Appendix 1

Feedback Statement on the Public Comments Received by the Technical Committee on the *Consultation Report on Transparency of Structured Finance Products.*

I. Background

Standing Committee 2 (TCSC2) initiated a review of the transparency of structured finance products (SFPs) in the secondary market following the recommendation made by the Technical Committee (TC) in its *Report on the Subprime Crisis* "to examine, together with the financial service industry, the viability of a secondary market reporting system for different types of structured finance products (SFPs), focusing in particular on whether the nature of structured finance products lends itself to such reporting and the costs and benefits such a system might entail".

I.A. Results from the fact finding and the industry roundtable

In 2008, TCSC2 agreed that a questionnaire should be sent to industry representatives and to regulators in each jurisdiction. The purpose of the survey was to obtain a full picture of the market for SFPs and, in particular, to:

- determine which SFPs should be focused on;
- obtain a better understanding of the current secondary market structure; and
- obtain views as to whether and how secondary market transparency in these products could and should be improved.

TCSC2 received over 60 industry responses to the survey from Asia, Europe, North America and South America. In order to more widely consult the financial services industry, TCSC2 also invited some industry representatives to its meetings held last year. The industry roundtable provided useful background on new issues in SFP markets and secondary market activity more generally.

I.B. Summary of the Consultation Report

TCSC2 produced a consultation report, *Transparency of Structured Finance Products*, that was approved by the TC and published on 16 September 2009. The consultation period ended on 13 November 2009.

Non-confidential responses were submitted by the following organisations to IOSCO Technical Committee (TC).

American Securitization Forum (ASF)
Association for Financial Markets in Europe/European Securitisation Forum (AFME/ESF)
Association Française de la Gestion (AFG)
Australian Securitisation Forum (ASF)
Aviva Investors
Axa Investment Manager
BlackRock Solutions

Bundesverband Investment und Asset Management e.V. (BVI)
European Fund and Asset Management Association (EFAMA)
Federation Bancaire Francaise (FBF)
Financial Industry Regulatory Authority (FINRA)
Interactive Data Corporation
International Banking Federation (IBFed)
International Capital Market Association (ICMA)
International Council of Securities Associations (ICSA)
Securitization Forum of Japan
Zentraler Kreditausschuss (ZKA)

These responses can be viewed in Appendix 2 of this document.

The Technical Committee took these responses into consideration when preparing this final report. The rest of this section reports on the main points raised during the consultation.

This report set out a number of factors to be considered by market authorities when considering any enhancement of post-trade transparency in their respective jurisdictions. In the TC's view, each member jurisdiction is best placed to judge the appropriate time, scope and manner for enhancing post-trade transparency for SFPs in their particular market. Inter alia, it may be appropriate in some jurisdictions to introduce post-trade transparency via a step-by-step or phased-in approach.

The Consultation Report highlighted a number of factors to be taken into consideration when seeking to develop a post-trade transparency regime for SFPs. Depending on how the market in SFPs develops and future initiatives and experiences of member jurisdictions to implement greater post-trade transparency of SFPs, each market authority should consider increasing the level of post-trade transparency.

II. Summary of the responses to the Consultation Report

This Feedback Statement summarizes respondents´ comments, including excerpts from responses in order to further illustrate the comments and the TC’s response to such comments.

The comments received convey contrasting positions regarding the key question of whether enhanced post-trade transparency of SFPs would boost or in fact impair liquidity in these markets, although a consensus appears to have developed that some post-trade transparency may have utility. Buy-side participants generally believe increased post-trade transparency in SFPs would be helpful for valuation and price discovery purposes, which would lead to an increase in liquidity in SFP markets. Interestingly, the sell-side did not collectively exclude the possibility that post-trade transparency for secondary market trades in SFPs may be beneficial. The sell-side did, however, emphasize the potential difficulties in implementing a post-trade reporting regime. For example, sell-side participants argue that increased post-trade transparency in relatively small and illiquid markets puts at risk the anonymity of market participants and the confidentiality of their trading strategies. In addition, some respondents raised as a concern the lack of standardisation of SFPs. Also, many comments raised the point that data underlying SFPs is more important than post-trade transparency. This is, however, not a condemnation of post-trade transparency per se, but a recognition of its limitations.

II.A. General Comments

TCSC2 received eighteen responses to the consultation report from a broad range of industry participants. Buy-side participants, including trade associations and investment managers, sent seven responses to the Consultation Report, five responses came from sell-side trade organizations and four from sell-side securitisation forums. In addition, two responses were provided by other types of organisations.

- Buy-side organisations generally agreed with the points outlined in the Consultation Report and were in favour of greater post-trade transparency
  Most of the respondents were in favour of a phased implementation of increased post trade transparency. These respondents have suggested that post-trade transparency should initially be enhanced on the most liquid SFPs. Liquidity of a particular security should be based on a number of factors, including its rating (higher-rated tranches are usually more liquid), size of issue, public vs. private initial offering, standardisation of offering and the name of the issuer (more well-known names tend to be more liquid).

  A majority of respondents argued that trade-by-trade data is necessary in order to gain the most value from post-trade transparency, however a minority are comfortable with the release of aggregate data on a periodic basis.

- Sell-side and other trade organizations were divided on the usefulness of post-trade transparency.
  Some respondents voiced opinions questioning the usefulness of post-trade transparency, while two did not directly voice an opinion. Several respondents expressed concerns that letting jurisdictions develop their own post-trade transparency regimes would lead to regulatory fragmentation and increased compliance costs. One respondent has also expressed the view that a transparency analysis is not possible until a systematic data collection regime has been implemented.

- Securitisation Forums were generally in favour of enhancing post-trade transparency for SFPs in their respective jurisdictions and agreed that any post-trade transparency system must be carefully tailored to the unique characteristics of the SFP market in each jurisdiction. They rejected a "one size fits all" solution and favoured phasing in post-trade transparency in stages.

II.B. Benefits of enhanced post-trade transparency (Section 4.1 of the Consultation Report)

Improved price discovery and reduction of information asymmetries

Some respondents focused on the information asymmetry between the buy-side and sell-side. One respondent noted that sell-side sees a much larger volume of trading, and can use this information to the detriment of the buy-side. Another respondent argued that the lack of post-trade transparency helps to extend the market dislocation that recently occurred, as participants were fearful of being gamed by other market participants and had no way of determining market prices.

One respondent stressed that an analysis should be done to ensure that regulatory objectives/benefits are appropriately balanced with market quality objectives. This respondent stated that some potential benefits include: (i) the ability to monitor quality and consistency of executions as well as valuations; (ii) the ability to monitor for risk build-ups at specific firms; (iii) the possibility to identify and study apparent correlations and/or market impacts between trading of a particular SFP and another product;

and (iv) the ability to develop an audit trail of transactions to detect instances of market abuse. This respondent also stressed the value in conducting studies during times of market stress as well as during more normal periods.

One respondent supported the publication of trade information on a periodic basis and further supported the use of time frames similar to those contained in the FINRA TRACE feed and Xtracter TRAX feed (intervals of less than one hour).

Valuation of products and portfolios

One respondent stated that the report should more directly address the accounting issues that could arise if post-trade transparency regimes are mandated, such as the use of prices available through reporting systems when such prices may not be an accurate reflection of current market values.

On the other hand, one respondent noted the current difficulties faced in making mark-to-market valuations of SFPs, and argued that increased post-trade transparency would encourage improvements in valuation methodologies, while another mentioned the importance of prices for risk management processes. One respondent noted that the difficulty in valuing SFPs is making it more difficult for asset managers to comply with their fiduciary duties. Another respondent stated its belief that post-trade transparency would facilitate the price discovery process and would assist those who prepare financial statements in meeting reporting and disclosure requirements.

Involvement of retail investors

Most respondents did not comment on steps to introduce retail investors into the market for SFPs. Most argued that greater transparency of SFPs would encourage wider participation generally by improving confidence in the market and attracting new investors.

Nevertheless, one respondent expressed the concern that volatility in valuing SFPs could result from the increased participation of retail investors, who may not fully understand the nature of these securities.

II.C. Costs of enhanced post-trade transparency (Section 4.2 of the Consultation Report)

Inappropriateness given customised non-standardised nature of SFPs

While one respondent stated that due to the lack of comparability across SFPs, post-trade information on SFPs is irrelevant, another respondent commented that even with the non-standardised nature of SFPs, post-trade data is useful as securities with similar features can assist in the valuation of securities. Another respondent argued that buy-side and sell-side market participants can distinguish between different securities and understand their individual nuances.

Two respondents noted that few SFPs in their jurisdictions are truly standardised. For transactions involving non-revolving discrete asset pools, the performance of these discrete assets may vary significantly, impacting the cash flow available to investors and therefore the value of the SFPs. However, these two respondents believed that improvements in the standardisation and quality of information regarding the assets underlying the products are essential in restoring liquidity and confidence in the SFP markets. However it is unclear how relevant this is to post-trade price reporting. One respondent stated that standardization of SFPs is mainly a business-driven process that may happen over time. This respondent further noted that undue levels of standardization, disclosure, or

post-trade infrastructure may render secondary markets inefficient. This respondent believed that any industry-driven (or regulatory) solution needs to be sensible for the particular market and product.

Usefulness of indices

Two respondents indicated they were unclear as to how indices would provide appropriate signals to market participants regarding the value of their underlying exposures.

Inappropriateness given illiquidity of SFP markets

Several respondents commented that illiquidity in the market is a legitimate concern, and that post-trade transparency regimes should not further reduce market liquidity. Such regimes should avoid the exposure of principal positions and should not discourage market-making in the products. In addition, one respondent expressed the view that post-trade transparency regimes should be gradually phased-in, focused first on the most liquid instruments, and calibrated to ensure that liquidity is not adversely affected.

Two respondents expressed the view that regulators should develop a better understanding of the liquidity characteristics of the SFP markets by observing, collecting and sharing with the industry, data on trading volumes and patterns before any implementation of a post-trade transparency regime. This is because liquidity varies across SFP products both in a single jurisdiction and across jurisdictions. For less liquid issues, trade prices may be weeks or months old and may not be a good indicator of the current value of a security.

One respondent noted that the nature of liquidity in SFPs is different from that found in equity and other bond markets. This respondent stated that most investors in securitisation markets apply a "buy and hold" strategy. Another respondent agreed with the report that purchasers of SFPs frequently adopt a buy and hold strategy and that trading in SFPs is nearly exclusively transacted on an OTC basis. This respondent further stated that some SFPs are traded in conditions in which transaction prices do not generally constitute a valuable source of information. While there may be some SFP markets where secondary information does exist, the degree of secondary market trading is the most important criteria for jurisdictions seeking to develop an appropriate post-trade transparency regime.
In addition, another respondent stated that the buy and hold strategy is a common investment style in its jurisdiction, due in part to the lack of suitable securities for substitution. With few secondary market transactions and lack of timely information on underlying assets and deal-specific conditions, the appropriateness of disclosed market prices may be impossible to judge.

Market distortion from transparency of distressed sales

One respondent argued that investors do not need to rely on others to interpret a trade as distressed, but can determine it based on their own valuation methods. This respondent argued that determining whether a particular transaction is a distressed sale should be easier with increased post-trade transparency.

Loss of anonymity

One respondent raised the concern that where the investor base is small, post-trade transparency may compromise the anonymity of transaction participants and hence be detrimental to liquidity. Preserving the anonymity of activities, portfolios and investment strategies of participants is therefore essential. Another respondent did not recommend the publication of individual trade information as

this would be likely to reveal individual traders' positions. This respondent also favoured publication of aggregate trade data (for example average prices), no disclosure of trade volumes and reasonable delays to the dissemination of data to protect anonymity.

In addition, one respondent expressed its concern over a potential decline in liquidity as sellers would worry that published prices might induce the market to assume the seller has liquidity constraints.

Costs of implementation

Respondents have generally argued that the direct costs of increased post-trade transparency would be low as existing infrastructure could be used to collect and disseminate post-trade data. In any case, respondents argued that the costs would be trivial in comparison to the size of the market, and that the benefits of the increased post-trade transparency would far outweigh the costs.

One respondent raised a concern that substantial costs may be incurred in building a post-trade transparency system from scratch. This respondent also argued that the 'financing cost' on the part of the originator/sponsor should also be considered, that is, the expectation of raising money at a lower cost as a result of transparency may not be realised leading to the feeling that the system is ineffective.

Another two respondents directly addressed the issue of costs of implementation and generally believed that existing reporting mechanisms could be leveraged to mitigate cost burdens. One respondent stated that the optimal approach need not be "one-size-fits-all." This respondent believed that large volume firms could build on existing vendor services whereas web-based reporting may be more appropriate for low trade volumes. In addition, this respondent stated that savings will result from a reduction of market abuses through enhanced market surveillance.

Two respondents believed that to reduce costs, it is important to have a clearly defined universe of reportable securities and to draw on available central sources of information (especially from regulators). Both respondents stated that the impact of the cost of implementation on the market should consider positive impacts (increased investor participation and trading volumes, compression of bid-ask spreads) as well as negative impacts (reduced willingness of market makers to commit risk capital).

More information about the underlying assets is needed first

One respondent stated that transparency of assets underlying the SFPs should be enhanced before any additional post-trade transparency. Same respondents stated that post-trade transparency should be secondary to standardisation of the products.

Another respondent added that the value of any post-trade transparency regime is a consequence of robust, liquid secondary markets where products are traded with sufficient frequency to make post-trade price reporting relevant. This same respondent added that prior to the implementation of a post-trade transparency regime, an assessment of the depth and maturity of SFPs' secondary markets and level of standardisation is required. This respondent believes that a post-trade transparency regime does not create liquid and robust secondary markets.

Global consistency

Two respondents noted that a degree of consistency across jurisdictions would be desirable to avoid regulatory arbitrage.

II.D. Additional issues

A number of respondents have argued that the scope of the IOSCO review should have been broader - looking also at what steps can be taken to encourage greater standardisation across SFPs. One respondent stated that post-trade transparency should apply to all cash and synthetic products as long as they are listed on an exchange, while another stated it should apply to all securitised products without regard to jurisdiction.

A number of respondents argued that the IOSCO paper should also have considered the transparency of the SFPs deal structure, underlying assets and data availability over the life of the asset. Some respondents noted that regulators need to be conscious of the possibility of fragmentation of the data, and whether this would result in higher costs for market participants.

Some respondents stated that certain distinctions need to be made when examining SFPs. One respondent stated that a distinction should be made between securities and other structured products such as warrants and certificates. Another respondent noted that a distinction should be made between publicly placed products and others, with post-trade transparency most relevant for publicly placed products.

II.E. Proposed Approach (Section 6 of the Consultation Report)

All respondents from buy-side organisations agreed with the factors listed in the Consultation Report as needed to be considered in the development of a post-trade transparency regime. Most respondents argued for a step-by-step approach, with initially only the most liquid securities (such as the highest-rated tranches of well-known securitisations) made post-trade transparent. However many respondents pushed for this list to cover as many securities as practical.

One respondent added as a factor the workability of the proposals in ensuring the data can be collected across a wide range of products and that systems can be extended to produce this information. This respondent is concerned that the proposals not be so onerous that they deter market-making. A majority of respondents argued that it was necessary to disclose trade-by-trade data, while a minority proposed the release of aggregate data.

Finally, one respondent from a sell-side organization stated its support for creating a label of transparency and liquidity and that such a label: (i) should remain market driven; (ii) stay light in its conception and in its functioning; and (iii) be designed and supported at an international level.