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13 February 2015

Submitted via BCBS website; and
email to Consultation - 2014 - 10@iosco.org

Dear Sirs,

BCBS/IOSCO Consultative Document on Criteria for identifying simple, transparent and comparable securitisations

Barclays welcomes the opportunity to comment on the consultative document issued by the Basel Committee on Banking Supervision ("BCBS) and the Board of the International Organization of Securities Commissions ("IOSCO") on the criteria of identifying simple, transparent and comparable ("STC") securitisations. This paper is important to us as we are active in many aspects of the securitisation market, including as originator, investor, advisor and swap provider across global markets.

We welcome the opportunity to feed back on the results of the work that has been undertaken to date by the Task Force on Securitisation Markets ("TSFM") in seeking to identify any impediments to the development of a sustainable securitisation market and developing criteria which may help alleviate those impediments.

We also note the work undertaken by the European authorities, such as the European Banking Authority's ("EBA") discussion paper on simple, standard and transparent securitisations, on ways to revive the European securitisation market. We have included, as Appendix 2 to this letter, our response to that discussion paper.

Our key messages are outlined in this letter with further detailed comments and answers to the questions asked in Appendix 1. In addition to this response, we have contributed to the Joint Associations' response to this consultative document.

Regulatory incentives will be needed for the framework to be effective

We recognise that the regulatory treatment of securitisation is outside the scope of this consultative document. However we believe that in order for the framework to remove impediments to the development of a sustainable securitisation market, it will be important for there to be regulatory incentives, for example in terms of capital or liquidity treatment, for compliance with the STC framework. A sustainable securitisation market needs both demand and supply of positions, and while STC has clear benefits for the demand side of the market, it would not substantively incentivise issuers.

In our experience, the largest barriers to the return of a well-functioning securitisation market are inconsistent regulation and regulatory uncertainty. This is consistent with the TSFM's survey data. Taking the BCBS work on capital requirements as an example, the capital requirements proposed will result in relatively high levels of capital to be held against highly rated securitisation exposures. In addition, there will be differences between jurisdictions in the implementation of the requirements. For example, as one approach is based on ratings and as such cannot be used in the US, the consequence is that for the same exposure, banks in different jurisdictions may carry different capital requirements.

Whilst we have seen a more positive approach from the regulatory community to securitisation over the last year, much of the regulatory work in the post-crisis period has had an inhibiting impact on securitisation as an asset class. The overall effect of these factors means that it is not only difficult for

regulated firms to assess the total costs of undertaking or investing in securitisations but the indications are that it will remain a high cost option. This arises not just from those initiatives aimed directly at securitisation, but also from measures which have a broader focus, for example the Fundamental Review of the Trading Book. In this context we would urge the authorities to consider how the STC framework could be used within regulation to alleviate uncertainty and the high cost of both issuing and investing in securitisation for regulated firms.

International co-ordination is needed to create the optimal outcome for securitisation markets

The consultative document identifies differences in the recent development of securitisation markets between jurisdictions. This has occurred for various reasons, including the state of development of these markets pre-crisis. Despite these differences, we would strongly encourage regulatory bodies to use these criteria to create a globally harmonised approach to securitisation. A globally harmonised framework would help to ensure a deep and liquid market in securitisation products and improve the cost-effectiveness of securitisation for investors and originators. We believe that the alternative would be the global securitisation market developing further into smaller regional markets, which we would regard as an unattractive and costly outcome.

We believe a globally harmonised approach to simple, transparent and comparable securitisations would work best on a principles basis, to allow for differences between jurisdictions and also the potential different uses of the framework (for example, in determining capital requirements or eligibility of instruments as collateral in central bank funding transactions). However, we are concerned that some of the "additional considerations" within the criteria seem to allow for a wide scope of interpretation of key terms (e.g. "exotic derivatives", "default", "materiality" etc) which could mean that an STC securitisation in one jurisdiction would not be comparable to an STC securitisation in another jurisdiction. In our view, this would significantly undermine the objectives of the framework

For this reason, and to ensure that the framework has sufficient substance, it will be important for certain key terms to be given a common definition. If this cannot be achieved to a sufficient degree, a potential alternate approach would for regulators to institute a system of mutual recognition of each other's STC frameworks. This would give both investors and issuers confidence in the framework on a global basis, whilst accommodating different uses, underlying legal frameworks, etc., and so support the broader development of the securitisation market.

The importance of the supply side of the securitisation market must be considered as fully as the demand side

The consultative document focuses mainly on those factors that have discouraged investors from returning to the securitisation market and, as such, the STC criteria primarily focus on providing a framework to promote investor confidence. We agree that this is necessary for the development of a strong and sustainable securitisation market. However, on its own it is not sufficient. For example, the EU securitisation market is more hampered by the limited supply of positions rather than by limited demand. Originators also need to be appropriately incentivised to provide the supply of STC securitisation to meet investor demand. Some criteria, as we note in our detailed response are either impossible for originators to meet or are disproportionately costly. If these criteria remain unchanged, it is unlikely that originators will be able to support the volume of STC transactions necessary to meet potential investor demand. This is likely to result in a distorted market that will undermine the overall framework.

Synthetic transactions do have a place in an STC framework

We do not agree with the overall exclusion of synthetic transactions from the STC framework. As with traditional securitisations, there is a wide range of synthetic transactions, some of which may be more suitable as STC eligible than others. We note that in many cases, we have found synthetic transactions are as effective at transferring risk efficiently as traditional securitisations.

With respect to features that could potentially be considered for a simple, standard and transparent designation for synthetic securitisations, we would suggest the following:

1. *The transaction should be reference obligation specific;*
2. *The transaction should be based on the three standard credit events to capture the main risks in lending activity (i.e. bankruptcy, failure to pay and restructuring);*
3. *The transaction should provide for immediate settlement of real credit losses once a credit event is triggered;*
4. *The transaction should have rules-based replenishment and reference the core business of an originator; and*
5. *The assets comprising the reference portfolio should adhere to the same level of quality standards and disclosure transparency as the underlying assets for traditional STC cash securitisation*

We support standardisation of documentation and meaningful disclosure

We believe it is important that the STC criteria support the standardisation of securitisation documentation and disclosure which have a meaningful use for investors and originators. We are encouraged that the consultative document notes as an impediment to some investors the large amount of documentation that is produced with each transaction. In in our experience one of the drivers for the increased disclosure has been regulatory requirements, with regulators incrementally adding on further disclosure requirements without always considering the implications for the overall amount of disclosure. This issue becomes further compounded by virtue of additional disclosure often required by law firms, rating agencies, etc. This is also an area where inconsistency between regulators adds to the cost of issuance and investing in securitisation, for example the divergence in the retention obligations and their related disclosure requirements makes cross-jurisdictional issuance disproportionately expensive.

We believe it is important for all market participants to bear in mind that the production of more information by issuers does not necessarily provide investors with greater insight into the products in which they are investing. As such, we would encourage the authorities to continue to focus the STC criteria on standardised and meaningful disclosure rather than incrementally increasing its volume. For example, for highly granular pools of retail exposures, loan level disclosure is often less useful than appropriately stratified data.

Treatment of short term securitisations

We note from the paper that short-term securitisations, such as ABCP transactions, are explicitly excluded from consideration as STC securitisations. We have provided initial suggestions for a framework for STC ABCP transactions in response to question 3. We believe ABCP conduits merit inclusion within the STC framework. Whilst some ABCP conduit structures failed and caused significant disruption during the crisis, the large majority of multi-seller conduits (rather than balance sheet arbitrage conduits or structured investment vehicles "SIVs") weathered the crisis without significant incident and continue to provide financing to a wide range of counterparties which support many small and medium sized enterprises. We would welcome the opportunity to work with the authorities further on developing suitable criteria for an STC framework for short-term securitisations.

We hope that you find these comments and our response to the questions useful. We would be very happy to discuss these and any related points further. Please do not hesitate to contact Roger Versluys (roger.versluys@barclays.com or +44 20 7773 2791) if you have any questions or comments on the issues raised in this response.

Yours sincerely,

Gary Romain
Barclays Finance Head of Policy

APPENDIX 1 - DETAILED COMMENTS AND RESPONSES TO QUESTIONS

1) **Do respondents agree that the criteria achieve the goals they aim to achieve? In particular, do respondents believe that the criteria could help investors to identify "simple", "transparent", and "comparable" securitisations?**

We believe that the stated criteria will facilitate progress towards a beneficial framework for STC securitisations in that they collectively provide a robust, detailed description of specific characteristics that would be expected to be met in order for securitisation instruments to meet the STC designation. We would, however, be interested in engaging in further discussions relating to the intended scope of this work, in particular what type of framework might be implemented for capital and liquidity incentivisation once the STC definitions are more finalised. A comparatively beneficial treatment for STC holdings should spur investor demand and encourage the originator community to structure deals that conform to the criteria.

To that end, we think it equally relevant to pay due consideration to the supply side of the securitisation market and to whether any of the criteria would prove unduly onerous for originators. For example, the requirement that originators make liability cash flow models continuously available to all investors may prove cumbersome as the notes may change hands over time in the secondary market (depending on whether the originator will be expected to provide such information to each investor, or if it would suffice to provide the models in one central location). This will be particularly relevant for privately issued deals. Separately, originator retention requirements, while certainly prudent from a 'skin in the game' perspective, must be sufficiently balanced so as to not remove the economic incentives to originate, particularly with respect to managing the very different retention rules in different jurisdictions. We discuss below other particular areas where we feel the criteria may not fully achieve their intended objectives.

2) **Do respondents agree with the STC criteria set out in the annex of the paper? In particular, are they clear enough to allow for the development by the financial sector of simple, transparent and comparable securitisations? Or do respondents think they are too detailed as globally applicable criteria? The annex provides guidance on each criterion. Which additional criteria would respondents consider necessary, if any, and what additional provisions would be useful or necessary to support these criteria? What are respondents' views on the "additional considerations" set out under some of the criteria in the annex? Should they become part of the criteria? Are there particular criteria that hinder the development of sustainable securitisation market due, for example to their costliness of implementation?**

We acknowledge the significance of balancing sufficient detail to facilitate internationally applicable criteria without unnecessarily over-engineering features of specific criteria that could potentially afford a greater level of flexibility. As suggested above, the consultation might benefit from the addition of precise definitions of relevant terms e.g. 'default', 'material increase', as well more robust descriptions of what might be described as 'sufficient' in a variety of contexts which are assessed in greater detail below.

In addition to the comments made in response to the questions above, we have the following comments and queries on the criteria:

- Criterion 1: We would welcome additional clarification on what defines a particular asset type, for example would auto leases be considered a separate asset type versus auto loans? We believe further definition would be needed here as the asset classes in the current Basel framework are likely to be insufficiently granular to be suitable for the STC framework. As suggested in the cover letter, we would also be interested in isolating specific definitions for "complex or complicated formulae", "exotic derivatives" and "homogeneity with respect to geographical origin."

- Criterion 2: The phrase "substantially similar risk characteristics" is open to wide interpretation. Who is it envisaged would be the arbiter of this point? If it were to be local regulators, then this would be an area where mutual recognition between regulators would be key. Similarly, further guidance would be needed on what is meant by a "sufficiently long time period to permit meaningful evaluation by investors". This point is highly subjective and one on which investors and issuers may not be able to reach consensus, as such high level guidance on this point would be helpful. Any data provided by issuers would need to be consistent with local customer privacy legislative in respect of retail exposures.

- Criterion 3: We would note that any representations and warranties that the issuer can give over the pool would only be applicable at the time of assets being transferred to the pool. For sufficiently granular pools (e.g. RMBS) expectations of material increase in expected losses at the loan level may not be feasible to obtain.

- Criterion 4: While we appreciate the aim of this criterion, further clarification on how an issuer might demonstrate "uniform and non-deteriorating underwriting standards" to investors and regulators over time would be useful. By their nature, underwriting standards will evolve over time as originators gain further insight into the performance of certain assets, assets performance itself evolves and, in some cases, originators' risk appetite changes. We believe a better formulation for this criterion might be to echo the requirement in the Capital Requirements Regulations ("CRR"[1]) which requires originators to maintain the same credit-granting criteria regardless of whether the exposures are to be securitised or to remain on balance sheet.

- Criterion 5: We assume that the prohibition on active management refers to active management of the underlying assets rather than investments of surplus cash in a traditional securitisation by the cash manager in certain classes of "authorised investments" as per its mandate . This type of management is generally beneficial to the securitisation and its investors as it means that additional returns can be earned on any "trapped" cash that provides credit enhancement to senior tranches. If this type of asset management were precluded, then we believe that many existing securitisation transactions would fail to achieve STC status.

  In additional to legal true sale, we believe the following mechanisms of transfer should also be permitted: i) declaration of trust and ii) assignment. These are well known technologies for securitisation. In addition, we do not agree with the categorical exclusion of synthetic securitisations from being STC as suggested by this criterion.

- Criterion 6: We would welcome further discussion around the definition of sufficient loan-level data / summary stratification data in the case of granular pools (see our comments in response to question 4). Relative to potential application to additional criteria, we would also question the value of requiring an independent 3rd party to audit the conformance of the initial portfolio with the eligibility requirements. We would be interested in the rationale for why this particular criterion has been singled out to be vetted by an independent party. This is consistent with to the broader question of who will ultimately determine STC designation, (originator, regulatory bodies, external auditors, etc?).

- Criterion 7: No comments.

- Criterion 8: We are in favour in principle of standardised swap documentation. Whilst there is already a significant amount of standardisation, an agreed industry template would be beneficial in terms of greater secondary market liquidity. We are supportive of industry work on this but note the challenges in relation to getting agreement given the large number of market participants. This

[1] Regulation 575/2013

criterion would also categorically exclude synthetic securitisations from the STC designation, a conclusion with which we do not agree.

- Criterion 9: We would be grateful for clarification on the detail required under the requirement to "provide in clear and consistent terms remedies and actions relating to the delinquency" etc. We are concerned that detailed disclosures of these terms would lead to the disclosure of proprietary information relating to a firm's credit risk management strategies. In addition we have concerns regarding the requirement to disclose liability cash flow models. Current practice would be that the structuring bank normally provides the raw data to another company (for example, Intex). This company then allows users to create their own stresses and cash flow models. We are concerned that if originators were required to provide these, they would be view as providing some form of guarantee over the performance of the securitisation.

- Criterion 10: No comments.

- Criterion 11: Further clarification would need to be provided on what would be regarded as "sufficient documentation" and a "sufficient period of time prior to issuance". These are subjective terms which, depending on interpretation could lead to a significant divergence in practice between jurisdictions with implications to the relative costs of securitisations and lead time for securitisations issuances. In line with our comments on criterion 6, what is the broader rationale for a formal legal review specifically with respect to initial deal documentation in the absence of similar reviews of other relevant documents relating to the securitisation process? In addition, we are concerned about how privately placed transactions would meet this criterion and do not think it appropriate to exclude such private transactions that meet all other STC criteria. Sufficient transparency could be achieved, for example, by ensuring appropriate disclosure to regulators and those investing in the transaction, but not to the wider market. However this would prevent the standards from being applied at a global level, which we believe to be the best way to create a deep and liquid securitisation market.

- Criterion 12: This requirement is already in place in many major jurisdictions via various national / regional interpretations of the Basel proposals for retention by originators. As previously noted, the implementation of retention requirements can differ substantially between regulators. Given this, we believe this is an area where mutual recognition between regulators as to whether this criterion has been met should be put in place. As discussed above, any retention requirements must be sufficiently balanced against originator economic incentives and adequate market liquidity. A prudent approach might be to require transactions to meet all local retention requirements, including any local definitions of "material exposure", again with different jurisdictions mutually recognising each other's requirements. Further discussion around cross-boarder transactions may still be warranted.

- Criterion 13: We are concerned that many facets of this criterion are inherently subjective and extremely difficult to quantify or definitively demonstrate, potentially disqualifying certain transactions from STC eligibility while allowing other similar transactions. Perhaps the development of an accepted list of eligible servicers would provide objectivity and allow for more transparent enforceability.

- Criterion 14: No Comments.

3) What are the respondents' views on the state of the short term securitisation markets and the need for initiatives with involvement from public authorities? Do respondents consider useful the development of differentiating criteria for ABCP, in a manner similar to that of term securitisations? The BCBS and IOSCO would particularly welcome any data and descriptions illustrating the state of the short term securitisation markets by jurisdiction and the views of respondents on concrete comparable criteria that could be applied to short term securitisations.

The short term securitisation market is, by its nature, largely comprised of privately placed transactions. To that end it is challenging to reliably identify specific points with respect to the state of the market, and even regular market participants may not necessarily have full visibility into trends relating to issuance levels, trading volumes, etc. Certain national regulatory bodies do collect information on the short term market, however this is typically presented at a highly aggregated level across disparate program types, and may therefore be difficult to translate into insights upon which to base actions.

Having said that, our general view in both the US and the EU is that demand for asset backed CP is quite strong among institutional investors. The substantial decline in the overall size of the market in the wake of the financial crisis had been driven primarily by the exit of non-100% liquidity backed vehicles as well as by the general decline in economic activity (the availability of acceptably high quality assets to sell into vehicles tends to correlate with broader macroeconomic conditions). As the global economy has recovered over the last several years, this market has started to pick up to the point that there is currently substantial unmet investor demand. Structures have trended strongly towards becoming more straightforward in terms of assets financed. Furthermore as a result of the need to comply with the US Volker Rule some US based conduits are fully credit supported by the sponsoring bank which results in the ABCP having similar economics to a short dated covered bond, the result being that the main factor requiring analysis isn't the structure of the security or the underlying collateral but the credit quality of the sponsor. If economic conditions continue to improve, we would expect some of this excess demand to be met as more high quality assets become available. However, in order for the market to develop to its full potential, it is important that a capital regime is established that allows investors to seamlessly acquire the paper and provides sufficient flexibility for conduit sponsors.

The prospect of identifying and developing criteria to classify qualifying ABCP as STC would be welcome. It would be necessary to ensure that benefits accrue to both investors and issuers, balancing any potential regulatory capital incentives against incremental administrative requirements.

Given some of the unique aspects of the short term securitisation market relative to the term market, we believe it would be appropriate to develop a separate set of criteria for short term transactions that should be met in order to receive the STC designation. This would be particularly beneficial in eliminating the potential risk of damage to the short term market as a result of possible competition with STC-designated instruments at the short-dated end of the term market. As a starting point, we would suggest the following:

Proposed Criteria

1. *Liquidity - The ABCP must have full (100%) liquidity coverage from the bank / sponsor. This means the liquidity facility is available to make payments on all of the outstanding balance of the ABCP including any accrued and unpaid interest.*
2. *Liquidity facility provider - The liquidity facility provider should be a credit institution.*
3. *Underlying assets - The underlying assets must adhere to minimum credit quality criteria, including the benefit of the seller over-collateralisation. The STC status of underlying assets would be relevant for multi-seller conduits, not for balance sheet arbitrage conduits investing in long dated, highly rated assets to enable to sponsor to pick up a spread. We acknowledge that balance sheet arbitrage conduits will not likely be eligible to meet the STC designation.*

4. *Derivatives - The ABCP conduit should not enter into complex derivatives. The only derivatives permitted should be for hedging purposes or, for the transfer of assets synthetically. For the latter, only derivatives that facilitate a direct pass-through of risk should be permitted.*
5. *Maximum maturity - The ABCP should not have a maturity at time of issuance exceeding 397 days.*
6. *Diversification - The ABCP conduit should have appropriate limits in place to prevent excessive concentration of exposure classes (as defined in Article 147 of Regulation 575/2013). There should also not be excessive concentration of exposure with common characteristics such as geography or originator within specific exposure classes. We acknowledge that these risks will be mitigated via the 100% sponsor liquidity coverage requirement stipulated in criterion 1.*

4) **What are the respondents' views on the level of standardisation of securitisation transactions' documentation? Would some minimum level of standardisation of prospectuses, investor reports and key transaction terms be beneficial? Do respondents think that there are other areas that could benefit form more standardisation? Would a standardised template including where to find relevant information in the prospectus be helpful? The BCBS and IOSCO would particularly welcome a description, by jurisdiction, of the extent to which different elements of initial documentation are standardised.**

We feel that an increased level of standardisation of securitisation transaction documentation and disclosure would be beneficial to both originators and investors. A more standardised environment, properly designed, would provide enhanced market liquidity, facilitate a more streamlined originations process and provide easier access to directly comparable deal attributes for investors.

It is worth noting that a certain degree of standardisation, at least within specific asset types, has already been put in place. For example, a master prospectus template containing standardised language which does not change from deal to deal is currently often used in conjunction with a prospectus supplement document, which reflects the specific fact pattern and idiosyncrasies of each transaction.

We feel that certain documents lend themselves more naturally to standardisation than others. For example, investor reports typically provide somewhat standardised information such as losses, underlying default rates, etc, broadly irrespective of asset class. Prospectus documents, however, quickly become difficult to standardise across deal types as only very high level information, which may be of limited use, would be most easily read across from deal to deal.

Even with this progress, the challenge of creating a more standardised environment is quite formidable. Even within specific assets classes within specific regions, there are sufficiently wide ranges of deal types that achieving significant standardisation whilst retaining disclosures that are sufficiently informative and granular will be difficult. Transactions within a particular securitisation space may come in numerous variants that are similar in many respects yet sufficiently unique so as to warrant multiple documentation templates.

We would also like to underscore the importance of ensuring that any incremental required disclosure or documentation is meaningful and useful for originators, investors, and regulators alike. As securitisation is already a relatively document and disclosure intensive asset class, we would urge caution when considring further increases to the administrative hurdles for executing or investing in securitised products.

We also note that increasing disclosure requirements are often the product of legal liability concerns or simple investor demand in addition to being driven by the changing regulatory landscape. That said, certain local rules, for example SEC Regulation AB in the US, already require originators of ABS to populate

a fairly thorough, standardised disclosure template which might be leveraged as one potentially useful starting point for an international standard. We acknowledge that the applicability of Reg AB to non-US securitisation transactions would need to be considered.

Another potential approach that could meet some of these challenges might be to develop standard documentation templates in parallel with separate 'rider' documents where any significant differences or unique features not easily reflected via the standard documentation could be called out. Of course, the balance here would be to ensure that this list of 'exceptions' does not become so extensive that the standardised document loses relevance. Finally, a standardised table of contents might be a useful tool to at least organise lengthy transaction documentation into readily identifiable, easily locatable sections. Even if the content within each section varies significantly between asset classes, regions, firms, etc, this approach could at least provide a standardised documentation framework, albeit at a higher, less granular level across the securitisation spectrum.

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13 January 2015

Submitted via EBA website

Dear Sirs,

EBA Discussion paper on simple standard and transparent securitisations

Barclays welcomes the opportunity to comment on the EBA Discussion paper on simple standard and transparent securitisations. We are active in many aspects of the securitisation market, including as originator, investor, advisor and swap provider in European and overseas markets.

We agree that not all securitisations have performed in the same way in recent years and welcome the consequent acknowledgement in the discussion paper that a one-size-fits-all regulatory approach to securitisations is no longer appropriate. We also welcome the continued recognition by the European authorities of the valuable role securitisation can play in the wider economy. We support the work to identify criteria by which different types of securitisation may be distinguished from each other.

We agree that the securitisation market within the EU needs to be re-established and strengthened in order to provide better support to the wider EU economy. This needs to be done in a prudent manner to ensure that the mis-aligned incentives that were a major factor in the financial crisis do not return. There also needs to be consideration of incentives for originators given that a well-functioning market needs both high and stable levels of supply as well as demand.

For bank originators, these incentives will include the capital treatment of securitisation exposures and the capital and leverage relief available for securitisations. This needs to be considered within the overall constraints that banks now face both from a capital demand (i.e. RWAs) and supply perspective, for example with the introduction of TLAC etc. Within the overall regulatory landscape, there is continuing uncertainty over the implementation of many securitisation specific rules with other the regulatory changes still under discussion, for example Fundamental Review of the Trading Book will have an impact on securitisation.

Our key messages are outlined in this letter with further detailed comments and answers to the questions asked in Appendix 1. In addition to our response, we have contributed to the AFME response to this discussion paper.

International co-ordination would create the optimal outcome for securitisation markets

We would strongly encourage the European authorities to work with other regulators to ensure that the proposals from this work are pursued as much as possible in international fora. We would note in particular the work of the Basel/IOSCO Task force on Securitisation Markets (TFSM), which has recently published a consultation on simple, transparent and comparable securitisations. The scope of the EBA discussion paper remit is the securitisation markets and economy within the EU and the analysis, including that of regulatory developments, is thorough. However, it is not entirely clear whether the intention is to align these proposals with the TFSM's work. A globally harmonised framework would help to ensure a deep and liquid market in securitisation products and improve the cost-effectiveness of

securitisation for originators and investors; as opposed to the global securitisation market developing into smaller regional markets.

Harmonisation of treatment of securitisation products within the EU should be a priority

The detail in Chapter 2 on regulatory developments is very useful in setting out many of the different regulatory reforms that have impacted securitisation. We particularly welcome the recommendation that a holistic review of the regulatory framework for securitisation is undertaken. We hope that this review would be drawn as widely as possible, including changes to the framework that may indirectly affect securitisation, for example the Fundamental Review of the Trading book.

One element that the review in Chapter 2 highlights is that there are already different versions of "qualifying securitisations" set out in regulation. For example, both the liquidity requirements and Solvency 2 set out characteristics of securitisations which could gain a preferential treatment. These requirements are different from each other in certain aspects and from the characteristics set out for simple standard and transparent securitisations in the discussion paper. Lack of harmonisation of these requirements increase the cost of securitisation for both originators and investors. We believe it is important that an outcome of this work is a single agreed set of criteria which can be used across all relevant EU regulation.

Definition and use of simple, standard and transparent securitisations would need active and continuous oversight

We welcome and support the EBA's work in this discussion paper to identify which criteria could be used to distinguish between securitisations which could be subject to a differentiated capital treatment. However, we note that whenever a boundary is drawn within regulation there is always the risk of perverse outcomes and potential perverse incentives. With respect to perverse outcomes, the criteria would need careful drafting and monitoring in order to ensure that transactions which meet the outcomes that the European authorities are hoping to achieve are not excluded from a differentiated capital treatment for a technical reason within the criteria. For example, we welcome the EBA's question in this paper as to whether certain synthetic securitisations could be eligible as a simple, standard and transparent securitisation. We believe that in certain circumstances, which we have set out in our detailed response, synthetic transactions should be eligible.

In considering perverse incentives, we are concerned about the outcome for those transactions which do not meet the criteria for simple, standard and transparent securitisations. In particular, we do not think it desirable that the market disappear entirely for "non-qualifying" products or for liquidity to become limited for these products within Europe. Such an outcome would overly limit the diversity of funding available to firms and products available to investors.

Given these concerns, we believe that the effect of the introduction of a new regulatory class of securitisations that qualify for a differential treatment would need to be carefully monitored in order for the authorities to check that the desired outcome has been achieved and on the wider market impact.

Treatment of ABCP

We note from the paper that ABCP transactions are explicitly excluded from consideration as simple, standard and transparent securitisations. As requested at the EBA Open Hearing on 2 December 2014, we have provided initial suggestions for a framework for simple, standard and transparent ABCP transactions in Appendix 2. We would encourage the EBA to create a framework that is "structure neutral" in the same way that it has created a framework which is "asset neutral". In other words, we think a better framework would be one that only set out the characteristics of structures which support simple, standard and transparent securitisations and permit those which meet the characteristics, rather than deeming certain types of structures, e.g. ABCP, synthetic transactions, private transactions etc., as unable to qualify.

We hope that you find these comments and our response to the questions useful. We would be very happy to discuss these and any related points further. Please do not hesitate to contact Roger Versluys (roger.versluys@barclays.com or +44 20 7773 2791) if you have any questions or comments on the issues raised in this response.

Yours sincerely,

Gary Romain

Barclays Finance Head of Policy

Appendix 1 – Detailed response

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

We agree with the impediments identified. As we have highlighted elsewhere in this response, regulatory uncertainty is by far the biggest impediment for both originators and investors within the EU. The uncertainty of how a certain product may be treated in the future from a capital or liquidity perspective creates a difficult environment for financial institutions to assess the cost/benefit of issuance or of investing in securitisation products. The current assumption by most regulated firms that the regulatory treatment is likely to be more costly than at present further deters them from considering securitisation as a option from an issuance or from an investor point of view.

It is important to note that regulatory uncertainty affecting securitisation does not end with the publication of rules relating to securitisation, such as the Basel framework. Other aspects to consider are uncertainty over how supervisory convergence of securitisation rules will be achieved within the EU and other changes to wider bank regulation which would affect the cost/benefit considerations of securitisation. These include the Fundamental Review of the Trading Book, swaps regulation, rating agency regulation, the development of leverage requirements and structural reform. As such, regulatory uncertainty is likely to continue to be an impediment to the development of the securitisation market for some time.

We also note that the lack of recognition of rating agency model and methodology changes within the capital framework for securitisation is an additional impediment to the securitisation market. Methodology changes have meant that greater levels of subordination are required for given ratings levels - this does not appear to have been factored into the current and revised calibration of capital requirements. Furthermore, retention and due diligence requirements act as additional protection should there be any future weakening of ratings standards.

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

We believe that certain synthetic securitisations should be included in the framework for simple, standard and transparent transactions. As with traditional securitisations, there is a range of synthetic securitisations some of which may be more suitable to be treated as simple, standard and transparent than others. We note that in many transactions, we have found that synthetic transactions are more effective at transferring risk than traditional securitisations.

The key differences in risk transfer between cash and synthetic transactions are caused by:

1) Rating agency models: in synthetic securitisations, focus on protective measures for the Aaa tranche (high quality assets, credit enhancing replenishment, excess spread), however these also protect the junior tranches thereby reducing the risk transferred to investors

2) In cases where the assets in a traditional securitisation were not sold at a loss to the originating firm, the spread on the assets will yield an income to cover the credit spread and funding costs as well as loan origination and servicing costs.
   In a synthetic securitisation the noteholders are reimbursed purely for the credit spread/deficit on the tranche. This can make synthetic securitisation a more flexible and cost effective option for issuers.

3) Sensitivity to loan spread vs securitisation spread: Cash flow securitisations can only work if the loan spread is sufficiently high to cover the cost of all tranches, movements in spreads can also be driven by technical factors rather than credit risk factors. During the crisis banks had large pools of good quality loan assets paying a relatively low margin. However due to volatility in the ABS space, the spread required for a full size securitisation was much higher and therefore loans could

not be securitised due to lack of cash flow. Synthetics do not have this issue and provide a more effective way of raising capital and manage credit risk volatility when credit spreads widen.

With respect to features that could be considered for a simple, standard and transparent synthetic securitisation:

- the transaction should be reference obligation specific;
- the transaction should be based on the three standard credit events to capture the main risks in lending activity (i.e. bankruptcy, failure to pay and restructuring);
- the transaction should provide for immediate settlement of real credit losses once a credit event is triggered; and
- the transaction should have rules-based replenishment and reference the core business of an originator.

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

We would prefer a definition that is aligned to existing CRR requirements as we believe this would assist in transparency and standardisation of the measure of default.

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

We regard requirements based on jurisdiction alone as unhelpful and unnecessary. As we noted in our cover letter, we believe that work on regulatory requirements for securitisation is best approached at as broad an international level as possible; a jurisdictional specific approach would most likely prevent this. In addition, we are not convinced jurisdiction is a good proxy for risk in a securitisation and, if the list of allowable jurisdictions were not monitored and updated on a frequent basis, there would be a risk of uneven treatment between similar jurisdictions which could leave to non-risk sensitive behaviour by market participants.

A preferable approach would be to state the characteristics that relate to jurisdiction, for example legal framework, insolvency law, transparency requirements, that would be expected to be in place for a simple, standard and transparent securitisation and then for confirmation by the issuing firm whether these were in place.

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

We believe the distribution of all voting rights to the most senior tranches in a securitisation would deter investors in non-senior tranches. We support the points made by AFME on this matter; that allocating all voting rights in the senior tranches, including for matters which mainly affect more junior tranches, would alter the balance of economic interests in the securitisation to the point that the yield required to compensate for this uncertainty would profoundly affect the economics of "qualifying" securitisation transactions. As noted in the AFME response, the allocation of all voting rights in the most senior tranches could give the senior noteholders the right to change the repayment profile for its own noteholdings, to the detriment of junior noteholders. In these circumstances, it is hard to imagine the non-senior tranches being attractive to investors.

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

We have no objection to a specific timing of disclosure within a reasonable amount of time after the settlement of the transaction. In our experience, it is not practically possible for all transaction documentation to be finalised with sufficient time before issuance to allow for publication. However, and

as noted in the AFME response, the prospectus contains the material information that the investor should require prior to investing, including any relevant disclosure (for example, risk retention) required by CRR.

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

Granularity can be a useful general indicator of risk in a securitisation but it is not a definitive indicator. For example, many US subprime mortgage securitisations would have met the granularity criterion but would most likely have failed other criteria.

Certain SME securitisations, in particular those of trade receivables, would most likely fail the 1% proposed granularity threshold.

If a granularity test were included, further clarification on the point in time at which granularity were measured would be useful. While transactions are likely to pass this test at inception; as assets pay down, the level of granularity will decrease. At the extreme, all deals would eventually fail this test. We would assume the intention is not to move qualifying deals to non-qualifying on this basis, however clarification on this point would be useful.

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

In addition to comments made in response to the questions above, we have the following comments on the criteria:

- Criterion 2 – We assume that the prohibition on active management would not include investments of surplus cash in a traditional securitisation by the cash manager in certain classes of "authorised investments" as per its mandate rather than active management of the underlying assets. This type of management is generally beneficial to the securitisation and its investors as it means that additional returns can be earned on any "trapped" cash within a traditional securitisation which provide credit enhancement to senior tranches. If this type of asset management were precluded, then we believe that many existing securitisation transactions would fail to achieve qualifying status.
- Criterion 3 – In addition to legal true sale, we think the following mechanisms of transfer should also be permitted: i) declaration of trust and ii) assignment. These are well known technologies for securitisation. In addition, this criterion would exclude synthetic securitisations from being "qualifying" securitisations; please see our response to question 2 regarding the treatment of synthetic securitisation.
- Criterion 4 (iv) - With respect to the restriction on assets "substantially reliant" on refinancing – we would welcome clarification on whether this criterion was intended to exclude auto receivables, many of which tend to have some reliance on re-financing or rolling over of the financing into another vehicle loan. This is an area that could be aligned with the Solvency 2 delegated act (article 177 2(m)).
- Criterion 5 – In addition to our comments in response to question 3, we would note in respect of representations and warranties that the issuer can give over the asset pool can only be applicable at the time of assets being transferred to the pool. We assume this is what is meant by "can be foreseen...." in the criterion but would welcome clarification on this point.
- Criterion 6 – This is a criterion for certain classes that is more relevant where fraud is a material issue. We support AFME's comments that the exception detailed in the criterion should be broadened out to all types of consumer credit. Moreover, we support AFME's comments that this criterion is not suitable for exposures which tend to be repaid in a single instalment, such as trade receivables. We support the proposed reformulation of the criterion set out in AFME's response.

- Criterion 8 – We are in favour in principle of standardised swap documentation. Whilst there is already a significant amount of standardisation, an agreed industry template would be beneficial in terms of greater secondary market liquidity. We are supportive of industry work on this but note the challenges in relation to getting agreement given the large number of market participants.
- Criteria 15 and 16 – While we agree that it is important for investors to have access to all relevant information in order to allow adequate due diligence to take place; we do not believe the Prospectus Directive and CRA are the most appropriate tools to achieve this. Our key concern is that tying the disclosure requirements to these pieces of legislation will mean that private transactions would not be eligible for any "qualifying" treatment. We do not think it is appropriate to exclude such transactions that would meet all the other criteria for simple, standard and transparent securitisations. Sufficient transparency could be achieved by ensuring appropriate disclosure to regulators and those investing in the transaction, but not to the wider market.
  This would be another criterion which would prevent the standards set being applied at a global level which, as we have noted elsewhere, we believe is the best route to create a deep and liquid securitisation market.
- Criterion 18 - We would be grateful for clarification on the detail required under the requirement to "provide in clear and consistent terms remedies and actions relating to delinquency" etc. We are concerned that detailed disclosure of these terms would lead to the disclosure of proprietary information relating to a firm's credit risk management strategies. In addition we have concerns regarding the requirement to disclose a liability cash flow model. Current practice would be that the structuring bank normally provides the raw data to another company (for example, Intex). This company then allows users to create their own stresses and cash flow models. We are concerned that if originators were required to provide these, they would be viewed as providing some form of guarantee over the performance of the securitisation
- Criterion 20 – With respect to the availability of performance data, we assume the definition of asset class is not issuer specific. Otherwise, this criterion would act as a significant deterrent to new issuers entering the market.
- Criterion 21 – We would welcome explicit allowance for reporting on a blind pool basis and support from the EBA to streamline bank secrecy rules across the EU to be consistent with such transparency requirements. Transparency requirements also need to respect customer privacy legislation in respect of retail exposures.

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

The answer to this question depends very much on the objectives of the framework and how it is implemented. Our key concerns are:

- Is the framework part of a globally agreed framework, e.g. aligned with work of the Taskforce on Securitisation markets, or would it diverge?

  As we note elsewhere in our response, we believe that the optimal approach to create deep and liquid securitisation markets is to create a global framework. To the extent the framework is adopted in the EU alone, it would be important to understand what approach other regulators would take.

- How does the framework fit with other rules relating to qualifying securitisation exposures in the EU, e.g. Solvency 2 and LCR?

  Similarly, within the EU the optimal framework would be one that allows for a coherent, co-ordinated treatment of securitisation products. At present, the small differences between criteria for different treatments of securitisation products create a cost overhead and regulatory uncertainty for both regulated investors and issuers. This may mean that they look to either issue or hold non-securitisation products where such overheads are smaller. An approach including a

single set of core criteria forming the basis of eligibility for different capital or liquidity treatments would be welcome.

- Who would be responsible for judging whether a securitisation had met "qualifying" status?

  This cost/benefit of the framework will depend on how the judgement of "qualifying" status is made, in particular who would be responsible for certifying a transaction had met qualifying status. This would need to balance the need for judgements to be made in a timely manner with the need for the regime to have credibility with both investors and issuers.

- What monitoring would be undertaken to ensure the criteria stayed current and did not create perverse incentives?

  As noted in our cover letter; the criteria would need monitoring to ensure that the criteria were not preventing "legitimate" transactions from being designated as qualifying due to technicalities within the criteria. We would also regard it as important to ensure that the criteria were not inadvertently resulting in a distorted market. One of our major concerns is whether the introduction of the qualifying designation would significantly reduce liquidity in those securitisations that were not designated qualifying. The creation of a two tier market for securitisation; or worse a one tier market where the only securitisations were qualifying securitisations would be an unwelcome development. We think it important that the authorities maintain the capacity to monitor the markets and the flexibility to make adjustments to the framework as needed.

Whilst this question focuses on the potential adverse consequences of the framework, a robustly implemented framework for "qualifying" securitisation should assist in increasing investor confidence, increased liquidity in the securitisation market and the ability and willingness of issuers to enter the market in greater volumes than at present.

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

How capital should reflect the partition between qualifying and non-qualifying transactions will principally depend on the ultimate aim of the framework. For example, if the intention is to maintain the existence of a market for non-qualifying securitisations, it will be important to avoid cliff effects in the treatment between qualifying and non-qualifying transactions.

With respect to qualifying transactions – we would echo the comments made in the AFME response about the importance of ensuring capital neutrality, including the removal or lowering of risk weight floors, in the treatment of qualifying transactions. Not only do we regard this as correct from a principles perspective; we think it will also help to ensure that qualifying securitisations remain attractive both as a funding instrument and an investment when compared to competing products.

If the treatment for qualifying transactions is to be based on the proposed Basel securitisation framework we would suggest that, in addition to the risk weight floors, the treatment of maturity is considered. At present, the maturity of a transaction would affect the capital requirement in three places under the proposed framework: 1) in the capital requirement for the underlying assets as calculated under the IRB framework; 2) In the level of subordination required by rating agencies for a given level of rating; and 3) in the securitisation capital requirements. In addition the measurement of maturity on a contractual rather than a weighted average life basis under the proposed framework creates a further divergence between the economic risk assessed for the securitisation transaction and the regulatory capital outcome. At the least, we would advocate a weighted average life approach to maturity to be introduced as standard for qualifying securitisations and reconsideration of the maturity scaling, given that the maturity impact has already been provided for in other places.

For securitisation to be an effective means of funding it is important that the most senior tranches have a low risk weight. These have performed well and should therefore be allowed to carry a weight closer to the original 7% than the 15% floor proposed in the Basel framework. This would not only support risk

transfer but also recognise that the junior tranches provide further risk mitigation due to their materially increased thickness in the new rating agency models. An unintended consequence of the non-neutrality ratio is that banks needs to purchase much more protection than is necessary from a credit risk transfer perspective. The cost of covering the buffers in the current capital framework, rating agency models and the securitisation framework (in particular through the multiple provision for maturity) drain the banking system of income that could be used to build capital reserves or make hedging prohibitively expensive.

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

In order to be able to give a full response to this question, it is important to be clear on the intended outcome for both qualifying and non-qualifying securitisations. Overall, we are concerned about the suggestion of a reallocation of capital across tranches as opposed to capital neutrality for the transaction as a whole, since this seems to imply taking the current and proposed Basel capital frameworks as the starting point for calibration. We would support an approach that more closely aligns the requirements for qualifying transactions with the capital requirements for the underlying assets, rather than an overall capital surcharge for securitisation. In addition, we would encourage the authorities to look at the impact of changes to rating agency models and what this implies for the economic risk of a given rated tranche from a securitisation. We remain concerned that, in calibrating proposed requirements to transactions that occurred before rating agency methodology changed, the divergence from capital neutrality is magnified.

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

We believe there is some merit in investors having transparency on what rating a securitisation would achieve absent the sovereign ceiling. This could aid the differentiation between securitisations which have a poor rating only due to the sovereign ceiling and those that have a poor rating due to the underlying assets or other structural features.

With respect to calibration, here we would defer to the authorities as to whether the view formed by the rating agencies of the impact of sovereign risk should be reflected in capital requirements. This is likely to be a question that is broader than securitisation and would need careful consideration.

APPENDIX 2 – Asset Backed Commercial Paper (ABCP) transactions – Proposed SST Criteria

We welcome the EBA's invitation to provide suggestions for a framework for simple, standard and transparent ABCP transactions. Whilst some ABCP conduit structures failed and caused significant disruption during the crisis; most weathered the crisis without significant incident and continue to provide financing to a wide range of counterparties, which includes many SMEs.

We have set out some initial suggestions below of criteria that we would regard as necessary for a parallel simple, standard and transparent ABCP framework. We would be happy to work with EBA further in developing such a framework.

Criteria

1. Liquidity – the ABCP must have full (100%) liquidity coverage. This means the liquidity facility is available to make payments on all of the outstanding balance of the ABCP including any accrued and unpaid interest.
   Comment: many of the problems during the crisis occurred in vehicles whose liquidity facilities were less than 100%. During the period of market dislocation, when there was very limited liquidity for the ABCP, these vehicles became forced sellers of the underlying assets. This was the primary cause of losses for these vehicles as opposed to the performance of the underlying assets.
2. Liquidity facility provider – the liquidity facility provider should be a credit institution.
3. Underlying assets – the underlying securitisations must qualify as simple, standard and transparent securitisations and the underlying assets must meet the credit quality criteria. The originator of such securitisations should comply with risk retention requirements.
4. Derivatives – the ABCP conduit should not enter into complex derivatives. The only derivatives permitted should be for hedging purposes or, for the transfer of assets synthetically. For the latter, only derivatives that facilitate a direct pass-through of risk should be permitted.
5. Maximum maturity – the ABCP should not have a maturity at time of issuance exceeding 397 days, exclusive of days of grace or any renewal, which would be subject to similar limits.
6. Diversification – the ABCP conduit should have appropriate limits in place to prevent excessive concentration of exposure classes (as defined in Article 147 of Regulation 575/2013). There should also not be excessive concentration of exposure with common characteristics such as geography or originator within exposure classes.