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Credit Suisse response to the Consultative Paper on 'Criteria for identifying simple, transparent and comparable securitizations' (BCBS 304)

Dear members of the Basel Committee and the Organization of Securities Commissions,

Credit Suisse AG ('CS') appreciates the opportunity to comment on the Consultative Paper ('CP') on 'Criteria for identifying simple, transparent and comparable securitizations' jointly published by the Basel Committee on Banking Supervision ('BCBS') and the Organization of Securities Commissions ('IOSCO', and together with the BCBS, the 'Authorities') in December 2014.

We agree in principle with the stated objectives set out by the Authorities with respect to the motivation for defining criteria for identifying simple, transparent and comparable securitizations. We ask the Authorities to consider the following general comments on the CP:

Scope and Applicability

We endorse and support the task force's work to "[identify] the factors that may be hindering the development of sustainable securitization markets". The STC criteria on which we are commenting are a positive first step, as a number of the criteria herein are reasonable, sensible, and will further assist investors in the investment decision-making process.

Our experience has been that the return of sustainable securitization markets has varied across asset types, legal jurisdictions, and markets. For example, the US CLO market had robust issuance in 2013 & 2014, while the private label US RMBS market was far more subdued. The pace of recovery has been driven by a variety of factors, including pricing, supply, demand, and the concerns addressed in the CP. It is difficult to assess the ultimate impact of the proposed STC criteria across all markets. The need to develop and strengthen markets that have not fully recovered must be balanced against the potential impact of unintended disruptions to markets that are already functional.

As the committee moves forward with this initiative, we would like to see more clarity around the proposed impacts of this proposal, especially as to the impact of capital charges or enhanced due diligence

requirements. We also note that it is, in our opinion, challenging to formulate and adopt a broad set of uniform principles that cut across a diverse set of product markets and legal jurisdictions. To that end, a number of criteria require improvements with regards to making clearer certain terms through more detailed definition.

Synthetic Securitizations

We believe that synthetic *balance sheet* securitizations should not be a priori out of scope of STC for the following reasons:

- In Europe and in particular in Switzerland it is standard for companies not to raise funding on the capital markets but through loans from banks because they want to have a personal lender-borrower relationship even if it is (slightly) more expensive than raising funding through the issuance of bonds. This is especially true for (i) small or medium-sized companies who do not have access to the capital markets and (ii) companies who are borrowing under a revolving facility, as the uncertainty of drawdown does not naturally suit a capital market issuance. Practically speaking, this results in the non-acceptance of any transfer clauses (or the imposition or stringent borrower consent requirements) in the loan agreements; it is not possible to change this attitude of European/Swiss companies in the short or medium term. Therefore cash securitizations where the assets have to be transferred to an SPV are not feasible.
- While synthetic securitizations have one additional structural layer in the form of a credit derivative via which the risk of the assets is transferred to an SPV, synthetic securitizations are typically easier to understand as the cash flows of a synthetic securitization typically only depend on the occurrences of credit events and the resulting loss rates, rather than on other variables (interest of the assets, cash account balances, breach of triggers, etc.). Consequently, it is simple for investors to perform scenario analysis and model losses on their investments without the need for complex cash flow models.
- While synthetic securitizations are developed on the basis of the corporate CDS market for which ISDA has produced comprehensive and complex documentations (ISDA Credit Derivatives Definitions), there is no need for synthetic securitizations to reference and incorporate any ISDA Credit Derivatives Definitions as the loss measurement for the risk transfer is based on actual losses of the lender rather than auction processes which determine the loss based on market prices. Therefore, it should be a criterion for synthetic securitizations that the settlement amounts are determined by reference to the loss amounts of the lender (subject to the following issue) and should not incorporate the ISDA Credit Derivatives Definitions. This ensures the economic equivalence to cash securitizations in the sense that only actual losses are borne by investors.
- We acknowledge that for investors it is of fundamental importance that there is an alignment of interests of the protection buyer and protection seller; this is now reflected in various regulatory directives (e.g. Capital Requirement Regulation, Alternative Investment Fund Managers Directive, Solvency 2). We would like to emphasize that care should be taken when drafting the provisions governing the 'alignment of interest' principal, such that it is not in conflict with insurance regulations which might re-characterize the instrument as 'insurance'. In particular, we note that the EBA has proposed in their response to the consultative document that the originator, which is typically the protection buyer in a synthetic securitization, represents that the assets are held by itself at inception and during the entire life of the transaction. Even though for all practical purposes this is the case in most synthetic securitizations, insurance regulation prohibits such representations. Under the current regulatory regimes a credit derivative where the protection buyer represents that it is holding the assets and where the settlement amount is determined on the basis of the protection, the buyer's loss is likely to be viewed as an insurance contractual loss rather than a loss from a derivative instrument. As a securitization vehicle is not regulated as insurer (but as a financing company) current and historical synthetic securitizations are prohibited from accommodating such

representations and structure. Therefore, as a prerequisite for such criteria, it is necessary that regulators clarify that such credit derivatives do not constitute insurance contracts.

If BCBS does not consider synthetic balance sheet securitizations eligible for STC treatment, we propose to treat tranches of synthetic balance sheet securitizations retained (implicitly) by the originating bank as STC as

- the originator owns *de facto* the securitized assets
- all aspects of control (voting rights, etc.) are with the originator
- the originator's investment in the form of the retained tranche is transparent in the best possible way
- there is full alignment of interests between the investor and the originator

and therefore the retained tranche resembles more a tranche of a cash securitization rather than an investment in a synthetic securitization.

In the following section we offer our detailed comments on the questions given in the CP.

Yours sincerely,

Credit Suisse AG

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Detailed CS comments on questions

Question 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" securitizations?

Please see Appendix 1 for our detailed responses

Question 2 – Do respondents agree with the STC criteria set out in the annex of this paper? In particular, are they clear enough to allow for the development by the financial sector of simple, transparent and comparable securitizations? 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 the use of the criteria? What are respondents' views on the "additional considerations" set out under some criteria in the annex? Should they become part of the criteria? Are there particular criteria that could hinder the development of sustainable securitization markets due, for example, to the costliness of their implementation?

Please refer to appendix 1 for our detailed comments

Question 3 – What are respondents' views on the state of short-term securitization 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 securitizations? The BCBS and IOSCO would particularly welcome any data and descriptions illustrating the state of short-term securitization markets by jurisdiction and the views of respondents on concrete comparable criteria that could be applied to short-term securitizations.

We agree that "[s]hort-term securitizations (e.g. ABCP)…are a key part of securitizations markets and provide an important source of funding to the real economy": for example, ABCP is the principal way in which certain asset classes (e.g. trade receivables) are securitized. Providing differentiating criteria for ABCP conduits would therefore be in the best interests of the market.

However, ABCP securitizations are structured differently from term securitization markets, so it may be difficult or inappropriate to subject ABCP to some or all of the criteria comprising the STC. Unlike securitization structures, there is no tranching in ABCP securitization, so review of cashflow rules is not necessary. In addition, the assets financed in ABCP conduits are generally of good quality and consist largely of consumer or trade receivables, which tend to have the required granularity to predict their performance. Although the underlying assets are of good quality, the ABCP transactions are structured with more conservative levels of credit enhancement (per credit rating agency guidelines) in order to ensure that the bank that provides the funding is not exposed to significant levels of credit risk.

It is also important to make a clear distinction between pre-crisis SIVs and multi-seller ABCP conduits. Since the SIVs and similar structures failed in the 2008 financial crisis, they have disappeared from the market. The ABCP conduits with full liquidity support did not suffer losses due to the liquidity crisis.

ABCP transactions are unlike term securitizations and do not have the same risk profile. The exposures represented by ABCP securitizations are very different, as they rely on the sponsor-provided liquidity facilities for timely payment, and not on the value or liquidity of the underlying assets. For the ABCP investors, it is the structure and not the credit quality of the conduit's underlying assets that is of singular importance. We therefore are of the opinion that STC rules be re-thought before applying them to ABCP conduits. The ABCP securitization should be looked at less as tranched exposures to underlying financial assets and more as a secured obligation of the sponsor bank, like covered bond facilities, but with much shorter terms.

Question 4 – What are respondents' views on the level of standardization of securitization transactions' documentation? Would some minimum level of standardization of prospectuses, investor reports and key transaction terms be beneficial? Do respondents think there are other areas that could benefit from more standardization? Would a standardized template including where to find the 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 standardized.

It is our view that standardization is an important consideration for simple and transparent securitization. Care must be taken in developing such criteria so as to recognize the diversity of legal systems which govern the various assets and the different market rules and regulations across different legal jurisdictions. Undertaking such a formalized effort might be extremely challenging.

Standardization of disclosures is clearly a step in the right direction and we continue to see efforts in many jurisdictions towards standardization. Again we would point out that there may be challenges in standardizing across markets and legal jurisdictions. The use of reporting templates is a sound idea and may be appreciated by the investor community to standardize investor reporting, though care would be required to ensure that all market and jurisdictional requirements for disclosure are still met without making the reporting standards complex and difficult to read and understand.

APPENDIX 1

Feedback on criteria for qualifying securitizations

Criterion	**Comments**
A. Asset risk	
1. **Nature of the assets** Criteria In simple, transparent and comparable securitizations, the assets underlying the securitization should be credit claims or receivables that are homogeneous with respect to their asset type, jurisdiction, legal system and currency. As more exotic asset classes require more complex and deeper analysis, credit claims or receivables should have defined terms relating to rental,[1] principal, interest, or principal and interest	The requirement for homogeneity of asset class is sensible but it should be made clear that this is intended to apply in a broad way across asset classes. As examples, auto loans and leases could be in the same securitized portfolio, as could a range of consumer receivables. It is not clear why the requirement for the same currency is needed so long as there is an appropriate currency hedge in place so as to reduce or eliminate any exchange rate risk. Currency hedging is covered by Criterion 8 already. It is not clear why all assets would need to be governed by the same legal system. As an example,

[1] Payments on operating and financing lease are typically considered to be rental payments rather than payments of principal and interest.

Criterion	Comments
payments. Any referenced interest payments or discount rates should be based on commonly encountered market interest rates, but should not reference complex or complicated formulae or exotic derivatives.[2] Additional consideration Whilst the principles behind this criterion should be understandable, the terms "complex or complicated formulae", "exotic derivatives" and "homogeneity with respect to geographical origin" may need to be defined, depending on the application of the criterion.	certain UK RMBS securitizations routinely include assets from two different legal systems (English and Scottish law) with separate enforcement processes. It is our opinion that this does not diminish the transactions simplicity or transparency. Limiting the payment streams to rental, principal and interest does not cover the entire spectrum of cash flow payments. For instance, royalty payments do not fit the definition yet are both simple and transparent The definition of payment streams should be expanded to cover most other income-producing asset. As to the terms mentioned in the "additional considerations", we would like to see expanded definitions in order to assess their meaningfulness in this context. There are certain standard market terms and conventions that might be inadvertently excluded as they were not defined.
2. **Asset performance history** Criteria New and potentially more exotic asset classes are likely to require more complex and heightened analysis. In order to provide investors with sufficient information to conduct appropriate due diligence and access to a sufficiently rich data set to enable a more accurate calculation of expected loss in different stresses, verifiable loss performance data, such as delinquency and default data, should be available for credit claims and receivables with substantially similar risk characteristics to those being securitized, for a time period long enough to permit meaningful evaluation by investors. Sources of and access to data and the basis for claiming similarity to credit claims or receivables being securitized should be clearly disclosed to all market participants. Additional consideration In addition to the history of the asset class within a	We agree that these criteria are important for STC. When new asset classes frequently emerge due to the evolution of trading markets, a sufficient amount of historical performance data is desirable. Quantifying "sufficient" is, however, challenging. At the same time, changes to the quality of underwriting or other market forces can materially alter the quality and expected behaviour of major asset classes, so that historical data is no longer indicative of future performance. The committee must balance these considerations to ensure that new asset classes are not held to an overly high standard, which might be detrimental to securitization markets while not providing a meaningful improvement in asset performance predictability.

[2] The Global Association of Risk Professionals (GARP) defines an exotic instrument as a financial asset or instrument with features making it more complex than simpler, plain vanilla, products.

Criterion	Comments
jurisdiction, investors should consider whether the originator, sponsor, servicer and other parties with a fiduciary responsibility to the securitization have an established performance history for substantially similar credit claims or receivables to those being securitized and for an appropriately long period of time.[3] "Substantially similar credit claims or receivables to those being securitized" may need to be defined depending on the application of the criterion.	
3. **Payment status** <u>Criteria</u> Non-performing credit claims and receivables are likely to require more complex and heightened analysis. In order to ensure that only performing credit claims and receivables are assigned to a securitization, credit claims or receivables being transferred to the securitization may not include obligations that are in default, delinquent or obligations for which the transferor[4] or parties to the securitization[5] are aware of evidence indicating a material increase in expected losses or of enforcement actions. <u>Additional consideration</u> The terms "default", "delinquent" and "material increase" may need to be defined depending on the application of the criterion.	No comment on these criteria as the criteria are reasonable. As to the additional considerations, they are correct; however, we expect that there will be uniform definitions of the terms "default" and "delinquent". This will be challenging, given the many different legal jurisdictions and asset classes that need to be considered when developing these definitions.

[3] It is not the intention of the criteria to form an impediment to the entry of new participants to the market, but rather that investors should take into account the performance history of the transaction parties when deciding whether to invest in a securitization.
[4] E.g., the originator or sponsor.
[5] E.g., the servicer or a party with a fiduciary responsibility.

Criterion	Comments
4. **Consistency of underwriting** Criteria Investor analysis should be simpler and more straightforward where the securitization is of credit claims or receivables that satisfy uniform and non-deteriorating origination standards. To ensure that the quality of the securitized credit claims and receivables is not dependent on changes in underwriting standards, the originator should demonstrate to investors that any credit claims or receivables being transferred to the securitization have been originated in the ordinary course of the originator's business to uniform and non-deteriorating underwriting standards. These should be credit claims or receivables which have satisfied uniform and non-deteriorating underwriting criteria and for which the obligors have been assessed as having the ability and volition to make timely payments on obligations; or on granular pools of obligors originated in the ordinary course of the originator's business where expected cash flows have been modelled to meet stated obligations of the securitization under prudently stressed loan loss scenarios.	In general we agree with these criteria but see difficulties with how an originator should demonstrate that assets have been originated in its ordinary course of business. We would suggest that the originator is obliged to describe the process of origination for the relevant assets in the offering memorandum, and to what extent the originator's credit policies have been applied. Additionally, the requirement for consistent origination pursuant to "uniform and non-deteriorating underwriting standards" may have the effect of excluding a number of asset classes that the market may deem to be simple and transparent. It would also most likely exclude securitizations of portfolios bought from other banks or with multiple contributing originators, such as we see across the Commercial Mortgage backed securitization markets. Additional consideration would need to be given where underwriting standards are changing over time. It could serve to lock an originator into a situation where required or necessary changes to underwriting standards will not be made to ensure compliance with these criteria. This decision should be left to be flexible in the judgment of the originator subject to applicable regulation.
5. **Asset selection and transfer** Criteria Whilst recognising that credit claims or receivables transferred to a securitization will be subject to defined criteria[6] the performance of the securitization should not rely upon the initial and ongoing selection of assets through active management on a discretionary basis of the securitization's underlying portfolio. Credit claims or receivables transferred to a securitization should be whole portfolios of eligible credit claims or receivables, or should be randomly selected from those satisfying eligibility criteria and may not be actively selected, actively managed or otherwise cherry-picked on a discretionary basis. Investors should be able to assess the credit risk of the asset	The committee should be aware that there are certain securitization transactions (mostly SME securitizations) where it is necessary for an originator to depart from a random selection process and to exercise some judgment and discretion to ensure that the structure meets requirements of junior investors, or to ensure the securitized pool represents assets where the obligor has consented to disclose the features necessary to comply with regulation. Additionally the definitions for representations and warranties in the closing wording of these criteria need to be made appropriate and flexible to cover a multitude of asset classes.

[6] E.g., the size of the obligation, the age of the borrower or the LTV of the property.

Criterion	Comments
pool prior to their investment decisions. In order to meet the principle of true sale, the securitization should effect true sale or effective assignment of rights for underlying credit claims or receivables from the seller on terms such that the resulting claims on these credit claims or receivables: • are enforceable against any third party; • are beyond the reach of the seller, its creditors or liquidators and are not subject to material re-characterisation or clawback risks; • are not effected through credit default swaps, derivatives or guarantees, but by a legal assignment of the credit claims or the receivables to the securitization; and • demonstrate effective recourse to the ultimate obligation for the underlying credit claims or receivables and are not a securitization of other securitizations. In applicable jurisdictions, securitizations employing transfers of credit claims or receivables by other means should demonstrate the existence of material obstacles preventing true sale at issuance[7] and should clearly demonstrate the method of recourse to ultimate obligors.[8] In such jurisdictions, any conditions where the transfer of the credit claims or receivable is delayed or contingent upon specific events and any factors affecting timely perfection of claims by the securitization should be clearly disclosed. The originator should provide representations and warranties that the credit claims or receivables being transferred to the securitization are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due.	

[7] E.g., the immediate realisation of transfer tax or the requirement to notify all obligors of the transfer.
[8] E.g., equitable assignment, perfected contingent transfer.

Criterion	Comments
Additional consideration The term "materiality" will need to be defined depending on the application of the criterion.	
6. **Initial and ongoing data** Criteria To assist investors in conducting appropriate due diligence prior to investing in a new offering, sufficient loan-level data or, in the case of granular pools, summary stratification data on the relevant risk characteristics of the underlying pool should be available to potential investors before pricing of a securitization. To assist investors in conducting appropriate and ongoing monitoring of their investments' performance and so that investors that wish to purchase a securitization in the secondary market have sufficient information to conduct appropriate due diligence, timely loan-level or granular pool stratification data on the risk characteristics of the underlying pool and standardized investor reports should be readily available to current and potential investors at least quarterly throughout the life of the securitization. Cutoff dates of the loan-level or granular pool stratification data should be aligned with those used for investor reporting. To provide a level of assurance that the reporting of the underlying credit claims or receivables is accurate and that the underlying credit claims or receivables meet the eligibility requirements, the initial portfolio should be reviewed for conformity with the eligibility requirements by an appropriate independent third party, other than a credit rating agency, such as an independent accounting practice or the calculation agent or management company for the transaction.	The requirement for loan-level or summary stratification data is appropriate. These types of disclosures are already made in many securitizations across all asset classes. As long as the new criteria is not introducing an additional standard above and beyond those already in place such that there is no duplication or the additional burden of cost to provide the relevant data on more than one occasion and in one format. Another important fact to consider is how existing securitization transactions that do not meet this requirement on an historical basis would go about becoming compliant on a going forward basis. Additionally, loan-level data is generally not available prior to issuance because, like transaction documents, as the final composition of the portfolio is not determined until shortly before issuance due to last minute additions or deletions to the portfolio. Finally, while in most cases Independent Auditors perform verification work of the initial pool, the auditors are reluctant to share their results outside of the parties engaged within the securitization. While there is a large amount of independent due diligence, the auditors letter is not provided to the investors.
B. Structural risk	
7. **Redemption cash flows** Criteria	These are sensible criteria, however further details are required with regards to how it would be applied. There are a number of asset classes where there is significant granularity (e.g. credit card receivables,

Criterion	Comments
Liabilities subject to the refinancing risk of the underlying credit claims or receivables are likely to require more complex and heightened analysis. To help ensure that the underlying credit claims or receivables do not need to be refinanced over a short period of time, there should not be a reliance on the sale or refinancing of the underlying credit claims or receivables in order to repay the liabilities, unless the underlying pool of credit claims or receivables is sufficiently granular and has sufficiently distributed repayment profiles. Rights to receive income from the assets specified to support redemption payments should be considered as eligible credit claims or receivables in this regard.[9]	residential mortgage loans, auto loans), however certain asset classes like single-loan CMBS or (balance sheet) CLOs, or certain US CMBS transactions that are made of up roughly 60-90 loans, that may not be deemed to be "sufficiently granular" to meet these criteria. Additionally, it is not clearly defined in the criteria what is meant by a "sufficiently distributed repayment profile". While we agree that conceptually this criteria is important, many assets in the securitisation market are subject to refinancing (e.g. company loans, mortgage loans, etc.). Strictly speaking, these criteria would exclude many asset classes, which we believe is not the intention.
8. **Currency and interest rate asset and liability mismatches** Criteria To reduce the payment risk arising from the different interest rate and currency profiles of assets and liabilities and to improve investors' ability to model cash flows, interest rate and foreign currency risks should be appropriately mitigated and any hedging transactions documented according to industry-standard master agreements. Only derivatives used for genuine hedging purposes should be allowed.	These are sensible criteria, provided that the definition of "appropriately mitigated" does not exclude macro hedging.
9. **Payment priorities and observability** Criteria To prevent investors being subjected to unexpected repayment profiles during the life of a securitization, the priorities of payments for all liabilities in all circumstances should be clearly defined at the time of securitization and appropriate legal comfort regarding their enforceability should be provided. To ensure that junior note holders do not have inappropriate payment preference over senior note holders that are due and payable, throughout the	It is not clear herein that the language dealing with debt forgiveness, forbearance, payment holidays and other asset performance remedies is in the spirit of the criteria for payment priorities. Payment priorities and observability refers to the debt side of the securitization but the terms forbearance and debt forgiveness are asset side nomenclature. This is a little confusing. The application of rules allowing for debt forgiveness or forbearance are based upon legal jurisdiction and asset type It is already standard practice in most jurisdictions for the originators to provide information showing the pool performance as measured against the relevant triggers. The purpose of this disclosure is to act as an early warning signal in a transaction and the likelihood of a trigger being breached is inherently

[9] For example, associated savings plans designed to repay principal at maturity.

Criterion	Comments
life of a securitization, or, where there are multiple securitizations backed by the same pool of credit claims or receivables, throughout the life of the securitization programme, junior liabilities should not have payment preference over senior liabilities which are due and payable. The securitization should not be structured as a "reverse" cash flow waterfall such that junior liabilities are paid where due and payable senior liabilities have not been paid. To ensure that debt forgiveness, forbearance, payment holidays and other asset performance remedies can be clearly identified, policies and procedures, definitions, remedies and actions relating to delinquency, default or restructuring of underlying debtors should be provided in clear and consistent terms, such that investors can clearly identify debt forgiveness, forbearance, payment holidays, restructuring and other asset performance remedies on an ongoing basis. To help provide investors with full transparency over any changes to the cash flow waterfall, payment profile or priority of payments that might affect a securitization, all triggers affecting the cash flow waterfall, payment profile or priority of payments of the securitization should be clearly and fully disclosed both in transaction documentation and in investor reports, with information in the investor report that clearly identifies the breach status, the ability for the breach to be reversed and the consequences of the breach. Investor reports should contain information that allows investors to easily ascertain the likelihood of a trigger being breached or reversed. Any triggers breached between payment dates should be disclosed to investors on a timely basis in accordance with the terms and conditions of the transaction documents. Transactions featuring a revolving period should include provisions for appropriate early amortisation events and/or triggers of termination of the revolving period, including, notably: (i) deterioration in the credit quality of the underlying exposures; (ii) a failure to acquire sufficient new underlying exposures of similar credit quality; and (iii) the occurrence of an insolvency-related event with regard to the originator or the servicer.	unpredictable. Additionally, the requirement to switch to straight line payments in the event of a performance-related trigger, may not be an appropriate solution in all cases. The committee should consider other remedies such as exclusion of the transaction from the STC rules in the event of a performance related trigger

Criterion	Comments
Following the occurrence of a performance-related trigger, an event of default or an acceleration event, the securitization positions should be repaid in accordance with a sequential amortisation priority of payments, in order of tranche seniority, and there should not be provisions requiring immediate liquidation of the underlying assets at market value. To assist investors in their ability to appropriately model the cash flow waterfall of the securitization, the originator or sponsor should make available to investors, both before pricing of the securitization and on an ongoing basis, a liability cash flow model or information on the cash flow provisions allowing appropriate modelling of the securitization cash flow waterfall.	
10. **Voting and enforcement rights** Criteria To help ensure clarity for securitization note holders of their rights and ability to control and enforce on the underlying credit claims or receivables, in particular upon insolvency of the originator or sponsor or where the obligor is in default on the obligation, all voting and enforcement rights related to the credit claims or receivables should be transferred to the securitization and investors' rights in the securitization should be clearly defined under all circumstances, including with respect to the rights of senior versus junior note holders. Additional consideration The criteria could be adjusted by specifying that the most senior rights are afforded to the most senior liabilities to ensure that senior note holders benefit from control of voting and enforcement rights, subject to legislative restrictions over such rights.	These criteria appear to be reasonable without comment. As to the additional criteria, the inclusion of the requirement outlined, we are concerned that it would deter investors in the junior tranches of securitizations if it were included and interpreted to require that all voting rights be allocated to the most senior classes. The removal of the ability of junior tranches to have at least some say in the decisions most likely to affect their recovery is contrary to industry practice and may lead to reduced demand for those junior tranches.
11. **Documentation disclosure and legal review** Criteria To help investors to fully understand the terms, conditions, legal and commercial information prior to	This criteria appears to be reasonable, however, it is not always possible to finalise all transaction documents with sufficient time before issuance. This could serve to raise issues with regards to overall disclosure within the transaction. In certain jurisdictions, draft documentation is provided though it may not yet be binding or may be further negotiated or altered prior to finalization.

Criterion	Comments
investing in a new offering and to ensure that this information is set out in a clear and effective manner for all programmes and offerings, sufficient initial offering documentation[10] should be provided to investors (and readily available to potential investors on a continuous basis) within a reasonably sufficient period of time prior to issuance, such that the investor is provided with full disclosure of the legal and commercial information and comprehensive risk factors needed to make informed investment decisions. These should be composed such that readers can readily find, understand and use relevant information. To ensure that the securitization's legal documentation has been subject to appropriate review prior to publication, the terms and documentation of the securitization should be reviewed and verified by an appropriately experienced and independent legal practice. Investors should be notified in a timely fashion of any changes in such documents that have an impact on the structural risks in the securitization. <u>Additional consideration</u> Standards for consistency of information and disclosure could be considered for this criterion.	There should be some flexibility in the timing of providing full documentation until perhaps after the transaction has settled because by law the prospectus is required to contain all material information, so the investor is getting a clear and transparent view of the material facts and provisos of the securitization.
12. **Alignment of interest** <u>Criteria</u> In order to align the interests of those responsible for the underwriting of the credit claims or receivables with those of investors, the originator or sponsor of the credit claims or receivables should retain a material net economic exposure and demonstrate a financial incentive in the performance of these assets following their securitization.	While the criteria are sensible, this needs to be done in compliance with local market risk retention rules. To the extent that there are differences or varying risk retention rules across different jurisdictions the criteria could be used to help better align the differing jurisdictions. The "additional consideration" in relation to these criteria is a little confusing. In many jurisdictions, the party with a fiduciary responsibility is not required to consider the commercial terms of the transaction and

[10] Eg asset sale agreement, assignment, novation or transfer agreement; servicing, backup servicing, administration and cash management agreements; trust/management deed, security deed, agency agreement, account bank agreement, guaranteed investment contract, incorporated terms or master trust framework or master definitions agreement as applicable; any relevant inter-creditor agreements, swap or derivative documentation, subordinated loan agreements, startup loan agreements and liquidity facility agreements; and any other relevant underlying documentation, including legal opinions.

Criterion	Comments
Additional consideration Parties with a fiduciary responsibility to investors should review and confirm the material economic exposure retained by the originator or sponsor and should confirm that the originator or sponsor demonstrates a financial incentive in the performance of these assets following their securitization.	will most likely choose not to review nor confirm compliance with risk retention rules.
C. Fiduciary and servicer risk	
13. **Fiduciary and contractual responsibilities** Criteria To help ensure servicers have extensive workout expertise, thorough legal and collateral knowledge and a proven track record in loss mitigation, such parties should be able to demonstrate expertise in the servicing of the underlying credit claims or receivables, supported by a management team with extensive industry experience. The servicer should at all times act in accordance with reasonable and prudent standards. Policies, procedures and risk management controls should be well documented and adhere to good market practices and relevant regulatory regimes. There should be strong systems and reporting capabilities in place. The party or parties with fiduciary responsibility should act on a timely basis in the best interests of the securitization note holders, and the terms of the notes and contractual transaction documentation should contain provisions facilitating the timely resolution of conflicts between different classes of note holders by the trustees, to the extent permitted by applicable law. The party or parties with fiduciary responsibility to the securitization and to investors should be able to demonstrate sufficient skills and resources to comply with their duties of care in the administration of the securitization vehicle. To increase the likelihood that those identified as having a fiduciary responsibility towards investors as well as the servicer execute their duties in full on a	While we agree with this criteria conceptually, we believe it will challenging to objectively define and measure "extensive industry experience", "reasonable and prudent standards", "strong systems", "sufficient skills" etc. We believe that adding such criteria would not lead to greater simplicity, transparency or comparability. Post-Lehman, there has been a trend among entities performing 'trustee' or 'fiduciary' roles to shy away from any responsibilities that imply a duty to act in the best interest of investors, for fear of legal action against them. Where any form of responsibility is assumed, such parties often steer on the side of caution and choose the course of inaction, rather than choosing to act and consequently risking legal action being taken against them. Thus, the additional consideration will practically be impossible as no transaction party will be prepared to overrule such a blocking vote. Consequently, many security documents are now drafted to be very prescriptive in the way conflicts between different parties are addressed and resolved, instead of placing stringent duties of care upon fiduciaries and servicers.

Criterion	Comments
timely basis, remuneration should be such that these parties are incentivised and able to meet their responsibilities in full and on a timely basis. Additional consideration Consideration should be given to whether parties with a fiduciary responsibility should act in the best interests of the majority of note holders to prevent situations where a single investor in a junior or mezzanine class can affect a blocking vote through a minority holding in that class, whilst recognising that legislative restrictions over such rights may exist.	
14. **Transparency to investors** Criteria To help provide full transparency to investors, assist investors in the conduct of their due diligence and to prevent investors being subject to unexpected disruptions in cash flow collections and servicing, the contractual obligations, duties and responsibilities of all key parties to the securitization, both those with a fiduciary responsibility and of the ancillary service providers, should be defined clearly in the transaction documents. Provisions should be documented for the replacement of servicers, bank account providers, derivatives counterparties and liquidity providers in the event of failure or non-performance or insolvency or other deterioration of creditworthiness of any such counterparty to the securitization. To enhance transparency and visibility over all receipts, payments and ledger entries at all times, the performance reports to investors should distinguish and report the securitization's income and disbursements, such as scheduled principal, redemption principal, scheduled interest, prepaid principal, past due interest and fees and charges, delinquent, defaulted and restructured amounts, including accurate accounting for amounts attributable to principal and interest deficiency ledgers.	The criteria appears to be reasonable, no comments.