in Emerging Markets should tailor such retention requirements so that they generate the appropriate incentives;

- ***Provisions on repurchase of a portion of the issue by the originator:*** Prima facie there should not be limitations on the possibility of the originator to purchase a portion of the issue. However, such purchases should be subject to transparency vis-à-vis the investors;

- ***Provisions on liability of key parties involved, including underwriters and expert parties:*** Alignment of incentives does not end with the originator; rather it should also encompass other key parties which should be required to exercise due diligence;

- ***Regulation and oversight of SPV administrators by a financial regulator:*** Administration of SPVs should be a regulated activity, thus subject to authorization and oversight by a financial regulator, who could be the securities regulator. Authorization requirements should include minimum capital requirements as well as fit and proper requirements; and

- ***Provisions on corporate governance:*** Regulators should require that participants involved in securitization have robust corporate governance frameworks, and that appropriate disclosure on such arrangements be made available to investors.

7.2.6 Regulators in Emerging Markets should strengthen business conduct obligations

The survey showed that in the overwhelming majority of the jurisdictions, the buy side is composed of institutional investors. At the same time it showed that few jurisdictions have imposed specific due diligence requirements on them — although many jurisdictions have established prudential limits (such as maximum investment limits or minimum credit rating). Thus, regulators in Emerging Markets should make it a priority to strengthen due diligence obligations, and therefore, reduce the use of mandatory ratings as the main tool to determine "eligible assets" by institutional investors. Implementation of the IOSCO best practices recently released is a step in that direction.

The survey showed that participation by retail investors has not been significant. In this context the gap on suitability requirements highlighted by the survey does not seem to create a critical problem. However, regulators in Emerging Markets should carefully monitor developments in this area and work on suitability requirements in case retail participation picks up. Furthermore, the EMC took notice that some jurisdictions have established restriction on the sale of ABS to the public. This is an area where the EMC encourages IOSCO to conduct further research.

7.2.7 Regulators in Emerging Markets should align credit rating agencies regulation with the IOSCO Code of Conduct

The survey highlighted that many emerging market jurisdictions already subject CRAs to a registration regime. However, it also showed gaps in the scope of such registration regimes. Thus, the EMC recommends securities regulators in emerging market jurisdictions to review their registration regimes to ensure that they are in line with the provisions of the IOSCO Code of Conduct, as amended in 2008.

7.3. Moving Forward with these Recommendations: The Adoption of Consistent Frameworks for Structured Products across Emerging Markets Jurisdictions

For many emerging market jurisdictions providing a sound framework for securitization markets will require a mixed set of actions that will vary depending on the level of development of the market, from working from scratch in meeting some or all of the preconditions identified in this report, to sharpening specific regulatory provisions already imbedded in their frameworks. Rather than doing this work in isolation, regulators in emerging market jurisdictions should strive towards developing a common (or at least a consistent) framework for structured products.

Indeed financial markets have become global and interconnected with issuers of structured products capable of offering their securities cross-border, either along with an offer in their own countries, or even cross border only, if their home country does not have a framework to support securitization. Such cross border offerings might involve participants from different jurisdictions (for example, underwriters, credit ratings, etc) who therefore might be required to comply with regulations from multiple jurisdictions in the provision of their services. Finally, such structured products can be held by investors from many different jurisdictions.

From the perspective of issuers and intermediaries, a common or at least consistent set of regulations across countries allow them to reduce regulatory costs. At the same time, the more consistent the regulations are, the easier it is going to be for investors to compare products and thus to have a more *global* investment portfolio. Finally from a financial stability perspective, it is critical that regulations are robust across jurisdictions, so that risks do not migrate or concentrate in markets or jurisdictions with weak regulation.

IOSCO is doing important work to achieve a common set of standards, in particular in connection with the disclosure requirements for offerings of ABS. Emerging market jurisdictions could consider expanding such work to areas where the survey has shown significant weaknesses or gaps, such as in relation to the basic framework for key participants in the securitization process.

Appendix A – List of Task Force Members

Co-Chairs

Dr. Carlos Serrano	Vice President for Regulatory Policy - National Banking and Securities Commission (CNBV), Mexico
Dr. K. M. Abraham	Full time member of the Securities Exchange Board of India (SEBI)

Argentina	Comisión Nacional de Valores
Bangladesh	Securities and Exchange Commission
Bermuda	Bermuda Monetary Authority
Brazil	Comissão de Valores Mobiliários
Bulgaria	Financial Supervision Commission
Chile	Superintendencia de Valores y Seguros
Chinese Taipei	Financial Supervisory Commission
Colombia	Superintendencia Financiera de Colombia
Costa Rica	Superintendencia General de Valores
Egypt	Egyptian Financial Supervisory Authority
Ghana	Securities and Exchange Commission
Hungary	Hungarian Financial Supervisory Authority
Israel	Israel Securities Authority
Jordan	Jordan Securities Commission
Kenya	Capital Markets Authority
Korea	Financial Services Commission (FSC) Financial Supervisory Service (FSS)
Malawi	Reserve Bank of Malawi
Malaysia	Securities Commission Malaysia
Morocco	Conseil Déontologique des Valeurs Mobilières
Oman	Capital Market Authority
Pakistan	Securities and Exchange Commission
Panama	Comisión Nacional de Valores de la República de Panamá
Peru	Comisión Nacional Supervisora de Empresas y Valores
Poland	Polish Financial Supervision Authority
Rumania	Romanian National Securities Commission (CNVM)
Sri Lanka	The Securities and Exchange Commission of Sri Lanka
Tanzania	Capital Markets and Securities Authority
Turkey	Capital Markets Board
United Arab Emirates	Emirates Securities and Commodities

Authority

The TFOS also received an extraordinary support from Ana Fiorella Carvajal, from the Monetary and Capital Markets Department (MCM) of the International Monetary Fund (IMF) and the IOSCO General Secretariat.

Appendix B – Survey Questionnaire

TASK FORCE ON SECURITIZATION

QUESTIONNAIRE FOR SURVEY ON PRACTICES RELATED TO SECURITIZATION AND SECURITIZED DEBT INSTRUMENTS IN EMERGING MARKET COUNTRIES

Definitions

For the purpose of this survey, key terms are defined as follows:

Securitisation is the process by way of which a single or a pool of assets are sold to a bankruptcy remote Special Purpose Vehicle (SPV) in return for immediate cash payment.

'SPV' means any company, trust, or other entity constituted or established for a specific purpose – (a) activities of which are limited to those for accomplishing the purpose of the company, trust or other entity as the case may be; and (b) which is structured in a manner intended to isolate the corporation, trust or entity as the case may be, from the credit risk of an originator to make it bankruptcy remote

'Securitized Financial Products' (SFP) are financial instruments which meet the following three key features:

(1) They are based on pooling of assets usually sold to a special purpose vehicle (SPV).

(2) There is subsequent guarantee and/or credit or maturity tranching of liabilities which are backed by the asset pool;

(3) There is de-linking of the credit risk of the collateral asset pool from the standalone special purpose vehicle (SPV).

Credit card ABS, auto-loan ABS, student loan ABS, RMBS, CMBS, CDO/CBOs, CLOs, are examples of SFPs. SFPs can be issued through public offerings or private placements.

'Secondary markets' is defined broadly to include secondary trading on traditional public markets (such as exchanges and alternative trading systems/multilateral

trading facilities) as well as bilateral trades executed over-the-counter (OTC).

'Originator' refers to an entity that transfers from its balance sheet a single asset or a pool of assets to an SPV as apart of a securitisation transaction and would include other entities of the consolidated group to which the entity belongs.

'**Bankruptcy remote'** means unlikelihood of an entity being subjected to voluntary or involuntary bankruptcy proceedings, including by the originator or its directors

'**Pre-trade transparency'** could include information accurately indicating the size and price of prospective trading interest, such as firm quotations in representative size, and resting limit orders, both at the best firm bid and ask quotations and away from such quotations.

'Post-trade transparency' relates to information about traded volume and prices (and possibly other information) which is disseminated publicly to market participants shortly after a transaction is executed.

'**Price vendors**' encompass entities who provide the prices of securities, including SFPs, to investors (usually institutional/professional investors) for the purposes of valuing their portfolios.

Abbreviations

ABS: Asset Backed Securities

RMBS: Residential Mortgage Backed Securities

CMBS: Commercial Mortgage Backed Securities

CDO/CBOS: Collaterized Debt Obligation / Collaterized Bond Obligation

CLOs: Collaterized Loan Obligation

ABCP: Asset Backed Commercial Paper

CDS: Credit Default Swaps

SFP: Securitized Financial Products

OTC: Over The Counter

SPV: Special Purpose Vehicle

QUESTIONNAIRE

CONTACT DETAILS:

Name of jurisdiction:	
Name of contact person and contact details:	

QUESTIONS:

NATURE AND SIZE OF SECURITIZATION MARKET

1. Indicate in the table below the%age of SFP issues that are placed through public offering versus private offering.

	In%ages (if unavailable, indicate which placing mechanism is the most common)	
	Pre crisis (Q2 2007)	Post crisis (October 2009)
Public offering		
Private offering/exempted offering		

2. Indicate in the table below what are the SFPs traded in your markets, and the size of the market in terms of outstanding issuances and average trading volumes. If it is not possible to give the instrument-wise break-up, aggregate information may be given. The information should include all issues (public/exempted/private), otherwise indicate any limitation.

Products	**Value of outstanding issuances in USD million**		**Average monthly Volume of trade in USD million**		**Average trading size Million USD**	
	Pre crisis (Q2 2007 monthly average)	**Currently (October 2009)**	**Pre crisis (Q2 2007 monthly average)**	**Currently (October 2009)**	**Pre crisis (Q2 2007 monthly average)**	**Currently (October 2009)**
Credit card ABS						

Auto loans ABS						
Student Loans ABS						
Agency RMBS						
Prime RMBS						
Sub-prime RMBS						
Prime CMBS						
Sub-prime CMBS						
Cash CDO/CBOs						
Synthetic CDO/CBOs						
Cash SME CLOs						
Cash leveraged loan CLOs						
Synthetic leveraged loan CLOs						
ABCP						

3. What is the extent of development of CDS market in your jurisdiction? Please give outstanding issuances and volume of trading in the CDS market pre and post crisis.

Product	**Value of outstanding issuances in USD million**		**Average monthly Volume of trade in USD million**	
	Pre crisis (Q2 2007 monthly average)	**Currently (October 2009)**	**Pre crisis (Q2 2007 monthly average)**	**Currently (October 2009)**
CDS				

4. Does any government entity or government sponsored entity participate in the securitisation market in your jurisdiction? **Yes/No.**

5. If you answered yes to the previous question, please indicate in the table below the role that they play

	Mark with X
Buy assets from originators and issue securities	
Guarantee issues	
Other (please specify)	

6. Describe any emergency measure taken by the Government to support the securitization market in light of the financial crisis.

7. Indicate in the table below whether the following services are available in your jurisdiction:

	Yes/No
a. Is there any mechanism to collate and disseminate information on outstanding issue of SFPs originating from a single originator or issued through a particular SPV?	
b. Are there any private information service providers who collect and provide information on SFPs?	
c. Are there price vendors in your jurisdiction?	
d. Do price vendors have to register with the securities regulator?	

TRADING IN SFPS

8. Please indicate in the table below how SFPs are traded in your jurisdiction?. Approximate information may be given.

	In%ages (if unavailable, indicate: Most commonly used/medium use/negligible use)	
	Pre crisis (Q2 2007)	Post crisis (October 2009)
On exchange		
On alternative trading systems		
Over the counter		

9. Indicate in the table below who are the main buyers/ Investors of these products? Approximate information may be given.

	In%ages (if unavailable, indicate: major/medium/minor/negligible participation)	
	Pre crisis (Q 2 2007)	Post crisis (October 2009)
Mutual funds		
Pension funds		
Insurance companies		
Banks		
Other financial institutions		
Retail investors		
Other (specify)		

10. Please indicate in the table below who are the main originators/ issuers of SFPs in your jurisdiction? Approximate information may be given.

	In%ages (if unavailable indicate major/medium/minor/negligible participation)	
	Pre crisis (Q2 2007)	Post crisis (October 2009)
Banks		
Mortgage companies/Specialized mortgage banks		
Manufacturing companies		
Leasing companies		
Other (specify)		

DISCLOSURES REQUIREMENTS RELATING TO ISSUANCE OF SFPS

11. In regard to SFPs placed through public offerings, are SPVs required to provide a prospectus/offering document at the time issue? **Yes/No.**

12. If you answered yes to the previous question, indicate in the table below whether the current regulatory framework requires that the information listed below be included in the prospectus/offering document, and whether improvements are being considered:

	Mark with X
Persons responsible for drafting the prospectus	
Identity of parties involved in the securitization	

Functions and responsibilities of significant parties	
Static pool information	
Pool assets	
Significant obligors of pool assets	
Description of the issue	
Structure of the transaction	
Credit enhancements	
Risk factors	
Markets where the issue will trade	
Information about the offering	
Taxation	
Legal proceedings	
Reports available to investors	
Related transactions	
Interest of experts and counsel	
Other (specify)	

13. In regard to SFPs placed through public offering, Is the SPV required to provide continuing disclosure by way of a Disclosure Memorandum or similar document? **Yes/No.**

14. If you answered yes to the previous question, please indicate in the table below whether the disclosure document is required to contain updated information

	Yes/No	Periodicity
(i) at the pool level only		
(ii) at pool and loan level		

15. Are private/exempted offerings subject to the same disclosure and continuing obligations requirements? **Yes/No.**

16. If you answered no the previous question, please indicate in the table below disclosure requirements applicable to private/exempted offerings

	Yes/No	
	Prospectus at the moment of issue	Continuous disclosure
Private offerings		
Exempted offers		

SPVs – Prudential framework/ Risk Management

17. Please indicate in the table below which legal vehicles can be used for securitization in your jurisdiction, and which are the most commonly used.

	Mark with X	
	Authorized	Most commonly used
Trust		
Limited partnerships		
Corporations		
Funds		
Other (specify)		

18. Based on your answer to the previous question, please indicate in the table below whether in your jurisdiction the administrator of the SFPs (trustee, fund manager, etc) are subject to regulation and supervision

	Yes/No
By the securities regulator	
By other financial regulator	

19. Are there specific provisions/guidelines in place to ensure that the SPV is independent of the originator? **Yes/No.** If so, please describe briefly.

20. Please provide information in the table below regarding the prudential framework applicable to the sale of assets by originator.

	Yes/ No	If yes describe limitations/conditions
a. Does the legal and/or regulatory framework allow the originator to retain residual rights and obligations in respect of assets transferred to SPV?		
b. Does the legal and/or regulatory framework require the originator to retain a portion of the issue?		
c. Are there limitations regarding the re-purchase of assets from the SPV by the originator?		
d. Are originators require to provide specific representations and warranties in regard to the risks of the assets and the due diligence		

performed?		
e. Is the originator required to hold capital against credit risk assumed when it provides credit enhancement explicitly or implicitly?		
f. Are there any restrictions regarding purchase of issues issued by SPV that apply to the originators?		
g. Are there restrictions on the servicing of the underlying assets by the originator?		

21. Indicate in the table below what type of credit enhancements and liquidity facilities were typically used to structure SFPs prior to the financial crisis *(Reference period may be taken as Q1 2005 to Q2 2007)*.

	Commonly used/Not used	Briefly explain the type/conditions
Credit enhancements		
By originator		
By entity of financial group of the originator		
By third parties		
Liquidity facilities		
By originator		
By entity of its financial group		
By third parties		

22. Prior to the financial crisis *(Reference period may be taken as Q1 2005 to Q2 2007)*, was it a common practice of the market that the originator retained a portion of the issue? **Yes/No.**

23. Indicate in the table below what type of servicing arrangements were the most commonly used prior to the financial crisis *(Reference period may be taken as Q1 2005 to Q2 2007)*.

	Mark with X
By originator	
By an entity of the same financial group than the originator	
By an independent entity	

24. Please indicate in the table below whether prior to the financial crisis

(Reference period may be taken as Q1 2005 to Q2 2007), the use of bond or mortgage insurance was commonly used, and whether the insurance was provided by regulated entities.

	Commonly used (Yes/No)	Provided by regulated entity (Yes/No)
Bond insurance		
Mortgage insurance		

25. During the financial crisis, was it a practice for originators to buy back the assets sold to the SFPs? If so, indicate in the table below whether it was as a result of

	Mark with X
Legal obligations (credit enhancements, etc incorporated in the prospectus, etc)	
Reputational risk	
Other (please specify)	

CREDIT RATING

26. Are credit rating agencies required to register with the securities regulator? **Yes/No.**

27. Briefly indicate in the table below whether the following topics are covered by the regulatory framework for credit rating agencies in your jurisdiction.

	Yes/No	If so, briefly explain
Independence and avoidance of conflict of interest		
Transparency of methodologies		
Disclosure of underlying information used for ratings		
Disclosure of information to assess historic performance		

28. Indicate in the table below whether rating is mandatory for SFPs issued by the SPV?

	Yes/No
SFPs of public offering	

SFPs for private offering/exempted offerings	

29. Are the SPVs required to update the ratings? **Yes/No.** If yes, briefly describe the conditions for such update.

UNDERWRITING

30. Are there specific provisions for underwriting of securities issued by the SPVs. **Yes/No.**

31. If so, please describe whether there are specific norms / practices (percentages and time frame) for disposal of the unsold securities by the underwriter and for accounting for the losses in such a case.

32. Indicate in the table below what type of underwriting arrangements were the most commonly used prior to the financial crisis.

	Mark with X
Underwriting by an entity of the same financial group than the originator	
Underwriting by an independent entity	

33. Briefly describe the remuneration practices adopted in your jurisdiction for underwriters?

ACCOUNTING

34. Indicate in the table below the accounting principles applicable to securitisation transactions in your jurisdictions

	Mark with X
IFRS	
Other (US GAAP, etc)	
Local principles (specify main deviations vis-à-vis IFRS in regard to SFPs)	

35. Are there any special norms regarding valuation of assets by SPVs? **Yes/No.**

36. Indicate in the table below the accounting treatment applicable to profits/losses:

	Mark with X
Up front	
Amortized	

SUITABILITY

37. Please indicate in the table below whether specific provisions exist in your legal and/or regulatory framework in relation to due diligence and suitability

	Yes/ No	If yes, provide brief description
a. Are there specific suitability obligations/guidelines applicable for the sale/distribution of SFP to a prospective investor?		
b. If yes, do they apply to all the entities that sell/distribute SFPs?		
c. Are there restrictions for the sale of SFPs to retail investors— for example do your regulations allow placement of SFP only among sophisticated and/or professional investors?		
d. Are there specific due diligence requirements for investment in SFPs by banks/ mutual funds/ insurance companies/pension funds, etc.? (financial institutions)		
e. Are there prudential restrictions applicable to the investment by banks/mutual funds/pensions funds in SFPs such as		
(i)%age limits		
(ii) Minimum credit rating		
(iii) Other (please explain)		

TRANSPARENCY IN TRADING OF SFPS

Pre-Trade

38. Are there pretrade transparency requirements in your jurisdiction applicable to SFPs? **Yes/No.**

39. If yes, please indicate in the table below whether such pre-trade transparency requirements apply to:

	Yes/No
SFP's traded on exchanges	
SFPs traded on Alternative Trading systems	
SFPs traded OTC	

40. Also indicate whether pre-trade transparency requirements vary depending

on

	Yes/No	If yes, briefly explain
Type of SFPs		
Liquidity of SFPs		
Credit ratings		
Size of orders		
Other (specify)		

Post Trade

41. Are there post-trade transparency requirements in your jurisdiction applicable to SFPs? **Yes/No.**

42. If yes, please indicate in the table below whether such pre-trade transparency requirements apply to:

	Yes/No
SFPs traded on exchanges	
SFP traded in Alternative trading systems	
SFPs traded OTC	

43. Please indicate whether post-trading requirements vary depending on

	Yes/No	If yes, briefly explain
Type of SFPs		
Liquidity of SFPs		
Credit ratings		
Size of trades executed		
Type of investors		
Other (specify)		

44. If SFPs are traded on multiple venues in your jurisdiction, are there any requirements or arrangements for the consolidation of trading information? **Yes/No.**

45. Does a mandatory **centralised** post-trade transparency system for corporate bonds trades executed OTC exist in your jurisdiction? **Yes/No.** If so, please describe that system. Also indicate whether you have ever considered expanding that system to SFPs.

46. Describe any existing market-led post-trade transparency of secondary market trading of SFPs in your jurisdiction (e.g. industry initiative or

commercially-available post-trade transparency information). Identify the type of entities that provides such information concerning the trading of SFPs, and the content and timing of the information made available to the public.

REGULATORY OBLIGATIONS TO MAINTAIN FAIR AND ORDERLY MARKETS

47. Transaction reporting requirements refer to detailed transaction-specific information which participants to a transaction are required to send to supervisory authorities to maintain fair and orderly markets. This information is not disseminated publicly. Do such transaction reporting requirements exist in your jurisdiction? **Yes/No.** If so, please summarise key requirements. In particular, your answer should indicate whether transaction reporting requirements vary depending upon (i) the type of SFPs; (ii) whether the investor is professional or retail; (iii) the liquidity of the SFP; (iii) credit ratings; and (iv) the size of trades.

48. Does your jurisdiction have anti-fraud laws (including laws prohibiting market manipulation and/or insider trading) which apply to trading in SFPs? Yes/No. If so, please summarize the material aspects of those laws.

MAIN ACTIONS TO RESTART/DEVELOP THE SECURITIZATION MARKETS

49. Indicate in the table below whether your agency/government is planning to take measures in the following areas, the timeframe, and evaluate on a scale of 1 to 5 (5 being the most critical, 1 the less critical) which do you consider critical to restart/develop the securitization market **in your jurisdiction**:

Measure	**Yes/No**	**Timeframe** **(within 6 months, 1 year, 2 years)**	**Importance 1-5**	**Optional: briefly explain**
Regulation of credit rating agencies				
Registration of credit rating agencies				
Stricter regulations in relation to independence and conflict of interest				
Better disclosure by credit rating agencies of methodologies and assumptions used				
Better disclosure by credit rating agencies of underlying				

information used for rating				
Disclosure by the credit rating agencies of information to assess historic performance				
Differentiation of ratings assigned to SFPs versus unstructured debt				
Other (specify)				
Disclosure and Transparency				
Better disclosure for SFPs of public offering at the moment of issue				
Better disclosure for SFP of public offering on a periodic basis				
Better disclosure for SFPs placed through private/exempted offers				
Imposition of pre-trade transparency requirements				
Imposition of post trade reporting obligations				
Other (specify)				
Suitability				
Stricter due diligence requirements for institutional investors				
Limitations on SFPs investments by financial institutions				
Stricter suitability obligations for distributors of SFPs				
Limitations on the type of investors to whom SFPs can be sold to				
Other (specify)				
Accounting				
Changes to consolidation requirements				
Changes to recognition of profit/losses				
Other (specify)				
Incentives/Prudential				
Reforms to capital requirements vis-à-vis holding of SFPs				

Imposition of retention requirements				
Guidelines on compensation				
Other (specify)				
Other				
Measures to address perverse responses by originators due to reputational risk (specify)				
Other (specify)				

OTHER

50. Please identify (and provide citations/references to) any internal (*i.e.*, government/SRO) or external (private) studies in your jurisdiction that analyze the securitization market, including studies relating to transparency/ disclosure norms for SFPs.

------------- End of Questions -------------

Thank you for contributing to this questionnaire. Your input is very important to us.

If you have any inquiry on this questionnaire or need further assistance, please contact Mr. Deepak Trivedi of the Securities and Exchange Board of India (SEBI) by email dtrivedi@sebi.gov.in or by phone on + 91 22 2644 9024.

Kindly submit all completed questionnaires to Kiyoung Choi and Paul Muthaura at the IOSCO General Secretariat by email at kiyoung@iosco.org or paul@iosco.org and copy the same to Mr. Deepak Trivedi at dtrivedi@sebi.gov.in.

Important: Please indicate the name, email and phone number of a contact person in your agency in case we need clarification on any aspect of your responses to this questionnaire or need further feedback from you.

Country/jurisdiction: **Name:** **Email:** **Phone:**