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c/o Bank For International Settlements
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Re: Comments on Consultative Document re: Simple, Transparent and Comparable Securitisations

The Structured Finance Industry Group ("**SFIG**")[1] appreciates the opportunity to offer some general comments on, and to respond to the questions raised by, the December 11, 2014 Consultative Document (the "**Consultative Document**") of the Task Force on Securitisation Markets (the "**TFSM**") of the Basel Committee on Banking Supervision and the International Organization of Securities Commissions that seeks to help industry and regulators develop standards for the identification of simple, transparent and comparable ("**STC**") securitizations which could contribute to building sustainable securitization markets. SFIG acknowledges the

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

efforts of the TFSM that produced the Consultative Document and strongly supports initiatives to strengthen the global securitization markets.[2]

I. **Introduction**

We appreciate and support efforts aimed at addressing the factors that may be hindering the full recovery of sustainable securitization markets. More than seven years after the onset of the financial crisis that for many cast an indiscriminately unfavorable light on virtually all forms of securitization, we are encouraged to see that a more thoughtful and nuanced assessment of the value of securitization has evolved among a broad range of regulatory and quasi-regulatory organizations (such as the constituent institutions of the TFSM).[3] Moreover, we recognize the efforts from both the regulatory community and the private sector to help restore confidence in, and accelerate the development or recovery of sustainable markets for, securitization transactions. We also understand that for certain regulatory or other policy-related purposes the adoption of standards identifying STC securitizations may be desirable and, indeed, helpful.

We are concerned, however, that the focus on the development of sustainable markets for STC securitizations may inadvertently confine to a lesser rank (and thereby hinder or prevent the development of markets for) all other securitizations that for one reason or another do not meet the STC standard.[4] The world economy, as a whole, would benefit from the development of efficient, well-regulated markets for all types of securitizations, including STC securitizations.

For the STC designation to be meaningful, we recognize that it cannot apply to the entire universe of securitization transactions. However, for the designation to be an effective regulatory instrument, it must exclude only those securitizations the inclusion of which would undermine the regulatory goal (or goals) sought to be achieved. Accordingly, the delineation of

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[2] Unless otherwise specified, abbreviations defined in the Consultative Document have the same meaning in this letter.

[3] In addition to the Consultative Document, the following documents (among others) have recently addressed different facets of the regulatory treatment of securitizations: (i) The European Banking Authority's "*EBA Discussion Paper on simple standard and transparent securitisations: Reponse to the Commission's call for advice of December 2013 related to the merits of, and the potential ways of, promoting a safe and stable securitisation market*" (October 14, 2014), available at http://www.eba.europa.eu/documents/10180/846157/EBA-DP-2014-02+Discussion+Paper+on+simple+standard+and+transparent+securitisations.pdf (the "**EBA Consultation**"); (ii) the Basel Committee on Banking Supervision's "*Basel III Document—Revisions to the Securitisation Framework*" (December 11, 2014), available at https://www.bis.org/bcbs/publ/d303.pdf (the "**2014 Basel Securitization Framework**"); and (iii) the IMF Staff Discussion Note authored by Miguel Segoviano, Bradley Jones, Peter Lindner, and Johannes Blankenheim entitled "*Securitization: The Road Ahead*" available at http://www.imf.org/external/pubs/ft/sdn/2015/sdn1501.pdf (the "**IMF Securitization SDN**").

[4] Our concern is echoed in the IMF Securitization SDN, which observes that:

> "A binary two-tier, high/low-quality, classification system at the aggregate level risks creating a fragmented market. Significant "cliff effects" or discontinuities between similar product offerings might result where a slightly lower-quality loan pool attracts drastically lower investor interest if it barely fails to meet the qualifying "high-quality" requirement. Significant pricing and liquidity distortions between tiers may well be exploited by product originators where there is a strong incentive to have deals barely meet the minimum requirement in order to attract the "high-quality" designation."

IMF Securitization SDN, page 20.

the criteria identifying an STC securitization must be a function of the regulatory purpose(s) to be served. We believe that it is critical in the development of STC criteria that the regulatory purposes intended to be served by the STC designation be clearly set out, as these purposes will of necessity impact the types of criteria that are relevant.

For example, if the STC designation is to be used to identify ABS issued as part of securitizations which, when held by banks or other regulated financial entities, are to be entitled to a preferential regulatory treatment not extended to other ABS (such as less punitive risk capital weighting), it would be reasonable to expect the relevant criteria to focus on characteristics such as the quality of the underlying assets, the robustness of the structure and the availability of sufficient information to allow a bank to assess the credit and other key characteristics of such assets and the securities they back. In addition, factors impacting the liquidity of the ABS (such as tranche size, listing/registration status and central bank repo eligibility) would also be relevant to the extent the standard is used in connection with liquidity coverage ratio ("**LCR**") requirements. Alternatively, if the STC designation is to be used in connection with the marketing of ABS, it would be appropriate also to emphasize the quality of the offering disclosure provided to investors and the scope of the fiduciary or other duties owed to investors by the dealers or other entities participating in the offering, in addition to the quality of the underlying assets and the liquidity of the securities. An STC standard that would simultaneously apply to the risk capital treatment of assets held by regulated financial entities as well as to disclosure considerations applicable to a broad range of investors (including non-professional retail investors) would be unduly restrictive as applied to financial institutions, since it would unnecessarily discourage financial institutions from holding otherwise high quality ABS merely because such ABS were not marketed in compliance with rules designed for the protection of a category of investor that does not include regulated financial institutions.

As the preceding discussion makes clear, we do not believe that a single set of criteria would be appropriate to identify STC securitizations for all regulatory purposes. Our specific comments in Part IV of this letter will identify the criteria that we think are appropriate for specified regulatory goals.

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Part II of this letter presents some high-level concerns of our members regarding the overall concept of "high-quality" securitizations (of which the STC securitization model is an example); Part III presents our membership's responses to the questions posed in the Consultative Document; Part IV contains our comments to the different criteria proposed in the Annex to the Consultative Document; and Part V summarizes our conclusions. In addition, in Annex A, prepared on the basis of input provided by several issuer members, we set out examples of a number of different ABS asset classes that our members believe should clearly merit "high-quality" status but which would not meet one or more of the criteria as proposed; and in Annex B we include a copy of our comments to the EBA Consultation.

II. General Comments

Before we answer the specific questions posed in the Consultative Document and provide comments to the STC criteria proposed therein, we wish to discuss three issues that, we believe, need to be addressed as a pre-requisite to the implementation of an STC securitization regime: (i)

the need for consistency of approach to "high quality" securitizations (and the attendant benefits of such a designation) across jurisdictions, ABS asset classes and types of investors, (ii) the delineation of the types of transactions to which the STC regime will apply, and (iii) the administration of the STC designation.

1. Consistency of approach

As the TFSM is aware, a separate consultation (the "**EBA Consultation**") by the European Banking Authority ("**EBA**") on a similar set of criteria intended to delineate "simple standard and transparent" securitizations ("**SSTS**") recently closed. One of the primary objectives of the EBA Consultation was to assist the European Commission in developing criteria that will provide European banks having securitization exposures with more favorable risk capital treatment than would result from applying the guidelines currently in place under the Capital Requirements Regulation (the "**CRR**"),[5] as potentially adjusted in accordance with the securitization capital framework recommended by the Basel Committee on Banking Supervision (the "**BCBS**") in their recently published 2014 Basel Securitization Framework.

While we appreciate the perceived urgency in Europe of adopting a regime for less punitive risk weighting of certain securitizations as a policy tool to facilitate the re-emergence of private securitization markets there, we are very concerned that an increasingly dissimilar capital treatment of securitization exposures among major jurisdictions will have a highly detrimental impact on the global securitization markets and, more generally, on the financial markets. Disparate treatment of securitizations in different jurisdictions will encourage global institutions to engage in regulatory arbitrage and non-economic decision-making by, for example, incentivizing activity (such as the creation of certain types of assets or booking exposures to certain types of asset pools) in the jurisdictions with the most favorable capital regime, rather than in the jurisdiction where the business needs most warrant such activity. In addition, differing regulatory treatment of high-quality securitizations across borders could lead to further fragmentation of the securitization markets by effectively closing the doors to, or making more costly and thereby discouraging, simultaneous offerings of high-quality securitizations in multiple jurisdictions.[6] Accordingly, we urge regulators considering the adoption of high-quality securitization standards to coordinate their efforts so as to ensure that the end result is not a patchwork of regimes in which each securitization market can effectively only be tapped by using jurisdiction-specific disclosure packages or complying with jurisdiction-specific regulatory requirements.

As noted above, we also believe that the criteria dictating which securitizations will benefit from a more favorable regulatory treatment should reflect the regulatory purpose being pursued and that, for example, while requiring the use of "commonly encountered market interest rates" or a strictly "homogenous" asset pool may be legitimate criteria for the

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[5] Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

[6] As the TFSM is aware, in Australia, Canada, the U.S. and the U.K., it is not uncommon to structure a single securitization of high-quality financial assets as a public offering in one jurisdiction and a private placement in one or more other jurisdictions. This approach allows securitizers to efficiently take advantage of the conditions and demand levels prevailing in different markets and have access to funding in different currencies without having to incur the additional cost and possible impracticality of separate stand-alone offerings in each jurisdiction involved.

identification of "high quality" ABS to be offered to retail investors who may have limited analytic capabilities, compliance with the same criteria should not be a mandatory condition when used in connection with the determination of the capital treatment to be given to the same ABS in the hands of a sophisticated financial institution such as a bank or an insurance company that is already subject to supervisory oversight.

The distinctions outlined in the preceding paragraph suggest the need for different sets of criteria (or at least modular subsets thereof) for identifying high quality securitizations depending on the nature of the assets involved, the investor base and the policy objectives to be achieved. Accordingly, the consistency of treatment that we recommend means simply that, once the relevant criteria have been identified for a particular asset class, investor base and regulatory purpose, such criteria should be adopted as uniformly as practicable across jurisdictions. Of course, even identical standards enacted in the same language in different jurisdictions can be (and almost inevitably often are) interpreted and applied differently from jurisdiction to jurisdiction. The lack of uniform implementation is easily compounded when the standards are of necessity translated into different languages and enacted in countries with different legal systems and traditions. For this reason, in the absence of a central authority with the power to enforce globally a uniform interpretation and application of the standards defining high-quality securitizations, we strongly recommend the adoption of a system of substituted compliance (at least, initially, among jurisdictions which, like Australia, Canada, the U.K. and the U.S., have mature and internationally-focused securitization markets), such that determinations made on the basis of the interpretative guidance in one jurisdiction does not need to be re-evaluated by investors or regulated entities in other jurisdictions.

2. Defining "securitization" for purposes of the STC standard

The successful adoption and implementation by legislators and regulators around the globe of a consistent standard for "high quality" securitizations (again, by whatever moniker is finally adopted) will require a uniform set of definitions that clearly delineate the scope of the transactions intended to be covered. However, there is no universally accepted definition of securitization (in fact, the United States has adopted two distinct definitions of the related term, "asset-backed securities", used for different regulatory purposes),[7] and to leave the concept open

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[7] For example:

(a) In the European Union, "securitization" is defined for purposes of the CRR as

> "a transaction or scheme, whereby the credit risk associated with an exposure or pool of exposures is tranched, having both of the following characteristics:
>
> (a) payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures;
>
> (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme"

Regulation (EU) No. 575/2013 (Article 4(61))

(b) In the U.S., there is no definition of the term "securitization", but the United States Securities Exchange Act of 1934, as amended (the "**U.S. Exchange Act**"), defines "asset-backed security" as

Footnote–*continued on next page*

for development in each implementing jurisdiction would result in inevitable discrepancies from jurisdiction to jurisdiction and the potential for deliberate or inadvertent regulatory arbitrage.

Whatever definition is ultimately adopted, it will have to be tailored to the regulatory purpose(s) for which the STC designation will be used. Depending on the scope of such purposes, the relevant definition should focus on one or more of the following elements:

- Nature of the underlying assets, which could range from any "exposure or pool of exposures" (as is the case of the definition in the CRR), to the narrower "self-liquidating financial asset" used in the U.S. Exchange Act definition;
- Whether tranching is a necessary requirement of the transaction (as is the case in the CRR definition), or if single-tranche securitizations should be included;
- Whether synthetic structures are included in the scope of the definition;

> "a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—
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> (i) a collateralized mortgage obligation;
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> (ii) a collateralized debt obligation;
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> (iii) a collateralized bond obligation;
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> (iv) a collateralized debt obligation of asset-backed securities;
>
> (v) a collateralized debt obligation of collateralized debt obligations; and
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> (vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section"
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> U.S. Exchange Act, Section 3(a)(79).

For purposes of the United States Securities Act of 1933, as amended (the "**U.S. Securities Act**"), however, the same term ("asset-backed security") is defined as

> "a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds from the disposition of the physical property underlying such leases."
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> Regulation AB under the U.S. Securities Act, Item 1101(c).

(c) In Canada, while there is no statutory national definition, there have been efforts to adopt national standards (referred to as "National Instruments" or "**NI**"), one of which defines "asset-backed security" as

> "a security that is primarily serviced by the cash flows of a discrete pool of mortgages, receivables or other financial assets, fixed or revolving, that by their terms convert into cash within a finite period and any rights or other assets designed to assure the servicing or the timely distribution of proceeds to securityholders"
>
> NI 52-102

- Whether the securitization has to result in the issuance of a "security" (as in the U.S. and Canadian definitions) or whether a transaction funded only by "loans" should be within the scope of the definition (as in Europe under the CRR); and

- The extent to which the "discrete pool" requirement should be incorporated into a definition and the ability to include in qualifying STC securitizations pools of revolving assets (like credit card receivables, home equity lines of credit and trade receivables) and/or to fund non-revolving assets with "master trust" structures (as is the case with many securitizations of UK residential mortgage loans).

Although there are similarities among the various definitions of "securitization" (or "asset-backed securities") collected in footnote 7~~8~~, subtle differences of the type noted above in what effectively constitutes the "on-ramp" to STC status can only lead to investor confusion and the potential for unproductive regulatory arbitrage. For the sake of clarity, we would recommend the adoption of the elements that are to be seen as essential to the existence of a "securitization" by means of a definition carefully tailored in light of the objectives expected to be reached and regulatory purposes intended to be accomplished by the implementation of an STC securitization regime. Once a consistent, multi-jurisdictional understanding of the term "securitization" has been established, it will be easier for regulators in various jurisdictions to identify the different features that should bear on the determination of the quality level of different types of securitizations.

3. Administration of the STC standard

To the extent that the STC designation is to be used by banking and other regulators for purposes of determining the capital (and, possibly, liquidity) requirements applicable to financial entities under their supervision, our members strongly believe that each regulated entity should be responsible for the determination of whether or not a particular transaction in which they hold an interest or to which they have an exposure meets the STC standard on the same basis, and to the same extent, as they are responsible for all other capital requirement or LCR determinations. This approach would be consistent with the way in which such risk capital and liquidity determinations are currently made for all other assets.[8]

Alternatively, if the STC designation is intended also to be used in connection with marketing of ABS (whether to a particular type of investor or in general), we believe that the best approach for determining how the designation is to be administered will be different. Our members believe that, although there are a number of different considerations to take into account, the best approach in this circumstance would be to allow the originator or sponsor of the securitization to make an assessment of the status of the securitization within the STC criteria and to include its conclusion in the related offering document (perhaps along with a brief analysis of each criterion and why it believes the relevant securitization meets such criterion).

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[8] Should one or more third-party "credentialing" agencies be designated in connection with the determination of compliance with the STC criteria (as discussed in more detail in the next paragraph), we would propose that each regulated financial institution be free to decide whether it will evaluate solely for itself a transaction's compliance with the final STC standard or if it will also take into account the determination of a third party credentialing agency. However, in either case, the ultimate responsibility for the determination of whether a given securitization meets the STC standard and the consequences thereof should nevertheless rest with the regulated entity alone.

We recognize that an originator's or sponsor's assertion as to compliance of its ABS offering with the STC standard may be perceived as biased by the originator's or sponsor's inherent interest in the success of the offering; however, we believe that such concerns can be mitigated by regulatory safeguards such as the imposition of penalties or other economic consequences on originators or sponsors found to have marketed securities based on incorrect or inconsistent assessments of STC compliance.[9]

Any alternative approach to the administration of the STC standard in this context would require the involvement of a credentialing third party (whether a governmental body or a private sector entity) to review the offering and provide its conclusion as to whether (or not) the criteria have been met. An obvious concern with this approach is the potential creation of a new "chokepoint" that may result in a critical reduction of the speed to market for transactions, especially those sold as the result of a reverse inquiry. More importantly, given the inherently high-level and principles-based nature of the STC criteria, any third-party credentialing agency would need to be authorized to make judgmental determinations on a transaction-by-transaction basis as to compliance of the securitization with the various criteria.[10] To effect such a system, a complex regulatory structure would need to be put in place to address issues such as:

- The degree of regulatory deference (if any) to which such judgmental determinations by the credentialing agency will be entitled;
- The consequences of, and ultimate responsibility for, "errors" made in connection with such judgmental determinations (to the extent that the credentialing agency's determinations are not final and binding for all purposes);
- How post-closing amendments to the transaction documents or structure would be handled; if the credentialing agency would be charged with ongoing surveillance and monitoring of all transactions designated as meeting the STC criteria across the globe, the volume of work could quickly become enormous, necessitating significant resources and cost;
- If more than one credentialing agency is to exist, how to resolve potential conflicts if differing judgmental determinations are made (or, if the determination of only one such agency is deemed sufficient, how to avoid "credential shopping" concerns

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[9] Temporarily or permanently depriving an originator or sponsor, or the individuals associated with the faulty determination, from the ability to make future offerings of STC compliant ABS is one of example of the economic consequences that could be considered.

[10] For example, whether the transaction is a "securitization" as ultimately defined; whether the assets that back the securitization should be considered "receivables" or "credit claims" in the relevant jurisdiction; whether the "homogeneity" requirement has been met; whether the asset pool includes any "defaulted" assets (however that term is defined); etc. Importantly, many securitizations are structured with mitigatants to perceived weaknesses (for example, by including additional overcollateralization to mitigate a small amount of defaulted receivables that for legal or practical reasons may need to be transferred to the issuing entity). The appropriate use of mitigants requires a significant application of judgment and experience on the part of the person charged with evaluating whether the mitigant is effective. To require the STC standard to adhere to a formulaic "checklist" system with no ability to appropriately mitigate specific issues would represent a large step backwards for the global securitization industry.

among multiple providers where an originator or sponsor selects the credentialing agency it believes will provide the most favorable response);

- If only one global (or national) credentialing agency is established, how to handle the multiple concerns arising from its monopolistic position; and
- The level of oversight (if any) to whom such credentialing agency or agencies would be subject.

Furthermore, we are very concerned that the implementation of a credentialing agency system could lead to a reprise of many of the undesirable practices exposed by the 2008 financial crisis, such as:

- The potential for overreliance by investors (including banks and other regulated entities seeking favorable capital treatment for their investments in securitizations) on such credentialing agency for the evaluation of a transaction's compliance with the STC regulatory criteria;
- The creation of incentives for any private sector credentialing agencies to increase volume or market share by accommodating the demands or perceived business needs of their customers; and
- Most importantly, the potential for devolving responsibility for the consequences of an inadvertent, negligent or even fraudulent application of the STC standards to one or more entities that will likely have limited liability.

It would be unfortunate to disregard the lessons of the financial crisis in these respects. We believe that the adoption of such an approach would ultimately be detrimental to the TFSM's objective of advancing the development of sustainable securitization markets.[11]

III. Responses of SFIG's members to the questions posed in the Consultative Document

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" securitisations?

We understand the objectives of the TFSM to be the identification of the factors that may be hindering the development of sustainable securitization markets and the development of criteria to identify simple, transparent and comparable securitization structures.[12] We also understand that, in the opinion of the TFSM, the development of STC securitization structures is expected to contribute positively to the development of sustainable securitization markets.[13]

[11] The IMF Securitization SDN flags these risks and specifically cautions against the use of "holistic risk labels". See, IMF Securitization SDN, page 20 (listing, as potential risks, in addition to the undue reliance by investors identified in the text, the potential creation of buying or selling pressure, and moral hazard, if the credentialing agency belongs to the official sector).

[12] Consultative Document, page 3.

[13] *Id.*

While we do agree with this view, we caution the TFSM not to expect the development of STC securitization structures singlehandedly to give rise to the healthy and robust securitization markets necessary for the global economy to take full advantage of the broad benefits that securitization techniques provided in terms of diversification of funding sources for the real economy and dispersion of risks among investors participating in such markets. STC securitizations will constitute only a limited portion of the securitization universe. If the TFSM and the legislators or regulators implementing the TFSM's recommendations around the globe focus their efforts only on developing that portion of the securitization universe, the rewards of this exercise will be significantly constrained.

Furthermore, we do not see a strong connection between the development of the STC securitization standard and an all-around solution to the factors that currently hinder the re-emergence of the securitization markets. The Consultative Document correctly identifies such factors as including the perception of securitization, macro-economic factors, the existence of funding alternatives, the regulatory treatment and lack of certainty surrounding securitization.[14] We discuss our perspectives on these factors in the context of the development of STC criteria below.

Public Perception—Stigma

As Charts 1 to 3 in the Consultative Document make abundantly clear, securitization, as a financing technique, sustained severe reputational damage as a result of the events that led to the financial crisis. While other studies have shown that the losses resulting from securitizations during the financial crisis were disproportionately associated with particular asset classes (in particular, sub-prime RMBS and CDOs of sub-prime RMBS and other ABS) and one geographic market (the United States),[15] the stigma appears to have tarnished the entire financing technique.

We do not believe, however, that such reputational damage arose from the *complexity* of the transactions that resulted in economic losses. Most of the sub-prime RMBS that failed during the crisis were not particularly complex in terms of structure. Even in the case of securitizations that admittedly were more complex (such as "squared" or "cubed" CDOs of sub-prime RMBS and other ABS), attributing their poor post-crisis reputation to their complexity in our view ignores the fact that losses on these securities were due primarily to the poor quality of the underlying assets, an excessive use of leverage and an over-reliance on the credit ratings given to these securities.[16]

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[14] Consultative Document, page 5.

[15] See, e.g., EBA Consultative Document on simple standard and transparent securitisations, European Banking Authority, October 14, 2014, pages 11-13.

[16] We urge the TFSM not to confuse "complexity" with "opacity". Many securitizations involve the use of multiple special purpose entities, complex cash flow allocation rules, different types of credit and liquidity enhancement, multiple and diverse liability structures intended best to align the securitization with perceived investor demand, varying service providers to fulfill different roles (such as cash manager, swap counterparties, and regular and special servicers) and other features that might reasonably be considered "complex". So long as all such features are clearly disclosed in plain language, we do not believe that the presence of these or other "complex" features should prohibit the securitization transaction from being considered of high-quality and thereby meriting the benefits

Footnote–*continued on next page*

Rather than focusing on the complexity of certain structures as the reason for the poor reputation of securitization transactions, we believe that the negative image of securitization derives more from certain market practices that included the use of undisclosed or poorly disclosed defective underwriting criteria in respect of the underlying assets, suspect behaviors by a variety of entities operating at the time in the origination and servicing chain, undisclosed conflicts of interest, misaligned incentives, and asymmetric sharing of information during the years leading up to the financial crisis. Put another way, we believe that an improvement in the reputation of the securitization markets, will require a change in investors' views about the behavior of participants in such markets is, and not from a simplification of the features of the instruments themselves. We believe that important progress has been made since the crisis in this respect. As acknowledged in the IMF Securitization SDN,

> **Regulators in the United States and Europe have taken important steps to address incentive problems due to asymmetric information.** This has been principally achieved through the requirement that originators retain an economic interest ("skin-in-the-game") in the performance of the underlying loans. Securitizations that are idiosyncratic or complex in nature have also been discouraged by the Basel Committee on Banking Supervision (BCBS). Furthermore, regulators in the United States and Europe have introduced measures requiring issuers of ABS to enhance disclosure of information pertaining to the underlying assets. The promotion of simple, generic, and standardized financing vehicles can help address many of the remaining impediments.[17]

SFIG is confident that the numerous regulatory reforms adopted and implemented since the crisis in the United States, Europe and elsewhere positively contribute to addressing investors' concerns in this regard, and we encourage regulators to help restore the tarnished reputation of the securitization markets by focusing on the conduct of specified market participants no longer exist and not the features of the instruments that trade thereon.

Economic Factors

Charts 1 to 3 in the Consultative Document identify as "Macroeconomic factors" and "Funding alternatives" what we believe are, together with the perception problem discussed above, the most significant factors affecting the development or recovery of securitization markets. Unfortunately, these factors will not be impacted by the development of criteria identifying STC securitizations. Accordingly, we see the development of STC criteria as simply one piece of a larger, more holistic effort to restore or develop securitization markets.

Uncertain/Restrictive Regulatory Treatment

Charts 3 and 4 in the Consultative Document clearly show the extent to which the uncertain and constantly evolving regulatory treatment of securitizations currently hinders the

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associated with that designation. We strongly caution against a potential tendency to encourage the "dumbing down" of securitization as a financing technique in order to solve the "stigma" issue noted above.

[17] IMF Securitization SDN, page 11.

securitization markets. According to Chart 3, the single factor that has most hindered securitization markets since 2009 is the regulatory treatment of securitizations and the uncertainty surrounding changes to that treatment. Not surprisingly, Chart 4 in the Consultative Document shows that the most important factor that would encourage investors (both bank and non-bank investors) to participate more actively in the securitization markets would be a relaxation of regulatory restrictions. These two charts suggest that the objective of building sustainable securitization markets would be greatly advanced by the implementation of a principles-based, more nuanced and less prescriptive "all-or-nothing" regulatory approach that evaluates each securitization transaction in light of its own features and not against the possibly unachievable model of the "ideal" securitization transaction. While regulatory change alone will not fully re-emerge, suffice to make securitization markets, without this necessary step, many securitization markets will be unable to achieve their full potential and thereby not contribute to the their fullest extent to the growth of economies that, like those of many European countries, have not yet found their path to a sustained recovery since the outset of the financial crisis.

We believe the application of a single one-size-fits-all STC prescriptive securitization standard (however defined) across all global securitizations may not be the ideal course. Providing regulatory relief from punitive capital requirements and restrictive LCR treatment only to those securitizations that satisfy a single set of suitability criteria which contain a number of elements more appropriate for the protection of less sophisticated investors[18] risks undermining the stated intentions of the development of STC criteria – encouraging more activity in the private securitization markets. As indicated above, the appropriate regulatory treatment of securitizations for capital and LCR purposes should take into account only those ABS features which directly relate to the regulatory goals to be achieved (*i.e.,* ensuring the soundness and liquidity of the financial institutions subject to the requirements). It is also critical not to lose sight of the importance of continuing to strengthen the whole origination/servicing chain given that, as the Consultative Document acknowledges, "the financial crisis highlighted that ***even simple and transparent securitisations could perform poorly*** if the underlying assets were subject to weak underwriting and poor governance".[19]

In short, while we agree that an STC securitization standard can help to achieve certain important policy objectives, regulators should be mindful that (a) the development of the STC standard should not be expected to cure all of the ailments currently afflicting the global securitization markets and (b) the implementation of an STC standard should not have the effect

[18] For example, the requirements for (i) a strictly homogenous pool of assets (Criterion 1); (ii) the ability only to use "commonly encountered market interest rates" (Criterion 1); (iii) "non-deteriorating origination standards" (as opposed to transparent origination standards that can be monitored for compliance against pre-agreed criteria) (Criterion 4); (iv) the inability to include an ongoing selection of assets through "active management" (Criterion 5); (v) the expense of an independent third party evaluation of the initial portfolio for conformity with the eligibility requirements (which may duplicate a bank's own diligence) (Criterion 6); (vi) the use only of "industry standard" master agreements for hedging (as opposed to the use of more bespoke documentation, where needed) (Criterion 8); (vii) the use of detailed offering documentation (as opposed to solely using directly negotiated transaction documents) (Criterion 11); and an independent legal review (as opposed to a legal review by the relevant bank's counsel) (Criterion 11). While all of these criteria may be valuable in some contexts, sophisticated financial institutions should be capable of evaluating whether a transaction is of "high quality" without a strict reference to these criteria.

[19] Consultative Document, page 7 (emphasis added).

of limiting the universe of worthy securitizations appropriately entitled to a favorable regulatory treatment for capital or LCR requirements purposes, thus reducing the supply of credit to the real economy.

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 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 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 securitisation markets due, for example, to the costliness of their implementation?

Part IV of this letter sets forth our views regarding the proposed criteria and related "Additional Considerations".

Question 3: What are respondents' views on the state of 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 short-term securitisation markets by jurisdiction and the views of respondents on concrete comparable criteria that could be applied to short-term securitisations.

We appreciate the opportunity to comment briefly on the state of the short-term securitization markets. Our members are grateful that the TFSM recognizes that short-term securitizations are a key part of the overall securitization market and provide an important source of funding to the real economy.

Asset-backed commercial paper ("**ABCP**") is a vital part of the short-term securitization market. Our members have supported efforts by national regulators to provide relatively more favorable treatment in certain contexts for the segments of the ABCP market that fund bank customer financial assets and the real economy; we would be pleased to work with the TFSM to develop similar criteria to support the revival of this critical market segment. Criteria that focus specifically on the ABCP market should focus on the needs of two sets of participants in this market: investors in ABCP and banks that provide credit and liquidity support to ABCP conduits.

Short-term investors should be encouraged to invest in commercial paper notes issued by ABCP conduits that meet the appropriate STC criteria developed for this market. Sustained economic recovery will require the efficient funding of a variety of asset classes, such as auto, trade and credit card receivables, equipment leases and consumer loans. ABCP conduits are a significant current and future source of this efficient financing.

Banks that provide credit and liquidity support to ABCP conduits should be encouraged to continue to provide that support. Customer securitization transactions funded through ABCP

conduits (or directly by banks) that meet STC criteria should be eligible for the same favorable regulatory treatment as if they were funded in term securitization markets. While most of the criteria that comprise the STC framework are equally applicable to securitizations funded in the short-term markets, some accommodations must be made for transactions funded by ABCP conduits or banks given the privately negotiated nature of these transactions. Our members look forward to working with the TFSM to develop STC criteria tailored to this market. In the meantime, we have added ABCP Conduit market-specific commentary to the individual criteria responses in Section IV below (to the extent that ABCP conduit market considerations differ from those of the term ABS market).

An important consideration for the TFSM is that the banks providing ABCP conduit market financing transactions are typically relationship lenders to their bank customers and so enjoy extensive and direct access, for diligence purposes, to vital information concerning both the underlying assets as well as the creditworthiness and servicing capabilities of the issuers themselves. Since these transactions are privately and directly negotiated between the banks and their customers, the banks have visibility into and control over facility terms.

Question 4: What are 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 there are other areas that could benefit from more standardisation? Would a standardised 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 standardised.

We recognize that a certain degree of standardization in securitization transactions can be beneficial to issuers and investors alike. Examples of effective standardization include the agreed data fields for loan level data prescribed by the U.S. Securities and Exchange Commission and the industry-driven efforts that have led to the "RMBS 3.0" initiative to promote growth in the U.S. private label RMBS market. That said, standardization initiatives across products (and, moreover, across jurisdictions) risk a one-size-fits-all mentality that either glosses over important structural differences between various ABS or, worse yet, forces sponsors to forego structural developments and innovations that could address impediments to securitizations and therefore create more funding for the real economy. We would urge the TFSM to focus elsewhere at this time and re-visit the need for global standardization initiatives after the benefits of the implementation of the STC designation can be better evaluated.

IV. Comments to the proposed criteria

The following are our comments to each of the fourteen criteria set forth in the Annex to the Consultative Document; for ease of reference, prior to our comments we reproduce in italics the corresponding criterion. Please note that some of the examples discussed below are based on the input of certain of our members who provided the detailed analysis of the various asset classes contained in the Annex. These comments do not represent the exclusive concerns of all of our members.

1. Nature of the assets

Criteria

In simple, transparent and comparable securitisations, the assets underlying the securitisation 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, principal, interest, or principal and interest 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.

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.

SFIG Comments

a. To eliminate ambiguities and uncertainty, if the assets underlying STC securitizations are to be limited to "credit claims" or "receivables", these two terms should be clearly defined. What constitutes a "credit claim" or a "receivable" may vary from jurisdiction to jurisdiction and any definition should recognize these differences.

b. More importantly, we question the need for the limitation of STC securitizations to those involving only "credit claims" or "receivables". Numerous other types of financial assets, some of which may not clearly fall into the technical definition of a "credit claim" or a "receivable" in a given jurisdiction (such as licenses, government obligations under stranded cost and other programs and certain leases), have been used in high-quality securitizations. Accordingly, if some limitation of the type of assets underlying an STC securitization is deemed desirable for particular regulatory purposes, we would endorse a broader, more flexible, description along the lines of those used in the U.S. Exchange Act ("self-liquidating financial assets") or the Canadian NI 52-102 ("receivables or other financial assets, fixed or revolving, that by their terms convert into cash within a finite period").

c. We have several concerns about the "homogenous" standard as proposed. First, the mere presence of assets originated in more than one jurisdiction (or with more than one currency of

denomination) should not of itself preclude STC treatment. Second, this element of the criteria may not permit relatively less granular asset classes (such as commercial mortgage backed securities ("**CMBS**")) in which the underlying exposures may not necessarily be considered "homogenous". The same concern may be present in other classes as well, such as transportation ABS, in which different vehicle types (such as autos, trucks and other equipment) may be included in a common pool. As noted in Annex A, it is unclear if U.S. Equipment ABS, Canadian ABS satisfies the "homogenous" criterion. Even the types of equipment underlying U.S. Equipment ABS issuer may not strictly be homogeneous; for example, a smaller originator's assets can range from postage machines to copiers/printers to automotive repair, whereas a mid-size originator's assets can include equipment used in the healthcare, construction and maritime sectors. Third, in the United States, Canada and other jurisdictions, each state, province or the equivalent may have subtle but important differences in its legal and regulatory framework that could be interpreted as making the assets from these different jurisdictions "non-homogenous". Many of the classes of ABS supported by these types of assets have historically performed extremely well, and the lack of strict "homogeneity" alone should not suffice to exclude ABS backed by such assets from STC treatment.

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

e. Further, we believe that limiting the manner in which interest on the underlying assets is computed for purposes of STC status creates the risk that market developments in the real economy may leave the STC designation behind. As long as transparency is achieved on the method in which interest is charged, innovation should not be stifled by definitions that restrict the ability of originators to address market developments.

f. The nature of the assets funded in the ABCP conduit market is generally similar to those funded in the term ABS market. However, ABCP conduits also frequently finance pools of customer assets (particularly, trade receivables) that arise in multiple jurisdictions and so are governed by different legal regimes and are denominated in different currencies. As mentioned above, given that ABCP conduit market lenders have unique access to asset performance data and servicing capabilities across jurisdictions, this absence of homogeneity should not be an impediment to achieving STC status for ABCP-related exposures.

2. <u>Asset performance history</u>

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 securitised, 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 securitised should be clearly disclosed to all market participants.

Additional Consideration

In addition to the history of the asset class within a jurisdiction, investors should consider whether the originator, sponsor, servicer and other parties with a fiduciary responsibility to the securitisation have an established performance history for substantially similar credit claims or receivables to those being securitised and for an appropriately long period of time.

"Substantially similar credit claims or receivables to those being securitized" may need to be defined depending on the application of the criterion.

SFIG Comments

a. We agree that prospective investors and on-going holders of ABS should have access to available data on the historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitized.

b. Caution should be exercised, however, that any historical data requirements are sufficiently flexible to allow originators to extend their origination activities to support growing areas of the real economy without concern that the quality assets they generate may not be securitizable due to an absence of directly comparable historic data (*e.g.,* a lessor of automobiles extending into the leasing of light trucks).

c. ABCP conduit market banks' diligence practices are very thorough due to the fact that they are typically providing a commitment to lend and so have formal internal credit approval processes to satisfy. Banks must also have sufficient performance data to meet regulatory capital calculation procedures (for example, the U.S. supervisory formula approach requires at least five years of performance data for the underlying assets). Accordingly, banks that meet existing regulatory requirements should be deemed to have satisfied these criteria.

d. As noted in Annex A, in the case of Auto ABS and Canadian ABS, this criterion may be a barrier to innovation in auto loan product financings and innovation in financing products. For example, recently, there has been an extension in financing terms offered (such as 84- or 96-month loans) or variable rate loans, which could be considered "new" asset classes.

3. *Payment status*

Criteria

Non-performing credit claims and receivables are likely to require more complex and heightened analysis. In order to ensure that only performing credit claims and receivables are assigned to a securitisation, credit claims or receivables being transferred to the securitisation may not include obligations that are in default, delinquent or obligations for which the transferor or parties to the securitisation are aware of evidence indicating a material increase in expected losses or of enforcement actions.

Additional consideration

The terms "default", "delinquent" and "material increase" may need to be defined depending on the application of the criterion.

SFIG Comments

a. Subject to the observations below regarding how "default", "delinquent" or "non-performing" assets are identified, we agree that this is generally a valid criterion for the determination of STC status.

b. However, the definitions of "default", "delinquent" or "non-performing" can vary significantly among asset classes and across jurisdictions. For example, exposures are considered "defaulted" in most Credit Card ABS only when they are 180 days past due. Likewise, certain government-supported ABS, such as U.S. student loans in FFELP transactions, are clearly high-quality and should not be impacted in treatment due to defaults on underlying exposures which do not affect investors. What constitutes a "defaulted exposure" can be very technical and is inevitably driven by local market practice and regulation for a given asset type. Accordingly, we would recommend a definition of "default" or "non-performing" that is aligned with market and, where applicable, regulatory standards for the relevant class and jurisdiction of the underlying assets.

c. Some additional examples of varying definitions of "delinquent" and "default" are specifically noted in Annex A. For example, in the case of Auto ABS, it is possible for a loan to be current as of the cutoff date but delinquent or even in default as of the closing date as auto pool loans are selected based on a cutoff date well in advance of the closing date. Auto loans are typically not considered delinquent until they are more 30 days or more in arrears. Something similar occurs in the case of Canadian ABS, and in the case of U.S. Equipment ABS, it was noted that it is possible for a receivable to be a few days late at closing without being considered to be in default. In the case of U.S. Credit Card (ABS), it is noted in Annex A that credit card securitization documents usually include definitions for eligible accounts and eligible receivables and delinquent accounts are typically not defined as ineligible.

d. Accordingly, if this criterion is to be included, significant guidance across products and jurisdictions will be needed.

4. *<u>Consistency of underwriting</u>*

Criteria

Investor analysis should be simpler and more straightforward where the securitisation is of credit claims or receivables that satisfy uniform and non-deteriorating origination standards. To ensure that the quality of the securitised 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 securitisation 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 securitisation under prudently stressed loan loss scenarios.

SFIG Comments

a. With respect to the requirement for "uniform and non-deteriorating" origination standards, we note that in securitizations with revolving pools that involve asset replenishment (such as Credit Card ABS), origination standards may vary over time and revised standards may adjust for relevant market factors, and thus it may be difficult to apply the rule that origination is "non-deteriorating" over time. (See the further discussion of this point in Annex A.) However, we believe that, where the required "skin in the game" (risk retention) is present, a track record of performance has been demonstrated, and the relevant asset replacement eligibility criteria require compliance with the originator's then in effect origination standards, the criterion should be considered to be satisfied.

b. It is unclear how an originator would "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". Whether or not a qualitative criterion like this has been satisfied will take a fair amount of judgmental discretion.

c. In the case of Auto ABS, as noted in Annex A, auto loan selection and receivables selection for underlying asset pools typically span multiple years so it would be very difficult to conclude that the auto loans were originated under the same standards or that they were "non-deteriorating" as the relevant standards typically do change in response to macroeconomic conditions and risk tolerance levels of the financing institution. For example, with respect to U.S. Equipment ABS, as indicated in Annex A, the definition of "uniform" must allow for some variance as equipment backed loans/leases have varying structures and rely heavily on collateral value. In addition, portfolios may be sold from one lender to another, and it could be impractical to expect that the underwriting standards of the seller and buyer are "uniform".

d. As noted in Annex A, in the case of Auto ABS, underwriting criteria is generally not uniform. With respect to Auto ABS, different standards may be applied depending on whether the loan is for a new or used vehicle, the term of the loan or whether the loan is to an individual or business. Similarly, different standards can be applied depending on the underlying asset with respect to Canadian ABS. For example, underwriting criteria for credit cards is usually different for mass market credit cards than premium rewards credit cards and is usually different depending on the origination channel.

e. As also pointed out in Annex A, in the case of U.S. Credit Card ABS, the cash flow modeling of a type described in the criterion is generally not used.

5. <u>Asset selection and transfer</u>

Criteria

Whilst recognising that credit claims or receivables transferred to a securitisation will be subject to defined criteria, the performance of the securitisation should not rely upon the initial and ongoing selection of assets through active management on a discretionary basis of the securitisation's underlying portfolio. Credit claims or receivables transferred to a securitisation 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 pool prior to their investment decisions.

In order to meet the principle of true sale, the securitisation 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 securitisation; and*
- *demonstrate effective recourse to the ultimate obligation for the underlying credit claims or receivables and are not a securitisation of other securitisations.*

In applicable jurisdictions, securitisations employing transfers of credit claims or receivables by other means should demonstrate the existence of material obstacles preventing true sale at issuance and should clearly demonstrate the method of recourse to ultimate obligors. 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 securitisation should be clearly disclosed.

The originator should provide representations and warranties that the credit claims or receivables being transferred to the securitisation are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due.

Additional consideration

The term "materiality" will need to be defined depending on the application of the criterion.

SFIG Comments

a. Special circumstances can apply in certain jurisdictions. For example, in the U.S., banks were typically able to isolate the receivables backing Card ABS from insolvency risk without a "true sale" based on guidance by the Federal Deposit Insurance Corporation. As noted in Annex A, in U.S. Credit Card ABS, the issuing entity typically has a first priority perfected security interest in the trust assets and most of the existing U.S. Card ABS trusts also rely on the Federal Deposit Insurance Corporation "Safe Harbor" to address the potential risk of re-characterization in the case of bank receivership. A number of these structures are grandfathered and continue to

be used by active prime issuers. The final criteria need to be flexible enough to not inadvertently exclude such structures.

b. The absolute terms in which the effects of a "true sale" are described in the first two bullet points following the second paragraph of this criterion should be modified to reflect the fact that, in most jurisdictions, so called "true sale" legal opinions are subject to assumptions and qualifications and that, in many instances, it may not be possible for local legal counsel to reach the level of certainty that the language suggests. While these qualifications are important for technical legal reasons (and can vary significantly across jurisdictions and asset classes), it is important to bear in mind that very few (if any) securitization transactions that resulted in losses to investors exist where the losses were due to the factors identified by counsel in these qualifications.

c. The criterion also makes reference to not "effecting" a transfer through a guarantee. It will be important to clarify that guarantees of various types (including letters of credit) that provide credit support should not prevent a transaction from being an STC securitization.

d. Attempting to define "materiality" in a way that differs from how the concept otherwise applies under the securities laws of the different jurisdictions may create unnecessary uncertainties or ambiguities. It is not clear why the concept needs a special definition in the case of an ABS that is issued in an STC securitization.

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

f. More specifically, standard ABS structures with revolving pools (which include Card ABS and dealer floor plan ABS, among others) may have eligibility criteria for asset inclusion, but the assets included may not always be strictly randomly selected, as other weighting factors may be applied, such as the legal entity originating the receivables, the product type, or other features. As noted in Annex A, in the case of Auto ABS and Canadian ABS, auto loans and receivables, respectively, are selected on a random basis subject to eligibility criteria as well as to meet the desired economics of the transaction. Auto ABS and Canadian ABS transactions also contain repurchase obligations for the servicer under certain situations where the underlying auto loan or underlying receivable has been modified by the servicer. Similarly, in the case of U.S. Equipment ABS, as noted in Annex A, the securitization pool is a subset of the total managed portfolio of the originator (not the whole portfolio) satisfying eligibility criteria and concentration limits and not necessarily a "random selection" depending on how random selection is defined. Likewise, upon pool replenishment, variations on the method by which additional receivables are included may not necessarily be strictly "random".

g. As indicated in Annex A, in the case of most U.S. Credit Card ABS, the securitization pool is a subset of the total managed portfolio of the originator (not the whole portfolio) and the originator is able to select any credit card accounts to be added to the securitization trust from time to time as long as those accounts satisfy the eligibility criteria defined in the securitization

documents; *i.e.,* there is generally no limitation on the method of account selection for account additions. Issues can also arise when accounts (and related receivables) are removed from the pool, for example due to the disposition of the originator/servicer of part of its business. In all of these instances, legitimate economic reasons justify a selection of assets otherwise than on a random basis. With this in mind, we would recommend that, rather than relying on a rigid criterion that excludes all securitizations in which the underlying assets are not randomly selected, the STC standard allow for a case-by-case evaluation of the asset selection process to ensure that no inappropriate "adverse selection" is occurring.

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

i. Finally, we would also welcome a clarification, similar to that included in the EBA Consultation, to the effect that substitution of exposures that are in breach of representations and warranties should in principle not be considered active portfolio management.[20]

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 securitisation.

To assist investors in conducting appropriate and ongoing monitoring of their investments' performance and so that investors that wish to purchase a securitisation 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 standardised investor reports should be readily available to current and potential investors at least quarterly throughout the life of the securitisation. 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.

[20] EBA Consultation, Criterion 2.

SFIG Comments

a. We agree that investors and prospective investors should have readily available access to data on the underlying assets; however, we believe that the requirement that data be provided on a loan-by-loan basis should be dependent on the type of asset. For example, in certain jurisdictions (such as the United States), asset-level disclosures are not yet required for all asset classes. We appreciate that, for European financial institutions, Article 409 of the CRR already requires certain loan-level data to be provided. In the absence of an existing regime for providing loan-level data, we do not believe that a further requirement is justified (in no small part due to the absence of any appropriately sanctioned standardization for the presentation of such data and the potential concerns about violating the privacy of the underlying obligors).

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

c. The proposed requirements for reporting seem to go further in terms of quarterly reporting than is currently required in either Europe or the U.S.

d. The proposed requirements would make this reporting mandatory for private transactions seeking to meet the STC standard, even in cases where equivalent disclosure requirements in a given jurisdiction (such as Regulation AB in the United States or disclosure requirements under the Prospectus Directive in Europe) may not apply.

e. ABCP market banks typically have direct access to information regarding issuers' creditworthiness and servicing capabilities.

f. Although the criterion correctly provides that, in the case of granular pools, summary stratification data would be required in lieu of loan-level data, the market would benefit from guidance as to when the level of granularity is such that the alternative regime becomes available.

g. We welcome the suggestion that standardization of the ongoing reports (with appropriate modifications to reflect the peculiarities of different assets classes and structures) is desirable. It would greatly advance the goal of comparability that the TFSM seeks to achieve.

h. In the case of Auto ABS and Canadian ABS, an accounting firm will have performed a review of the agreed upon procedures and have provided agreed upon procedures letters to the underwriters prior to the pricing of the securitization. Such review will have been conducted on a sample basis with respect to eligibility requirements with respect to Auto ABS transactions and likewise, with respect to Canadian ABS transactions if the agreed upon procedures contains a review of eligibility requirements (certain asset classes such as credit cards do not include an eligibility audit). With respect to U.S. Credit Cards ABS transactions, no review of assets by third parties is required; rather, an issuer is required to perform a review of its disclosure in order to provide reasonable assurance that the information contained in its prospectuses relating to the pool assets is accurate in all material respects and pursuant to the securitization transaction documents, and to provide representations that accounts added to the trust and receivables generated under accounts in the trusts meet the eligibility criteria defined in the transaction documents.

7. Redemption cash flows

Criteria

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.

SFIG Comments

a. We acknowledge that financial assets the repayment of which is linked to the sale of a significant tangible property (such as commercial real estate in the case of a loan supporting a commercial mortgage backed security ("**CMBS**")) will require a different type of analysis than that needed for assets exclusively linked to an obligor's direct ability to repay. That said, it is not clear that this different type of analysis is inherently "more complex" than that required to understand the risks associated with a pool support by consumer exposures. Rather than excluding assets of this type from the possibility of supporting STC securitizations, we would suggest that the STC criteria focus more on staggered refinancing timelines that would prevent an ABS from defaulting due to a short term liquidity gap for assets of the relevant type.

b. As indicated in Annex A, U.S. Equipment ABS issuers may not be able to satisfy this criterion if the securitizations include lease residuals. With respect to Canadian ABS, Canadian mortgages are typically refinanced by the obligor over their life and while RMBS pools should be sufficiently granular to satisfy this criterion, CMBS may not be sufficiently granular.

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.

SFIG Comment

We note that the proposed criterion refers to interest rate and foreign currency risks being "appropriately mitigated". The criterion seems to focus on mitigation through traditional hedging transactions. However, interest rate and foreign currency risks may also be mitigated by other means, including over-collateralization, reserve accounts or external support. The final criteria should make clear that so long as such risks are "appropriately mitigated," this criterion has been satisfied. We also note that "appropriately mitigated" will require significant judgment or interpretive guidance to apply.

9. <u>*Payment priorities and observability*</u>

Criteria

To prevent investors being subjected to unexpected repayment profiles during the life of a securitisation, the priorities of payments for all liabilities in all circumstances should be clearly defined at the time of securitisation 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 life of a securitisation, or, where there are multiple securitisations backed by the same pool of credit claims or receivables, throughout the life of the securitisation programme, junior liabilities should not have payment preference over senior liabilities which are due and payable. The securitisation 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 securitisation, all triggers affecting the cash flow waterfall, payment profile or priority of payments of the securitisation 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.

Following the occurrence of a performance-related trigger, an event of default or an acceleration event, the securitisation 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 securitisation, the originator or sponsor should make available to investors, both before pricing of the securitisation and on an ongoing basis, a liability cash flow model or information on the cash flow provisions allowing appropriate modelling of the securitisation cash flow waterfall.

SFIG Comments

a. It is not clear what is meant by "investor reports should contain information that allows investors to easily ascertain the likelihood of a trigger being breached or reversed." If more than standard data points will need to be included in the reports, there should be specific guidelines as to what that information will be. The imposition of open-ended reporting requirements such as this can only result in different information being provided from transaction to transaction, thereby undermining the objective of comparability that the TFSM seeks to accomplish.

b. Our members have different views on the usefulness of liability cash flow models. On the one hand, many investors would clearly welcome such models. On the other hand, requiring the originator or sponsor to produce a liability cash flow model, both before the pricing of the securitization and on an ongoing basis, could raise significant liability concerns for the originators and sponsors. As the dissemination of such models by originators or sponsors is not currently required in any major jurisdiction (including Europe and the United States) and given our members' varying views and the complexity of the issues surrounding this criterion, we believe further specific and detailed consultation on the risks and benefits of such a construct is required prior to imposing any such requirement.

c. Transactions featuring a revolving period will, of necessity, also feature a set of events which cause the revolving period to conclude ahead of the otherwise scheduled termination date (*i.e.,* "early amortization events"). However, we have concerns about a prescriptive set of required early amortization events. While many early amortization events will be linked to an overall deterioration of the asset pool, the connection may be indirect (for example, the reduction of "excess spread" below a required threshold). The specific "credit performance" of underlying exposures (particularly, consumer exposures) typically by itself would not give rise to an early amortization event, particularly given credit enhancement embedded within a structure.

d. Not all well-structured securitizations will be subject to sequential amortization based on the seniority of the tranche. In some cases, other amortization rules may apply (for example, a short-term A-1 tranche normally paid in first position and a longer term A-2 tranche normally paid in second position may be repaid on a *pari passu* basis upon default or early amortization).

So long as the cash flow allocations during both normal periods and following an early amortization event or default are clearly set out in the offering document, we do not believe that the allocation of cash other than on a strict seniority basis following an early amortization or default should impact an ABS's STC status.

e. As indicated in Annex A, in the case of Auto ABS and Canadian ABS, for competitive and other business reasons, certain of the disclosures listed in this criterion are usually not provided and transactions contain repurchase obligations for the servicer in certain scenarios such as where debt forgiveness is provided. In the case of U.S. Credit Cards ABS, a high-level description of any debt restructuring or payment holidays programs is usually included in the securitization disclosure documents and the population of credit card accounts subject to debt restructuring, payment holidays, etc. are usually very small at any point in time. Furthermore, the securitization transaction documents typically only require that the servicer services the credit card receivables in the securitization trusts in accordance with its normal business practices.

g. In addition, in the case of Auto ABS and Canadian ABS, it is unclear whether existing investor report disclosure would "contain information that allows investors to easily ascertain the likelihood of a trigger being breached or reversed". As indicated in Annex A, in the case of U.S. Credit Card ABS, there are typically no triggers that will change the waterfall or the priority of payment and if the waterfall is changed due to an amendment, rating agency confirmation and investor consent will likely be required.

h. As noted in Annex A, in the case of Auto ABS, auto loan transactions typically have been structured as amortizing transactions so these types of early amortization events are not applicable; however, it is possible that similar structures to the revolving U.S. auto loan transactions could be introduced into Canada. In the case of Canadian ABS, early amortization events have been tied to credit performance rather than credit quality. The amortizing transactions do contain triggers that if breached would accelerate the repayment and in those cases, some of the sequential pay senior notes being paid *pari passu*.

10. Voting and enforcement rights

Criteria

To help ensure clarity for securitisation 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 securitisation 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.

SFIG Comments

a. In the first instance, it is not clear what is meant by the requirement that, following an originator or sponsor insolvency all voting and enforcement rights related to the credit claims or receivables should be transferred to the securitization. Typically, the servicer of a securitization continues to make decisions with respect to the underlying assets in a securitization, even following an originator insolvency. It would be unusual for either the ABS holders as a group or the Trustee on their behalf to exercise any voting or enforcement rights related to the underlying receivables.

b. ABCP conduit market transactions are typically structured such that the banks constitute the sole and senior investor class.

c. Moreover, while the "additional consideration" to this criterion generally fits most ABS transactions, it is not clear to our members why it should be given particular significance in the STC framework. There may be cases where other than senior class voting rights is more appropriate to one or more elements of a particular transaction (such as determining the replacement of a "special servicer" whose identity could have a greater impact on the more risk-sensitive junior securities). So long as voting rights are clearly set out in the relevant offering materials, we do not think any particular voting rights require should impact the "qualifying" status of an ABS. For example, as indicated in Annex A, in the case of Canadian ABS, while all voting rights are disclosed in the offering documents, these transactions may not satisfy this "additional consideration." With respect to U.S. Credit Card ABS, all third party noteholders of any affected class or tranche of notes have equal voting rights, regardless of the credit tranche they hold.

11. Documentation disclosure and legal review

Criteria

To help investors to fully understand the terms, conditions, legal and commercial information prior to 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 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 securitisation's legal documentation has been subject to appropriate review prior to publication, the terms and documentation of the securitisation 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.

Additional consideration

Standards for consistency of information and disclosure could be considered for this criterion.

SFIG Comments

a. We support access of investors to information regarding the underlying transaction documentation. In the United States, material transaction documentation for registered transactions is on file with the Securities Exchange Commission and publically available. For privately placed transactions, material documentation is generally available upon request.

b. The first sentence in the second paragraph is not clear. It appears to suggest that the documentation needs to be reviewed by qualified legal counsel to ensure that it is "reviewed and verified". What would be the object of this review – simply to make sure that the descriptions of the transaction documents in an offering document are aligned with the terms of the final documentation? More importantly, the suggestion that legal counsel be "independent" raises questions as to whether additional counsel, other than counsel representing the different parties to the securitization transaction, may be contemplated.

c. ABCP banks directly participate in the negotiation of terms. They and their counsel typically review and agree all terms and so would not need a further external counsel review process.

d. As indicated in Annex A, it is unclear if a variety of transactions would satisfy this criterion and it would be helpful to clarify the meaning of "reasonably sufficient period of time" as a period of three days and "standards for consistency". Also noted in Annex A, publicly registered U.S. ABS programs are required to file their prospectuses with the SEC prior to the time of sale and Regulation AB imposes a three-business day waiting period between the filing of the prospectus and the time of sale. Furthermore, we are more generally concerned that highly prescriptive standards for consistency will create significant implementation issues due to the nuances and differences of different asset classes and distribution platforms.

12. Alignment of interest

Criteria

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.

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.

SFIG Comments

a. Provision should be made to allow for substituted compliance to accommodate the different risk retention requirements in different jurisdictions. For example, as noted in Annex A, U.S. ABS programs and many other U.S. ABS will be required to comply with the final U.S. risk retention rules when they come into effect, thereby aligning the interests of the sponsors of

those transactions with those of investors in a manner resulting from several years of consultation between regulators and market participants in the United States.

b. We note that under the final U.S. risk retention rules, certain securitizations that meet detailed criteria relating to the credit quality of the underlying assets (such as securitizations of qualified residential mortgages or "QRMs") may be securitized without any retained exposure by the sponsor. Accommodation should be made with respect to this criterion for securitizations originated in a jurisdiction such as the United States that has designated ABS backed by certain high-quality assets not to require a retained interest by the sponsor.

c. If a specific jurisdiction (such as Canada or Australia) does not have in place its own risk retention framework that could be utilized, would the final STC criteria include a parallel risk retention framework? (As the TSFM is aware, agreeing the details of such a framework consumed significant regulatory resources in both the U.S. and Europe.) Alternatively, the final criteria could allow issuers from such jurisdictions without a home-market risk retention regime to utilize the regime in place in another jurisdiction (such as that of the U.S. or Europe).

d. We understand that the concern underlying the "additional consideration" set forth above is that someone must be responsible for monitoring compliance with applicable risk retention requirements. However, because the scope of the legal duties of the different parties involved in structuring and distributing a securitization transaction vary from jurisdiction to jurisdiction (and one party may be subject to fiduciary duties in one jurisdiction but not in other), it would be better to identify clearly the party with whom that duty rests. Furthermore, it is simply not the case that the parties having fiduciary duties to the investors in the different jurisdictions will necessarily be the best positioned to establish compliance with the criterion and assume responsibility for the consequences of that determination.

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 securitisation 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 securitisation and to investors should be able to demonstrate sufficient skills and resources to comply with their duties of care in the administration of the securitisation 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 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.

SFIG Comments

a. We agree generally that the servicer of a securitization should be able to demonstrate expertise in servicing the underlying assets, supported by a management team with extensive industry experience and that the servicer's policies and risk management controls should be well-documented. We would welcome guidance regarding how the different regulators will assess compliance with this inherently subjective criterion. It would be helpful to clarify the meaning of "a proven track record in loss mitigation." In addition, it is unclear if this criterion would exclude newly formed originators from establishing securitization programs.

b. The attempt to impose standards around the level of servicer compensation may prove difficult to implement across asset classes and jurisdictions and would, in any event, require significant judgment to apply in a given case. In addition, as noted in Annex A, servicers affiliated with the original sellers of the underlying assets are typically not paid separately for their performance as such.

c. As noted in Annex A, the revisions to the U.S. Securities and Exchange Commission's Regulation AB (known as "Reg AB II") will require issuers using shelf registration to include provisions that facilitate investor communications and dispute resolutions.

d. ABCP market banks typically have direct access to information regarding issuers' creditworthiness and servicing capabilities and negotiate the required terms on a case-by-case basis. Also, ABCP conduit market transactions are typically structured such that the banks constitute the sole and senior investor class. Accordingly, we do not believe that a specific criterion of this type would need to apply to bank exposures to ABCP conduits.

14. <u>Transparency to investors</u>

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 securitisation, 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 securitisation.

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 securitisation'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.

SFIG Comments

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

b. We are also supportive of reports to investors that accurately reflect cash flows and their application.

c. ABCP market banks typically perform their own diligence directly in cooperation with issuers.

d. As noted in Annex A, some of the concepts listed are not applicable to U.S. Credit Card ABS. Usually, the investor reports include all key performance metrics, such as yield, payment rate, delinquencies, losses, the amount of collections, and the amounts allocated to each tranche of notes. It is also unclear whether the existing investor reports for Canadian ABS transactions would satisfy this criterion.

e. It would be helpful to clarify the meaning of "being subject to unexpected disruptions in cash flow collections".

V. <u>Conclusions</u>

In summary, our responses to the Consultative Document include, among others, the following key recommendations:

- Continue the process of coordinating with other global regulators to ensure that well-intended regulatory initiatives aimed at fostering growth of healthy securitization markets (such as the criteria for STC securitizations in the Consultative Document) do not lead to the adoption of disparate regimes across jurisdictions. In particular, we believe it would be inappropriate and contrary to the development of healthy global financial markets for the risk capital weightings for securitization exposures to vary significantly between jurisdictions due to the manner of the adoption (or non-adoption) of an STC or equivalent designation in these jurisdictions.

- Ensure that the administration of any STC securitization criteria (i) does not break new ground when applied to banks, allowing supervised financial institutions to reach

their own conclusions on risk capital weightings and (ii) reflects the lessons learned from the administration of credit ratings assigned prior to the financial crisis.

- Regulators should clearly identify and explain to the market the policy purposes and regulatory objectives for which the STC securitization designation will be used. Depending on what these purposes and objectives are, the market may seek an opportunity for further consultation and feedback.

- To the extent that the STC securitization designation will be used in connection with the treatment of securitizations for capital and LCR purposes by banks and other regulated financial institutions, not treat as mandatory those criteria that are more relevant to general market transparency (such as strictly homogenous asset pools or the use of commonly encountered market interest rates), rather than to the risk weighting of assets for regulatory capital purposes.

We greatly appreciate your consideration of our members' comments and would welcome the opportunity to discuss with the TFSM the concerns expressed herein and how our member may contribute to the more successful development of the STC securitization criteria. Please do not hesitate to contact the undersigned at +1 (202) 524-6301 should you have any questions in connection with this letter.

Very truly yours,

Richard A. Johns
Executive Director

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Annex A

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
A - Asset Risk					
Criterion 1 – Nature of the Assets	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.	No [3,4]	Yes. Criterion should be satisfied, but depends on application of homogeneity. Auto loans are backed by various automobile types such as trucks, SUVs, and cars. Transactions have included auto loans to individuals as well as business clients. [5]	Yes	Unclear. Canada has 13 different provinces and territories with all but Quebec under the Common Law legal system. Quebec operates under a Civil Law legal system. Each province and territory has its own laws pertaining to the underlying financing business. The transactions have been structured with these legal system differences in mind and have not presented any challenges. Additional concern for CMBS is the homogeneity of assets as the underlying commercial mortgages can be very diverse in terms of properties.

[1] Auto ABS includes both U.S. and Canadian deals.

[2] CAD ABS includes comments from various asset classes such as credit card ABS, RMBS, CMBS, and auto lease ABS.

[3] Equipment even from one issuer is not "homogenous." A small ticket issuer's assets can range from postage machines to copiers/printers to automotive repair. A mid-size issuer issuance could range from healthcare to construction to maritime.

[4] Legal jurisdictions, even in the US vary as each state has its own judicial/legal system. For the most part, they are similar, but not identical.

[5] Legal jurisdictions, even in the US vary as each state has its own judicial/legal system. For the most part, they are similar, but not identical and Canada has 13 different provinces and territories with all but Quebec under the Common Law legal system. Quebec operates under a Civil Law legal system. Each province and territory has its own laws pertaining to the auto finance business. The transactions have been structured with these legal system differences in mind and have not presented any challenges.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
Criterion 1 – Nature of the Assets	As more exotic asset classes require more complex and deeper analysis, credit claims or receivables should have defined terms relating to rental, principal, interest, or principal and interest 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.	Yes Yes	Yes, although may depend on how terms are defined.	N/A (Card is not considered "exotic") Yes. Interest payment are usually fixed or based on 1M LIBOR or 3M LIBOR	Yes, although may depend on how terms are defined.
Criterion 1 - Nature of the Assets (Additional Considerations)	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.	Yes	N/A[6]	Yes. Most US Card ABS are backed by credit card receivables generate in accounts based in US, and denominated in USD.	Unclear if any underlying asset originated within Canada meets the definition of "homogeneity with respect to geographic origin"
Criterion 2 – Asset Performance History	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.	Unclear[7] Unclear[8]	Yes, although may be a barrier to innovation in auto loan product offerings. Recent examples are extension in financing terms offered (such as 84 or 96 month loans) or variable rate loans. Although loss performance data has been provided, it is unclear what is meant by "verifiable" loss performance data.	Yes. Card receivables are not considered "exotic". However, most US Card ABS program have been in existence for a long period of time, and historical performance data on the credit card pools are publicly disclosed pursuant to Regulation AB.	Yes, although may be a barrier to innovation in financing products. Although loss performance data has been provided, it is unclear what is meant by "verifiable" loss performance data.
Criterion 2 – Asset Performance History (Additional Considerations)	In addition to the history of the asset class within a 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.	Yes	Yes	Yes. Regulation AB requires that the securitization experience and history of key transaction parties (including the originator, servicer, trustee, etc.) be	Yes

[6] Question specific to Canada – do auto loans meet the definition of "homogeneity with respect to geographic origin" given differences in legal systems?

[7] "New" does not necessarily mean more exotic

[8] How is "time period long enough" and "sufficiently rich data set" defined? "Access to data" depends on the type and amount of data being provided.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
				disclosed.	
Criterion 2 - Asset Performance History (Additional Considerations)	"Substantially similar credit claims or receivables to those being securitized" may need to be defined depending on the application of the criterion.	Yes	Yes, although may depend on how terms are defined.	Yes. Should not be a concern for Card ABS, where the receivables are pretty homogenous.	Yes, although may depend on how terms are defined.
Criterion 3 – Payment Status	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 or parties to the securitization are aware of evidence indicating a material increase in expected losses or of enforcement actions.	Unclear[9]	Yes[10] Auto loan pools are selected in advance of the closing date of the transaction and assigned as of a cutoff date that is prior to the closing date. It is possible for a loan to be current as of the cutoff date but delinquent or in default at the closing date. Auto loans are not considered delinquent until it is 30 or more days in arrears.	No. Credit card securitization documents usually include definitions for eligible accounts and eligible receivables. Charged-off accounts (i.e. defaulted accounts), accounts with bankrupt obligors, and accounts classified as counterfeit, fraudulent, stolen or lost are typically considered to be ineligible for addition to the securitization trust. For accounts that are already in a securitization trust and are subsequently charged off, there are typically automatic removal provisions in the securitization documents to remove those accounts. Please note that delinquent accounts are typically NOT defined as ineligible.	Similar situation to the auto loans, although one difference is credit cards. Credit card accounts are selected using eligibility criteria and all accounts meeting that criteria are selected which typically does include delinquent accounts.

[9] Delinquent needs to be defined. Assets being securitized are selected as cutoff date – possible for receivable to be a few days late at closing without being in default.

[10] Loans transferred to the securitization vehicle do not include those in default or 31+ days past due. However, there is not an assessment of the potential for a material increase in expected losses. In Canada, delinquent and defaulted loans as of closing date are repurchased on the first settlement date.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
Criterion 3 – Payment Status (Additional Considerations)	The terms "default", "delinquent" and "material increase" may need to be defined depending on the application of the criterion.	Yes	Yes, although may depend on how terms are defined. Note that delinquent and default are defined terms in the transaction documents and disclosed in offering documents.	Yes, although may depend on how terms are defined.	Yes, although may depend on how terms are defined. Note that delinquent and default are defined terms in the transaction documents and disclosed in offering documents.
Criterion 4 – Consistency of Underwriting	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.	Unclear[11]	Unclear[12]	No. Credit card receivables are underwritten in accordance to the originator's underwriting policies in effect at any point in time. An originator applies the same underwriting standards to all of its accounts, making no distinction between securitizes or non-securitized accounts. It will be helpful to clearly define "uniform and non-deteriorating" underwriting standards. Most US Card ABS programs have highly seasoned accounts in their securitization pools. Some accounts are as seasoned as 10-15+ years. In response to changing economic conditions, consumer	No. Underwriting criteria generally not uniform. Different standards can be applied depending on the underlying asset product. For instance, underwriting criteria for credit cards is usually different for mass market credit cards than premium rewards credit cards and is usually different depending on the origination channel. Receivable selection for the underlying asset pools typically spans multiple years so it would be very difficult to conclude that the receivables were originated under the same standards or that they were non-deteriorating as they

[11] Depends on the definition of non-deteriorating.

[12] The criterion does not define how an originator would "demonstrate" to investors that loans being transferred to the securitization were done so under "uniform and non-deteriorating underwriting standards." Different standards can be applied depending on a variety of factors including whether the loan is for a new or used vehicle, term of loan, or whether the loan is to an individual or a business. Auto loan selection for the underlying asset pools typically spans multiple years so it would be very difficult to conclude that the auto loans were originated under the same standards or that they were non-deteriorating as they typically do change in response to macroeconomic conditions and risk tolerance levels of the financing institution.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
				behavior, rules and regulations, credit card originators will need to be able to adjust its underwriting standards in order to maintain credit quality, profitability, market shares, etc. It will be impractical to expect that underwriting standards remain stagnant for a revolving asset pool. In addition, portfolios may be sold from one lender to another, and it will also be impractical to expect that the underwriting standards of the seller and buyer are "uniform".	typically do change in response to macroeconomic conditions and risk tolerance levels of the financing institution.
Criterion 4 – Consistency of Underwriting	These should be credit claims or receivables which have satisfied uniform and non-deteriorating underwriting Criterion 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.	Unclear[13]	Unclear[14]	No. Credit card receivables are originated the originator's underwriting standards, which do not typically include any "cash flow modeling" relating to securitization obligations. Securitization activities are independent of and should not have any impact on the originator's underwriting standards.	Unclear. Same comments as above. Receivables were originated in the ordinary course of business.

[13] "Uniform and non-deteriorating" must be defined. Equipment backed loans/leases have varying structures and rely heavily on collateral value. Thus "uniform" must allow for some variance.

[14] Criterion does not define how to satisfy uniform and non-deteriorating underwriting standards. However, pools of obligors are originated in the ordinary course of business and cash flows are modeled.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
				It should be noted that most credit card ABS issuers only securitize a portion of their credit card portfolio. Credit card receivables are NOT intended to be "originated for securitization". Additionally, the obligations of the securitization trust change over time and the credit card receivables are revolving constantly. It is impractical and meaningless to run any type of cash flow modeling as part of the normal course of underwriting,	
Criterion 5 – Asset Selection and Transfer	Whilst recognizing that credit claims or receivables transferred to a securitization will be subject to defined Criterion, 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 Criterion 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 pool prior to their investment decisions.	Unclear[15]	Yes. Transactions contain repurchase obligations for the Servicer under certain situations where the underlying auto loan has been modified by the Servicer. Auto loans are selected on a random basis subject to eligibility criteria as well as to meet desired economics of transaction.	Unclear. It will be helpful to define "active portfolio management". In Card ABS, the portfolio is a revolving pool of credit card receivables, the performance of which will be subject to the ongoing underwriting and servicing of the servicer. Typically, the Servicer makes no distinction between securitized receivables and non-securitized receivables and services all receivables in the same way. The originator/servicer, in	Yes. Transactions contain repurchase obligations for the Servicer under certain situations where the underlying receivable has been modified by the Servicer. Receivables are selected on a random basis subject to eligibility criteria as well as to meet desired economics of transaction.

[15] In Equipment ABS, the securitization pool is a subset of the total managed portfolio of the originator (not the whole portfolio). Satisfying eligibility criteria and concentration limits "random selection" so definition is important.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
				its normal course of business, is able to adjust and make changes to its underwriting and servicing standards in response to changes in the economy, industry, consumer behavior, laws and regulations, etc. It will be helpful if such normal business practices would not be considered "active portfolio management". In most Card ABS, the securitization pool is a subset of the total managed portfolio of the originator (not the whole portfolio). The originator is able to select any credit card accounts to be added to the securitization trust from time to time, as long as those accounts satisfy the eligibility criteria defined in the securitization documents. There is generally no limitation on the method of account selection for account additions. However, it is worth noting that most Card ABS programs have some limiting provisions relating to removal of accounts from the trust. Accounts to be removed from a trust are required to be randomly selected, or	

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
				be removed pursuant to an arrangement with a third party (e.g. co-branding or affinity arrangements) which by its terms permits a third party to repurchase specific accounts, or to be selected using another method that would not negatively impact the sale accounting treatment set forth in SFAS 140 as in effect prior to November 15, 2009. Historical performance metrics and data on the composition and characteristics of the credit card receivables in a securitization trust are typically publicly disclosed on a regular, frequent basis. Investors will be able to assess the credit risk of the securitization by analyzing the data that are publicly available.	
Criterion 5 – Asset Selection and Transfer	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-characterization or clawback risks; • are not effected through credit default swaps, derivatives or	Yes, with some limits.[16]	Yes[17]	Yes. In US Card ABS, the issuing entity has first priority perfected security interest in the trust assets, as defined in the securitization documents. Most of the existing US Card	Yes

[16] There are legal principles of "equity" that could limit enforceability. These are rare but are included in reps and warranties and legal opinions.

[17] The true sale opinion does not specify that the true sale is "not effected through credit default swaps, derivatives or guarantees" or that the deal is "not a securitization of other securitizations."

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
	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.			ABS trusts also rely on the FDIC Safe Harbor to address the potential risk of re-characterization by the FDIC in the case of bank receivership. Card ABS typically are not "resecuritization" and do not rely on CDS, derivatives or guarantees to effect the security interest.	
Criterion 5 – Asset Selection and Transfer	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 and should clearly demonstrate the method of recourse to ultimate obligors. 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.	Yes	N/A	N/A	Yes
Criterion 5 – Asset Selection and Transfer	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.	Yes	Yes	The transferor typically makes representations that include (but not limited to), as of each day on which any new receivable is created and as of the date an account is added to the trust, the Transferor owns and has good marketable title to such Receivable….free and clear of any Lien.	Yes
Criterion 5 – Asset Selection and Transfer (Additional Considerations)	The term "materiality" will need to be defined depending on the application of the criterion.	Yes	Unclear[18]	N/A	Yes

[18] Materiality is not currently defined as described.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
Criterion 6 – Initial and Ongoing Data	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.	No[19]	Yes[20]	Yes. It is standard industry practice for US Card ABS issuers to disclose stratification tables of the trust pool in a prospectus.	Yes. Summary stratification data is provided to investors before pricing of securitization. Loan level data has not been provided for most types of securitizations. Loan level data has been provided for CMBS transactions.
Criterion 6 – Initial and Ongoing Data	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.	Yes for quarterly reports but see Note 19.	Yes[21]	Yes. It is standard industry practice for US Card ABS issuers to disclose pool stratification periodically, and to provide monthly investor reporting. For publicly registered transactions, the monthly investor reports are filed as Form 10-D pursuant to SEC regulations. It will be helpful to define "standardized investor reports". Card ABS investor reports all contain important pool and performance metrics. But the format of the reports or the terms used in the reports vary due to differences in	Yes. Ongoing stratification data has not been provided on amortizing transactions. Ongoing stratification data has been provided for revolving pools.

[19] Loan level data has not been provided in Equipment ABS.

[20] Summary stratification data is currently provided to investors before pricing of securitization. Loan level data has not been provided. Upon implementation of Regulation AB II, loan-level data will be provided at the time of offering and on a monthly basis. However, loan level data has not been provided in Canadian auto deals and is not required under Canadian securities laws.

[21] Ongoing stratification data has not been provided on amortizing transactions. Upon implementation of Regulation AB II, loan-level data will be provided at the time of offering and on a monthly basis. Canada, however, does not have a similar requirement.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
				underlying securitization transaction documents.	
Criterion 6 – Initial and Ongoing Data	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.	Unclear[22]	Unclear[23]	Unclear. No review of assets by third parties required for Card ABS. US Card ABS issuers are required, under Rule 193, to perform review of its disclosure in order to provide reasonable assurance that the information contained in their prospectuses relating to the pool assets is accurate in all material respects. US Card ABS Issuers are typically required, pursuant to the securitization transaction documents, to provide representations that accounts added to the	Independent accounting practice has performed review of Agreed Upon Procedures (AUP) and provided report to underwriters prior to pricing of securitization. Accounting firms typically limit the distribution of this AUP report. When the AUP contains a review of eligibility requirements, it is done on a sample basis. Certain asset classes such as credit cards do not include an eligibility audit.

[22] If entire pool of assets being securitized, no, too costly and time consuming. A meaningful sample should be tested.

[23] A sample of accounts is currently tested through an AUP process for selected reporting items. Independent accounting practice has performed review of Agreed Upon Procedures (AUP) and provided report to underwriters prior to pricing of securitization. Accounting firms typically limit the distribution of this AUP report. The AUP is conducted on a sample basis with respect to eligibility requirements. It is unclear if this process would satisfy the “level of assurance” required for this criterion.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
				trust and receivables generated under accounts in the trusts meet the eligibility criteria defined in the transaction documents.	
B – Structural Risk					
Criterion 7 – Redemption Cash Flows	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.	Yes[24]	Yes	N/A	Unclear. Canadian mortgages are typically refinanced by the obligor over their life. RMBS pools should be sufficiently granular to satisfy the criterion. Commercial mortgages have same concern and may not be sufficiently granular. Automobiles backing an auto lease securitization need to be sold after the lease maturity, however, may be sufficiently granular to meet criterion.
Criterion 8 – Currency and interest rate asset and liability mismatches	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.	Yes	Yes	Yes, although it will be helpful to define "appropriately mitigated". There is typically some interest rate mismatch between the underlying credit card assets and the Card ABS. However, that risk is typically already accounted for in the determination of credit enhancement levels of the securitization trust. Currency risk arises if the Card ABS is	Yes

[24] Unless the securitization includes lease residuals.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
				denominated in a different currency from that of the underlying Card assets. Such currency risk is typically mitigated by cross-currency swaps.	
Criterion 9 – Payment Priorities and Observability	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.	Yes[25]	Yes	US Credit Card ABS have bullet maturities.	Yes
Criterion 9 – Payment Priorities and Observability	To ensure that junior note holders do not have inappropriate payment preference over senior note holders that are due and payable, throughout the 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 program, 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.	Yes	Yes	Yes. In US Card ABS, the principal payment waterfall and interest payment waterfall are very clearly defined such that senior notes rank higher in the waterfall. There are typically also provisions that prevent principal payment be made to the more junior notes if the junior notes are required to provide credit enhancement to outstanding senior notes.	Yes
Criterion 9 – Payment Priorities and Observability	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	Unclear[26]	Unclear[27]	The securitization transaction documents typically only require that the servicer services the credit card receivables in the securitization trusts in	For competitive and other business reasons, certain of these disclosures not usually provided. Transactions contain repurchase obligations for the

[25] For "all liabilities in all circumstances" is difficult to "guarantee." What is legal "comfort"?

[26] The policies regarding debt forgiveness, etc. should be clearly described in offering documents, however, is not provided on a loan level basis.

[27] For competitive and other business reasons, certain of these disclosures not usually provided. Transaction documents specify in clear and consistent terms the remedies relating to asset performance and default/delinquencies, including repurchase obligations for the Servicer in scenarios such as where debt forgiveness is provided. However, actions relating to debt forgiveness, forbearance and payment holidays are discussed only in general terms.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
	basis.			accordance with its normal business practices. The population of credit card accounts subject to debt restructuring, payment holidays, etc. are usually very small at any point in time. A high-level description of any debt restructuring or payment holidays programs is usually included in the securitization disclosure documents.	Servicer in scenarios such as where debt forgiveness is provided.
Criterion 9 – Payment Priorities and Observability	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.	Unclear[28]	Unclear[29]	N/A. US Card ABS typically have no triggers that will change the waterfall or priority of payment. If the waterfall is changed due to an amendment, rating agency confirmation and investor consent will likely be required.	Unclear whether existing investor report disclosure would "contain information that allows investors to easily ascertain the likelihood of a trigger being breached or reversed."
Criterion 9 – Payment Priorities and Observability	Transactions featuring a revolving period should include provisions for appropriate early amortization events and/or triggers of termination of the revolving period, including, notably: (i) deterioration in the credit quality of the underlying exposures; (ii) (ii) a failure to acquire sufficient new underlying exposures	Unclear [30]	N/A. Auto loan transactions have typically been structured as amortizing transactions so these types of early	Yes. Card ABS program define early amortization events in the securitization transaction documents. Typical early	N/A. Early amortization events have been tied to credit performance rather than credit quality.

[28] "Might affect" is open ended. "Does adversely affect" could be a better definition. Does "reversed" mean "cured"? "Easily ascertain the likelihood" needs definition.

[29] The transparency and payment priorities required by this criterion are disclosed in both transaction documentation and investor reports. However, it is unclear what information would be required for an investor to "easily ascertain the likelihood of a trigger being breached or reversed."

[30] "Deterioration in credit quality" should be defined. As should "sufficient new underlying exposures of similar credit quality."

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
	of similar credit quality; and (iii) (iii) the occurrence of an insolvency-related event with regard to the originator or the servicer.		amortization events are not applicable. However, there have been revolving auto loan transactions completed in the U.S. and it is possible that similar structures could be introduced in Canada. Early amortization events have been tied to credit performance rather than credit quality.	amortization events include, but are not limited to trigger based the 3-month average excess spread of the trust, the inability of the transferor to add receivables when required (note, the "of similar credit quality" test is not typical),and insolvency of the transferor or servicer.	
Criterion 9 – Payment Priorities and Observability	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 amortization priority of payments, in order of tranche seniority, and there should not be provisions requiring immediate liquidation of the underlying assets at market value.	Yes	Unclear. The amortizing transactions do contain triggers that if breached would accelerate the repayment. But in those cases, some of the sequential pay senior notes begin being paid pari passu.	Yes. The liquidation of the underlying credit card assets is typically only allowed if, following an event of default and acceleration, the consent of a large majority of noteholders has been obtained or if a note has not been paid in full on the legal final maturity date of that note.	Unclear. Similar concerns as Auto ABS.
Criterion 9 – Payment Priorities and Observability	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.	No[31]	No. Cash flow waterfall is clearly disclosed in offering documents. Liability cash flow model has not been provided.	No. Not currently required for US Card ABS.	No. Cash flow waterfall clearly disclosed in offering documents. Liability cash flow model has not been provided.
Criterion 10 – Voting and	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	Unclear[32]	Yes[33]	Yes. Enforcement rights and voting right allocation are clearly	Yes. All voting rights are disclosed in offering documents.

[31] Data on the cash flows should be made available, but sufficient data to "appropriately model the cash flow" might cause concerns for issuers.

[32] What does transfer to the securitization vehicle mean? The trustee?

[33] All voting rights are disclosed in offering documents. However, noteholder voting and enforcement rights are not transferred to the securitization vehicle as referenced in this criterion. A Trustee acts on behalf of the note holder and at their direction.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
Enforcement Rights	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 [vehicle] 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.			defined in transaction documents.	
Criterion 10 – Voting and Enforcement Rights (Additional Considerations)	The Criterion 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.	Yes	Yes. All voting rights are disclosed in offering documents. However, certain transactions may not meet this criterion.	No. All third-party noteholders of any affected class or tranche of notes have equal voting rights, regardless of the credit tranche they hold. For example, if the issue affects all noteholders, then all third party noteholders, regardless of whether they are holding the subordinated or the senior tranches, will be able to vote. The indenture typically specifies the percentage of votes required to effect an action that will be binding on all holders of the affected notes or class or tranche of notes.	All voting rights are disclosed in offering documents. Transactions may not meet this criterion.
Criterion 11 – Document Disclosure and Legal Review	To help investors to fully understand the terms, conditions, legal and commercial information prior to investing in a new offering and to ensure that this information is set out in a clear and effective manner for all programs and offerings, sufficient initial offering documentation 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.	Unclear[34]	Yes, securities laws require all material disclosures.	Yes. Publicly registered Card ABS program are required to file their prospectuses with the SEC prior to the time of sale. The newly adopted Regulation AB II further imposes a 3 business day waiting period between the filing of the prospectus	Yes, securities laws require all material disclosures.

[34] Reasonably sufficient period of time should be defined.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
				and the time of sale.	
Criterion 11 – Document Disclosure and Legal Review	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.	Yes, but see note 34 for "timely fashion."	Yes[35]	Yes. It is standard industry practice for issuers and underwriters to engage outside legal counsel with deep experience in Card ABS to review and draft securitization documents. Any potential material risks relating to the securitization will typically be disclosed in the Risk Factors section of the prospectus.	Yes
Criterion 11 – Document Disclosure and Legal Review (Additional Considerations)	Standards for consistency of information and disclosure could be considered for this criterion.	Yes	Unclear	Unclear. It will be helpful to clarify what "standards for consistency" mean. Standards that are highly prescriptive will create significant implementation issues due to the nuances and differences of different asset classes and different structures.	Yes
Criterion 12 – Alignment of Interest	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.	Yes[36]	Yes[37]	Yes. US Card ABS program are required to comply with the US Risk Retention Rule by December 2016. It is worth noting that the interests of the credit	Yes

[35] Issuer and Underwriting Counsel review documents. Offering docs reflect the underlying legal docs that are filed or made available (upon request or otherwise) at or before closing.

[36] Material Net Economic Exposure and "financial incentive" should be defined.

[37] The originator, servicer and securitizer are all the same party, and this party maintains the first loss exposure. Additionally new risk retention rules will require specified holdings amount upon implementation of the rule. Canada has not adopted specific rules, but issuers may implement U.S. rules, particularly if they carry out simultaneous offerings in the U.S.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
				card issuers/sponsors are already aligned with those of the investors because the sponsors are already retaining risk in the form of seller's interest and excess spread.	
Criterion 12 – Alignment of Interest (Additional Considerations)	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.	No	No	It is unclear how such a party (presumably, an indenture trustee) will be able to make such determination, besides confirming that a certain amount of seller's interest or residual interest is being retained by the originator or sponsor.	Yes
C – Fiduciary and Servicer Risk					
Criterion 13 – Fiduciary and Contractual Responsibilities	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.	Unclear[38]	Unclear[39]	Yes, although it will be helpful to clarify what it means by "a proven track record in loss mitigation."	Unclear. Most Originators have long established history in business. However, not clear how satisfaction of this criterion would be demonstrated. Also, not clear if this would exclude relatively newly formed originators from establishing securitization programs that satisfy STC criteria.
Criterion 13 – Fiduciary and	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	Yes	Yes	Yes. Although there is currently no such provision, the newly	Yes

[38] This standard uses multiple terms that should be defined. If not defined, language should be modified.

[39] Most Originators have long established history in auto finance business. However, the requirements for this criterion are broad and subjective and therefore it is unclear how satisfaction would be demonstrated. Also, not clear if this would exclude relatively newly formed originators from establishing securitization programs that satisfy STC criteria.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
Contractual Responsibilities	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.			adopted amendment to Regulation AB will require issuers using shelf registrations to include provisions the facilitate investor communications and dispute resolutions.	
Criterion 13 – Fiduciary and Contractual Responsibilities	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.	Yes, but see note 38.	Unclear[40]	Yes. There is general disclosure about the indenture trustee's experience in securitization available in prospectuses.	Yes
Criterion 13 – Fiduciary and Contractual Responsibilities	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 timely basis, remuneration should be such that these parties are incentivized and able to meet their responsibilities in full and on a timely basis.	Unclear[41]	Unclear[42]	Yes. The roles and responsibilities of the indenture trustee are clearly laid out in the transaction documents.	Yes. Receivable portfolios typically sold as serviced and servicer is not paid if affiliated with original seller of the underlying receivables.
Criterion 13 – Fiduciary and Contractual Responsibilities (Additional Considerations)	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 recognizing that legislative restrictions over such rights may exist.	Unclear[43]	Unclear[44]	Yes. The allocation of voting rights, and the applicable voting thresholds for various matters will be specified in the transaction documents.	Yes
Criterion 14 – Transparency to Investors	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	Yes	Yes, all material provisions are disclosed. Unclear by what is meant by "…to prevent investors being	Yes	Yes, all material provisions are disclosed. Unclear by what is meant by "…to prevent investors being

[40] The requirements for this criterion are broad and subjective.

[41] How would this be structured?

[42] The requirements for this criterion are broad and subjective. In Canada, auto loan portfolios sold as serviced and servicer is not paid if affiliated with original seller of the underlying auto loans.

[43] Determined by documentation.

[44] The requirements for this criterion are broad and subjective.

		US Equipment ABS	Auto ABS[1]	US Credit Card ABS	CAD ABS[2]
	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.		subject to unexpected disruptions in cash flow collections…”		subject to unexpected disruptions in cash flow collections…”
	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.	Yes but must define and limit terms.[45]	Yes[46]	Some of the items listed in this criterion are not applicable to credit card ABS. Typical Card ABS Investor reports include all key performance metrics, including yield, payment rate, delinquencies, losses, amount of collections, the amounts allocate to each tranche of notes, etc.	Unclear whether existing investor reports would satisfy criteria.

[45] “Such as” leaves this open. Required fields should be defined.

[46] In Canada, it is unclear whether existing investor reports would satisfy criteria.

Annex B

January 14, 2015

European Banking Authority
Tower 42
25 Old Broad Street
London EC2N 1HQ
Submitted via www.eba.europa.eu

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

The Structured Finance Industry Group ("**SFIG**")[67] appreciates the opportunity to offer some general comments on, and respond to the questions raised by, the October 14, 2014 discussion paper (the "**Discussion Paper**") of the European Banking Authority (the "**EBA**") that sets forth the proposed characteristics that should define a "simple, standard and transparent" securitization and the requirements that could justify a preferential regulatory capital treatment in the European Union for certain "qualifying" securitizations. SFIG acknowledges the efforts of EBA that produced the Discussion Paper and strongly supports initiatives to strengthen the global securitization markets.

I. Introduction and General Comments

We recognize and support efforts aimed at addressing the need to develop in the European

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

Union a more robust fixed-income investor base willing to invest in EU securitization transactions and prepared to participate in the global securitization markets. Due to the global nature of our financial system, we believe that a well-functioning EU securitization market will positively impact the global financial markets by increasing the diversity and supply of high-quality, tradable financial assets available to all investors and financial intermediaries, as well as broadening the global investor base for securitization products originating from a variety of jurisdictions. Likewise, well-functioning securitization markets in non-EU jurisdictions increase the investor base for EU securitization products and provide financial institution investors in the European Union with a greater supply and diversity of securitization products to hold.

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

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

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

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

The appeal of the SSTS concept is self-evident. What is not clear to our members, and may be contributing to the regulatory uncertainty that the Discussion Paper correctly identifies as one of several factors operating as impediments to the development of a post-crisis EU securitization market, is the scope of application that the concept will have. Clearly, the intended regulatory use will determine how the concept should be framed. The main objective of the Discussion

Paper is to address the relatively narrow question of the securitization prudential regulatory capital framework currently in force in the EU.[68] However, we understand that the SSTS concept (or equivalents) is also being actively considered as a framework for the wider regulation of securitization activity. While securities regulators focused on the strength of markets, and prudential regulators focused on the strength of banking institutions, insurance companies and the overall financial system, may each have an interest in securitization, the different purposes to be served by their respective regulatory regimes will call for different approaches.[69]

For example, an investor-focused securities regulator may be primarily interested in encouraging greater *simplicity* in the terms of ABS permitted to be sold to retail investors who may be least capable of evaluating complex structures, greater *standardization* for ABS of mature asset classes (such as residential mortgage-backed securities ("**RMBS**") and credit-card receivables backs securities ("**Card ABS**")) so as to promote easy comparison of those products and enhance primary and secondary market liquidity of those asset classes, and increased *transparency* across-the-board, so that all investors, regardless of their sophistication, have access to the information necessary to make informed decisions about the ABS they seek to acquire. Alternatively, a banking or insurance regulator may seek to balance these considerations (which, we believe, are less pressing in the case of banks or insurance companies that hold ABS) with a regime that *facilitates appropriate risk-transfer and funding activity* via securitization by the banking institutions and insurance companies under its supervision, allowing these regulated entities to maximize scarce capital by disposing a wider range of financial assets and other exposures to the capital markets via securitizations. The real economy as a whole benefits from the development of well-functioning securitization markets and the manner in which SSTS are defined needs to be flexible enough to adapt to these different objectives. [70]

As noted above, the Discussion Paper, consistent with the mandate received by the EBA from the European Commission, understandably focuses its objective on the analysis of the regulatory capital treatment that certain ABS held by financial institutions in the EU may

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

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

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

receive. In this context, we agree with the Discussion Paper's analytical approach of focusing on the core *credit quality* of the underlying assets and the resultant ABS once any additional risks that result from the process of securitizing assets (such as, for example, servicer or hedge counterparty default risk, underlying pool claw-back risk, etc.) have been appropriately mitigated. We are of the view, however, that for the purposes of determining which securitizations should be entitled to preferential capital treatment, features such as compliance of any related offering document with the requirements of the Prospectus Directive, the scope of the legal opinions delivered at closing, the structure of the payment waterfall, the extent of the investors' voting rights or the diversity of governing laws applicable to the underlying assets (all of which may be desirable in ABS sold to retail investors) may, in many instances, be irrelevant and that, accordingly, for purposes of determining the capital treatment given to a particular securitization, the evaluation of whether these or similar features need to be considered should be made on a case-by-case basis.

Of course, the type of individualized evaluation that we advocate in the preceding paragraph is very difficult, if not virtually impossible, when the regulatory framework adopted follows a prescriptive or "rules-based" approach (as the Discussion Paper does), as opposed to a more "principles-based" approach.[71] We believe that the U. S. Securities and Exchange Commission correctly summarized the pitfalls of the prescriptive, rules-based approach when (referring to the application of that regulatory model to the accounting regulation at the time prevailing in the U.S.) it indicated that:

> "Unfortunately, experience demonstrates that rules-based standards often provide a roadmap to avoidance of the accounting objectives inherent in the standards. Internal inconsistencies, exceptions and bright-lines tests reward those willing to engineer their way around the intent of standards. This can result in financial reporting that is not representationally faithful to the underlying economic substance of transactions and events. In a rules-based system, financial reporting may well come to be seen as an act of compliance rather than an act of communication. Moreover, it can create a cycle of ever-increasing complexity, as financial engineering and implementation guidance vie to keep up with one another."[72]

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

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

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

2. Administration of the SSTS standard

Our members strongly believe that each prospective investor must be responsible for the determination of whether or not a particular transaction in which they hold an interest meets the SSTS standard.[73] In other words, while each investor should be free to decide whether it will evaluate for itself a transaction's compliance with the standards for qualification or, alternatively, whether it will take into account the determination of a third party credentialing agency retained by the transaction sponsor, the ultimate responsibility for the consequences of the characterization should rest with the investor alone. In the case of banking institutions having to apply the SSTS standard to the determination of their capital requirements for securitization exposures, the proposed approach would be entirely consistent with the way in which such risk capital determinations are currently made for all other assets.

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

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

- the creation of incentives for the credentialing agency or agencies to increase volume or market share by accommodating the demands or perceived business needs of their customers;[74]

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

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

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

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

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

3. SSTS jurisdictional issues

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

Although unquestionably the securitizations triggering the 2008 financial crisis originated primarily if not exclusively in the United States, the criteria listed in the Discussion Paper correctly identify and eliminate the deficiencies and anomalies that allowed those securitizations to come to market in the first place.[75] That being the case, we do not believe that a valuable purpose is advanced by excluding from SSTS status securitizations of assets originated in, governed by the laws of, or sponsored or issued by entities organized in, jurisdictions with mature securitization markets such as Australia, Canada and the United States.

The exclusion of non-EEA securitizations from SSTS status would strongly discourage EU-based investors (including, quite likely, non-financial institution investors) from purchasing well-structured ABS backed by a wider range of assets that could allow them to diversify their exposures. Further, should other international regulators decide to follow a similar regionally-biased approach, effective access of EU-based securitizers to other global markets (including the deep and liquid US fixed-income markets) could be significantly impaired, thereby increasing

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

the cost of funding real economy assets in the EU and limiting or frustrating the ability of EU-based securitizers to transfer risks to the global capital markets, which is one of the acknowledged advantages of securitization.

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

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

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

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

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

A clear advantage we see in the three-prong approach common to the Discussion Paper (and the BCBS/IOSCO Paper) is that it allows the different "pillars" (*i.e., simple*, *standard* and *transparent*) potentially to be combined in different ways for different regulatory purposes. For example, if this approach was adopted by a market regulator such as ESMA, securitizations sold to retail investors may have to comply with all three pillars. For regulatory capital purposes (*i.e.,* the stated main objective of the Discussion Paper), however, we believe only the criteria relating to *transparency* and *credit risk* should be <u>necessary</u> requirements (with the other criteria being required on a case-by-case basis as appropriate on a judgmental basis to different classes of

securitizations).[76] For this purpose, however, transparency should not be focused on the kind of disclosure document prepared by the issuer, but on the overall mixture of information provided by originators or sponsors to the financial institution seeking the preferential capital treatment. It should be self-evident that financial institutions investing in securitizations do not need the type of protections that a disclosure document delivered to retail investors (*e.g.*, under the Prospectus Directive) is designed to provide.

With respect to the specific criteria comprising each pillar, we are concerned that their often detailed and prescriptive nature may significantly limit innovation or reduce flexibility for issuers who seek to finance high-quality assets, and potentially divert to foreign markets investors who seek exposure to more diversified products. This prescriptive approach may, in hindsight, prove to have been an "attempt to fight the last war" and leave regulators without adequate tools to address future developments that do not fit the model on the basis of which the regulatory framework was built.

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

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

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

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

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

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

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

- We recognize the inherent differences of synthetic securitizations from "traditional" securitizations that involve the sale of financial assets to affect risk transfer. However, we also believe that criteria could be developed focusing on the transparency of such structures which, when combined with a rigorous approach to the credit risk of the underlying assets, would make certain synthetic securitizations appropriately eligible for a capital treatment that is aligned with that of well-structured traditional securitizations. Our members would welcome a separate consultation on developing such criteria.

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

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

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

- Accordingly, we would recommend a more flexible and principles-based definition of "default" that is aligned with relevant market and, where applicable, regulatory standards

for the relevant class and jurisdiction of the underlying assets.[77] Under this approach, the subject financial institution applying the SSTS criteria would be charged with determining compliance with the criterion (and retaining appropriate support for this determination for the examining supervisor to review).

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

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

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

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

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

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

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

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

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

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

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

- We have significant concerns about the proposed 1% granularity requirement. It effectively limits "qualifying" status to consumer asset-backed ABS. This means that key areas of the real economy that could benefit from the increased supply of credit, such as lending to small and medium-sized businesses and loans to corporate borrowers, which generally performed well throughout the period of the financial crisis, would be excluded. As noted in the Discussion Paper, most losses from securitizations during the financial crisis related directly or indirectly to ABS backed by highly granular assets (sub-prime RMBS and CDOs backed primarily by sub-prime RMBS). Furthermore, the Anotoniades/Tarasheve Paper raises questions about the effective modeling of mezzanine tranches of even highly granular pools backing ABS. We believe that a more even-handed approach would be to require that the granularity of the asset pool be correlated to the amount of credit enhancement provided. For example, no single obligor (or group of obligor) could be permitted to constitute more than 25% of the minimum credit enhancement allowed under the transaction documentation.

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

- See Section III below for our more detailed commentary.

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

- As discussed in our general comments above, we believe that the proposed criteria, if adopted as set out in the Discussion Paper, would have significant adverse market consequences. In particular: (i) if all criteria are applied strictly, very few (if any) ABS

even originating from the EU would achieve "qualifying" status, frustrating the purpose of the initiative; (ii) even if the criteria are broadened to address technical issues in the EU, limiting the criteria to EEA-related underlying assets (and using European-centric regulatory definitions) will inhibit cross-jurisdictional activity, harming overall liquidity and price transparency for financial assets on a global basis; and (iii) even a more multi-jurisdictional approach to the criteria that places specific requirements around the "*simple*" and "*standard*" pillars, when applied to sophisticated (and well-regulated) financial institutions, will inhibit innovation and flexibility in the financial markets without providing a related benefit in risk reduction for the financial system.

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

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

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

- Our members recognize the difficulties of allocating risk weights across tranches of a given securitization. Conceptually, however, the answer should embody the same principle set forth in the answer to Question 10 above.

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

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

III. Additional feedback on proposed criteria

a. Criterion 1

As discussed above, we believe that European-centric criteria (such as requiring a qualifying securitization to meet the CRR definitions of "securitisation" and "traditional securitisation", and not to be a "re-securitisation"), may unduly restrict the range of ABS which regulated banks may hold, and will potentially encourage other jurisdictions to adopt similar regionally-focused approaches, ultimately damaging the global securitization market and real economy. For example, the definition of "re-securitization" could potentially capture certain

multi-tier US structures. In addition, some US asset classes, such as Auto ABS, may utilize special units of beneficial interest ("**SUBIs**") that may not meet the required definitions. If express reference to designated statutory regimes is preferred, and alternative could be the adoption of a "substituted compliance" approach where a securitization that meets the requirements of a regulatory regime in another jurisdiction (such as Regulation AB in the United States), would be deemed to satisfy this criterion (although we note that a number of major jurisdictions do not have in place equivalent sweeping securitization regulation (largely due the absence of significant defaults in that market, such as term ABS from Canada)).

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

b. Criterion 2

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

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

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

We recommend that, rather than this being a strict criterion, regulated banks should be required to make an evaluation of the entirety of the structure, taking into account the particular

circumstances of an ABS, to determine whether any "cherry-picking" concerns are in fact present.

c. Criterion 3

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

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

d. Criterion 4

We are concerned about the "homogenous" standard as proposed. The mere presence of assets originated in more than one jurisdiction (or with more than one currency of denomination) should not prevent a sophisticated financial institution from evaluating whether the ABS is appropriate for "qualifying" treatment. In some countries (such as Canada) there can be significant differences in the legal regime between one sub-jurisdiction and others (such as is the case in Canada with the Province of Quebec). Also, this standard does not suit relatively less granular asset classes (such as commercial mortgage backed securities ("**CMBS**")) in which the underlying exposures, while all of high credit quality, may not necessarily be considered "homogenous". The same concern may be present in other classes as well, such as transportation ABS, in which different vehicle types (such as autos, trucks and other equipment) or different aircraft types may be included in a common pool.

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

With respect to the requirement that the underlying exposures be "full recourse" to the relevant obligors, we note that several jurisdictions in the United States and Canada do not permit full recourse to the obligors in the case of RMBS and certain other asset classes. Assets

subject to these legal limitations have historically been included in securitizations without adversely affecting the quality of the relevant asset pool.

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

e. Criterion 5

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

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

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

- The relatively lower credit score of a certain portion of borrowers in an otherwise prime portfolio may often be mitigated by other factors, such as a relatively low loan-to-value ratio. Originators may appropriately include such assets in prime portfolios and may not have systems to exclude these assets from portfolios supporting ABS marketed both in Europe and in jurisdictions other than Europe.

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

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

f. Criterion 6

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

g. Criterion 7

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

h. Criterion 8

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

i. Criterion 9

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

j. Criterion 10

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

k. Criterion 11

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

offering document, we do not believe that the allocation of cash other than on a strict seniority basis following an early amortization or default should impact an ABS's "qualifying" status.

l. Criterion 12

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

m. Criterion 13

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

n. Criterion 14

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

o. Criterion 15

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

p. Criterion 16

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

q. Criterion 17

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

r. Criterion 18

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

s. Criterion 19

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

t. Criterion 20

We agree that investors and prospective investors should have readily available access to data on the historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitized. However, many issuers across asset classes do not have at least five years of historical performance. If this requirement is to be

retained, we believe it should call for "appropriate" data in light of the underlying assets, with separate guidance as to what may be appropriate in a given circumstance.

u. Criterion 21

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

v. Criterion 22

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

w. Credit Criterion A

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

x. Credit Criterion B

See our response to Question 7.

y. Credit Criterion C

See our response to Question 4 regarding the jurisdictional requirements for underlying exposures. Also, we note that high-quality ABS (with virtually no loss history) that are largely backed by prime portfolios in some jurisdictions have also included a small portion of subprime loans. It may not be practical for originators in these jurisdictions to structure ABS differently just to meet the requirements of the European market.

In addition, in Canada, it is common for even very high quality pools backing Auto ABS to include loans with LTVs over 100% at closing, due to the convention of lenders financing taxes and certain other amounts in addition to the purchase price of the relevant vehicle.

Nevertheless, these portfolios have exhibited very low losses over time (including through the financial crisis of 2008-09).

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

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

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

V. Conclusion

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

- Broaden the specific criteria as discussed above to allow for an effective use of the "qualifying" standard among the full range of well-structured ABS with strong indicia of high credit quality.
- Preserve banking institutions' ability to determine for themselves the proper classification of their assets (including in respect to compliance with SSTS standards) and the corresponding regulatory capital treatment.
- Allow non-EEA assets to be included in qualifying ABS transactions so long as appropriate local regulatory and market standards are met and include mechanisms for the addition of new eligible jurisdictions in the future.
- Allow financial entities not subject to Article 405 of the CRR to satisfy SSTS risk retention requirements by complying with corresponding requirements in effect in their respective jurisdictions.
- Allow regulated European financial institutions greater flexibility in applying the relevant criteria, in particular, those relating to a securitization being "*simple*" and "*standard*", so

long as the supervising authority monitors the application by the financial institution on an on-going basis.

- Continue the process of coordinating with other European and global regulators to insure that well-intended regulatory initiatives aimed at fostering growth of healthy securitization markets (such as the criteria for qualifying securitizations in the Discussion Paper) are not impeded by cross-jurisdictional frictions that do not have a commensurate regulatory benefit.

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

Very truly yours,

Richard Johns
Executive Director

Annex A: Evaluation of Typical ABS Transactions

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

	which the sale of cash flow generating assets backing the securitization can be invalidated by the liquidator solely on the basis that it was concluded within a certain period (suspect period) before the declaration of insolvency of the seller (originator/intermediary), or where such invalidation can only be prevented by the transferees if they can prove that they were not aware of the insolvency of the seller (originator/intermediary) at the time of the sale.					
Criteria 4	The securitization should be backed by exposures that are homogeneous in terms of asset type, currency and legal system under which they are subject.	Unclear (8)	Yes	Yes	Unclear (9)	Unclear (8)
4.i	The exposures should arise from obligations with defined terms relating to rental, principal, interest or principal and interest payments, or are rights to receive income from assets specified to support such payments.	Yes	Yes	Unclear (10)	Yes	Unclear (10)
4.ii	The exposures should be consistently originated in the ordinary course of the original lender's business pursuant to uniform and non-deteriorating underwriting standards.	Unclear (11)	Yes	Unclear (12)	Unclear (13)	Unclear (12)
4.iii	The exposures should contain a legal, valid and binding obligation of the obligor, enforceable in accordance with its terms against any third party, to pay the sums of money specified in it (other than an obligation to pay interest on overdue amounts).	Yes	Yes	N/A (14)	Yes	Unclear (14)

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

	financial difficulties within three years prior to the date of origination. -He is, to the knowledge of the institution at the time of inclusion of the exposure in the securitization, recorded on a public credit registry of persons with adverse credit history, or other credit registry where a public one is not available in the jurisdiction. -He has a credit assessment by an ECAI or a credit score indicating significant risk of default.					
5.iv	Should not include any transferable securities, as defined in Directive 2004/39/EC (MIFID) or derivatives, except derivatives used to hedge currency and interest rate risk arising in the securitization. The original lender should provide representations and warranties that assets being included in the securitization are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due.	Yes	Yes	Yes	Yes	Yes
Criteria 6	At the time of inclusion in the securitization, the underlying exposures are such that at least one payment has been made by the borrower, except in the case of securitizations backed by personal overdraft facilities and credit card receivables.	Yes	No	N/A	Yes (34)	Yes (34)

Pillar II: Standard Securitization Criteria						
Criteria 7	The securitization should fulfill the CRR retention rules (Article 405 of the CRR).	Yes (35)	Yes (36)	Unclear (37)	Unclear (38)	Unclear (39)
Criteria 8	Interest rate and currency risks arising in the securitization should be appropriately mitigated and any hedging should be documented according to standard industry master agreements. Only derivatives used for genuine hedging purposes should be allowed.	Yes	Yes	Unclear (40)	Yes	Yes
Criteria 9	Any referenced interest payments under the securitization assets and liabilities should be based on commonly encountered market interest rates and may include terms for caps and floors, but should not reference complex formulae or derivatives.	Yes	Yes	Yes (41)	Yes	Yes
Criteria 10	Should include provisions for appropriate early amortization events and/or triggers of termination of the revolving period, which should include, at least, each of the following: - A deterioration in the credit quality of the underlying exposures. - A failure to generate sufficient new underlying exposures of at least similar credit quality. - The occurrence of an insolvency-related event with regards to the originator or the servicer.	Unclear (42)	No	Yes (43) (44)	N/A	Unclear (45) (46)
Criteria 11	Following the occurrence of a performance-related trigger, an event of default or an acceleration event: -The securitization positions	Yes	Yes	Yes (47)	Yes (48)	Yes

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	are repaid in accordance with a sequential amortization payment priority, whereby the seniority of the tranches determines the sequential order of payments. -A repayment of note holders in an order of priority that is 'reverse' with respect to their seniority should not be foreseen. -There are no provisions requiring immediate liquidation of the underlying assets at market value.					
Criteria 12	The transaction documentation should clearly specify the contractual obligations, duties and responsibilities of the trustee, servicer and other ancillary service providers as well as the processes and responsibilities necessary to ensure that: -The default or insolvency of the current servicer does not lead to a termination of the servicing of the underlying assets; -Upon default and specified events, the replacement of the derivative counterparty is provided for in all derivative contracts entered into for the benefit of the securitization; and -Upon default and specified events, the replacement of the liquidity facility provider or account bank is provided for in any liquidity facilities or account bank agreements entered into for the benefit of the securitization.	Yes	Yes	Yes (49)	Yes	Yes
Criteria 13	The transaction documentation contains provisions relating to an	Yes	Yes	No (50) (51)	Yes (52)	Yes (52)

	'identified person' with fiduciary responsibilities, who acts on a timely basis and in the best interest of investors in the securitization transaction to the extent permitted by applicable law and in accordance with the terms and conditions of the securitization transaction. The terms and conditions of the notes and contractual transaction documentation should contain provisions facilitating the timely resolution of conflicts between different classes of noteholders by the 'identified person'. In order to facilitate the activities of the identified person, voting rights of the investors should be clearly defined and allocated to the most senior credit tranches in the securitization.					
Criteria 14	The management of the servicer of the securitization should demonstrate expertise in servicing the underlying loans, supported by a management team with extensive industry experience. Policies, procedures and risk management controls should be well documented. There should be strong systems and reporting capabilities in place.	Unclear (53)	Yes	Yes	Yes	Yes
Pillar III: Transparent Securitization Criteria						
Criteria 15	The securitization should meet the requirements of the Prospectus Directive.	Unclear (54)	No (54)	N/A	Unclear (55)	Unclear (55)
Criteria 16	The securitization should	No (56)	Unclear (57)	N/A (58)	Unclear (59)	Unclear (59)

	meet the requirements of Article 409 of the CRR and Article 8b of the CRA (disclosure to investors).					
Criteria 17	Investors should have access to all underlying transaction documents where legally possible.	Unclear (60)	Yes (61)	Yes	Unclear (60)	Unclear (60)
Criteria 18	The transaction documentation should provide in clear and consistent terms definitions, remedies and actions relating to delinquency and default of underlying debtors, debt restructuring, debt forgiveness, forbearance, payment holidays and other asset performance remedies.	Unclear (62)	Unclear (63)	Unclear (64)	Unclear (62)	Unclear (62)
	The transaction documents should clearly specify the priority of payments, triggers, changes in waterfall following trigger breaches as well as the obligation to report such breaches.	Yes	Yes	Yes	Yes	Yes
	Any change in the waterfall should be reported on a timely basis, at the time of its occurrence.	Yes	Yes	Yes (65)	Yes	Yes
	The originator or sponsor should provide investors a liability cash flow model, both before the pricing of the securitization and on an ongoing basis.	No (66)	No	No	No (67)	No (67)
Criteria 19	The transaction should be subject to mandatory external verification on a sample of underlying assets (confidence level of at least 95%) at issuance, by an appropriate and independent party or parties, other than a credit rating agency. Confirmation that this verification has occurred	Unclear (68)	Yes	No (69)	Unclear (70)	No (71)

	should be included in the transaction documentation.					
Criteria 20	Investors and prospective investors should have readily available access to data on the historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitized, covering a historical period representing a significant stress or where such period is not available, at least 5 years of historical performance.	Yes	Yes	Yes (72)	Unclear (73)	Unclear (73)
	The basis for claiming similarity to exposures being securitized should also be disclosed.	Yes	Unclear (74)	Unclear (75)	No (76)	No (76)
Criteria 21	Investors and prospective investors should have readily available access to data on the underlying individual assets on a loan-by-loan level, at inception, before the pricing of the securitization, and on an ongoing basis. Cut-off dates of this disclosure should be aligned with those used for investor reporting purposes.	No (77)	No	No (78)	Unclear (79)	Unclear (79)
Criteria 22	Investor reporting should occur at least on a quarterly basis. As part of investor reporting the following information should also be disclosed:	Yes		Yes (80)		
	All materially relevant data on the credit quality and performance of underlying assets, including data allowing investors to clearly identify debt restructuring, debt forgiveness, forbearance, payment holidays, delinquencies and	Unclear (81)	No	No (82)	Unclear (83)	Unclear (83)

	defaults in the pool;					
	Data on the cash flows generated by underlying assets and by the liabilities of the securitization, including separate disclosure of the securitization's income and disbursements, i.e. scheduled principal, scheduled interest, prepaid principal, past due interest and fees and charges;	Yes	Yes	No (84)	Unclear	Unclear
	The breach of any waterfall triggers and the changes in waterfall that this entails.	Yes	Yes	No (85)	Unclear	Unclear
Credit Risk Criteria						
Criteria A	Credit rating criteria should include at least an assessment of the borrower's creditworthiness in accordance with paragraphs 1 to 4, 5(a) and 6 of Article 18 of Directive 2014/17/EU or Article 8 of Directive 2008/48/EC, as applicable.	Unclear (86)	Unclear (87)	Yes	Unclear (86)	Unclear (86)
Criteria B	Pool of exposures to be securitized should be such that the largest aggregated exposure to a single obligor does not exceed 1% of the value of the aggregate outstanding balance.	No	Yes	Yes	Yes	No (88)
	For calculations, loans or leases to a group of connected clients (per Article 4(39) under CRR) would be considered exposures to a single obligor.	Yes	No	No (89)	Unclear (90)	Unclear (90)
Criteria C.i	Underlying exposures must be to individuals or undertakings that are resident, domiciled or established in an EEA jurisdiction.	No	No	No	No	No
C.ii	At the time of inclusion they have to meet the conditions for being assigned, under the	Unclear	N/A	N/A	No (91) (92)	N/A (92)

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	Standardized Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than: [40%] on a weighted average basis where the exposure is a loan secured by a residential mortgage or fully guaranteed residential loan, as referred to in paragraph 1(e) of Article 129 of the CRR; [50%] on an individual loan basis where the exposure is a loan secured by a commercial mortgage; [75%] on an individual loan basis where the exposure is a retail exposure; [100%] on an individual loan basis for any other exposures. Under (a) and (b) loans secured by lower ranking security rights on a given asset should only be included in the securitization if all loans secured by prior ranking security rights on that asset are also included in the securitization. Under (a) no loan in the securitized portfolio should be characterized by a loan-to-value ratio higher than 100%.					

Notes

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

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

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

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

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

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

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

8 How narrowly is "homogeneous" defined?

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

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

11 Depends on how "nondeteriorating" is defined.

12 It will be helpful to clearly define "consistently originated" and "uniform and non-deteriorating" underwriting standards. Most US Card ABS programs have highly seasoned accounts in their securitization pools. Some accounts are as seasoned as 10-15+ years. In response to changing economic conditions, consumer behavior, rules and regulations, credit card originators will need to be able to adjust its underwriting standards in order to maintain credit quality, profitability, market shares,

etc. It will be impractical to expect that underwriting standards remain stagnant for a revolving asset pool. In addition, portfolios may be sold from one lender to another, and it will also be impractical to expect that the underwriting standards of the seller and buyer are "consistent" or "uniform".

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

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

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

16 Certain provinces have seize or sue legislation.

17 Unless transaction includes leases where residual is securitized.

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

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

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

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

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

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

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

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

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

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

28 Difficult to monitor.

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

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

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

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

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

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

35 Does this include residual risk/loss exposure?

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

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

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

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

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

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

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

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

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

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

46 No current requirement.

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

48 Class A2 and A3 are repaid pari passu.

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

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

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

52 Senior and sub investors have equal voting rights.

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

54 Offering complied with prospectus disclosure requirements in Regulation AB.

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

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

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

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

59 Existing structures likely don't meet criteria.

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

61 All underlying documents are available once deal is closed.

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

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

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

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

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

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

68 Scope/extent of verification?

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

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

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

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

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

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

75 Not sure what this means.

76 Not currently disclosed.

77 Loan level is not provided for equipment.

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

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

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

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

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

83 Uncertain as need to determine what data is required.

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

85 Typically no waterfall triggers.

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

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

88 Issue for dealer floorplan and CMBS transactions.

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

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

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

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