POSITION PAPER

WSBI-ESBG response to the BCBS – IOSCO consultation on criteria for identifying simple, transparent and comparable securitisations

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WSBI-ESBG welcomes the BCBS – IOSCO initiative to develop criteria for identifying simple, transparent and comparable securitisations and for giving us the opportunity to provide our input, in particular in the context of the work of the EBA proposal for simple standard and transparent securitisations. WSBI-ESBG shares the view that a functioning securitisation market – supplementing bank loans as a main financing instrument – is essential to support economic development, and for providing sufficient credit to companies, particularly to small and medium-sized enterprises. This is especially true where banks require a complementary, functioning market that allows them to boost lending, in the event of higher credit demand by corporate borrowers, beyond their capacity of on-balance-sheet lending within the scope available under the Basel III regime.

Notwithstanding the EBA's parallel initiative in this respect, WSBI-ESBG welcomes the establishment of a uniform catalogue of criteria at the level of the Basel Committee – thus creating the fundamental basis for a harmonised implementation of such criteria across all countries recognising the securitisation framework defined by the Basel Committee.

WSBI-ESBG welcomes that BCBS – IOSCO did not include criteria based on credit risk. Indeed, WSBI-ESBG believes that the creation of a separate category of securitisation is very welcome but should be focusing solely on simplicity, standardisation and transparency, and not on risk. Introducing risk parameters in a label will create the false illusion that the label is granting a new institutionalised “AAA” rating with all the consequences observed during the crisis. The risk analysis should be made by the investor and the label should only be a guarantee that all necessary risk analysis elements are available to the investor.

BCBS and IOSCO emphasise the importance of short-term securitisations, ABCP programs and synthetic securitisation for large parts of the real economy – yet BCBS and IOSCO exclude these forms of securitisation without analysing their suitability. In addition, WSBI-ESBG would like to highlight that synthetic securitisations should not be excluded from the framework of simple, transparent and comparable securitisations. WSBI-ESBG very much supports of extending the scope of qualification to include synthetic securitisations with real-economy links. Careful differentiation should be made between a synthetic securitisation that is used to create an arbitrage, or allow hedge funds to create short positions on specific asset classes such as the Abacus transactions during the crisis, and a “non-true sale” transaction that is created because there is no simple or efficient way to actually transfer the legal ownership of assets. Furthermore, for some banking institutions it is the only way to participate in risk transfer transactions without the need of selling loans or clients. Indeed, with regard to “cash” transactions the transfer of the risk is made synthetically because the true sale is impossible (transfer restrictions) or too cumbersome (notification for example). If this difference is not made, these institutions will not take advantage of this two-class system as their client policy and given words of not selling performing loans to external investors will prevent it.

Furthermore these are not public transactions. The “Mezzanine” piece is only sold to very sophisticated investors (such as hedge funds) that clearly understand the structures even if they are complex. The “retained” tranches (that are usually implicit tranches) are retained by the bank that originated the underlying risk and that most of the time structured the transaction. Therefore applying penalties to that bank doesn’t make any sense either.

Synthetic securitisations can be structured in a way to fulfil all mentioned criteria for qualifying securitisations. The non-compliance of legal true sale can be eliminated with funded trustee accounts from investors and the originator. The investors pay the notes notional on a trustee account to cover losses of the underlying assets. The originator pays the interest on the notes on a trustee account for

fulfilment of its payment obligations until maturity. A legal transfer for recourse is therefore not necessary. Moreover, not including synthetic transactions would be a differentiation from the EU Capital Requirement Regulation in which the same capital requirement calculations apply for both traditional and synthetic transactions.

Please find below some comments in response to the questions.

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

In WSBI-ESBG's point of view, the criteria could be much more detailed.

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?

The STC criteria are not yet clear enough and WSBI-ESBG would appreciate more specifications. Based on the lack of detailed specifications we could hardly define if securitisations could be classified as simple, transparent and comparable.

About WSBI (World Savings and Retail Banking Institute)

WSBI brings together savings and retail banks in all continents and represents the interests of 6,200 financial institutions. As a global organization, WSBI focuses on issues of global importance affecting the banking industry. It supports the aims of the G20 in achieving sustainable, inclusive and balanced growth and job creation around the world, whether in industrialised or less developed countries. WSBI favours an inclusive form of globalization that is just and fair, supporting international efforts to advance financial access and financial usage for everyone. It supports a diversified range of financial services that responsibly meet customers' transaction, saving and borrowing needs. To these ends, WSBI recognizes that there are always lessons to be learned from savings and retail banks from different environments and economic circumstances. It therefore fosters the exchange of experience and best practices, among its members and supports their advancement as sound, well-governed and inclusive financial institutions.

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About ESBG (European Savings and Retail Banking Group)

ESBG brings together savings and retail banks of the European Union and European Economic Area that believe in a common identity for European policies. ESBG members support the development of a single market for Europe that adheres to the principle of subsidiarity, whereby the European Union only acts when individual Member States cannot sufficiently do so. They believe that pluralism and diversity in the European banking sector safeguard the market against shocks that arise from time to time, whether caused by internal or external forces. Members seek to defend the European social and economic model that combines economic growth with high living standards and good working conditions. To these ends, ESBG members come together to agree on and promote common positions on relevant matters of a regulatory or supervisory nature.

ESBG members represent one of the largest European retail banking networks, comprising of approximately one-third of the retail banking market in Europe, with total assets of over €7,300 billion, non-bank deposits of €3,479 billion and non-bank loans of €3,947 billion (31 December 2012).

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