

International Organisation of Securities Commissions
C/Oquendo 12
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Spain

Submitted by email to: Consultation-2014-10@iosco.org

13 February 2014

To whom it may concern,

Re: Criteria for identifying simple, transparent and comparable securitisations

The Investment Association represents UK investment managers. We have over 200 members who manage more than £5 trillion for clients around the world. Our aim is to make investment better for clients so that they achieve their financial goals, better for companies so that they get the capital they need to grow, and better for the economy so that everyone prospers. Ultimately, much of what they manage belongs to the man in the street through their savings, insurance products and pensions. Their interest in this consultation is therefore in their role as the "buy side" of the market, accessing capital markets on behalf of their clients.

We welcome the opportunity to respond to the consultative document on the criteria for identifying, simple, transparent and comparable securitisations.

Overall, we are supportive of:

- BCBS/IOSCO's aim in developing the criteria to enable the industry and regulatory community to identify certain features of securitisation which may indicate those securitisations that lend themselves to less complex analysis and therefore contribute to building securitisation markets.
- The criteria put forward in the BCBS/ IOSCO consultative document, as this could help re-establish investors' confidence in the securitisation market and pave the way for a more risk sensitive regulatory framework that can differentiate between securitisation products.

A global approach to simple, transparent and comparable securitisations is the right approach, as this would limit the possibility for regulatory arbitrage and result in less fragmented securitisation markets. However, for these criteria to be adopted as part of a risk sensitive regulatory framework that incentivises investors to invest in these assets, there would need to be 'buy-in' from regional and national regulators.

In Europe, there has been increased focus on the importance of the securitisation market and its role in funding the European economy. Work has already started under Solvency II and the Liquidity Coverage ratio delegated acts to ensure a comprehensive and consistent prudential approach for high-quality/qualifying securitisations. Further, developing the securitisation market is a key component of the European Commission's proposals for a Capital Markets Union. We would encourage those regulators to consider the BCBS/IOSCO criteria as part of their work, to ensure that the frameworks that are developed are consistent, complementary and harmonised.

In addition to developing the criteria for simple, transparent and comparable securitisations, we recommend that the BCBS/IOSCO joint task force should work on developing a set of global disclosure standards for securitisation transactions. These standards should take into account the different



underlying assets and should not be overly prescriptive. Standardisation of disclosure across jurisdictions will materially assist the development of the market for the benefit of all parties.

The Investment Association and its members remain strongly supportive of developing the securitisation market in Europe as well as globally, and would welcome further discussion on any of the points that we raise in our response.

Pamela Gachara
Manager, Markets

THE INVESTMENT ASSOCIATION RESPONSE TO THE BCBS-IOSCO CONSULTATION PAPER ON CRITERIA FOR IDENTIFYING SIMPLE,

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?”

The Investment Association is supportive of BCBS’ and IOSCO’s efforts to develop criteria for identifying simple, transparent and comparable securitisations. These principles provide a reasonable high-level interpretation of ‘simple’, ‘transparent’ and ‘comparable’.

However, for these criteria to be applied in a consistent manner, further clarification would be required. We provide comments on specific aspects of the criteria in Appendix 1.

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?

Please see Appendix 1 for more detailed comments on the criteria and additional considerations.

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 welcome the development of differentiating criteria for ABCP. ABCP does share similarities with term securitisations in certain structural characteristics, certain assets in the underlying pool and the benefits that it affords to capital markets and the overall economy. However, they differ from ABS in a number of ways, including:

- benefitting from the liquidity support of its sponsor;
- having shorter maturities; and
- having generally more diverse exposure in their asset portfolios.



Their incorporation into criteria for wider securitisations would therefore be simplistic and could impede developments in the ABCP market.

Consideration should also be given to the development of separate criteria for CLOs.

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.

The Investment Association is supportive of standardisation of securitisation transactions' documentation including prospectuses, investor reports and key transaction terms. These disclosure standards should take into account the different underlying assets and should not be overly prescriptive. This could be in the form of a standardised template that would guide investors on where to find relevant information.

We note that:

- standardisation of investor reports may not be possible due to different reporting requirements; and
- key transaction terms may differ from jurisdiction to jurisdiction based on different legal systems.

To overcome this potential barrier, guidelines on what should be included in the investor reports and the key transaction terms that should be defined in the transaction documents should be developed. Both the investor reports and the key transaction terms should be consistent, as a minimum, at the national level.

Securitisation transactions documentation should also be published in English to ensure that they are accessible to the widest range of investors.

We recommend that the BCBS/IOSCO joint task force should work on developing a set of global disclosure standards for securitisation transactions.



APPENDIX 1

SIMPLE TRANSPARENT AND COMPARABLE SECURITISATIONS – CRITERIA

1. Nature of the assets

We are supportive of the requirement for the assets underlying the securitisation should be homogenous with respect to their asset type, legal system and currency.

However, the requirement for jurisdictional homogeneity should not be included. This would not be practical in Europe where assets in a securitisation may be multi-jurisdictional even within single nations such as the UK (due to differences between English and Scottish mortgage laws).

2. Asset performance history

We would support increased disclosure of asset performance history, although a more exact definition of what will be considered 'sufficient information' and a 'sufficiently rich data set' will be needed.

3. Payment status

We agree that, as noted in the additional considerations, the terms default', 'delinquent' and 'material increase' need to be defined.

4. Consistency of underwriting

There should be further clarification on the specific requirements for 'consistency of underwriting' including which party to the transaction that would be required to model the cash flows.

5. Asset selection and transfer

'Not subject to material re-characterisation' should be further clarified to specify what is meant by material.

As currently drafted, this criterion seems to ban all synthetic securitisations. However, synthetic securitisations are important component of the market, particularly where a true sale securitisation is either uneconomic or not possible due to contractual limitations. Excluding these securitisations would act a significant impediment to the expansion of the securitisation market

Synthetic securitisations should be included in a framework for simple, transparent and comparable securitisations, subject to adequate safeguards.

For this to be achieved it is important to draw a distinction between synthetic securitisations where only the asset-side of the securitisation is synthetic and those where both the asset and liability side of the securitisation are synthetic. The former and not the latter should be considered to be a qualifying securitisation subject to the safeguards set out below at a minimum (in addition to the criteria that qualifying true sale securitisations will have to satisfy).

- Where only the asset side of the securitisation is synthetic, the securitisation is exposed to two separate asset pools, the funding collateral and the reference collateral.
- Regulatory eligibility criteria should be applied to the funding collateral in a qualifying synthetic securitisation, with the aim of ensuring that the bankruptcy-remoteness of the securitisation from the originator is not impaired via the reference collateral (e.g. senior unsecured bonds issued by the originating bank would not be eligible as funding collateral).



- The funding collateral should not consist of instruments with credit risk that is significantly correlated with the credit risk of the reference collateral (e.g. senior unsecured bonds issued by an EU bank used as reference collateral in a securitisation from another EU bank).
- The originator must certify that:
 - the reference collateral will only be securitised once and will not be securitised in a true sale transaction in addition to the synthetic transaction, nor will it be securitised in multiple synthetic transactions.
 - that the reference collateral is not referenced in any other credit instrument, securitisation or not.
 - the ability of the securitisation to enforce the reference collateral is in no way inferior to that in a corresponding true sales transaction.
- The originator must own the reference collateral over the life of the transaction. In the event of a transferor insolvency, the transaction must enter liquidation.
- The originator must post additional cash collateral in a ring-fenced account to be deposited with the originating bank (in a ring-fenced account) or held by a counterparty and pledged to the securitising bank.
- Higher risk retention requirements should be imposed to ensure strong alignment on interest between the originator and the investor.
- Originators should use standardised transaction documents and the terms of those documents (including amendments) should be publicly available following the conclusion of the transaction.

6. Initial and ongoing data

We are supportive of this criterion.

7. Redemption cash flows

We would welcome a definition of granularity that can be and is used consistently across regulatory frameworks, for securitisations, covered bonds and other collateralised instruments. The Herfindahl Index is used for such purposes in other regulatory contexts and limits on this index can be set to achieve regulatory policy objectives as required

8. Currency and interest rate asset and liability mismatches

We are supportive of this criterion, although 'appropriately mitigated' may need to be defined.

9. Payment priorities and observability

While we are generally supportive of the principle that proper payment priorities be adhered to, it is important that the wording of this criterion is not overly restrictive and should not prevent pro-rata payments.

The criterion also states that originators or sponsors 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.

This should be amended to require originators or sponsors to provide *both*, rather than one or the other. Where a liability cash flow model is provided, issuers should also publish the model's code



for inspection. This is to ensure that the cash flow model accurately reflects the prospectus, and vice versa. It should be clear that these should not be assumptive cash flow models.

We support the requirement that 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.

However, requiring information that allows investors to ascertain *likelihood* of a trigger being breached or reversed would not necessarily be helpful to investors.

Issuers should be required to provide details on all the triggers (including non-financial triggers) in a tabular format, and the status of components and their respective trigger levels. This would help avoid any ambiguity surrounding non-financial triggers.

10. Voting and enforcement rights

We are supportive of this criterion and would recommend that it is extended to include disclosure of any rights on the underlying assets that fall outside the securitisation structure that may nevertheless affect it.

The additional consideration under this criterion should be deleted.

Voting rights are a factor that is considered actively when purchasing/pricing different securitisation tranches. Limiting the voting rights of junior noteholders would act as a disincentive to investors interested in investing in the junior tranches of a transaction as they would not only be taking first loss (relative to the senior tranches) but the protections afforded to them by the ability to vote on material changes (subject to the terms and conditions) would be taken away. This may negatively impact the marketability of these tranches in the transactions and consequently the revival of the securitisation market.

11. Documentation disclosure and legal review

The Investment Association strongly supports greater disclosure to investors during the new issue process and on an ongoing basis. In addition to the terms, conditions, legal and commercial information, issuers should be required to disclose intercreditor agreements and the master trust. In addition, investors should be provided with any further information on any claims to the underlying assets that lie outside the securitisation and may affect it.

For clarity, we would welcome further information regarding the exact definition of 'legal documentation' and 'appropriately experienced and independent legal practice'.

12. Alignment of interest

We agree with the requirement that originators or sponsors retain a material net economic exposure.

In Europe, retention requirements increase the investment risk to investors in securitisations, as they are being held to account for originators satisfying retention requirements yet have no obvious means to reliably control the behaviour of originators over the life of the transaction. Ideally, the retention requirements should operate as disclosure obligation on originators, rather than (as present in the EU) on investors.

The BCBS/IOSCO criteria presents an opportunity to address this.



We propose that originators should be required to retain credit risk of the securitised assets in the form of restricted notes. This is irrespective of whether they are retaining a vertical or horizontal interest or a combination of the two. These restricted notes would only pay a coupon to the originator in the event that they continue to be the beneficial recipient of the interest. If the originator were to sell on their holdings then the coupon payment would stop. As a result these notes would only have value if the originator is holding them and confer no economic benefit to a potential purchaser.

In addition, originators should be required to certify in the investor reports that they continue to hold these restricted notes.

13. Fiduciary and contractual responsibilities

The additional consideration under this criterion should be deleted

As noted under criterion 10 locking out junior noteholders will mean investors will be much more reluctant to invest in junior debt.

14. Transparency to investors

We support this criterion.