Transparency of Structured Finance Products

Final Report

TECHNICAL COMMITTEE
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

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Foreword

The International Organization of Securities Commissions (IOSCO) Technical Committee (TC) has been considering whether transparency of structured finance products (SFPs) is desirable, and if so, how increased transparency should best be implemented.

This Final Report sets out a number of factors that are designed to assist market authorities when considering how to enhance post-trade transparency of SFPs in their respective jurisdictions. The report lists the factors that market authorities should use in determining which structured finance products should be made transparent, and how this could best be implemented.

Chapter 1 Executive Summary

In light of the crisis in financial markets, the Technical Committee (TC) of the International Organization of Securities Commissions (IOSCO) mandated its Standing Committee on the Regulation of Secondary Markets (TCSC2) to examine the viability of a secondary market reporting system for structured finance products (SFPs), with a particular focus on the nature of the market and its participants as well as on the potential benefits and drawbacks of such a regime. In undertaking this task, TCSC2 solicited information from a variety of sources from the financial services industry across several jurisdictions. This final report follows the publication of a Consultation Report[1] on 16 September 2009 and the analysis of the responses received.

Most market participants took the view that a carefully developed post-trade transparency regime with a phased implementation would be beneficial to market efficiency. All respondents to the Consultation Report agreed that the level of post-trade transparency on any particular market needs to be carefully tailored on the basis of the characteristics of that particular market and the particular SFPs being traded.

In some other important ways, views from market participants varied considerably. In general, buy-side participants are supportive of increased post-trade transparency for SFPs. They expressed the view that increased transparency would assist them in valuing these products, and in general lead to an improvement in price discovery and liquidity. Buy-side participants were supportive of increasing trade transparency, starting with the most liquid and standardised SFPs, with further analysis needed by member jurisdictions before moving onto less liquid SFPs.

In contrast, sell-side participants raised some concerns about post-trade transparency in SFPs. While most sell-side participants agreed that post-trade transparency of some products could be beneficial, they stressed the need for regulators to carefully consider individual market characteristics before mandating post-trade transparency in even the most liquid SFPs. One of their primary concerns is that the non-standardised, complex and illiquid nature of structured finance products would make meaningful price comparability difficult or impossible. However some sell-side participants agreed that if carefully tailored to the particular product and market, and limited to the most liquid and standardised SFPs, increased post-trade transparency could be beneficial to market efficiency.

The TC recognises that there are divergent views about the merits of requiring enhanced post-trade transparency for SFPs, but nevertheless believes that greater information on traded prices would be a valuable source of information for market participants. The TC therefore recommends that member jurisdictions should seek to enhance post-trade transparency of SFPs in their respective jurisdictions taking into account the benefits of and issues related to post-trade transparency discussed in this report.

In the TC's view, member jurisdictions should work initially towards implementing post-trade transparency taking into account the factors mentioned below. To do this, member jurisdictions will need to gain a detailed understanding of how those factors apply in their market. Following the implementation of post-trade transparency for one or more particular types of securities, member jurisdictions should carefully analyse the impact of the transparency on the market for these SFPs, and look to extend post-trade transparency to other securities, when it deems it beneficial to do so.

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1 *Transparency of Structured Finance Products*, Consultation Report, Report of the Technical Committee of IOSCO, 16 September 2009 available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD306.pdf

2 *Report on the Subprime Crisis* – Final Report, Report of the Technical Committee of IOSCO, May 2008,

In the TC's view, it is appropriate for post-trade transparency regimes to be tailored to take into account the unique nature of the market and participants in each jurisdiction, and each member jurisdiction is best placed to judge the appropriate time, scope and manner for enhancing post-trade transparency.

The TC believes that enhanced post-trade transparency should be provided in the most cost-effective way reasonably possible, but should at the same time seek to avoid a negative impact on efficiency and liquidity of markets. The TC believes that it would be appropriate to develop a post-trade transparency regime that provides for the transparency of trade-by-trade data or aggregate data, depending on the liquidity of the particular SFP. Over time, member jurisdictions should seek to move to greater trade-by-trade transparency, where it believes that doing so would provide an overall benefit to the market without revealing a substantial amount of private information.

In light of the above, the TC believes that, amongst other things, member jurisdictions should consider the following factors when seeking to develop a post-trade transparency regime for SFPs:

- The degree of liquidity or secondary market trading for a particular SFP;
- The initial and outstanding amount of the issue;
- The rating of the issue;
- Whether the SFP was publicly offered or offered via private placement;
- Whether there is a broad investor base for the particular instrument;
- The degree of standardisation of a particular SFP;
- Costs of implementation of a post-trade transparency regime or costs of extending any existing post-trade transparency system to SFPs;
- Any appropriate time delays in publishing trade information;
- Whether to require the dissemination of trade-by-trade or aggregate trade information; and
- Thresholds with respect to the disclosure of trade volumes and further measures to help ensure anonymity of the market participants.

Chapter 2. Objectives and Scope of this Report

Mandate

In its *Report on the Subprime Crisis*,[2] published in May 2008, the TC found, *inter alia*, that the recent market turmoil had particularly affected the market in SFPs. In addition, in the Report of the Financial Stability Board (FSB)[3] on *Enhancing Market and Institutional Resilience*,[4] published in April 2008, the FSB recommended that securities market regulators work with market participants to study the possible scope of a comprehensive system for a post-trade transparency reporting system (price and volume) for credit instruments traded in secondary markets.

Following the publication of the FSB report, the TC mandated TCSC2 to examine, including pre-consultation with the financial services industry, the viability of a secondary market transparency system for different types of SFPs, focusing in particular on whether the nature of SFPs lends itself to such transparency and the costs/benefits such a system might entail.

One of IOSCO's 30 principles of securities regulation (set out in IOSCO's *Objectives and Principles of Securities Regulation*[5]) states that regulation should promote transparency of trading. It further states that ensuring timely access to relevant information is key to the regulation of secondary trading as it allows investors to better look after their own interests and reduces the risk of market manipulation. TCSC2 accordingly considered the application of this principle to the secondary market for trading in SFPs.

For the purposes of this Report, TCSC2 defined SFPs as financial instruments that are:

- based on a pooling of assets usually sold to a special purpose vehicle;
- the assets can be either cash instruments or credit derivatives; but the credit risk of the asset pool is de-linked from the originator or sponsor of the assets;[6] and
- there is also credit or maturity tranching of the liabilities backed by the asset pool.[7]

For the purpose of this report, SFPs include residential and commercial mortgage-backed securities (RMBS & CMBS),[8] asset-backed securities (ABS),[9] collateralised debt obligations (CDO),[10] collateralized loan obligations (CLO),[11] and asset-backed commercial papers (ABCP).

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2 *Report on the Subprime Crisis* – Final Report, Report of the Technical Committee of IOSCO, May 2008, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD273.pdf.

3 The FSB was previously known as the Financial Stability Forum (FSF).

4 *Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience*, Financial Stability Forum, 7 April 2008, available at http://www.fsforum.org/publications/r_0804.pdf.

5 *Objectives and Principles of Securities Regulation*, May 2003 available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD154.pdf.

6 A defining feature common to many special purpose vehicles is that of bankruptcy remoteness, whereby a special purpose vehicle's assets are isolated from any creditors of its sponsoring firm should the latter go into bankruptcy.

7 Excluded are covered bonds, as their liabilities are not tranched, as well as certificates and other derivatives products, since they are linked to an underlying asset but not backed by a pool of assets.

8 A primary example includes agency RMBS, which are MBS issued by government-sponsored entities (GSEs) such as Fannie Mae and Freddie Mac or certain government agencies in the United States. Loans eligible for

The debate about the need for additional transparency for SFPs encompasses many dimensions, including transparency of the underlying assets, transparency of the structure of the product, firm-specific information about exposure to a specific product or asset class, trading transparency, and general information about the market. For the purposes of this Report, TCSC2 focuses solely on post-trade transparency for SFPs. However, TCSC2 recognises that other issues relating to transparency are important and may deserve attention in other fora.

Development of this Final Report

TCSC2's work in preparing this Report was informed by a range of meetings and presentations by industry representatives (including market data vendors) followed by a formal period of consultation after the release of the Consultation Report on 16 September 2009. A feedback statement that summarizes the public comments received is attached to this Report as an Appendix. In addition, TCSC2 conducted a survey of industry participants and market authorities[12] to:

a) Identify the types of SFPs that TCSC2 should focus on for the purpose of this project;

b) Identify the general regulatory approaches taken by TCSC2 members with regard to post-trade transparency of different SFPs in the secondary market;

c) Obtain information from the industry, especially any self-regulatory initiatives in this regard;

d) Seek the views of the industry and TCSC2 members on the key issues/challenges and costs/benefits arising from potential trade transparency for SFPs, focusing in particular on whether the nature of SFPs lends itself to such transparency; and

e) Obtain information from active market participants on the degree of secondary trading, both pre- and post-crisis, for SFPs.

TCSC2 received a total of 63 responses to the survey from industry and 17 responses from market authorities. Of the 63 responses from industry, 56 were from financial institutions (buy side and sell side), five from stock exchanges or market associations and two from market data vendors. TCSC2 also obtained clarification on a range of issues at an IOSCO TCSC2 Industry Roundtable held on 13 May 2009 (TCSC2 Roundtable). Participants included representatives from European trade associations, industry representatives (from the buy-side and from the sell-side) and data vendors. TCSC2 also received a written submission from a trade association.

GSE-issued MBS are also referred to as "conforming," and include prime RMBS and sub-prime RMBS (including UK non-conforming RMBS).

9 For example: credit card ABS, auto-loan ABS, student-loan ABS.

10 For example: cash CDOs, synthetic CDOs.

11 For example: cash leveraged loan CLOs, synthetic leveraged loan CLOs.

12 The term 'market authority' refers to the authority in a jurisdiction that has statutory or regulatory powers with respect to markets. Markets should be understood in the widest sense, including facilities and services relevant to debt securities. In addition to traditional stock exchanges, secondary markets should be understood to include various forms of off-exchange trading. The relevant market authority may be a regulatory body and/or a self-regulatory organization.

TCSC2 received 18 responses to the Consultation Paper. Of these responses, five were from financial institutions, 11 were from trade associations or securitisation forums, one from a market authority and one from a market data vendor.

Industry views expressed in this Final Report stem from the responses to the survey carried out by TCSC2,[13] the IOSCO TCSC2 industry roundtable, industry presentations provided during TCSC2 meetings and responses to the Consultation Report. As this was not a scientifically conducted survey or consultation process, those views should not necessarily be interpreted as representing the general view of all market participants.

Other relevant international work

In addition to TCSC2, which focuses on secondary market regulation, other international groups, including the TC Standing Committees and Task Forces are considering matters related to SFPs including issuer transparency, investor due diligence, fair market valuation, firm risk management and prudential supervision, and credit rating agencies. TCSC2 therefore monitored work undertaken by the other Standing Committees and Task Forces and any implications they may have for the completion of TCSC2's mandate on post-trade transparency of SFPs.

For example, IOSCO published in 2008 a report on the role of credit rating agencies in structured finance markets; and the Joint Forum published in 2009 a report on the use of credit ratings.[14] Moreover, in February 2009, the TC established a new standing committee on credit rating agencies (CRAs), also know as Standing Committee 6 (SC6). In May 2010, the TC published a consultative report written by SC6 entitled *Regulatory Implementation of the Statement of Principles Regarding the Activities of Credit Rating Agencies.*[15]

In late 2008, the TC set up a Task Force on Unregulated Financial Markets and Products. This Task Force examined two systemically important market areas, the securitisation process and the market for credit default swaps (CDS), and considered the appropriate regulatory action to improve transparency, efficiency, and market quality. The Task Force issued a final report in September 2009.[16] The final report recommends regulatory actions to assist financial market regulators in introducing greater transparency and oversight with respect to securitisation. The recommendations are aimed at mitigating wrong incentives, enhancing risk management and reducing the lack of transparency. The Task Force is carrying out further work on the implementation of the recommendations.

In April 2010, the TC published a final report entitled *Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities,*[17] setting out disclosure principles applicable to listings and public offerings of asset-backed securities, defined for the purposes of that report as securities that are

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13 IOSCO Questionnaire for Industry Participants: Transparency of structured finance products in the secondary market.

14 *The Role of Credit Rating Agencies in Structured Finance Markets* – Final Report, Report of the Technical Committee of IOSCO, May 2008, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD270.pdf ; see also *Stocktaking on the use of Credit Ratings*, Report of the Joint Forum, June 2009, available at http://www.bis.org/publ/joint22.pdf?noframes=1.

15 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD319.pdf.

16 *Unregulated Financial Markets and Products* – Final Report of the Technical Committee of IOSCO, September 2009, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD301.pdf.

17 *Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities* – Final Report, Report of the Technical Committee of IOSCO, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD318.pdf.

primarily serviced by the cash flows of a discrete pool of receivables or other financial assets that by their terms convert into cash within a finite period of time.

In July 2009, the TC published a final report on *Good Practices in Relation to Investment Managers´ Due Diligence When Investing in Structured Finance Instruments*.[18] That paper sets out five key points that firms should consider when assessing their due diligence policies and procedures with regard to the potential purchase of SFPs. Furthermore, the paper sets out three key steps which should generally be included in a due diligence process along with some good practices to be considered at each step. Finally, it deals with questions relating to the use of third parties in the due diligence process, including credit rating agencies.

A number of groups have undertaken similar analysis to assess whether there is a need to enhance post-trade transparency of securitised markets. For example, the Committee of European Securities Regulators (CESR) issued a report on the *Transparency of Corporate Bond, Structured Finance Product and Credit Derivatives Markets*[19] in July 2009 to address the recommendations of the FSB. CESR notes that, "Although insufficient post-trade transparency may not have been a key reason behind the recent market turmoil and that additional post-trade transparency would not be able to solve the different problems experienced in structured finance product and credit derivatives markets as a singular measure, CESR is of the opinion that post-trade information plays a role also in these markets. However, the appropriate level of transparency should be calibrated taking into account the relevant instruments, their trading methods as well as market participants active in the markets for these instruments". With respect to ABS markets, CESR is of the view that "greater post-trade transparency could assist with valuations of ABS and could generally provide greater transparency of market activity to assist with price formation." In its recommendations CESR calls for a harmonised European post-trade transparency regime for all ABS and CDOs that are commonly considered to be standardised and that in terms of implementation a phased approach should be adopted.

TCSC2 notes that several international industry groups – the Securities Industry and Financial Markets Association (SIFMA), European Securitisation Forum (ESF), American Securitization Forum (ASF) and Australian Securitisation Forum (ASF) – have set up a Joint Global Initiative in an attempt to help restore confidence in the securitisation and structured credit markets. The Joint Global Initiative made several recommendations for improving key market practices including independent third-party sources of valuation, reporting and disclosure practices for RMBS and enhancing transparency into the credit rating agency process. It also made recommendations for proactively guarding against future crises through education programs and the establishment of a Global Securitisation Markets Group to report publicly on the market.

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18 *Good Practices in Relation to Investment Managers' Due Diligence When Investing in Structured Finance Instruments* – Final Report, Report of the Technical Committee of IOSCO, July 2009, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD300.pdf.

19 *Transparency of Corporate Bond, Structured Finance Product and Credit Derivatives Markets*, Report of the Committee of European Securities Regulators, 10 July 2009, available at http://www.cesr-eu.org/popup2.php?id=5798.

Chapter 3. Background information about the Structured Finance Products market

3.1 Nature of the market

Where trading takes place

Trading for SFPs is nearly exclusively transacted on an OTC basis. While in many jurisdictions SFPs are also admitted to trading on a regulated or organised market,[20] trading rarely takes place on these markets.[21] In nearly all jurisdictions the predominant method of trading is still via traditional voice broking. However, a few jurisdictions reported that some SFPs are allowed to be traded on electronic trading platforms,[22] although this does not account for a significant market share.

Public offering v Private placement

In the United States, the offer and sale of many SFP related securities are registered with the SEC, sold in public offerings and publicly traded OTC. They are neither admitted to trading nor traded on exchanges. In addition, virtually all of the CDOs in the United States are offered and sold in exempt transactions without registration with the SEC and are instead privately placed.

In Europe, pre-crisis SFPs tended to be admitted to trading on regulated markets but traded OTC. The Irish Stock Exchange plays a key role in the listing of EU-originated deals, listing approximately 65-70% of all EU deals within the period 2001 to 2008. The Irish Stock Exchange also lists a significant number of US-originated deals, many of which are issued by Cayman and Delaware incorporated vehicles. Over 50% of such listings over the past three years have been for RMBS, with CMBS and CDOs collectively accounting for a further 30%. The majority of issuance in Europe is Euro-denominated and issued by special purpose vehicles (SPVs) mostly incorporated in Ireland or the Netherlands.

In the ABCP market, products are nearly exclusively offered by private placement. Whilst in some jurisdictions it is technically possible to admit ABCP to trading on a regulated market, in practice this is not the case as the shorter maturity of the product can make it financially prohibitive (exchange fees, legal fees, etc.) to admit the instrument to trading.

In Australia, based on estimates as at October 2009, the bulk of outstanding SFPs are RMBS (about 75% of the total) with CDOs (13%), CMBS (5%) and auto-loan ABS accounting for most of the remainder.[23] Almost all the CDOs and RMBS issued in Australia are issued via private offerings and traded OTC, although a proportion of the RMBS are listed on the Australian Stock Exchange to satisfy the eligibility requirements of investment mandates of institutional fund managers.

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[20] For example, United Kingdom, Germany, Brazil, Switzerland, Australia, Italy and Hong Kong.

[21] For example United Kingdom, Germany, and Australia.

[22] For example the electronic trading platform established by Bursa Malaysia and Borsa Italiana.

[23] Source figures from speck by Dr. Guy Debelle, Assistant Governor (Financial Markets), Reserve Bank of Australia, at the Australian Securitisation Conference 2009, Sydney, 18 November 2009.

Whether an SFP is admitted to trading or not can have implications for both on-going and initial disclosure as well as transparency requirements. There are generally no transparency requirements if an SFP is not admitted to trading on a regulated market.

Level of market activity

Respondents report that both primary issuance and secondary market trading of SFPs has declined significantly since the onset of the credit crisis. The primary issuance market in Europe remained closed end of 2008 in the sense that over 95% of all issuance in Europe in 2008 were retained only for repo purposes, notably with the Bank of England and the European Central Bank.[24] In the United States, primary issuance has restarted to a limited extent due to the Federal Reserve Bank of New York's Term Asset-Backed Securities Loan Facility (TALF) program.[25] Industry representatives consulted by TCSC2 indicated that new issuances in the first months of the TALF program were often oversubscribed, and expressed cautious optimism that the program would expand. Primary issuance in Australia has also slowed significantly in 2008 and early 2009 with the bulk of RMBS issued in the first half of 2009 being purchased by the Federal Government's Australian Office of Financial Management.[26] However, conditions in the local SFP market have improved significantly with more recent transactions being more widely supported by both local and international investors at narrower spreads.[27]

In terms of primary issuance by collateral type, the mortgage-backed securities (MBS) sector remains dominant. In 2008, over 83% of all primary issuance in the United States was for agency MBS while in Europe, RMBS accounted for 82% of all issuance.[28] In Australia, RMBS accounted for an estimated 86% of all issuance in 2009.[29]

There were only moderate levels of secondary market trading of SFPs before the onset of the credit crisis. SFPs are complex products with tailored cash flows that may not suit the needs of many investors.[30] Prudent investors with good risk management systems would be expected to conduct significant due diligence before purchasing, so that they can understand the features of the product (e.g., collateral composition, payout structure, credit enhancements, etc.). The expected need to conduct due diligence could be a significant factor in explaining the observed low level of secondary market trading (i.e., this might lead to a lower number of investors who are capable or willing to conduct the necessary due diligence). Moreover, having committed resources to perform the due diligence, purchasers are reluctant to sell into the secondary market, particularly in the near term. Thus, purchasers of SFPs frequently adopt a *buy and hold* strategy, even more so than purchasers of

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24 European Securitisation Forum (ESF) Securitisation data report (Q4 2008), available at http://www.afme.eu/document.aspx?id=2862.

25 The TALF program was created to help market participants meet the credit needs of households and small businesses by supporting the issuance of asset-backed securities (ABS) collateralized by auto loans, student loans, credit card loans, equipment loans, floor-plan loans, insurance premium finance loans, loans guaranteed by the Small Business Administration, residential mortgage servicing advances or commercial mortgage loans.

26 Reserve Bank of Australia Statement of Monetary Policy (May 2009).

27 Reserve Bank of Australia Statement of Monetary Policy (February 2010).

28 European Securitisation Forum (ESF) Securitisation data report (Q4 2008), available at http://www.afme.eu/document.aspx?id=2862.

29 Australian Securitisation News (Issue 411), Jan. 8, 2010 available at .

30 This is particularly the case for the ABCP market, which is regarded to have minimal secondary market trading.

other debt instruments. Anecdotal evidence from the survey undertaken by TCSC2 has sought to compare trading volumes from pre- and post-crisis.

The most notable conclusion that can be drawn from the survey is that aggregated traded volumes have retreated significantly for all sectors. Specifically, according to our survey results, declines in the mortgage-backed sector have averaged 45% for RMBS (both prime and sub-prime) with similar declines seen for CMBS. The picture is more mixed for the ABS sector, with average declines of 45% seen for credit-card ABS, whereas auto-loan ABS volume levels have slumped by 85%. However, student-loan ABS have increased on average by 33%. In general, declines in traded volume have been the greatest for the synthetic CDO and CLO sectors.

This picture is reinforced by information gathered from the UK Financial Services Authority transaction reports[31] for SFPs, which indicates that during the period 1 December 2008 to 29 May 2009, only 35% of the European population of SFPs[32] traded. In terms of trading frequency, 23.5% of those securities which did trade traded only once during this period and only 7% of securities traded at least once per week during this time.

Some attendees at the TCSC2 Roundtable noted a brief spike in trading activity in the first quarter of 2009. In their view, this appears to have been driven by forced selling to meet liquidity needs. The trading subsequently decreased as the market began to stabilize. Participants at the roundtable observed that, although there are some potential buyers in the market currently, most holders of SFPs are reluctant to sell. Respondents noted that this could be ascribed to a general belief that the hold-to-maturity value of many SFPs exceeds the value that could be obtained in the current secondary market. Selling into the current market would lock-in losses and could potentially erode the sellers' capital position.

Active market participants

The industry survey explicitly asked for information regarding the key participants active in the various SFP markets, both at the buyer and seller level. Responses to the questionnaire indicated that the breakdown of participants varies across sector. This breakdown has changed pre- and post-crisis.
In terms of active sellers, banks and funds (especially money markets funds/fund managers) seem to have dominated the SFP market pre-crisis. Some respondents thought that, post-crisis, the breakdown by seller type remained broadly the same.

Mixed views emerge regarding active buyers across the various sectors, but some respondents suggest that, before the crisis, banks and funds (especially money markets funds/fund managers) dominated the SFP market while post-crisis banks seem to have retreated from purchasing SFPs. Fund managers are now seen to account for greater market share, with hedge funds increasing their level of participation for some markets – such as the prime RMBS and CLOs markets.

For the ABCP market, key buyers were seen to be money market funds, banks, insurance companies, and dealers, with a prevalence of dealers and money market funds post-crisis. On the sell side, banks and large business enterprises and money market funds are seen as most active.

[31] This includes transaction reports from FSA-authorised firms as well as transactions reports for non-FSA-authorised firms trading in a security which has been admitted to trading on a regulated market.

[32] This represents 4357 securities (issued in a European jurisdiction) representing all sectors and all ratings.

Wholesale v retail participation

The survey did not solicit information regarding the level of retail participation in the SFP market; and data is not readily available to quantify the extent of retail participation. However, the method of trading (i.e., primarily OTC), the complexity of the products, and the large average trading size strongly suggest that the SFP market is predominantly an inter-dealer market dominated by wholesale participants. However, some jurisdictions[33] do have some retail participants in this market, whether via direct investment in SFPs or indirectly (e.g., via funds).

Degree of product standardisation

SFPs tend to be highly complex products. Whilst there may be some degree of sector homogeneity, at the product level there is scope for greater differentiation. This is due to a variety of reasons including the way the product is structured, the composition of the collateral which backs the structure, performance features and the payment of cash flows. For example, some SFPs - such as synthetic CDOs, which are based on pooling of synthetic assets - may be characterised by a higher degree of complexity and tend to be bespoke.

The responses received to the industry survey do not provide a uniform view on the perceived level of product standardisation by asset class, which in itself serves to highlight a reduced level of product standardisation when compared to other assets which are traded on an OTC basis. Furthermore the perceived level of product standardisation can differ on a geographical basis within the same sector (e.g., UK prime RMBS v US prime RMBS).

Moreover, some respondents noted that, in Europe (in contrast to the United States) the perceived level of product standardisation is lower due to a large number of comparatively small markets impacted by their geographical location, e.g. by unique national laws and practices.

In terms of a consensus view, securities that are backed by credit cards, auto loans, and student loans are generally perceived to have a higher degree of standardisation. Varying views emerged with regards to mortgage-backed securities, with some viewing prime RMBS as having a relatively high degree of standardisation while others thought not. In contrast, sub-prime RMBS and CMBS were thought to have a lower degree of standardisation.

The CDO market and the CLO market are perceived to have a much lower degree of standardisation, with some products in these sectors seen as complex and bespoke.

The perceived level of product standardisation also varies by tranche, with the AAA tranche(s) perceived to be more standardised than the mezzanine or equity tranche(s).[34]

A more uniform view emerged regarding the degree of standardisation for ABCP, with this market generally perceived to have a higher degree of standardisation compared to some other types of SFP.
The degree of product standardisation also seems to correlate with its liquidity. More standardised SFPs, especially those backed by more homogenous collateral, generally are more liquid than SFPs that are bespoke, of lower credit quality or backed by heterogeneous collateral.

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33 For example, Italy, Spain, Canada, Brazil, Hong Kong, and Mexico.

34 Ratings are of course a major issue for many SFPs as they can have an impact on both pricing and liquidity. This paper, however, does not address the issue of ratings or the role of credit rating agencies in general as this issue has been addressed in other fora.

3.2 Little or No Post-Trade Transparency Currently

The vast majority of SFPs are not subject to any post-trade transparency regime.[35] In almost all TCSC2 jurisdictions, SFPs are mainly traded OTC and, with a few exceptions,[36] post-trade information with respect to those OTC trades is not publicly disseminated. Most jurisdictions indicated that they do have post-trade transparency requirements at exchange level if an SFP is listed and traded on an exchange. In addition, some jurisdictions indicated that post-trade transparency requirements would also exist for SFPs admitted to and traded on Multilateral Trading Facilities (MTF), Alternative Trading Systems (ATS), or Electronic Trading Platforms (ETP).[37] However, few SFPs do in fact trade on those markets, so few SFPs are subject to those markets' post-trade transparency regimes. There do not appear to be any initiatives by data vendors in TCSC2 jurisdictions to provide post-trade information to the public regarding secondary market trading of SFPs.

In the United States, however, the U.S. Department of the Treasury has specifically called for TRACE[38] to be expanded to include asset-backed securities.[39] In fact, in March 2010, the Financial Industry Regulatory Authority (FINRA) expanded TRACE to include debt issued by federal government agencies, government corporations and government-sponsored enterprises (GSEs), as well as primary market transactions in TRACE-eligible securities. With this expansion, TRACE broker-dealers will report and FINRA will disseminate to the public primary (with some exceptions) and secondary transactions in non-mortgage related debt instruments issued by U.S. federal government agencies such as Fannie Mae, Freddie Mac, Federal Home Loan Banks and Federal Farm Credit, among others.[40] Moreover, on February 22, 2010, the Securities and Exchange Commission approved FINRA rules expanding TRACE to include all asset-backed Securities (ABS), including mortgage-backed securities (MBS) and collateralized debt obligations (CDOs). Although not yet effective, FINRA would initially only collect ABS transaction data. After detailed analysis and observation of the market, FINRA would determine whether dissemination of ABS data is appropriate.[41]

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35 However, a large majority of TCSC2 jurisdictions (Brazil, France, Germany, Italy, Malaysia, Mexico, Spain, Switzerland, and the United Kingdom) reported that transactions in SFPs that are admitted to trading on a regulated market must be reported for regulatory purposes to the regulatory authority whether or not such transactions were carried out on the regulated market. In such cases, the information is used by market authorities to help maintain fair and orderly markets and to detect and deter insider trading, market manipulation, and other forms of fraudulent or abusive activity.

36 In Malaysia, all trades in SFPs that are traded on Electronic Trading Platforms or OTC must be reported to the exchange. In Australia and Hong Kong, only members of the exchange are required to report information. In Italy, intermediaries concluding transactions outside regulated markets, MTFs and systems operated by systematic internalisers are asked to make public post-trade information on SFPs admitted to trading on Italian regulated markets.

37 Italy, Malaysia, and Switzerland.

38 The Trade Reporting and Compliance Engine (TRACE) is a vehicle that facilitates the mandatory reporting of OTC secondary market transactions in eligible fixed income securities. TRACE was developed by the Financial Industry Regulatory Authority (FINRA), a U.S. self-regulatory organisation. All broker-dealers who are FINRA member firms have an obligation to report transactions in corporate bonds to TRACE under an SEC approved set of rules. TRACE became operational on July 1, 2002.

39 *See* U.S. Department of the Treasury, *Financial Regulatory Reform: A New Foundation*, http://www.financialstability.gov/docs/regs/FinalReport_web.pdf, at 45.

40 *See* SEC Release No. 34-60726; File No. SR-FINRA-2009-010 (September 28, 2009).

41 *See* SEC Release No. 34-61566; File No. SR-FINRA-2009-065 (February 22, 2010). TRACE reporting of ABS transactions would provide to FINRA trade prices, volume and other information. FINRA's ability to supervise

3.3 Existing pricing mechanisms

The price information used by industry participants for price discovery and valuation of SFPs is generally provided from a variety of sources. There is a generic valuation process applicable for SFPs which involves identification of the most recent market quote and comparing that quote to the investor's view of intrinsic value, taking into account risk and interest rate environment.

Industry responses to the TCSC2 survey provided some insight into the sources of pricing information used for SFPs. There are basically three different types of prices used by market participants:

i) Dealer quotes;

ii) Consensus-based prices; and

iii) Model-based prices.

Most participants will use a combination of all three of these sources in addition to internal valuation processes[42] to form their pricing of SFPs.

Industry participants also noted that they use prices at primary issuance for price discovery, particularly for student-loan ABS, RMBS and CMBS. However, the market turmoil and the retreat of market liquidity since mid-2007 have led to a decrease of issuance of new SFPs. Therefore, the usefulness of this as a source of price information may have been reduced.

Dealer Quotes

As noted before, trading of SFPs is nearly exclusively transacted on an OTC basis. As with other debt markets, price information is mainly provided by dealers. Dealer quotes are by far the most prevalent source of price information across all SFPs, with most respondents using this as their main source of price information.

Consensus-based prices

Consensus pricing services are offered in a number of jurisdictions by third-party data vendors and are used by financial institutions on a global basis. This source of pricing information is viewed by respondents as a valuable source of pricing data.

The data vendor receives end-of-day pricing contributions from a wide range of dealers. These prices are then subjected to a number of cleansing algorithms to remove stale data and outliers, with the final published price generally being an average of the remaining pricing contributions.

In the United States, consensus pricing is also available on a number of benchmark deals based on dealer contributions.

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the market would be enhanced through a better-informed surveillance program designed to detect fraud, manipulation, unfair pricing and other misconduct that violates U.S. federal securities laws and FINRA rules.

[42] Factors relevant in scope of such internal valuation processes include: Assets in the portfolio, true sale or synthetic structure, seniority of the tranche (junior, mezzanine, super senior), interest payments, ratings, recovery rate, default probability, credit spreads, cash flow profile, currency risks, CDS indices.

Model-based prices

Pricing of SFPs that trade less frequently is driven more by model-based prices. Model-based pricing uses cash flow models, other inputs, and generic assumptions to derive a theoretical price. Generic assumptions may be gleaned from research reports or analyst insights for particular asset classes. This source of pricing information is particularly relevant for SFPs which trade infrequently.

The retreat of market liquidity since mid-2007 has led to an increased reliance on this type of pricing information.

Chapter 4 Enhancing post-trade transparency

Responses to the TCSC2 survey and Consultation Report provide some insight into the potential benefits and drawbacks of post-trade transparency. A feedback statement that summarizes the comments received is attached to this Report as Appendix 1. TCSC2 acknowledges, however, that it did not select potential respondents in a scientific manner and thus the description below of the summary results should not be viewed as representative of all market participants, particularly because the respondents who provided answers were self-selected. Caution should therefore be exercised when viewing the results of the survey because the views expressed may not necessarily be shared by other market participants. Given these limitations, it is nevertheless clear that some market participants, particularly on the buy-side, see benefits in post-trade transparency for SFPs generally. Of the sell-side respondents, nearly all opposed post-trade transparency for SFPs.

4.1 Potential benefits of post-trade transparency

Survey respondents identified a number of potential benefits associated with a post-trade transparency regime for SFPs.

Improved price discovery and reduction of information asymmetries

A number of buy-side respondents argued that asymmetries in information between the buy-side and sell-side[43] are putting buy-side participants at a material disadvantage. Increased post-trade transparency would reduce information asymmetries in that published prices would be increasingly available to all market participants. Some respondents claimed that the absence of post-trade information partially contributed to the recent dislocations in the SFP market.

The buy-side argued that one of the main benefits of post-trade disclosure would be improvement in the price-discovery process. Reduced information asymmetries could enable investors to have a better informed view of the market, potentially leading to more accurate pricing and appropriate spread levels. This in turn was seen as possibly having a beneficial effect on market liquidity. Some respondents were of the view that an improved price-discovery process would be of more use in developed SFPs markets.

While most buy-side respondents were in favour of trade-by-trade reporting of SFP transactions and saw this as the most helpful form of transparency, some were of the view that the release of aggregate trade data would still be beneficial for market efficiency. Some sell-side participants argued that only aggregate trade data should be released to ensure anonymity of market participants is preserved.

Valuation of products and portfolios

A large number of respondents argued that dissemination of post-trade information would help with portfolio valuation. It was felt that making information on traded prices and volumes publicly available could contribute to more accurate portfolio valuations and in turn support better risk management practices while assisting asset managers in complying with their fiduciary duties to their

[43] Some buy-side participants argued that as the sell-side is involved in a much higher number of trades than the buy-side and given there is little to no post-trade transparency, the buy-side has less information about the market for a particular security. They argued that this can negatively impact the price formation process.

clients. One respondent stated that increased transparency would encourage the improvement of valuation models and so would further improve valuations of SFPs.

Confidence in the market

As a result of these potential benefits, increased market confidence was also identified as a beneficial consequence of a post-trade transparency regime. Of the respondents that viewed post-trade transparency favourably, some believed that a post-trade transparency regime for SFPs could boost liquidity and help stimulate the market for SFPs. However, the majority of those who generally viewed post-trade transparency favourably thought that mandating such transparency at this time would have little or no impact on the secondary market for SFPs. Few respondents believed that the absence of post-trade transparency contributed to the financial crisis.

Involvement of other investor classes

Increased price and market transparency was considered a potential means to bring new investors to the SFP markets. A number of respondents argued that liquid markets were partly the result of low levels of information asymmetry, and so increased post-trade transparency would encourage new investors into the market, bringing liquidity to the market.

4.2 Issues related to post-trade transparency

Survey respondents identified a number of factors and potential drawbacks associated with a post-trade transparency regime for SFPs.

Inappropriateness given customised non-standardised nature of SFPs

Unlike equities and other classes of debt instruments, SFPs involve a large number of customised issues, many of which trade very infrequently. Standardisation of SFPs is difficult because of the range of issuers, the different kinds of underlying assets and the variety of different tranches created on individual pools. As a result, some respondents believe the benefits of a mandatory post-trade transparency regime are limited because it is not always possible to compare *like for like* (i.e. seemingly similar) transactions across a secondary market. That is, where SFPs in a secondary market are largely non-standard, similarities across products that can be used for comparison will be few.

Loss of confidentiality of positions and investment strategies

Some respondents believed that, due to the relatively small number of active participants in most SFP markets, post-trade transparency could result in participants' positions and/or investment strategies becoming identifiable. Most respondents argued that this meant any post-trade transparency needs to be carefully calibrated to ensure there is not an unreasonable loss of anonymity by increasing post-trade transparency. Consequently, liquidity could be further reduced if dealers become unwilling to commit capital if their trades are publicised. Some respondents argued that this should encourage the use of aggregate trade reports rather than trade-by-trade reporting.

Some respondents raised a related concern that mandatory post-trade transparency means other firms can view and take advantage of another firm's market making work by using the latter's published pricing as a starting point. This can reduce the original market maker's incentive to do fundamental research by reducing that market maker's upside potential. This could in fact make the market less efficient if this reduces the level of fundamental research in what are generally complex and heterogeneous securities.

Inappropriateness given illiquidity of SFP markets

Most respondents are of the opinion that post-trade transparency is likely to be best suited to liquid SFPs with large and diverse pools of investors. Where the SFP markets are illiquid (or become illiquid) – with few investors, low volumes, and infrequent trading – post-trade transparency may not, in the view of some respondents, provide clear and consistent information that is needed for price discovery. One respondent argued that the buy-and-hold nature of a large number of SFPs means that transaction prices do not therefore constitute a valuable source of information.

One respondent suggested that indices such as ABX and CMBX, which are published daily, are used to address the heterogeneous nature and illiquidity of SFPs. These indices are used as proxies by investors to do a relative value pricing analysis on their own securities as long as the underlying or the components of the index are consistent with the SFP to be priced. However other respondents argued that these indices were of limited value in price formation given the limited liquidity of the index and low number of benchmark SFPs used in the indices.

Market distortion from transparency of distressed sales

Another commonly identified drawback was the scope for *fire-sales* or distressed sales to distort SFP markets by setting unrepresentative prices, especially when markets are illiquid. The publication of such distressed prices can in turn further depress prices, by drawing the market towards distressed prices, and lead to an increase in volatility. A few respondents noted that while the majority of investors follow a buy-and-hold strategy, publication of distressed sales prices of similar securities could create mark-to-market volatility (i.e., incorrect valuation of portfolios, inaccurate analysis of the risks involved resulting in a decision to trade out of these positions, etc.).

One respondent noted that it is difficult to determine whether a trade is distressed. To identify distressed trades, it is necessary to consider these trades in the broader context of other trades for related and comparable securities. Other respondents argued that with sophisticated and almost entirely wholesale market participants, it should be left to the market to determine whether a trade was distressed; and increased post-trade transparency would assist in determining this.

Costs of implementation

It was noted that post-trade transparency could potentially consume a large amount of resources for the development of systems and compliance monitoring. A concern was raised that, if brokers and sponsors of the deal are to be required to provide additional and/or regular information at an individual client level, higher fees would have to be charged to clients. Other respondents argued that the cost of implementation could be reduced by leveraging existing market infrastructure, and by ensuring that the level and method of post-trade reporting should be adapted for each SFP market segment and location.

More information on deal structures and underlying assets are needed first

A number of respondents stated that post-trade transparency would be less useful if it were not accompanied by increased transparency of the structure and underlying assets of SFPs. Additional information about the deal structure, the quality and performance of the underlying assets, and the general availability and timeliness of such information was often cited as desirable. Increased transparency in these areas can complement post-trade transparency by enhancing the interpretation of post-trade information and helping restore investor confidence in more accurate valuations of assets.

Standardisation of SFPs

A number of respondents argued that steps to standardise the structure and release of information about SFPs was particularly important. Lack of standardisation makes comparisons between SFPs difficult, and would potentially limit the value of increased post-trade transparency. Some respondents argued that post-trade transparency should not be enhanced until there is greater standardisation across SFPs or at least classes of SFPs.

Chapter 5 Evaluating benefits of and issues related to post-trade transparency

The TC recognises that there are divergent views about the merits of introducing post-trade transparency for SFPs. For example, post-trade transparency generally might provide useful information about the overall direction of the market. Many respondents, however, have noted that in a crisis situation, trades in SFPs might be distressed sales and may not reflect true market conditions. These divergent views reflect, to a certain extent, the difficulties in assessing the correct balance between the potential benefits and potential drawbacks of any transparency regime.

In evaluating the potential benefits and drawbacks of a mandated post-trade reporting system, the TC has considered existing IOSCO principles.[44] In particular, Principle 27 states that "regulation should promote transparency of trading." In the Commentary accompanying the Principles for the Secondary Market, it is stated that:

i). *Regulation appropriate to a particular secondary market will depend upon the nature of the market and its participants*;

ii) *The level of regulation will depend upon the proposed market characteristics, including the structure of the market, the sophistication of market users and the types of products traded; and*

iii) *Post trade reporting and publication – information on completed transactions should be provided on the same basis to all participants. Full documentation and audit trail must be available.*

Transparency in general promotes several important policy aims. Transparency enhances investor protection by making it easier for investors to monitor the quality of executions that they receive from their intermediaries.

Transparency can also help to promote market efficiency. Inefficiencies can arise in the pricing of securities when market participants are unaware of others' trading activity. This is particularly the case in dealer-dominated markets where pre-trade quotation information, if it can be obtained at all, can be obtained only from a small number of dealers, thus leaving buy-side clients at an informational disadvantage. Post-trade transparency can reduce information asymmetries between dealers and buy-side clients. If trade prices are publicly known, buy-side market participants will be more likely to question if they are not obtaining prices similar to those at which executions have occurred in the past.

Post-trade transparency would assist in the valuation of SFPs. In the equity markets, for example, last-sale prices are frequently used as the basis for valuations. However, exclusive reliance on last-sale prices presupposes a liquid market where a sale can be viewed as reasonably representing the market's consensus view of a security's value. This may not be the case with SFPs, as secondary market sales may be extremely infrequent for many tranches of SFPs or because particular sales occur in highly individual circumstances. However, some post-trade information coupled with models-based pricing

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44 *IOSCO Objectives and Principles of Securities Regulation*, Report of IOSCO, February 2008, available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD265.pdf.

might be more accurate than models-based pricing alone. Judgment must be exercised to avoid inappropriate reliance on last-sale prices in SFPs for valuation purposes.[45]

Industry participants have pointed out the need for greater standardisation of SFPs and of performance reports on the underlying assets which are being securitised. Whilst transparency of the underlying assets or deal structure is not within the scope of this mandate[46], the TC acknowledges that greater standardisation of SFPs and reporting and transparency of the underlying assets would contribute significantly to enhancing transparency of securitised markets.[47] The TC encourages existing industry initiatives aimed at bringing greater standardisation and transparency of the underlying assets.

The TC examined the potential costs of post-trade transparency in SFPs. These potential costs can broadly be placed into two categories:

1. Operational costs, i.e., those associated with developing and maintaining the systems and internal controls to support a post-trade transparency regime; and

2. Potential costs arising from altered market structure, i.e., a potential loss in liquidity if post-trade transparency caused dealers to reduce their activity in the SFP market.

With respect to operational costs, the TC notes that building a system for collecting and disseminating trade information from scratch could be costly. For example, development of the TRACE system in the United States cost several millions of dollars industry-wide. However, where post-trade transparency regimes are already established for certain kinds of products, such regimes could possibly be extended to SFPs in order to minimize such costs. Thus, extending TRACE to include SFPs would likely not entail the same degree of costs as the initial start-up. In developing a separate

45 The reduction in market liquidity for certain SFPs significantly increased the amount of work and judgment required by financial statement preparers to estimate the fair value. In the U.S., for example, preparers needed to determine if observable pricing information reflected fair value as defined by FAS 157, or if observable transactions were the result of "fire sales" or distressed transactions. However, determining if a transaction is orderly or forced is a difficult task and requires significant judgment. To address the concerns of marketplace participants, the FASB issued FSP FAS 157-4 on April 9, 2009, which provided additional guidance on how to estimate fair value in markets that have become illiquid and identifying transactions that are not orderly. FSP FAS 157-4 reaffirms what Statement 157 states is the objective of fair value measurement—to reflect how much an asset would be sold for in an orderly transaction (as opposed to a distressed or forced transaction) at the date of the financial statements under current market conditions. Specifically, it reaffirms the need to use judgment to ascertain if a formerly active market has become inactive and in determining fair values when markets have become inactive. In addition, the International Accounting Standards Board (IASB) set out a three-phase project to replace its existing financial instruments standard (IAS 39). The IASB finished the first phase of the project in November 2009, when it published IFRS 9 on Financial Instruments. The new standard only rules the classification and measurement of financial assets, but new requirements for the measurement of financial liabilities (phase 1b), impairment (phase 2), and hedge accounting (phase 3) will be added by the end of 2010. Eventually, IAS 39 will be completely replaced by IFRS 9. As of the date of this report, the complete new standard is expected to become effective in the beginning of 2013.

46 As noted at the beginning of this report, IOSCO has examined this issue separately. *See Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities* – Consultation Report, Report of the Technical Committee of IOSCO, June 2009, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD296.pdf.

47 The IOSCO Task Force on Unregulated Financial Markets and Products is currently examining ways to introduce greater transparency and oversight in unregulated financial markets and products and improve investor confidence in, and the quality of, these markets. A Final Report will be released in September 2009 which will make recommendations about regulatory approaches to be considered by national regulators and then implemented as appropriate with respect to securitisation and credit default swap markets.

trade reporting system for municipal bonds, U.S. regulators minimized the operational costs by using clearing information as the basis for the transparency regime.

To assess the possible market structure costs associated with post-trade transparency in the SFP market (or some subset thereof), the TC also took into consideration how the introduction of mandatory post-trade transparency through TRACE has affected the market in corporate bonds in the United States. The TC acknowledges that there are divergent views in relation to TRACE's overall effect. Nonetheless, the TC is of the view that experiences with TRACE could shed some light on potential effects of enhanced post-trade transparency in general.

As part of TRACE's establishment, independent economists were commissioned to test the effects of transparency on corporate bond liquidity. In their empirical study, Goldstein, Hotchkiss and Sirri (2006)[48] found that increased post-trade transparency has a neutral or positive effect on market liquidity. Further academic studies[49] suggest that trade execution costs for institutional transactions in corporate bonds were reduced after the introduction of transaction reporting for corporate bonds through TRACE.[50] Other studies[51] have found evidence of a *liquidity externality*, whereby the improved market quality in securities where there are reported prices improves market quality in similar securities that either have no reports or are not subject to the transparency regime.

However, some doubt remains about the effects of TRACE. For example, SIFMA has argued that the academic studies conducted to date examine only transaction costs, but not volume or other measures of liquidity. Maxwell and Bessembinder (2008)[52] report complaints, from both dealer firms and some of those firms' buy-side customers, that trading is more difficult because dealers are more reluctant now to commit capital to the market.

It is also unclear to what extent TRACE's experience is directly transferable to SFPs.[53] As discussed earlier in this Report, there are significant differences between corporate bonds and SFPs, in terms of the structure of the market, degree of standardisation and investor behaviour. It should also be noted that empirical studies of the impact of TRACE were carried out in a much different market environment. Two other factors could be taken into consideration that could help to limit the operational costs of introducing a post-trade transparency in SFPs.

A first factor in limiting the operational costs of a post-trade transparency regime for SFPs is the involvement of private sector data vendors. A post-trade transparency regime need not be operated as

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48 Michael A. Goldstein, Edith S. Hotchkiss, and Erik R. Sirri, "Transparency and Liquidity: A Controlled Experiment on Corporate Bonds," *Journal of Financial Studies* (2006).

49 Hendrik Bessembinder, William Maxwell, and Kumar Venkataraman, "Market transparency, liquidity externalities, and institutional trading costs in corporate bonds," *Journal of Financial Economics* (2006); Amy K. Edwards, Lawrence E. Harris, and Michael S. Piwowar, "Corporate Bond Market Transaction Costs and Transparency," *Journal of Finance* (June 2007); Amy K. Edwards and M. Nimalendran, "Corporate Bond Market Transparency: Liquidity Concentration, Information Efficiency, and Competition" (May 2007).

50 These studies do not take into account the initial cost of establishing TRACE or the ongoing cost of operating TRACE.

51 Hendrik Bessembinder, William Maxwell, and Kumar Venkataraman, "Market transparency, liquidity externalities, and institutional trading costs in corporate bonds," *Journal of Financial Economics* (2006).

52 William F. Maxwell and Hendrik Bessembinder, "Transparency and the Corporate Bond Market," *Journal of Economic Perspectives* (2008).

53 As noted above, the United States Department of Treasury has recommended that TRACE be expanded to include asset-backed securities.

a public utility on a not-for-profit basis. Market participants that effect trades in SFPs possess valuable information about those trades. Such market participants should not necessarily be required to disclose that information for free. The TC believes that a for-profit transparency regime can be consistent with the market benefits that post-trade transparency may provide. Under such a regime, jurisdictions should ensure, however, that post-trade data could be obtained by the public on terms that are fair and reasonable and not unreasonably discriminatory.

Secondly, a post-trade transparency regime need not include, particularly in its earliest stages, every tranche of SFPs. Indeed, given the sheer number of tranches, a system that attempts to include them all in the reporting regime from the start could prove difficult. Jurisdictions might conclude, therefore, that it is more practical to undertake initially a transparency regime for SFPs with only a limited number of products for which transparency is deemed the most beneficial.[54]

While dealer participation in the market might be expected to lessen when dealers do not have clear informational advantages over buy-side investors, a phased-in approach might show whether and to which extent the alleged drawbacks and benefits prove true. Moreover, market authorities should consider whether the reduction of informational asymmetries between the buy-side and the sell-side might encourage greater buy-side participation, and thereby offset any potential reduction in sell-side participation.

[54] TCSC2 notes that, in the United States, a post-trade transparency regime for corporate bonds that predated TRACE was limited to 50 non-investment-grade debt securities.

Chapter 6 Recommended Approach

The TC is of the view that, in accordance with Principle 27 of the IOSCO principles, there are overall benefits from enhancing post-trade transparency for SFPs. The TC therefore recommends that member jurisdictions should seek to enhance post-trade transparency of SFPs in their respective jurisdictions taking into account the benefits of and issues related to post-trade transparency discussed in this report.

The TC recognises that any post-trade transparency system should be tailored to take into account the unique characteristics of the SFP market in a particular jurisdiction. SFP markets are more developed in certain IOSCO jurisdictions than in others. In particular the degree of liquidity and standardisation can even differ across product classes even within a geographical location.

In seeking to develop an appropriate post-trade transparency regime for SFPs, member jurisdictions may wish to consider the following factors:

- The degree of liquidity or secondary market trading for a particular SFP.
- The initial and outstanding amount of the issue;
- The rating of the issue;
- Whether the SFP was publicly offered or offered via private placement;
- Whether there is a broad investor base for the particular instrument;
- The degree of standardisation. Factors such as the structure of the product and the homogeneity of underlying assets could be considered in determining the degree of standardisation; and
- The extent to which existing post-trade transparency systems could be extended to SFPs at reasonable cost.

With respect to the kind of information that usefully could be disseminated, IOSCO jurisdictions may wish to consider:

- Publication of trade-by-trade transparency information or publication of aggregate trade information (such as high, low, and average prices) on a periodic basis.
- Measures to ensure anonymity of the market participants;
- Reasonable delays before trading information is disseminated; and
- Publication of trade information without disclosing data relating to the volume of the transaction, possibly depending on a certain threshold.

The TC acknowledges that some member jurisdictions may find it helpful to consider other factors in determining how to enhance post-trade transparency. This could include consideration of the availability and quality of information about the underlying assets of SFPs through indices.[55]

The TC recognises that member jurisdictions have implemented different models for the publication of post-trade transparency for asset classes other than SFPs. Different models have their own merits and costs and each could serve to enhance post-trade transparency for SFPs. It is important that any transparency regime be delivered in a cost-effective way. Each member jurisdiction is best placed to determine itself what constitutes an effective way of implementing a post-trade transparency regime for SFPs. However members should attempt to leverage existing technology whenever practical and cost-effective.

Furthermore, individual member jurisdictions are best placed to judge the appropriate time and manner for enhancing post-trade transparency for SFPs in their respective jurisdictions. Thus, a jurisdiction may wish to consider phasing in post-trade transparency in stages, whether in terms of the number of products subject to the regime or the kinds of information disseminated, or both.

[55] An example is the introduction by Markit of its ABX indices, which track subprime RMBS prices, and the fact that market participants could write CDS based on the ABX indices. The CDS market allows market participants to express an aggregate view of the creditworthiness of US RMBS bonds and their underlying assets.

Chapter 7 Conclusions

The financial crisis has brought to light a multitude of issues, some of which are specific to the SFP market and others which are not. In undertaking its work to consider a post-trade transparency regime for SFPs, the TC has solicited information from a variety of sources across several jurisdictions.

Whilst a lack of post-trade information is not widely regarded as being a direct cause of the difficulties experienced by the SFP market, the absence of accurate information – both in terms of an efficient price formation process and for accurate valuations – has come to light. Currently, with a few exceptions[56], a mandated post-trade transparency regime for SFPs does not exist in member jurisdictions, although some pricing information on SFPs is available from a number of sources. Whilst there are divergent views on the possible benefits and drawbacks of a post-trade transparency regime, the TC believes that greater information on traded prices of SFPs is a valuable source of information for market participants. The TC therefore encourages each member jurisdiction to take steps towards enhancing post-trade transparency in its jurisdiction.

In reaching its view, the TC is mindful of IOSCO Principle 27 and the need for promoting transparency in the secondary markets. The TC acknowledges, however, the complexity of the SFP market and therefore the importance for each jurisdiction to consider what level of information might be appropriate to disclose, bearing in mind the characteristics of the market in question and its participants.

56 Italy and Malaysia.

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 B 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.

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.

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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.

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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.

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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

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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.

Appendix 2

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

List of Respondents

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)

VIA EMAIL TO SFP-Transparency@iosco.org

November 13, 2009

Mr. Greg Tanzer
Secretary General
IOSCO General Secretariat
C/ Oquendo 12
28996 Madrid
Spain

Re: Public Comment on Transparency of Structured Finance Products

Dear Mr. Tanzer,

The American Securitization Forum (ASF[1]) is pleased to respond to IOSCO's September 2009 Consultation Report on transparency of structured finance products. ASF believes that the restoration of securitized products markets is an essential and necessary component of any broad-based economic recovery, and is key to the return of more normal levels of credit availability that are important contributors to economic growth. ASF also agrees that improvements to the transparency of structured finance products are a necessary component of such recovery.

It is for this reason that ASF has undertaken a broad platform of industry initiatives for securitized products, under the auspices of "Project RESTART" that are designed to promote this restoration of confidence to securitization markets[2]. Project RESTART encompasses a wide range of activities, including: standardization of data reporting on mortgage securitizations (completed), a similar disclosure and reporting package specific to credit card ABS (in development), an effort to outline a standardized set of representations and warranties for securitization transactions (in development), and in the future will include model servicing procedures and pre-securitization due diligence review standards, among other things. These projects are focused on standardizing and making more transparent critical aspects of the securitization process.

In the context of price transparency, ASF agrees that improvements should be made in providing better price transparency to all market participants as this is one of the cornerstones of rebuilding investor confidence. The consultation notes that "*TCSC2 recognises that any post-trade transparency system should be tailored to take into account the unique characteristics of the SFP market in a particular jurisdiction*". We are pleased that IOSCO has recognized these important and unique features of the securitization markets, and that they have informed IOSCO's approach to post-trade transparency in securitization markets. ASF believes these unique features of securitization markets are important components of any consideration of post-trade reporting requirements, and ASF broadly agrees with the flexible and nuanced approach IOSCO recommends in the consultation report.

Market participants broadly agree that unless carefully approached and designed, the impact of such requirements on liquidity could instead act to hamper a return to normal market conditions, thus acting counter to governments'

[1] The American Securitization Forum is a broad-based professional forum through which participants in the US securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com. The ASF is an affiliate of the Securities Industry and Financial Markets Association.
[2] For more information on Project RESTART, see: http://www.americansecuritization.com/restart

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efforts to safeguard financial stability and restore the provision of credit and lending to the economy. The consultation paper appropriately reflects this consideration.

We have focused our comments on the Proposed Approach described in section 6 of the consultation, in light of the unique characteristics of markets for securitized products in the United States. Those detailed comments begin on the following page. These considerations also inform ASF's work related to recent regulatory proposals regarding the expansion of trade reporting requirements to asset backed securities in the U.S.

Should you have any questions, or desire more information, please do not hesitate to contact me at 212.313.1116 or gmiller@americansecuritization.com.

Sincerely,

George P. Miller
Executive Director

<u>Specific Comments on IOSCO's Proposed Approach</u>
(IOSCO consultation text in bold/italics)

TCSC2 is of the view that, in accordance with Principle 27 of the IOSCO principles, there could be benefits in enhancing post-trade transparency for SFPs. TCSC2 thus recommends that member jurisdictions consider enhancing post-trade transparency in their respective jurisdictions.

TCSC2 recognises that any post-trade transparency system should be tailored to take into account the unique characteristics of the SFP market in a particular jurisdiction. SFP markets are more developed in certain IOSCO jurisdictions than in others. In particular the degree of liquidity and standardisation can even differ on a geographical basis within the same sector.

ASF members broadly agree that there are potential benefits to improvements in post-trade transparency, along with potential costs. As mentioned above, efforts to improve post-trade transparency must be carefully approached as to avoid negative impacts to liquidity in securitization markets, and therefore should necessitate careful study and cost/benefit analysis. ASF members also agree that any post-trade transparency systems must be carefully tailored to the specific characteristics of structured finance markets. This tailoring is not just necessary at the national level; rather, it should extend into the various markets for specific kinds of securitized products. For example, ASF's Project RESTART tailors its efforts to the specific needs of discrete securitization markets such as RMBS and Credit Card Asset Backed Securities. While a broad-brush approach to improvements to structured finance markets may seem easier and more expedient, we believe that it could ultimately create inefficiencies and cause market distortions that would operate contrary to the intentions of regulators. While we will address this point in greater detail later in this letter, generally speaking structured finance markets are not standardized, as structured finance products have unique collateral and structural components. Thus the industry broadly agrees with IOSCO's view that a "one-size-fits-all" solution is inappropriate.

In seeking to develop an appropriate post-trade transparency regime for SFPs, member jurisdictions may wish to consider the following factors:

ASF broadly agrees that each of the following factors is important to the consideration of post-trade transparency systems. ASF notes that these factors should be viewed as interdependent and connected. For example, liquidity is directly tied to the size and nature of the investor base for a product, which is connected to the homogeneity of the products, and causation flows in multiple directions from factor to factor.

- ***The degree of liquidity or secondary market trading for a particular SFP.***

ASF agrees that liquidity should be a central consideration for any post-trade transparency regime, or more broadly, any effort at reform. ASF believes that reforms should have a goal of promoting, not reducing, liquidity. Liquidity is what allows securitization to provide downstream benefits to financial markets; the more liquid a market, the better it is able to finance originations. We note that liquidity has a number of components, beyond measures of frequency of trading. Important to considerations of liquidity, especially in the context of price transparency, is the ease of execution and the ability to trade significant amounts of securities in large blocks. Central to the debate over previous price transparency efforts in the U.S. has been whether market liquidity and efficiency should be measured by trading costs (i.e., bid-ask spreads) or ability to execute/trade in significant size, or some combination of both measures.

We note that liquidity varies widely across securitization markets in a single jurisdiction and also across jurisdictions. In the U.S., at one end, Agency MBS passthroughs are extremely liquid, possibly one of the most liquid fixed-income products in the world. At the other end, there are numerous structured finance products that are bespoke, or otherwise customized to the appetite for risk of a single investor. In between these two extremes there is

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a broad, heterogeneous array of securitized products that are more liquid than bespoke products, but still do not trade frequently. Many securitized products are bought by buy-and-hold investors, or are otherwise "locked up" in vehicles such as resecuritizations and repackagings. Generally speaking, higher rated tranches are more liquid than subordinate tranches.

Liquid products, such as Agency MBS passthroughs, often trade on organized platforms, have significant information available on services such as Bloomberg and TradeWeb, and have relatively high levels of price transparency. These securities trade frequently, in significantly large blocks, and are attractive to both buy-and-hold investors as well as opportunistic investors with shorter return horizons. Illiquid products by definition trade less frequently if at all, with less observable trading information available as to the current market value of a security.

Securitization products, outside of Agency MBS, are generally heterogeneous and less liquid than other financial products such as corporate debt or government securities. For example, an unsecured bond issued by corporation will ultimately depend on the creditworthiness of that corporation; while there may be pricing differences between issuances for a variety of reasons, ultimately the securities have a measure of comparability by virtue of their dependence on the creditworthiness of a single firm. Securitizations, on the other hand, depend not upon the creditworthiness of their sponsor (although sometimes that may be a factor) but rather on the creditworthiness of a discrete pool of assets that collateralizes the security (and the creditworthiness of insurance providers or swap counterparties, depending on the terms of a transaction). Furthermore, securitizations are often structured to meet the needs of the investors in each transaction, and therefore two issuances by the same sponsor may not be at all comparable. Secondary trades of non-agency securities tend to require longer marketing periods, and occur less frequently than those of their Agency counterparts.

These different liquidity characteristics create differences in the applicability of a given trade price to the current value of a security. For a very liquid issue, it is more likely that a recent trade price will be available, and that the available trade price will have direct application to the current value of that security.

For less liquid issues, trade prices may be weeks, if not months, in age. An aged trade price is less likely to be a good indicator of the current value of that security, but rather would serve as a data point in a broader valuation exercise that would also need to include information on collateral performance and expectations of future performance.

Putting all of these considerations together, it is clear that there are a number of facets of liquidity, and that there are distinct levels of liquidity across various structured finance markets. ASF believes that it is important for regulators to develop an understanding of the liquidity characteristics of a market in order to most effectively, and least disruptively, enhance post-trade transparency regimes. ASF would encourage regulators to observe, collect, and share with the industry data on trading volumes and patterns before implementing post-trade transparency regimes in a less calibrated fashion.

- ***The initial and outstanding amount of the issue;***

The size of an issue may be indicative of liquidity but is not necessarily determinative. Broadly, larger issuances tend to be more liquid than smaller issuances, but it is possible for smaller issuances to be liquid. As a proxy for liquidity, ASF believes that initial and outstanding size are appropriate indicators, if used in conjunction with other features such as homogeneity of an asset class and other factors.

- ***Whether the SFP was publicly offered or offered via private placement;***

Generally speaking, publicly registered securitized products are more liquid than privately issued products. In the U.S., it is common for securitized products to be sold under exemptions provided in SEC Rule 144a; sales under this rule are restricted by regulation to sophisticated investors referred to as "qualified institutional buyers" or "QIBs".

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These investors must pass tests with respect to assets under management among other features. Presumably, these investors are situated to perform the significant credit analysis that is required for successful investments in securitized products. By virtue of these restrictions, private markets tend to be less liquid. We note that for corporate debt, the Financial Industry Regulatory Authority's TRACE reporting system does not publicly disseminate trade information for Rule 144a securities.

Publicly issued securities, on the other hand, are subject to the robust reporting regime of the SEC's Regulation AB, that among other things, requires the publication of static pool data and the regular filing of Exchange Act reports. Information dissemination regarding these issuances is less restricted by regulation, and this promotes the liquidity of these products.

- ***Whether there is a broad investor base for the particular instrument;***

A wide variety of investors participate in structured finance markets. They range from banks to pension funds, mutual funds, insurance companies, hedge funds, other types of funds, central banks and other sovereign vehicles.

The investor base for a specific structured finance product, however, is determined by the nature of that product. Securitization markets, outside of certain limited sectors in the Agency MBS market, are overwhelmingly institutional. Structured finance products are by their nature complex (in varying degrees, but in any case more so than a U.S. Treasury security), and demand careful analysis and research on the part of investors. As noted in a previous paragraph, there are a number of structured finance products where the investor base consists of a single investor. For structured finance products where the investor base is small, trade price transparency may raise concerns of a loss of anonymity for transaction participants; this could be detrimental to the (already limited) liquidity in these products.

We also note that the recent disruptions to structured finance markets have impacted the size and breadth of the investor base for SFPs. SFP markets are, and have always been, primarily inhabited by institutional investors. However, many investors once active in SFP markets have pulled back from SFP investments, especially in private label RMBS, and it is unclear when these investors will return and what yields they will demand. Certain financial vehicles, such as ABS CDOs, SIVs, securities arbitrage conduits, and the investment portfolios of the U.S. government sponsored enterprises once played a large role in SFP markets, and have either shut down, unwound, or significantly reduced their purchase activity. These parties, as a whole, were a significant source of demand for both AAA and especially lower rated SFPs. Their loss represents a significant structural change to the investor base and to the liquidity of non-agency SFP markets, and it is unclear what will either partially or completely replace the demand once represented by these investors. While government programs such as TALF have been able to restore a measure of liquidity to certain SFP markets, broadly speaking the markets for most types of subordinate SFPs are still suffering from a severe lack of liquidity. The fragile nature of securitization markets should be considered when regulators are examining the liquidity of SFP markets.

- ***The degree of standardisation. Factors such as the structure of the product and the homogeneity of underlying assets could be considered in determining the degree of standardisation;***

ASF notes that the only structured finance products that can truly be considered standardized are Agency MBS passthroughs. The structures, by their nature as passthroughs, are similar. The underlying collateral, while not fully homogeneous, is subject to the standards and requirements of each agency, and therefore is generally consistent across issuances of that Agency. This has served to a large degree to promote the liquidity of Agency MBS passthroughs.

Other Agency MBS products are customized, and can be quite complex. Non-agency securitizations are by their very nature generally neither standardized nor homogeneous. Waterfalls, cash flows, credit enhancements, inclusion

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of swap and other derivatives, and other features will vary from transaction to transaction. Furthermore, even if all of those features were exactly the same, transactions collateralized by discrete asset pools would depend upon the performance of those discrete assets, which may vary significantly.

In revolving structures such as credit card or auto loan master trusts, cash flows may be more standardized into bullet structures. However, each issuance may not be exactly the same, and it is inappropriate to consider the products homogeneous.

- ***The extent to which existing post-trade transparency systems could be extended to SFPs at reasonable cost.***

Securitized products are generally more complex than corporate or agency debt, and trading practices vary significantly from other fixed income markets. Thus the implementation of reporting schemes for securitized products is likely to be quite complex for broker-dealers in the U.S., especially given the size of structured finance product markets. For example, the total number of SFP CUSIPs exceeds one million, and thousands of new securities are issued each month. Furthermore, structured finance products are often traded forward (e.g., Agency MBS passthroughs), and the offering process may not involve a traditional corporate bond-style syndicate. These factors will tend to complicate trade reporting.

Given this, it is of critical importance that any post-trade transparency regime clearly defines the universe of reportable securities. Furthermore, to the extent that regulators can provide central sources of information regarding products that are within this universe (such as current security factors, identifiers or other information) so that participants are not reporting duplicative information, it will make the transparency system more efficient. Generally speaking, the more that reporting firms are able to automate their processes the lower the cost to them in the long term. Automation will also make reporting less prone to human error and thus more valuable to the end user. Trade reporting systems need to be able to accommodate the unique trading practices and market conventions found in structured finance markets, yet should still allow for automated reporting processes.

The "cost" of implementation should not be considered solely in terms of the monetary cost of implementation by dealers. The calculation of the ultimate "cost" of trade price reporting should also include any impact trade price reporting schemes have on financial markets. This impact could be positive, in terms of increased investor willingness to participate in markets, and increased trading volumes. Furthermore, experience in corporate debt markets has shown a correlation between trade reporting and compression of bid-ask spreads, i.e. a reduction in transaction costs. These factors would reduce the overall "cost".

On the other hand, trade reporting requirements carry with them risks of impacting the willingness of market markers to place capital at risk in certain sectors of securitization markets. Market makers, especially in the current environment of limited risk capital, must consider risk-adjusted returns on various business propositions. A market maker will demand an appropriate level of return for positioning any product, and if this return hurdle cannot be met, that market maker may decide not to participate in those markets. For less liquid products, which are likely to be more credit sensitive and risky, this hurdle will be higher, and less likely to be met. This would create disincentives to market makers for providing liquidity and maintaining inventories of bonds, negatively impacting the liquidity of those markets. Experience in corporate markets has provided examples of reductions in the commitment of capital to corporate trading desks at broker dealer firms, which impacts the depth of these markets, the ability for both dealer and investor participants to trade in significant sized blocks of securities, and the ability to execute trades in a timely fashion. Furthermore, many participants have noted that in the corporate context, much trading and risk capital was moved into synthetic markets, which seems to be contrary to the intentions of regulators. These factors increase the overall "cost".

These costs and benefits in terms of liquidity, market depth, market performance, and incentives for market participants should be considered in conjunction with the actual physical implementation costs of trade price

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reporting requirements. Generally, the imposition of trade reporting requirements on more liquid markets would likely have smaller detrimental impacts, while less liquid markets for more credit sensitive products might see a greater liquidity impact. Either situation should be preceded by a analysis of the impact prior to implementation.

With respect to the kind of information that usefully could be disseminated, IOSCO jurisdictions may wish to consider:

As above, ASF agrees that the following three factors are important considerations, and reiterates that they must be contemplated in conjunction with one another and not independently.

- ***Publication of trade-by-trade transparency information or publication of aggregate trade information (such as high, low, and average prices) on a periodic basis.***

More granular publication of data will provide more specific information for individual securities. Given the limited investor base for many securitized products, and the limited number of market makers for a given product, it could also result in compromises of the anonymity of transaction participants. This consideration is a necessary part of a cost-benefit analysis of post trade transparency requirements.

- ***Measures to ensure anonymity of the market participants;***

ASF members agree that preservation of the anonymity of the activities, portfolios, and investment strategies of market participants is of essential concern when designing any trade price reporting requirements. Efforts should be made to preserve anonymity.

- ***Reasonable delays before trading information is disseminated;***

Delays in dissemination could have different outcomes depending on one's perspective, and the nature of the market for the securitized product. From the perspective of a market maker, delays in dissemination could lessen some concerns that may otherwise lead to decreased commitment of capital. On the other hand, investors may view delayed information as less useful, depending on the nature of the market.

In a very liquid market, where securities trade multiple times per day, a delay in dissemination of trade prices could lead to those disseminated prices being less relevant, or irrelevant, to the current market price for that security. In markets where securities trade less frequently, delays would have less impact on the relevance of a reported price to the current market, so long as the delay did not extend across further activity in that security. Thus in less liquid markets, reporting delays could alleviate some concerns that would negatively impact market participant willingness to commit capital but still provide for the provision of relevant information to investors. As discussed at the outset of this response, this issue is one where the appropriate solution should be tailored to the unique characteristics of the specific securitization market.

- ***Publication of trade information without disclosing data relating to the volume of the transaction, possibly depending on a certain threshold.***

Many investor and dealer members of ASF have indicated that they support a cap on the volume that is disseminated publicly; i.e. that trades above a certain level would be reported only as being greater than that level. For example, FINRA reports trades in corporate debt securities in amounts above $5 million as "$5 million +". The concern around this point is tied directly to concerns of anonymity and preservation of market liquidity.

On the other hand, a number of members have indicated to ASF that an opposite threshold should be established, in order that smaller trades which may be executed at prices not reflective of market pricing for larger trades do not distort perceived levels of market prices, and do not have potentially pro-cyclical impacts regarding the marking of

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portfolios. However, other members have indicated that they would prefer to see prices on all trades, and would be capable of discerning which prices should be ignored for the purposes of their valuation exercises.

TCSC2 acknowledges that some member jurisdictions may find it helpful to consider other factors in determining whether and how to enhance post-trade transparency. This could include consideration of the availability and quality of information about the underlying assets of SFPs through indices.

ASF believes that improvements to the standardization and quality of information regarding the assets that collateralize structured finance products is an essential part of any effort to restore the markets for securitized products. As mentioned previously, ASF's Project RESTART prioritized the standardization of issuance and periodic reporting data for RMBS among all other potential initiatives. Participants in a significant industry study conducted in 2008 indicated that such standardization of information was the most important consideration for the restoration of securitization markets, prioritizing it above improvements to rating agency methodologies, valuation improvements, and trade price reporting requirements.[3] That being said, it is unclear how such standardization relates to post-trade reporting for securitized products.

Indices have featured prominently in the recent market crisis; however there exists significant disagreement as to their ultimate utility, benefits, and reflection of market conditions. On one hand, indices have provided a way for market participants to hedge risk, or to take the other side of those hedges and express their views on the same risk. However, it is not clear that the performance of securitization-related indices such as ABX were always reflective of the fundamentals of the underlying exposures, as opposed to reflective of technical trading patterns and more generally the thin liquidity supporting the indices. Thus it is not clear that indices will necessarily provide appropriate signals to market participants regarding value for their underlying exposures.

TCSC2 recognises that member jurisdictions have implemented different models for the publication of post-trade transparency for asset classes other than SFPs. Different models have their own merits and costs and each could serve to enhance post-trade transparency for SFPs. It is important that any transparency regime be delivered in a cost-effective way. Each member jurisdiction is best placed to determine itself what constitutes an effective way of implementing a post-trade transparency regime for SFPs.

ASF agrees, however we note that jurisdictions should coordinate to the extent practical in order to minimize any cross-border impacts of differences between regulatory requirements.

Furthermore, individual member jurisdictions are best placed to judge the appropriate time and manner for enhancing post-trade transparency for SFPs in their respective jurisdictions. Thus, a jurisdiction may wish to consider phasing in post-trade transparency in stages, whether in terms of the number of products subject to the regime or the kinds of information disseminated, or both.

ASF agrees.

[3] ASF/AuSF/ESF/SIFMA Study: Restoring Confidence in the Securitization Markets, at 10. <http://www.sifma.org/capital_markets/docs/Survey-Restoring-confidence-securitization-markets.pdf>

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13 November 2009

Mr. Greg Tanzer
Secretary General
IOSCO General Secretariat
C/ Oquendo 12
28996 Madrid
Spain

Re: AFME / ESF Dealers Group Public Response to IOSCO Consultation Report on Transparency of Structured Finance Products dated September 2009

Dear Mr. Tanzer,

On behalf of the Association for Financial Markets in Europe (AFME)[1] and the AFME / European Securitisation Forum (AFME / ESF)[2] Dealers Group we are pleased to respond to the September 2009 Consultation Report (CR) on transparency of structured finance products (SFPs).

In the context of developing a sounder infrastructure for the securitisation market and restoring investors' confidence in structured finance products, AFME / ESF agrees that improvements should be made in providing better price transparency to all market participants. Market participants broadly agree that unless carefully approached and designed, the impact of such requirements on liquidity could hamper a return to normal market conditions, thus acting counter to governments', central banks' and authorities' efforts to safeguard financial stability and restore the provision of credit and lending to the economy. The CR appropriately reflects this important consideration.

It is estimated that more than 90 per cent of European securitisations issued to the public in 2006-2007 (approximately €800 billion) were "real economy" transactions. These SFPs supported residential and commercial real estate lending, consumer loans and credit cards, auto loans and manufacturers, SME loans to businesses, trade receivables, leases, infrastructure and other asset classes. AFME / ESF would also like to emphasize the benefits of sound securitisations as a funding source as recently recognised by Chapter 2 of the International Monetary Fund Global Financial Stability Report published at the end of September.

We have focused our comments on both general issues included in the CR as well as the Proposed Approach described in section 6. Our response is intended to serve as a basis for further discussions with IOSCO. We would welcome the opportunity to organise a meeting to discuss in details these

[1] AFME (Association for Financial Markets in Europe) was formed on 1 November 2009 following the merger of LIBA (the London Investment Banking Association) and the European operations of SIFMA (the Securities Industry and Financial Markets Association). AFME represents a broad array of European and global participants in the wholesale financial markets, and its 197 members comprise all pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with SIFMA in the US, and the ASIFMA (Asian Securities Industry and Financial Markets Association) through the GFMA (Global Financial Markets Association). AFME provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European, and UK capital markets. For more information please visit the AFME website, www.AFME.eu.

[2] AFME / ESF (AFME / European Securitisation Forum) is the securitisation division of AFME. The AFME / ESF membership comprises a broad variety of securitisation market participants – issuers, investors, dealers, credit rating agencies, law and accounting firms, data providers, trustees, servicers, stock exchanges, and other participants. The goal of AFME / ESF is to develop, where possible, a consensus approach to a variety of securitisation market-related issues. For more information please visit the AFME website, www.AFME.eu.

comments and related industry initiatives at your convenience. This letter reflects the views of the AFME / ESF Dealers Group only.

Yours sincerely

Rick Watson
Managing Director
Chief Operating Officer
AFME / ESF

GENERAL COMMENTS

1. The crisis has revealed significant deficiencies in the efficient functioning of structured finance markets.

2. The industry is committed to working alongside regulators to restore confidence in structured finance markets. Transparency has an important role to play.
Transparency relates both to information regarding outstanding transactions as well as functioning secondary markets. As IOSCO is aware, the industry has embarked on a significant number of initiatives to enhance transparency in the EU securitisation market, and more broadly to improve the securitisation market infrastructure. The industry has undertaken ten transparency initiatives since the start of the crisis that have been largely implemented. More specifically, AFME / ESF launched in February 2009 the RMBS Issuer Principles for Transparency and Disclosure (RMBS Principles)[3] that have been endorsed by 14 institutions for 19 RMBS programmes as of today. These RMBS Principles include a number of recommendations for standardising fields, formulas and definitions that are currently used in RMBS transactions. These ultimately are relevant in order to improve the valuation process of SFPs. Other initiatives include opening access to relevant SFP information and to this extent AFME / ESF published two separate directories for RMBS and CDOs[4].

3. Market failures and loss of confidence were not caused by a lack of post-trade transparency.
Accordingly the securitisation industry initiatives have not, to date, focused on developing a formal post-trade price transparency regime. Industry has focused on what it sees as the main priorities, such as disclosure and valuation issues in order to most quickly restore confidence.

4. Unless carefully approached and designed, mandatory post-trade price transparency could negatively impact the liquidity in the securitisation market. This could hamper a return to normal market conditions, thus acting counter to governments' efforts to safeguard financial stability and restore the provision of credit and lending to the economy.
Under Article 25 of the Market in Financial Instruments Directive (MiFID) dealers are already obliged to report transactions privately to their respective home state competent authorities. We encourage securities markets regulators to conduct a review of the information that has been submitted over time to analyse trends and volatility in the SFPs market, with particular focus on how often certain types of instruments do or do not trade. This information can then be used to calibrate a public reporting regime. It is important to recognise that particular care should be taken when making such data, in whatever form, available to the public. Regulators' needs are not the same as those of the general public, or other market participants. In tailoring data, to make them suitable for public dissemination, any measure must be accurately aimed and proportionately designed to address specific and clearly defined issues. Insufficiently calibrated measures would provide a disincentive for dealers to stay in the market, thus reducing liquidity. Users of such information should also be mindful of how they apply it to meet their specific purposes. They need to take care to avoid misapplication of unsuitable data, which would result in misleading valuation.

5. We recognise the importance of robust and reliable price information and are keen to work with IOSCO on assessing the role that post-trade price information can play in this process in a way that minimises the risks identified above.
We believe that the issue of trade price transparency cannot be looked at in isolation but must be considered from the broader objective of strengthening price information processes, including valuation practices. This issue is key in the securitisation market where, especially in times of stress, most bonds outstanding do not trade. Any considerations of post-trade price transparency

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[3] For more information on the AFME / ESF RMBS Principles see http://www.afme.eu/dynamic.aspx?id=1672.

[4] The AFME / ESF RMBS Directory is available at http://www.europeansecuritisation.com/dynamic.aspx?id=1486 while the AFME / ESF CDO Directory is available at http://www.europeansecuritisation.com/dynamic.aspx?id=1488.

must further take into account the differing needs of investors in those markets. We would also like to stress that retail presence is almost non-existent in the securitisation markets. The existing trade transparency requirements in the EU under MiFID are designed primarily for the protection of retail clients therefore any application of those requirements to the wholesale markets needs appropriate adjustments.

6. Although price and trade information reporting has improved significantly in recent months and years, the industry agrees that still more can be done to provide more post-trade reporting information to investors and to organise it better, while at the same time preserving incentives for dealers to provide liquidity and capital resources to structured finance market trading activity.
AFME / ESF is promoting the dialogue among its membership in order to proactively propose industry-led initiatives to improve post-trade reporting information for SFPs. Moreover, AFME / ESF is encouraging its membership to develop, at the same time, a consistent approach towards post-trade reporting of other products.

7. The current crisis has highlighted the importance of transparency regarding underlying data and structural features of SFPs to encourage investors' confidence. Improvement of disclosures and valuation practices is paramount to restore liquidity in the SFP market.
In the almost total absence of a primary SFP market in Europe since the summer of 2007, the price discovery mechanism has been badly affected. A consistent reliable source of SFP prices, which is relevant to mark SFP positions for various participants has disappeared and exacerbated the pressure on dealers to provide timely information. Restoring a healthy primary SFP market is dependent upon improvements in the valuation process and disclosures. In the US, TALF has been a valuable pricing tool for SFP valuation discovery process.

8. We are in principal supportive of providing additional transparency, the details of which need to be discussed further.
We welcome that key points in IOSCO's CR are consistent with the recent CESR Recommendations published in July. The dealers' community is actively considering the development of a workable post-trade reporting framework and will engage with both investors and regulators in the coming months. In relation to the EU, we recommend that the introduction of a post-trade transparency regime for SFPs is fully coordinated with the upcoming revision of MiFID expected in 2010. Moreover, we recommend that principles of a post-trade transparency regime for SFPs are not considered in isolation but also in the context of the ongoing dialogue surrounding both the corporate bond market as well as the OTC derivatives contracts.

9. The CR notes that "TCSC2 recognises that any post-trade transparency system should be tailored to take into account the unique characteristics of the SFP market in a particular jurisdiction."
We are pleased that IOSCO has recognised these important and unique features of SFPs. AFME / ESF believes the SFP's unique features are important components of any consideration of public post-trade reporting requirements.

INDUSTRY COMMENTS ON IOSCO PROPOSED APPROACH[5]

TCSC2 is of the view that, in accordance with Principle 27 of the IOSCO principles, there could be benefits in enhancing post-trade transparency for SFPs. TCSC2 thus recommends that member jurisdictions consider enhancing post-trade transparency in their respective jurisdictions.

TCSC2 recognises that any post-trade transparency system should be tailored to take into account the unique characteristics of the SFP market in a particular jurisdiction. SFP markets are more developed in certain IOSCO jurisdictions than in others. In particular the degree of liquidity and standardisation can even differ on a geographical basis within the same sector.
The industry broadly agrees with IOSCO's view that a "one-size-fits-all" solution is inappropriate to meet the needs of various jurisdictions within the EU where structured finance products are distributed and traded. We also recommend that any solution should include not only SFP trades between dealers and other dealers, and dealers and investors but also transactions where brokers are acting as counterparties. This is to make sure that the regime encompasses all trading activity in the secondary markets. It should be noted that recently there has been an increase of the number of brokers active in the secondary market because of the decreased capital allocated to dealer trading desks as a result of the crisis.

In seeking to develop an appropriate post-trade transparency regime for SFPs, member jurisdictions may wish to consider the following factors:
The industry agrees that the factors below are important to the consideration of a public post-trade transparency regime, however these factors should be viewed as interdependent and connected and not considered in isolation.

- ***The degree of liquidity or secondary market trading for a particular SFP;***

It is very difficult to create a single definition of liquidity across SFP market sectors. Liquidity for specific SFP sections can vary significantly not only between asset classes such as RMBS, CMBS and other ABS, but also between countries and individual originators/issuers of SFPs. Asset underwriting quality, credit enhancement of the transactions, ratings agencies utilised, financial strength of the originator and other structure-specific issues create very different perceptions of liquidity by traders and investors. For less liquid SFPs, trade prices may be weeks or months in age. These trade prices are generally not good indicators of the current value of those securities, but rather would assist a broader valuation exercise together with other information including the collateral performance and future expectations. We also note that liquidity has a number of components, beyond measures of frequency of trading. Important to considerations of liquidity, especially in the context of price transparency, is the ease of execution and settlement as well as the ability to trade significant amounts of SFPs in large blocks. Liquidity also varies widely across SFPs in a single jurisdiction and also across jurisdictions as well as across asset classes.

Putting all of these considerations together, it is clear that there are a number of facets of liquidity, and that there are distinct levels of liquidity across SFPs. AFME / ESF believes that it is important for competent authorities to develop an understanding of the liquidity characteristics of SFPs in order to most effectively, and least disruptively, enhance public post-trade transparency regimes. AFME / ESF encourages competent authorities to observe, collect, and share with the industry data on trading volumes and patterns before implementing any public post-trade transparency regime.

- ***The initial and outstanding amount of the issue;***

The initial and outstanding amount of the issue could be an indicator of liquidity although it does not always guarantee the liquidity of a transaction and the amounts traded. Certainly, larger transaction and tranche sizes are generally more liquid than those for smaller transactions. However, there can be large transactions with poor liquidity, and medium-size transactions with reasonable liquidity.

[5] Please note that IOSCO text is reported in bold and italics.

- ***Whether the SFP was publicly offered or offered via private placement;***

Although most European SFPs are listed, not all are truly marketed widely to a large number of investors. Some listed transactions are targeted to a small group of investors, while many listed transactions are offered publicly. For example, in many European CLO transactions, the underlying ratings on many obligors are private and they are often bound by a confidentiality agreement. This practice naturally restricts liquidity.

- ***Whether there is a broad investor base for the particular instrument;***

The investor base for specific SFPs is determined by a combination of factors, such as familiarity of investors with the general asset class as well as the originator and specific structure utilised. Since many SFPs are one-off transactions from a specific SPV, even if originated by a frequent originator of SFPs, investors still need time to review each specific transaction for credit approval.

We also note that the recent disruptions to structured finance markets have impacted the size and breadth of the investor base for SFPs. Many investors once active in SFP markets have pulled back from SFP investments, and it is unclear when these investors will return, and what yields they will demand. European banks plus certain financial vehicles, such as ABS CDOs, SIVs, securities arbitrage conduits, once played a key role in SFP markets and have either shut down entirely, unwound, or significantly reduced their activity. These parties, as a whole, were a significant source of demand for both triple-A and especially lower rated SFPs in Europe, estimates before the crisis indicate that they represented almost half of the investor base. Their loss represents a significant structural change to the investor base, and it is unclear if they will either partially or completely be replaced by other investors such as money market funds or institutional investors. Most SFP markets are currently still suffering from a severe lack of liquidity.

- ***The degree of standardisation. Factors such as the structure of the product and the homogeneity of underlying assets could be considered in determining the degree of standardisation; and***

Many SFPs are by nature not standardised, although certain structures are more standardised than others. For example, for transactions which involve non-revolving discrete pools, the characteristics of the assets will largely determine the cash flows available to be paid to investors. The documentation for these types of transactions can be standardised to a certain extent, however, the cash flows, swaps and credit enhancement for each transaction will often vary. For many revolving structures such as mortgage master trusts or credit card securitisations, cash flows can be more tailored and standardised into bullet structures, although this standardisation process to tailor cash flows to investors will naturally create complexity within those structures.

- ***The extent to which existing post-trade transparency systems could be extended to SFPs at reasonable cost.***

Although most trading of SFPs is conducted over-the-counter, there are a number of established data provider services of post-trade and price data that already produce this information and make it available to investors.

It is of critical importance that any public post-trade transparency regime clearly defines the universe of reportable SFPs. Furthermore, to the extent that competent authorities can provide central sources of information regarding products that are within this universe, such as current factors or other information, so that individual participants are each not reporting duplicative information, it will make the transparency system more efficient. Trade reporting systems need to be able to accommodate the unique trading practices and market conventions found in SFPs as well financial innovation going forward.

The "cost" of implementation should not only take into consideration the cost of implementation by dealers in monetary terms. The calculation of the ultimate "cost" of trade price reporting should also include any impact trade price reporting schemes have on financial markets. This impact could be positive, in terms of increased investor willingness to participate in markets, and increased trading volumes. Furthermore, experience in corporate debt markets has shown a correlation between trade reporting and compression of bid-ask spreads, i.e. a reduction in transaction costs. On the other hand, trade reporting requirements carry with them risks of impacting the willingness of market markers to place capital at risk in certain sectors of securitization markets. Experience in corporate bond markets has provided examples of reductions in the commitment of capital to corporate trading desks at broker dealer firms, which impacts the depth of these markets, the ability for both dealer and investor participants to trade in significant sizes, and the ability to execute trades in a timely fashion. Furthermore, many participants have noted that in the corporate bond markets, much trading and risk capital was moved into synthetic and derivative markets, which seems to be contrary to the intentions of regulators.

These costs and benefits in terms of liquidity, market depth, market performance, and incentives for market participants should be considered in conjunction with the actual physical implementation costs of trade price reporting requirements. Logically, the imposition of trade reporting requirements on more liquid markets would likely have smaller detrimental impacts, while less liquid markets for more credit sensitive products might see a greater liquidity impact.

With respect to the kind of information that usefully could be disseminated, IOSCO jurisdictions may wish to consider:

- ***Publication of aggregate trade information (such as high, low, and average prices) on a periodic basis.***

Due to the very specialised nature of trading in SFPs, the small number of dealer trader participants in each asset class and/or country, we do not recommend the publication of individual trade information. The release of trade-by-trade information is highly likely to reveal individual traders' positions. This would significantly reduce their incentive to make markets and ultimately to provide liquidity. While publication of aggregate trade data, such as average prices, is helpful, any further disclosure in less active markets would need to be carefully assessed. It should be noted when considering this key issue that the financial markets crisis has reduced the leverage capacity of all wholesale markets financial institutions, which, in turn, reduces the ability of firms to take principal positions in SFPs and to commit capital. In addition, the highly specialised nature of many SFPs means that individual dealers must perform considerable due diligence on a potential trade prior to execution. Realistically, there are usually only 3-5 dealers who are willing to take principal risk in specific transactions due to these constraints. Investors will generally be aware of who these dealers are.

- ***Measures to ensure anonymity of the market participants;***

AFME / ESF dealers agree. This is one of the most important points as all trades are assumed to be private bilateral transactions between two counterparties. In addition, the identity of market participants who executed a transaction has little value for investor, not involved in the trade, seeking valuation levels.

- ***Reasonable delays before trading information is disseminated; and***

AFME / ESF dealers agree that a reasonable delay for at least a limited time period before prices and amounts are disclosed to the public is essential to maintaining the ability of dealers to position and manage risk.

- ***Publication of trade information without disclosing data relating to the volume of the transaction, possibly depending on a certain threshold.***

AFME / ESF dealers agree that data relating to any trade volumes should not be disclosed to ensure anonymity.

TCSC2 acknowledges that some member jurisdictions may find it helpful to consider other factors in determining whether and how to enhance post-trade transparency. This could include consideration of the availability and quality of information about the underlying assets of SFPs through indices.
The industry agrees that information regarding the availability and quality of information about the underlying assets is important to liquidity as well as to long-term investment. It is not clear, however, whether this issue is relevant to post-trade price reporting. Indices on European SFPs

could be created from a dealer standpoint. However, there are other factors which influence the decision as to whether indices should be created, such as whether there are sufficient buyers and sellers to make the index sufficiently liquid and more recently if there is a sufficient number of benchmark SFPs that can be selected to be part of the constituents of an index.

TCSC2 recognises that member jurisdictions have implemented different models for the publication of post-trade transparency for asset classes other than SFPs. Different models have their own merits and costs and each could serve to enhance post-trade transparency for SFPs. It is important that any transparency regime be delivered in a cost-effective way. Each member jurisdiction is best placed to determine itself what constitutes an effective way of implementing a post-trade transparency regime for SFPs.
AFME / ESF dealers agree, although a degree of consistency is important so as to avoid regulatory arbitrage.

Furthermore, individual member jurisdictions are best placed to judge the appropriate time and manner for enhancing post-trade transparency for SFPs in their respective jurisdictions. Thus, a jurisdiction may wish to consider phasing in post-trade transparency in stages, whether in terms of the number of products subject to the regime or the kinds of information disseminated, or both.
AFME / ESF dealers agree on the need to provide for a phase-in implementation of any regulation concerning a public post-trade transparency regime. In particular, it would be advisable to ensure that implementation does not take place before economic recovery is assured, given the nature of SFPs where origination activities of underlyings depend on a wider economy. AFME / ESF dealers also recommend that competent authorities share with market participants SFPs trading activities in a “normal” period to help calibrating the potential introduction of a public post-trade reporting regime.

BDG/VH – n° 2636Div.

Mr Greg Tanzer
Secretary General
International Organization of
Securities Commissions
C/ Oquendo 12
28006 Madrid
Spain

13 November, 2009

Re: ASSOCIATION FRANCAISE DE LA GESTION (AFG)'s comments on IOSCO Consultation Report regarding the transparency of structured finance products

Dear Mr Tanzer:

The ASSOCIATION FRANCAISE DE LA GESTION (AFG)[1] would like to thank IOSCO for having solicited comments on its Technical Committee draft Report about transparency of structured finance products (SFPs).

[1] The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include 409 management companies and 660 investment companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing 2400 billion euros in the field of investment management. In terms of financial management location, it makes the French industry the leader in Europe for collective investments (with 1300 billion euros managed by French companies, i.e. 23% of all EU investment funds assets under management, wherever the funds are domiciled in the EU) and the second at worldwide level. In terms of fund domiciliation, French funds are second in Europe and third at worldwide level. Regarding product interests, our association

General Comments

1. AFG is strongly in favour of higher transparency and efficiency in the credit market. Therefore, we are supportive of a tailored mandatory post-trade reporting regime for SFPs as it would obviously lead to a valuable improvement in price discovery process, reducing the information asymmetries between dealers and buy-side clients, and as it would also strengthen the accurateness of portfolio valuation.

2. Considering the fragmented structure of securitised markets and the lack of standardization of the products, AFG agrees with the nine factors suggested by IOSCO Technical Committee to evaluate the appropriateness of establishing post-trade transparency regime in SFPs

3. AFG encourages the industry initiatives like TRACE aimed at developing existing systems for collecting and disseminating trade information. We acknowledge that the reporting extension to SFPs transaction data would contribute significantly to enhance transparency of securitised markets. However, in order to minimize development and operational costs, AFG favours a phased approach with pragmatic and flexible solutions, where only the senior tranches of specific SFPs should be required to a reporting regime, at least at the earliest stages.

4. However, the publication of SFPs trade information may raise a market abuse concern if it is not strictly monitored regarding the degree of liquidity of the secondary market. We recommend that only aggregate trade volume and prices should be disclosed on a periodic basis relevant with the outstanding size of the product issue.

5. AFG considers that the IOSCO's consultation report should have had a wider scope. Indeed, we strongly believe that information disclosure of the deal structure, transparency of the underlying assets, and data availability and accessibility all over the life of securitised products are essential features that can not be dissociated with the approach seeking to develop post-trade transparency.
From this perspective, a specific survey on these issues should be carried out by the Standing Committee on the Regulation of Secondary Markets in order to set out additional disclosure principles applicable to these critical dimensions of SFPs.

In conclusion, it is our belief that a better transparency in SFPs markets will not only hold to post-trade data reporting but will need also be supported by market-driven initiatives to enhance standardised and timely investor reports, current trading methods and market-making commitments to secondary market liquidity.

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represents – besides UCITS – the employee saving scheme funds, hedge funds/funds of hedge funds as well as a significant part of private equity funds and real estate funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

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We thank you in advance for your attention to the views expressed above.

If you wish to discuss the contents of this letter with us, please contact myself at +33 1 44 94 94 14 (e-mail: p.bollon@afg.asso.fr) or Bertrand du Guerny, at +33 1 44 94 94 31 (e-mail: b.duguerny@afg.asso.fr).

Sincerely,

Pierre BOLLON

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13 November 2009

Mr Greg Tanzer
Secretary General
IOSCO
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SPAIN

stp-transparency@iosco.org

Dear Mr Tanzer

Technical Committee of the International Organisation of Securities Commissions – Transparency of Structured Finance Products - September 2009 ("the Paper")

1 Introduction

Thank you for your invitation for the Australian Securitisation Forum ("**ASF**") to participate in this consultation process.

The ASF is the peak industry body representing the Australian securitisation market, the ASF performs a pivotal role in the advancing the benefits of securitisation in Australia to government, regulators, investors, the public and others who have an interest or potential interest in Australian securitisation.

The historical performance of Australian securitisation transactions has generally been strong, and within the expectations of the particular transaction and asset class. In particular, the Australian securitisation market, which is dominated by residential mortgage-backed securities (RMBS), has not suffered the credit-related problems that arose in other markets.

The ASF supports the directive emanating from the G20 meetings earlier this year for regulators to investigate ways in which to help restart securitisation markets. The ASF is encouraged to see that IOSCO is evaluating the merit of additional transparency in securitisation markets while acknowledging the differences between individual markets and the peculiar characteristics of structured finance products within various markets.

The ASF's submission has been developed through the consideration of the Paper by the ASF's regulatory subcommittee and from wider consultation with the members and other stakeholders of the ASF.

Executive Summary of ASF response to the Paper

- The ASF submits that any consideration of establishing a post trade reporting regime should be phased in for the Australian asset-backed securities (ABS) market to allow time to bed down important changes already underway that flow from the IOSCO TFUMP recommendations for securitisation markets.

- ASF believes it to be prudent to allow adequate time for the industry to identify how a system of post trade reporting could be implemented in a comprehensive, cost effective and appropriate manner to suit the Australian debt capital market including ABS.

- The issues associated with collecting and reporting pricing and volume data through multiple domestic and international clearing houses while protecting anonymity needs significant research and evaluation of the legal, logistical, relevancy and timeliness issues.

- Domestic regulators are best placed to understand their respective markets. Accordingly, the ASF believes that it would be appropriate for the Australian ABS market, in conjunction with ASIC, to establish a working group to evaluate and advise on the benefits and costs of post trade reporting at this point to aid a sustainable recovery of the Australian securitisation market.

1 The ASF supports the principle of greater transparency in the Australian securitisation market and the availability of relevant, timely and useful information for investors to make informed investment decisions. The ASF is finalising new guidelines for disclosure and reporting for asset-backed securities (ABS) that it believes, once implemented, will improve consistency and clarity in the Australian market.

2 In evaluating the merit of post trade transparency in the Australian ABS market the ASF believes it needs to be considered in the context of the G20 directive of earlier this year to identify changes that can help restart securitisation markets. Evaluation of post trade reporting of ABS prices and volumes needs to question who benefits and will such reporting improve liquidity in the secondary ABS market.

3 The ASF submits that the concept of liquidity needs to be defined in the context of the Australian ABS market. Even in market conditions that existed before the financial crisis, liquidity in the Australian ABS market did not match the levels of liquidity in other OTC markets such as the foreign exchange market. Past experience of the failure of the listed futures market in semi-government debt securities – even though there is a greater level of liquidity in that market compared to the ABS market – is noteworthy. The ASF submits that liquidity in the secondary ABS market is driven by excess capacity in terms of demand and supply amongst the buy and hold investor base for ABS.

4 Before the financial crisis the Australian securitisation market operated as a wholesale market with both domestic and global investors active. Prior to the financial crisis the growth of the ABS market was significantly underwritten by the liquidity provided by asset-backed commercial paper (ABCP) conduits and structured investment vehicles (SIVs). These investment vehicles have wound down their portfolios and are not expected to re-emerge in the near term. Over the last 12 months the investor base for Australian ABS has predominately been the domestic institutional investors. The ASF believes that the market for Australian ABS in the near term will be characterised by investors who are generally long term holders of ABS.

5 The Australian ABS market has included residential mortgage-backed securities (RMBS), term ABS, commercial-mortgage backed securities (CMBS) and ABCP. The dominant asset class is prime RMBS. However within each asset class there has not been a high degree of standardisation of transaction structures or security features, and pre- and post-issuance disclosure and reporting to investors. There have been differences between RMBS issued by regulated banks and non-bank financial institutions and transactions backed by prime and alternative mortgage loans. This has resulted in a low degree of standardisation in the Australian RMBS market and the broader securitisation market more generally.

6 Structured finance products such as RMBS, CMBS and ABS have generally been considered as illiquid securities in Australia with irregular trades completed on a bi-lateral basis between investors and brokers. Australian ABS is traded in the domestic market and also in global markets where the securities are not denominated in Australian dollars. Liquidity within the Australian debt capital market can be considered across a spectrum from liquid to illiquid. Commonwealth Government Securities (CGS) are considered the most liquid fixed income asset class, corporate bonds are seen to have a reasonable degree of liquidity but ABS are at the more illiquid part of the spectrum.

7 Outside of RMBS the amount of issuance of Australian ABS and CMBS has been modest and low relative to volumes of issuance in other international markets. Where trading has occurred it has been sporadic as most issues have been purchased on a buy and hold basis. In particular the run-off in outstanding amounts of CMBS is such that this asset class may be largely repaid as early as the end of 2010.

8 Price information is provided in Australia through data services and is used by investors and custodians to value holdings. In addition to such data services a number of investment banks and bond trading portals provide regular price sheets to provide information to the market on mid-point fair value prices. It has been difficult through the financial crisis for the market to accurately gauge where there was real buying interest and specific spot trades did not necessarily accurately reflect broader market levels.

9 The ASF believes that a secondary market benefits when there is an active primary market which aids price discovery through disclosure of margins embedded in new issues. Throughout the financial crisis secondary market trading in RMBS accelerated primarily due to the forced deleveraging of many European SIVs and hedge funds. Generally the attractiveness of Australian ABS is tied directly to market sentiment.

10 The ASF believes that if post trade reporting of prices and volumes of ABS were to be considered appropriate, it should be part of a wider and more comprehensive post trade reporting framework for all debt securities traded in the Australian debt capital market.

11 The ASF understands that price and volume data relating to purchase and sales of ABS denominated in Australian dollars is available through Austraclear which is the central clearing house for Australian fixed income securities. Austraclear is a subsidiary of ASX Limited. The ASF is unclear who has ownership of this data; whether it is owned by the individual member organisations of Austraclear, or Austraclear itself. The ASF submits that work needs to be done to ascertain the feasibility of Austraclear making this data available to facilitate post trade reporting. Further the commercial cost of obtaining this data is not known and needs to be clarified in considering the cost/benefit of post trade reporting in Australia.

12 The ASF supports further consideration of the value and benefit of constructing a synthetic price for benchmark RMBS tranches at various rating levels and weighted average life (WAL) bands. This benchmark could augment and validate data and information provided to the market through other pricing services and the actual reported post trade prices and volumes.

13 As many issuers of ABS undertook global issues of ABS prior to the financial crisis, the ASF submits that any proposal to introduce post trade reporting in Australia needs to be completed in conjunction with access to price and volume information from overseas clearing houses such as Euroclear and Clearstream. The ASF is unaware of the practicality and costs of obtaining this information and the issues involved in integrating the data with that potentially available through Austraclear.

14 One issue to consider in implementing post trade reporting is to understand how debt securities may be traded between funds within the same funds management group or how securities may be bought and sold between master and feeder funds. Are these arms length transactions to be included in post trade reporting or could they distort the picture, we wonder.

15 In considering the implementation of post trade reporting in the Australian debt capital market the ASF advocates that existing market infrastructure should be utilised to disseminate the information. One channel of distribution that would be beneficial to the market would be through vendors such as Bloomberg or even through the ASF's own website.

16 The ASF does not have a definitive view at this time as to the appropriate length of delay in reporting trade prices and volumes to the market. The ASF believes further work needs to be undertaken in the Australian market to develop a framework for information to be disclosed that is timely, protects the anonymity of the parties and is relevant and useful to market participants.

17 A concern expressed amongst the ASF membership is the potential volatility in valuation of ABS that could be introduced if trading activity of retail investors is combined with the trading activity by institutions. The debt Australian market outside of CGS is relatively shallow and institutional fixed income investors highlight the past difficulties encountered when income securities were issued to retail and institutional investors some years ago by listed financial services organisations such as National Australia Bank and AMP. Retail investors who did not understand the nature of the securities sold the securities regardless of price to convert their holding to cash to the detriment of the ensuring valuation of the income securities held in portfolios of long term institutional investors. The ASF submits that it cannot be assumed that a mixture of retail and institutional investors in a fixed income security in Australia is necessarily a positive outcome due to the infancy of the retail debt market in Australia.

18 The ASF submits that there are many aspects that influence price and value of ABS which may or may not be represented in the last traded price. The motivation of individual buyers and sellers drive traded prices as do expectations of credit performance of the asset pool, prepayment speeds, views on the servicer of the issue and macro issues such as the outlook for interest rates and unemployment. The ASF believes there needs to be process established to eliminate prices and trades that represent outliers in the market and to present post trade data in a meaningful and beneficial fashion.

19 Practical ways to ensure buyer and seller anonymity and determining the form in which aggregated data would be useful warrants further investigation before moving forward to implement a post trade reporting requirement in Australia.

Thank you for your consideration of our submissions. We would be happy to meet with you or discuss any aspect of this submission by telephone. Once again, we appreciate the willingness IOSCO is showing in ensuring the concerns of the industry generally are being heard in this process.

Yours sincerely
For and on behalf of the Australian Securitisation Forum

Chris Dalton

Chris Dalton
Chief Executive Officer

Copy

Mr Greg Medcraft
Commissioner
ASIC
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AVIVA INVESTORS

12 November 2009

Mr Greg Tanzer
Secretary General
IOSCO General Secretariat
C/ Oquendo 12
28006 Madrid
Spain

Dear Mr Tanzer

<u>Public Comment on Transparency of Structured Finance Products</u>

Aviva plc is the world's fifth-largest[1] insurance group, the largest insurance services provider in the UK and is one of the leading providers of life and pension products in Europe and is actively growing its long-term savings businesses in Asia Pacific and the USA. Aviva's main business activities are long-term savings, fund management and general insurance.

Aviva Investors is the global asset management business of Aviva plc, managing assets in excess of £222[2] billion across a range of funds and asset classes. The business operates under a single brand with 1,430 employees in 20 locations across North America, United Kingdom, Continental Europe, and Asia Pacific.

We are active in the structured finance product markets covered by this consultation and we believe that we, and our buy-side peers, would benefit from greater information flow.

Aviva Investors therefore supports IOSCO's recommendation that member jurisdictions consider enhancing post-trade transparency. We also support IOSCO's list of factors to be considered in developing an appropriate post-trade transparency for structured finance products. We wish to add one further factor which is workability. Any proposal must be workable in that it must be possible to collect the data across a wide range of products and to extend systems accordingly. Proposals must also not be so onerous that they deter market-making. It is important to achieve a balance.

It is our policy to be very supportive of greater transparency. We consider that it is key that regulators and the markets can access information that enables them to make informed judgments. It is also our policy to support harmonisation of regulatory standards wherever possible. Therefore we welcome IOSCO's initiative to propose factors for member jurisdictions to consider in seeking to develop an appropriate transparency regime for structured finance products.

Please note that we ask for our submission to remain private and therefore, not be made available for public inspection.

Yours sincerely

Niall Paul
Chief Investment Officer Equities
Deputy Chief Executive Aviva Investors London

[1] Based on gross worldwide premiums for the year ended 31 December 2008
[2] As at 30 June 2009

Dear Mr Tanzer

You will find below AXA IM's answer to IOSCO Consultation Report on Transparency of Structured Finance Products.

AXA IM is a major investor in structured finance products and is an active member of the most important industry and authorities led initiatives aimed at reviving the European Securitization market.
3 other major investors shares the views expressed herein.

This answer only concerns securitized products in the sense of ABS, RMBS, CMBS and CDOs. This answer does not concern Credit Derivatives such as CDS whose market functioning and liquidity are different. We indeed consider that any reflexion about market organization for securitized products should be treated apart from Credit Derivatives.

1. AXA IM is in favour of full post trade transparency for Securitized Products on a trade by trade basis as most of the Securitized Products markets are as of today illiquid.
We would consider a liquid market as a market where bid/offer are both :

- public and easily available
- reasonably tight and tradable both ways

2. Full Trade transparency should consist in:

- Daily posting of executed trades (ISIN, Quantity, Prices) on an anonymous basis (buyers and sellers remaining unknown)
- This should apply on all securitized products without regard to jurisdictions of underlying assets or SPV or listing. Markets are actually pan European (securitized products are today tradable from any locations no matter jurisdictions) and any located constraints would entail regulatory arbitrage.
- No distinction wholesale / retail should be applied as Real Money Investors are typically involved in both and regulated under MiFid

3. In the absence of liquidity as defined in §1, post trade transparency is of paramount importance:

- Post trade transparency is a normal requirement of a functioning market
  - the most liquid securities worldwide are those for which post trade transparency is effective and quasi instantaneous (equity markets as an example)
- Fixed Income products tend to move toward more transparency (eg TRACE in US) Securitized Products should not be left behind
- Asymmetry of information is harming the market and should not be encouraged:
  - While the lack of post trade transparency did not alone trigger the market dislocation, it plays a definite role in the ongoing dislocation as it both prevents investors to value and trade their holdings while discouraging them to invest again in the asset classes by fear of being gamed by market participants. It should be noted that the only market to have somewhat recovered is the US consumer ABS market where Government led TALF enabled primary issuance which set a relative transparency on price levels.
  - Asymmetry of information fuelled by the absence of post trade transparency is making asset managers' fiduciary duties more difficult

4. Post trade transparency is an easy-to-implement way of market organization

  - Eligibility of securitized products to the balance sheet of certain investors and to the portfolio of regulated collective instruments is currently questioned in the absence of price transparency, liquidity and market organization. Moreover, in the double absence of liquidity as defined in § 1 and of post trade transparency, Real Money Investors face difficulties to give substance to Mark to Market prices they receive from dealers, fuelling concerns from regulators.
  - Securitized Products would become less dependant on the balance sheet of dealers and trading desks, as investors will regain enough confidence to provide long term commitment

Natixis Asset Asset Management, a major asset manager, share these views and recommendations and wish to associate itself with this answer.
Credit Agricole Asset Management, a major asset manager, have expressed their approval for a full trade transparency of securitized product transactions as it considers that transparency as essential for any new development of this market.
A Large Dutch pension investor also express their agreement with the views expressed here.

We remain at your disposal for further developments

Best regards

Gaëlle Philippe-Viriot
Head of ABS Group

Michel Fryszman
Head of ABS Investments

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13 November 2009

Mr. Greg Tanzer

Secretary General

IOSCO General Secretariat

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Spain

Re: Transparency of Structured Finance Products dated September 2009

Dear Sir:

We thank you for the opportunity to respond to the IOSCO Consultation Report on Transparency of Structured Finance Products.

BlackRock is one of the world's premier providers of global investment management, risk management and advisory services to institutional and retail clients around the world. As of 30 June 2009, BlackRock's assets under management totaled $1.37 trillion across equity, fixed income, cash management, alternative investment and real estate strategies. Through BlackRock Solutions, the firm offers risk management, strategic advisory and enterprise investment system services to a broad base of clients with portfolios totaling more than $7 trillion.

As a general principle, we strongly believe that transparency is a very important contributor to market functioning. In particular, we are strongly supportive of the proposal to require post-trade reporting of structured finance trades, as pricing and trading data is an important component of transparency. Since you have already discussed all the important pros and cons in your document, we will not repeat them. Instead, we will briefly respond to the specific issues that you have raised.

1. The absence of trade transparency severely handicaps the structured finance market currently. It results in low levels of confidence, barriers to entry by new investors and potential market abuse by participants with asymmetric access to trade information. Easy availability of quality prices will encourage wider market participation, particularly from more active mark-to-market investors, which the market so badly needs.

2. We suggest that the information required should include the security identifier (ISIN or CUSIP), trade amount, price and time of trade. To preserve the anonymity of market participants, no counter-party information should be required.

3. We believe that this should apply without limitation to all cash and synthetic products, such as RMBS, CMBS, other ABS as well as CDOs, as long as these products are listed on exchanges (or are public securities in the US). We realize that there is considerable objection to this from sell-side firms, so we would like to specifically clarify our position on the following factors:

a. We believe that this should also apply to all tranches of public transactions; private bilateral trades (e.g., credit default swaps) can be excluded.

b. Factors such as rating, position in capital structure, size of tranche or investor base do not affect the need for transparency. In fact, the need for transparency is even greater further down in the capital structure.

c. While we acknowledge the non-standardised nature of structured products, we believe that the market has created generics which will facilitate comparisons and efficient use of the data. For example, even if a particular tranche of an Italian RMBS deal has not traded recently, market participants can make comparisons to other Italian RMBS deals with similar performance and structure.

d. Given the wide disparity in performance, the publication of indices of prices (such as ABX) is a poor substitute for disclosure of trade data on securities.

1. The cost of implementation is trivial compared to the benefits. The size of the structured products market exceeds €1.5 trillion in Europe alone and the cost of implementation is likely to be a tiny fraction of that.
    1. We do not agree with the argument that greater transparency will result in lower liquidity. Liquidity arises from market consensus formed by common data and information, not from the availability of balance sheets.

Just as the current financial crisis was not caused by any one factor, it will not be solved by any one measure. However, improvement of transparency in all its forms, particularly post-trade transparency will go a long way in returning the market to some level of normalcy.

We would be glad to elaborate on any of the statements above.

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November 12th, 2009

Mr. Greg Tanzer
Secretary General

IOSCO The International Organi-
zation of Securities Commissions
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IOSCO Consultation Report
"Transparency of Structured Finance Products"

Dear Mr. Tanzer,

The IOSCO report **"Transparency of Structured Finance Products**" (SFP-report) deals with the question whether post- trade transparency will increase market efficiency and investor protection in the off-exchange SFP markets. IOSCO states that currently, a mandated post-trade transparency regime for SFPs does not exist in any member jurisdiction, although some pricing information on SFPs is available from a number of sources.

The report suggests that IOSCO member jurisdictions shall develop post-trade transparency of structured finance products in their respective jurisdiction. On page 23 it sets out a number of factors to be considered in seeking to develop an appropriate post-trade transparency regime and the kind of information that usefully could be disseminated.

Before we elaborate on the findings of the report, we would like to challenge the interpretation of the definition of SFPs tabled by TCSC2 (page 4). More precisely, we disagree with the assumption stated in the 2nd bullet point and Footnote 2, that the credit risk of the asset pool is de-linked from the special

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purpose vehicle (SPV). On the contrary, it is 100% linked to it, as the SPV in itself is functioning as a shell holding the assets (true sale or synthetically via credit derivatives plus collateral) and issues notes. The bankruptcy remoteness and de-link is meant against the originator / servicer, i.e. if the originator / servicer of the loans / receivables that have been transferred to the SPV becomes insolvent, this should ideally have no effect on the SPV. The better the structural features of the SFP (e.g. downgrade language for counterparty risk, bank accounts not held with originator but with well rated other banks, back-up servicing is in place so that servicing can be transferred easily to that party in case of the insolvency of the originator / servicer, ...), the more remote are the SFPs issued out of the SPV.

Regarding the IOSCO Technical Committee's findings, BVI concurs with the view that greater information on traded prices of SFPs could be a valuable source of information for market participants, especially participants in the investment fund industry which is largely dependent on daily prices of all fund holdings for valuation, NAV calculation, and risk management purposes.

BVI therefore supports the intent of IOSCO that all its members should actively consider enhancing post-trade transparency in their own jurisdiction, and that in seeking to develop an appropriate post-trade transparency regime for SFPs, member jurisdictions may wish to consider the following factors:

- The degree of liquidity or secondary market trading for a particular SFP;

- The initial and outstanding amount of the issue;

- Whether the SFP was publicly offered or offered via private placement;

- Whether there is a broad investor base for the particular instrument;

- The degree of standardization. Factors such as the structure of the product and the homogeneity of underlying assets could be considered in determining the degree of standardization; and

- The extent to which existing post-trade transparency systems could be extended to SFPs at reasonable cost.

With respect to the kind of information that could usefully be disseminated, BVI concurs also with IOSCO's views that jurisdictions may wish to consider:

- Publication of trade-by-trade transparency information or publication of aggregate trade information (such as high, low, and average prices) on a periodic basis;

- Measures to ensure anonymity of the market participants;

- Reasonable delays before trading information is disseminated; and

- Publication of trade information without disclosing data relating to the volume of the transaction, possibly depending on a certain threshold.

BVI agrees with IOSCO that it is helpful to consider other factors in determining whether and how to enhance post-trade transparency. This could include consideration of the availability and quality of information about the underlying assets of SFPs, but should not be limited to the provision of SFP indices. Fragmentation of price information is also an issue which needs to be addressed. Although most of the information will be available through several price sources or banks, not all investors may want to incur the cost of supporting several information systems or access to trading venues.

In addition to increased post trade price transparency in the secondary markets, asset managers need more information on the SFP offerings in the primary markets. We refer for the details on investors needs for increased pre-trade information on SFP and their ratings to our answer dd. 10 August 2009 on the IOSCO Consultation Report on Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities.

BVI finally shares the view of the IOSCO Technical Committee that enhanced post-trade transparency should be provided in the most cost-effective way possible, while at the same time seeking to avoid a negative impact on efficiency and liquidity of markets, and that it may be appropriate to introduce post-trade transparency only on a step-by-step or phased-in basis.

BVI believes that it is now time to tackle the issue. The German asset managers feel that the evolutionary process of providing price transparency in the bond and SFP markets that has been responding reasonably well in the past to changes in investor preferences and demand is not sufficient anymore. From the German asset management perspective, current levels of post-trade price transparency need to be improved following the financial markets crisis and the continuing freeze of most SFP market segments. The German asset management industry does in fact consider the current situation as a market failure with very negative consequences on the asset management ability to perform the risk management, valuation and NAV calculation of the SFP holdings of investment funds on a daily basis. We recall that a number of investment funds in various EU member states that invested in SFP had to suspend redemptions after August 2007 because of lack of SFP liquidity and post trade pricing transparency. Our members therefore support - inter alia - efforts to create new and liquid trading venues for SFP going forward.

The set up of a comprehensive regulatory regime on post trade pricing transparency in the SFP market is required as an important means to rebuild the trust of the investor base. Investors need easy and low cost access to consolidated price information on trades in SFP. Increased transparency on trades and prices will help market participants to find appropriate price levels on other deals too and will help to increase overall liquidity.

There are several initiatives by the banking sector on the way which aim to revitalize the SFP markets. These initiatives stress the fact that the ability of the banking sector to provide credit to their clients depends to a large degree on functioning SFP markets. Against this background we expected that the sell side - issuer and intermediary banks - are now much more willing than in the past to support increased post trade price transparency in order to restart the SFP markets which they need for their future well being.

Concrete regulatory transparency requirements towards issuers and sell side intermediaries nevertheless should be in proportion to costs and other market requirements. The added value of additional transparency for investors and concurrent requirements to issuers should be scrutinized in detail. In summary, we believe that deficiencies in price transparency must be overcome through meaningful regulation which is the result of a dialogue between regulators, SFP issuers, sell side intermediaries and investors.

We hope you find our comments helpful and we stand ready to answer any inquires you may have.

Yours sincerely

BVI Bundesverband Investment und Asset Management e.V.

Signed: Rudolf Siebel

Signed: Marcus Mecklenburg

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efama

European Fund and Asset Management Association

EFAMA comments on IOSCO Consultation Report on Transparency of Structured Finance Products

EFAMA welcomes the opportunity to comment on IOSCO's Consultation Report on Transparency of Structured Finance Products. We strongly believe that increased post-trade transparency for structured finance products (SFPs) would improve market efficiency and thereby investor protection. We therefore welcome the recommendation by TCSC2 that member jurisdictions shall consider enhancing post-trade transparency in their respective jurisdictions.

Before commenting on the Consultation Report, our members brought forward a general remark. They question the definition of SFPs tabled by TCSC2 (page 4). More precisely, they challenge the assumption stated in the 2nd bullet point and Footnote 2, that the credit risk of the asset pool is de-linked from the special purpose vehicle (SPV). As a general rule, the credit risk is 100% linked to it, as the SPV in itself is functioning as a shell holding the assets (true sale or synthetically via credit derivatives plus collateral) and issues notes. The bankruptcy remoteness and de-link is meant against the originator / servicer, i.e. if the originator / servicer of the loans / receivables that have been transferred to the SPV becomes insolvent, this should ideally have no effect on the SPV. The better the structural features of the SFP (e.g. downgrade language for counterparty risk, bank accounts not held with originator but with well rated other banks, back-up servicing is in place so that servicing can be transferred easily to that party in case of the insolvency of the originator / servicer, ...), the more remote are the SFPs issued out of the SPV.

The asset management industry largely depends on daily prices of all fund holdings for its portfolio valuation, the NAV calculation and the risk management. EFAMA members believe that increased post-trade transparency for SFPs will reduce the information asymmetries between dealers and buy-side clients and improve the price discovery process, helping the buyers of SFP in valuing these products. For the asset management industry increased post-trade transparency will thus be beneficial for the valuation of the fund portfolios, ultimately strengthening the accurateness of portfolio valuation, the NAV calculation and the risk management. EFAMA members are therefore strongly in favor of higher post-trade transparency.

EFAMA supports the IOSCO recommendations on the Proposed Approach that all its member jurisdictions should actively consider enhancing post-trade transparency in their own jurisdiction, and that in seeking to develop an appropriate post-trade transparency regime for SFPs, member jurisdictions may wish to consider the following factors:

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- The degree of liquidity or secondary market trading for a particular SFP;
- The initial and outstanding amount of the issue;
- Whether the SFP was publicly offered or offered via private placement;
- Whether there is a broad investor base for the particular instrument;
- The degree of standardisation. Factors such as the structure of the product and the homogeneity of underlying assets could be considered in determining the degree of standardisation; and
- The extent to which existing post-trade transparency systems could be extended to SFPs at reasonable cost.

With respect to the kind of information that could usefully be disseminated, EFAMA members agree with IOSCO's views that jurisdictions may wish to consider:

- Publication of trade-by-trade transparency information or publication of aggregate trade information (such as high, low, and average prices) on a periodic basis;
- Measures to ensure anonymity of the market participants;
- Reasonable delays before trading information is disseminated; and
- Publication of trade information without disclosing data relating to the volume of the transaction, possibly depending on a certain threshold.

One EFAMA member mentioned that the member jurisdictions should bear in mind as important factor the workability of the proposals. It must be possible to collect the data across the wide range of products and to extend systems accordingly. Proposals should not be so onerous as to deter market-making.

One of our members recommended that only aggregate trade volumes and prices should be disclosed on a periodic basis relevant with the outstanding size of the product issue in order to meet market abuse concerns.

Further, the analysis of the TCSC2 is shared by us that a greater standardization of reporting and transparency of the underlying assets of SFPs would contribute significantly to enhancing transparency of securitized markets. Availability and quality of information of the underlying assets of SFPs should be considered and should not be limited to the provision of SFP indices. Information disclosure of the deal structure and data availability and accessibility during the life of the securitized products are also essential points which should be taken into account in the framework of post-trade transparency.

EFAMA members share the opinion of the Technical Committee of IOSCO that enhanced post-trade transparency should be provided in the most cost-effective way reasonably possible but should at the same time seek to avoid a negative impact on efficiency and liquidity of the markets. It is true that in order to limit the operational costs of post-trade transparency the involvement of private sector data vendors is an important factor. However, the costs of the provision of post-trade data to be borne in this case by the buyers of the SFPs should not be neglected. Although most of the information will be available through several price sources or banks not all investors may want to incur the cost of supporting several information systems or access to trading venues.

We also agree with the conclusion of the TCSC2 that in some jurisdictions the introduction of post-trade transparency should be made via a step-by-step or phased-in approach. One of our members suggested that it could be considered that in the earliest stages only the senior tranches of specific SFPs should be required to a reporting regime.

We remain at your disposal for any question you may have or further clarifications you may require.

Yours sincerely,

Peter De Proft
Director General

[09-4099]

FEDERATION
BANCAIRE
FRANCAISE

IOSCO
–
Consultation
–
IOSCO consults on transparency of structured finance products

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorised as banks and doing business in France, i.e. more than 500 commercial, cooperative and mutual banks. They employ 500,000 people in France and around the world, and serve 48 million customers.

The French Banking Federation welcomes the consultation of the IOSCO on transparency of structured products and, on a preliminary basis, would like to emphasise that French Banks are committed to support all initiatives which will satisfy and facilitate both the market efficiency needs and the integrity of the financial system. Then, whilst sharing the view of the IOSCO that the disclosure and dissemination regime for SFPs should be enhanced and valuation processes for SFPs should be strengthened, the French Banking Federation would like to highlight:

- **First,** that a distinction has to be made between securitised products and some other structured securities like warrants, or certificates; securitised products are in the heart of IOSCO's reflexion since they were in the heart of the financial crisis while other structured securities were not due to their own specificities which implies that the rationale on securitisation is not relevant for them;

- **Second,** that in the field of securitisation, liquidity is not of the same nature as on equity or even bond markets.

  On the equity markets, investors are looking for a capital gain. This capital gain is neither calculated on a predetermined basis nor with a known maturity. This is the main reason why there is a natural liquidity on the secondary markets. On the bond markets or on the securitisation markets, investors are expecting a regular income, predetermined and with a maturity of the products and a clear set of protective covenants. This implies that most investors are taking a "buy and hold" strategy. But the difference between bond markets and securitisation markets is that the existing sporadic liquidity of secondary bond markets enables investors to have access to accurate valuations of bonds. This is not the case on securitisation markets.

In 2007, the sporadic liquidity on secondary markets of securitised products completely disappeared, since investors lost confidence of the products which were considered as too complex and with an opaque portfolio of underlying assets.

Besides, considering the transparency of the categories of underlying assets, which means a transparency of the securitised products, should be a prelude to any consideration of the post-trade transparency on the markets.

- **Third,** transparency should be enhanced firstly on the processes, *i.e.* on all the distribution channel, with all intermediaries intervening and their role being clearly identified.

- **Fourth,** IOSCO's consultation paper only focuses on issues around post-trade transparency, and on this issue, there should have a clear distinction between SFPs offered to public and the others SFPs.

There is not doubt in our view that the revitalisation of securitisation is all the more a key stone of the economic growth given the new prudential constraints which could be applied to banks and which will impair their capacity to finance the economy.

This said, before answering on the post-trade transparency question, the French Banking Federation would like to express that the liquidity essentially depends on investors behaviours, which reflects their needs, and then on the intrinsic qualities of the products.

As it is abovementioned, in SFPs markets, investors are looking for a regular income, predetermined and with a maturity of the products and a clear set of protective covenants. This implies that most investors are taking a "buy and hold" strategy. Thus the lack of liquidity on the secondary markets is a logical consequence of the characteristics of the product.

Moreover, the crisis has provided evidence that sometimes the complexity of the products did not allow even sophisticated investors to assess the risks profile of these products. Again though, this was mainly a problem of complexity of the products, rather than any failing in post-trade transparency.

The liquidity of the secondary markets can be enhanced, mainly for investors who need to redeem. Liquidity is essential to convince investors (who have previously experienced investments that they could neither sell nor value correctly) to come back. In order to obtain such liquidity and to promote a more favourable treatment by Central Banks and regulators, it seems necessary to create the conditions of a deeper and more mature market.

This could be achieved by creating high quality and standardised securitised products.

In this regard, the easy identification of such a quality market segment could bring investors to reinvest in these markets. A harmonised market segment will help to regain the confidence of investors and public at large.

This creation of a high quality and standardised structured finance product segment is the first step to liquidity on the secondary market. The industry is leading reflexions in this area and will shortly make propositions.

To fulfil the requirement of quality and standardisation, securitisation products should notably:

- be based only on granular real economy underlying assets meeting eligibility criteria (and not be re-securitisation products);
- meet origination and servicing criteria;
- meet structuring features, etc.

So the French Banking Federation, recognising the necessity to create a more liquid securitisation market, strongly supports the idea of creating a label of transparency and liquidity. It seems preferable that such a label:

- remain market driven, and follow the evolution of the markets and of the Central Banks requirements (in other words the eligibility criteria should be able to evolve through time), the development of a credible market making requires that market makers can benefit from a special treatment, when giving these assets as collateral for refinancing to Central Banks (defining precise and harmonised criteria is thus essential to give confidence to Central Banks in the asset's quality and to justify this special treatment),
- stay light in its conception and in its functioning (and thus be based to the extent possible on criteria elaborated in a binary format), and
- be designed and supported at an international level, and be based upon the best existing national practices. This last point is essential: since securitisation market is in essence global, it seems better to leverage any possible national initiative or structure within an international framework.

Then, the implementation of the post-trade transparency should only be considered as a second step after the first. But, as it is stated before, prior to any imposition of post-trade transparency, the standardisation of the products is the first necessary step. This standardisation must be led by the industry.

Still, the French Banking Federation considers that if there were some segments in SFPs markets where a secondary market does truly exist and, consequently, where trading conditions could justify the establishment of a post-trade transparency regime, the best the industry and the regulators could do in this respect is agree on a high quality and standardised product segment because it is the first condition to the existence of a real secondary market with enough liquidity to make a post-trade transparency regime relevant.

As a conclusion, the French Banking Federation considers that if the quality and the transparency of the products generate the existence of a real secondary market, with enough liquidity, then trading conditions could justify the establishment of a post-trade transparency regime. Permitting each IOSCO member jurisdictions to develop a formal (and possibly, non-identical) post-trade transparency regime for certain SFPs markets (as said in the consultation), may, however, lead to more regulatory fragmentation and increased compliance costs.

Financial Industry Regulatory Authority

November 25, 2009

Mr. Greg Tanzer
Secretary General
IOSCO General Secretariat
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28006 Madrid, Spain

Re: Public Comment on Transparency of Structured Finance Products

Dear Mr. Tanzer:

The Financial Industry Regulatory Authority, Inc. (FINRA) welcomes this opportunity to comment on the Consultation Report, *Transparency of Structured Finance Products*, issued on September 23, 2009 (Report), by the Technical Committee of the International Organization of Securities Commissions (IOSCO). While the term "transparency" has multiple meanings in relation to different classes of securities and their markets, the TC focused its consideration to post-trade transparency, i.e., the reporting and dissemination of price and volume information on completed transactions in individual structured finance products (SFPs).[1] The range of SFPs considered by the TC in developing its Report includes residential and commercial mortgage-backed securities (MBS), asset-backed securities (ABS), collateralized debt obligations (CDOs), collateralized loan obligations (CLOs), and asset backed commercial paper (ABCP).

In developing this report, the TC conducted a survey of interested parties which elicited 63 responses from industry participants and 17 from market authorities. The survey results were supplemented by inputs received at an industry round table held on May 13, 2009.

FINRA is keenly interested in the Report's findings/recommendations because of our recent rule filing proposing to expand the Trade Reporting and Compliance Engine (TRACE) to all ABS, including MBS.[2] Historically, FINRA (and its predecessor NASD) has had an institutional bias toward enhancing transparency in products traded in OTC markets—principally corporate bonds and equities—because of our statutory responsibilities for regulating OTC securities markets and fostering fair and efficient execution of customers' orders. As such, we wish to offer comments on the TC's draft consultation report from a regulator's perspective, particularly in reference to TRACE.

[1] For purposes of the Report, the SFPs were defined as financial instruments with these characteristics: (1) the instruments are based on a pooling of assets usually sold to a special purpose vehicle; (2) the assets can be either cash instruments or credit derivatives, but the credit risk of the asset pool is delinked from the special purpose vehicle; and (3) there is either credit or maturity tranching of the of the liabilities backed by the asset pool.

[2] Launched in 2002, TRACE consists of specific rules mandating transaction reporting and a reporting system for corporate debt instruments traded by FINRA (formerly the National Association of Securities Dealers, Inc. (NASD)) members. An earlier system dating back to 1994, the Fixed Income Pricing System (FIPS) had been operated by NASD, but was restricted to post-trade reporting and limited, aggregated dissemination of transactions in high yield corporate debt. FIPS did have a quoting mechanism, but it was not widely used.

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1. Data Collection to Achieve Specific Regulatory Benefits

FINRA starts with the premise that pre- and post trade transparency is beneficial to the price discovery process, market participants, regulators and issuers. However, depending on the attributes of an instrument and the market for the instrument, a careful analysis should be conducted of the impact of transparency to ensure that regulatory objectives/benefits are appropriately balanced with market quality objectives. Based on our TRACE experience to date, we would highlight the following as potential benefits that may be gained from the systematic collection and analysis of transactional data on a particular class of SFPs:

- the ability to monitor the quality and consistency of executions provided to clients as well as valuations derived from transactional data in conjunction with other sources;
- the ability to monitor for risk build-ups (e.g., exposures to market and liquidity risks) at specific firms attributable to concentrations of SFP holdings;
- the possibility to identify and study apparent correlations and/or market impacts between the trading of particular SFP and another product traded in the cash or derivative market segments; and
- the ability to develop an audit trail of transactions in a given product to detect instances of market abuse.

We would emphasize, however, that implementation of a trade data reporting requirement to meet regulatory needs does not always result in a post trade transparency regime equivalent to that which typically exists in cash markets for corporate securities. Rather, a separate analysis must be conducted—using the reported transaction information—to determine the sort of post trade transparency regime that would be appropriate for the particular security/instrument, given the character of the market in which it trades. This analysis should materially assist in defining the form and frequency that the post trade data dissemination should take. For example, the analysis may cause the authority to conclude that the dissemination of data only in aggregated form is the best option. Similarly, given the diversity of jurisdictions that comprise IOSCO's membership, this second analysis may yield different results depending on the volume and breadth of secondary market trading in SFPs that now occurs in the respective jurisdictions. However, it is not possible to make the transparency analysis until the local authority implements a systematic data collection regime and assesses the character of its OTC market in the SFPs.

In reference to FINRA's proposed expansion of TRACE to ABS, we have filed the proposed rules with the U.S. Securities and Exchange Commission (SEC) for public comment and review.[3] The rules propose end-of-day reporting of transactions in ABS, but no dissemination of transaction information. Assuming the SEC's approval, FINRA would proceed to collect and analyze the transaction information for consistency with the reporting rules. The data would also be analyzed to develop a profile of the market in various classes of covered securities and the role of the firms that act as dealers or underwriters in these instruments. Upon completion of these analyses, we would expect to be in a position to determine whether it is appropriate to disseminate certain elements of the collected data on a regular basis, and how that dissemination should occur.

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[3] See File No. SR-FINRA-2009-065, submitted to the SEC on October 1, 2009. The FINRA rule filing refers to ABS (and not SFP) instruments because this term defined and used in key SEC regulations pertaining to this segment of the structured debt market.

Thus, to understand and therefore effect meaningful regulation, we believe it is essential to collect and analyze the transactional data to understand the character of the market place for individual products before making any decision on dissemination of secondary market transactions. Meanwhile, however, the collected data can and should be used to meet the corresponding regulatory objectives.

2. The Cost Factor

Several parties that responded to the survey underlying the Report cited the cost of building and administering a system to capture, cleanse, and eventually distribute selected data on reported transactions. In our experience, it is important to have a solid understanding of the market structure, trading practices, distribution of trading among dealer participants, and available infrastructure that might be leveraged to achieve a cost-effective reporting mechanism. Thus, it may be feasible to build on existing vendor services to implement a reporting mechanism for large volume firms, thereby achieving greater economies of scale at the vendor-provider. In contrast, if the local market consists mostly of firms with modest to low trade volumes in SFPs, a web based reporting solution may be the most cost-effective option. If the local market features a mix of high and low volume firms, the approach may be to support reporting for the former via a direct interface through existing infrastructure while permitting low-volume firms the alternative of a web-based mechanism. Thus, the optimal approach from a cost standpoint need not be a "one-size-fits-all" solution.

At the market participant level, the launch of a system to support the mandate for transaction reporting will likely involve some incremental costs, regardless of the system chosen. Over time, there should be an effort to offset some of these costs with benefits in the form of value-added services derived from analyzing or mining of the collected data. This possibility deserves consideration at an early stage in fashioning a transaction reporting system.

Finally, we also believe that savings will result from a reduction of market abuses through enhanced market surveillance. Additionally, over the long term, we believe that increased revenue will result from increased liquidity due in part to increased transparency with respect to post-trade data. These economic gains would offset some of the operational costs that firms will incur to support systematic reporting of transaction data in SFPs.

3. Monitoring the Impact of Implementation Over Time

FINRA wishes to underscore the importance of continuing to monitor the impact of the post-trade reporting regime in relation to the goals established for the regime. Our experience with TRACE includes periodic evaluations to assess the impact of trade collection and data dissemination on the depth and liquidity of markets in the reportable securities. In this area, we have utilized the academic community to conduct periodic studies to test our internal findings or perceptions of TRACE's impacts. Given the nature of SFPs and, and in many cases, their lack of fungibility, such monitoring may be quite useful. Moreover, we believe there is value in conducting such studies during times of market stress as well as normal periods. The results of these studies should provide empirical data that may be used to fine-tune the reporting/dissemination regime.

In closing, FINRA wishes to acknowledge the high quality and comprehensive work product produced by the TC on this complex topic. We would be happy to discuss our experience further at your convenience.

Sincerely,

Steven Joachim
Executive Vice President
FINRA

VIA ELECTRONIC MAIL: SFP-Transparency@iosco.org

November 12, 2009

Mr Greg Tanzer
Secretary General
IOSCO General Secretariat
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28006 Madrid
Spain

Public Comment on Transparency of Structured Finance Products

Dear Mr Tanzer:

Interactive Data Corporation ("Interactive Data") welcomes the opportunity to respond to the International Organization of Securities Commissions ("IOSCO") invitation to comment on the consultation report on Transparency of Structured Finance Products ("The Report") proposed September 2009.

Interactive Data's Pricing and Reference Data business is a leading provider of pricing and fixed income evaluations (including for structured finance products) for the financial industry in support of our clients' pricing, research, and portfolio management activities. We also offer valuations for a range of derivative instruments. Throughout this period of financial market turmoil, and following the issuance of various proposals (from the G20, US Treasury, ASF/ESF, among others) regarding the transparency of OTC and structured finance products (SFP), we have actively engaged with clients and other industry participants regarding the role of market data providers and the information that we can supply to support transparency in these markets.

Post trade transparency and its impact

Interactive Data supports increased transparency in SFP markets and believes such transparency will result in improved price discovery and liquidity. We understand the concerns that certain market participants have voiced regarding the potential costs and burdens from an increase in SFP post-trade transparency, however we believe that post-trade transparency could improve the liquidity in these markets by improving confidence in the market and attracting new investors to these assets. In addition, facilitating the price discovery process would assist financial statement preparers in meeting new and evolving reporting and disclosure requirements from the IASB and the FASB.

Interactive Data has responded to our clients' increased demand for transparency by providing a range of new resources and information in support of our evaluation services, including market data reports and assumptive data for SFPs. These resources could be further enhanced by access to post trade transparency data. Given the increased requirements of our clients, we would welcome the opportunity to participate in either a public or for-profit transparency regime. As noted in The Report, there are significant costs required to set up a post trade transparency system, however market authorities' existing post trade reporting mechanisms could be leveraged where available to mitigate these burdens.

Interactive Data's evaluated pricing approach

As an established provider of evaluated pricing for SFPs, Interactive Data would like to comment on the existing pricing mechanisms outlined in section 3.3 of The Report. We note that the existing pricing mechanisms stated (dealer quotes, consensus-based prices and model-based prices) do not sufficiently describe the approach we employ. Interactive Data's approach utilises pricing models which are driven by market data. The proprietary pricing models are built to take into account market convention, accommodate relevant structural details, and incorporate market and assumptive data. The model inputs are maintained by teams of dedicated specialists and derived from information sourced from the market, including reported trades, broker/dealer quotes, issuer spreads, two-sided markets, comparable securities, bids, offers and reference data. Market information is analysed in the context of groups of securities or sectors, and individual security-level characteristics are also taken into account, as appropriate. This approach also allows our evaluators to apply judgment when considering distressed prices and quotes that appear to be outliers, which can be investigated further and/or assigned less weight in the evaluation process.

This approach allows us to evaluate a wide range of assets that might not be priced effectively using only one of the mechanisms highlighted in The Report. As stated in section 5 of the Report, "some post-trade information coupled with models-based pricing might be more accurate than models based pricing alone." We suggest that a market-based approach, such as the one utilised by Interactive Data, is well-recognized by the industry and should be included in the list of existing pricing mechanisms specified in section 3.3 of The Report.

Transparency in underlying assets

In addition to post-trade transparency, we also support efforts by IOSCO, and others, to improve the transparency of underlying information for SFPs. Expanded access to underlying collateral data will increase the availability and quality of pricing sources for SFPs. It will also allow for increased transparency of model-based and market-based valuations, ultimately increasing confidence in the market and potentially leading to greater liquidity.

Application of transparency in post trade information

We support IOSCO's recommendation in section 6, the Proposed Approach, that IOSCO jurisdictions may wish to consider publication of trade information on a periodic basis. We note however that the FINRA® TRACE™ feed and Xtrackter TRAX feed report trades in intervals of less than an hour, and suggest that IOSCO jurisdictions consider similar time frames for periodic reporting for market participants to get the main benefits of post-trade transparency. In addition, we note that the feeds mentioned above also include indication of volumes which is invaluable for users of the information to appropriately weight the data as part of their valuation process.

Interactive Data supports the work of IOSCO to improve post trade transparency and we are grateful for the opportunity to provide our perspective on The Report. We would be happy to engage in further dialogue with IOSCO on this and related topics.

Sincerely,

Roger Sargeant
Managing Director - International

International Banking Federation

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Mr Greg Tanzer
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13th November 2009

Email: SFP-Transparency@iosco.org

Dear Mr Tanzer,

Transparency of structured finance products: consultation report

General remarks

1. The International Banking Federation (IBFed) welcomes IOSCO's public consultation on post-trade transparency of Structured Finance Products (SFPs) and it is very appreciative of the work conducted by IOSCO´s Standing Committee 2 (SC2) in preparing the report and, in particular, of the meetings and presentations held with industry representatives. The comments hereto contained are made in the Federation's capacity as a body representative of the buy and sell-sides of SFPs.

2. The Federation notes that IOSCO is consulting on SFPs as defined by the SC2: financial instruments based on a pooling of assets, excluding covered bonds and other derivatives products linked to an underlying asset but not backed by a pool of assets. The definition catches the following instruments: residential and commercial mortgage-backed securities (RMBS & CMBS), asset-backed securities (ABS), collateralised debt obligations (CDO), collateralised loan obligations (CLO), and asset-backed commercial papers (ABCP). Specifically, the IBFed highlights that IOSCO is not consulting on bond markets and on the transparency in those markets[1].

[1] The difference between bond markets and securitisation markets is that the existing sporadic liquidity of secondary bond markets enables investors to have access to accurate valuations of bonds. This is not the case on securitisation markets.

3. Furthermore, the Federation notes that IOSCO's consultation paper focuses on issues around post-trade transparency. Our comments will, therefore, mainly refer to that particular set of products and topic issue.

4. That said, and as way of background, the Federation wishes to highlight a number of considerations:

    - Actual or perceived market failure in SFPs as defined in this consultation paper should not be translated in a wholesale manner to other OTC markets or derivative products.

    - The **value of any post-trade transparency regime arises as a consequence of the existence of robust, liquid secondary markets where products are traded with sufficient frequency to make post trade price reporting relevant**. There is a direct link between liquidity in the market and the intrinsic characteristics (e.g. credit quality, level of standardisation) of the products traded in that market. This holds true for both equity and other products, such as SFPs. In 2007-2008, the levels of liquidity on secondary markets of securitised products completely disappeared as investors lost confidence in the products which were considered too complex, with an opaque portfolio of underlying assets.

    - As a consequence of the above point, prior to the imposition of a post-trade transparency regime in SFPs, an assessment of the depth and maturity of SFPs' secondary markets and, necessarily, of the level of standardisation in SFPs is required. Importantly, the implementation of a post trade transparency regime of transactions will not create *per se* liquid and robust secondary markets.

    - The view of the Federation is that the level of standardisation of SFPs can be improved and, to that effect, the **industry is working towards the establishment of high quality, standardised products that would bring about a secondary market with enough liquidity as to make a post-trade transparency regime relevant**. Those efforts would certainly contribute to the revitalisation of important segments of the SFPs market where low activity levels are impairing banks' capacity to finance the economy. In addition, these efforts will also facilitate the eligibility of securitised products as collateral at central banks.

    - **Undue levels of standardisation, disclosure, or post-infrastructure underpinnings may, nonetheless, render secondary markets inefficient**. That is why the nature of any industry-driven (or, to the same effect, regulatory) solution needs to be sensible for the market / product. Whilst a degree of market-driven standardisation of some structured product offering should be pursued, it is important to remember that non-standard products exist for a reason.

5. More specifically now on post-trade transparency of SFPs, the Federation shares the view of IOSCO that - for the reasons explained above - "*a lack of post-trade information is not widely regarded as being a direct cause of the difficulties experienced by the SFPs market*". The Federation also concurs with the view of IOSCO that "*there are divergent views on the possible benefits and drawbacks of a post-trade transparency regime for SFPs*".

6. Furthermore, the Federation is in broad agreement with IOSCO´s analysis regarding the situation in the SFPs market. As noted by IOSCO, SFPs are usually complex products with tailored cash flows that may not suit the needs of many investors. As a result, the pool of investors interested in these products is limited. Furthermore, investors in SFPs are likely to be wholesale participants (e.g. banks, hedge funds, insurance companies) with a presumed sophisticated understanding of SFPs and, consequently, sufficient ability to look after their own interests (even if the crisis has put that presumption under review). In addition, purchasers of SFPs frequently adopt a "buy and hold" strategy and, finally, and more importantly in the context of this analysis, **trading for SFPs is nearly exclusively transacted on an OTC basis.** IOSCO furthermore clarifies that where SFPs are admitted to trading in regulated or organised secondary markets, **trading rarely takes place**.

7. The Federation is certainly supportive of the objective that underpins the establishment of any post-trade transparency regime as defined in IOSCO´s Objectives and Principles of Securities Regulation (page 50), namely "*to provide a valuable source of information for market participants on the basis of greater information on traded prices*" that would permit those market participants "*to look after their own interests and to reduce the risk of manipulative or other unfair trading practices*"[2]. The question is, therefore, whether trading conditions in SFPs markets warrant the establishment of a post-trade transparency regime.

8. By looking at the characteristics of SFPs markets as described by IOSCO, the Federation believes that the answer to the question above, for most types of SFPs and recipients of the information is negative: some **SFPs tend to be traded in such conditions that transaction prices do not generally constitute a valuable source of information[3], thus making any post trade information on SFPs irrelevant** in the context of securing any potential public policy objectives, such as, for example, the reduction of risk of manipulative or other unfair trading practices.

9. That said, the Federation acknowledges that **there may be segments in SFPs markets where a secondary market does truly exist and, consequently, where trading conditions could justify the establishment of a post-trade transparency regime**. In that context, the Federation wishes to single out the degree of secondary market trading for a particular SFP as the most important criteria of those identified by IOSCO in its consultation paper for jurisdictions seeking to develop an appropriate post-trade transparency regime for SFPs. The Federation also believes that the distinction between publicly placed products and others should be made, with post-trade transparency being more relevant for the former group.

10. **The Federation has, nonetheless, reservations over IOSCO's conclusion that "*each IOSCO member jurisdiction should be encouraged to actively consider enhancing post-trade transparency for SFPs markets*"**. The Federation notes that permitting each IOSCO member jurisdictions to develop a formal (and possibly, non-identical) post-trade transparency regime for certain SFPs markets, may lead to more regulatory fragmentation and increased compliance costs, particularly **for institutions operating across borders**.

[2] IOSCO´s Objectives and Principles of Securities Regulation (page 50)
http://www.iosco.org/library/pubdocs/pdf/IOSCOPD154.pdf

[3] Certain recipients of information (i.e. bond traders, syndicates, arrangers, repo traders, researchers, etc.) find nonetheless post-trade transparency useful for the performance of their functions.

11. **The Federation notes that the international regulatory communit**y is debating the issue of post-trade transparency under the assumption that an increasing number of SFPs will be traded over regulated venues as structured products are admitted to trading. In that regard, the Federation notes that standardisation of SFPs (and subsequent admission to trading and to placing under a workable post-trade transparency regime) is mainly a business-driven process that may happen over time.

12. Furthermore, the Federation notes that **the industry has already made inroads into implementing solutions for SFPs markets that can deliver the benefits traditionally associated with post-trade transparency regimes**. The Federation believes that the enhanced access to deal information, the standardisation of the way it is presented, the added granularity and the open access to new data providers' portals will improve market participants' ability to compare, and therefore value, transactions. These industry initiatives, well-known to IOSCO, are already playing a key part in improving transparency around SFPs trading activity, thus making the need for a more formalised post-trade price transparency regime less acute.

Conclusion

13. The Federation believes that SFPs tend to be traded in such a manner that transaction prices do not constitute a valuable source of information, thus making any post trade information on SFPs irrelevant. If the SFP generates sufficient secondary market interest, then trading conditions could justify the establishment of a post-trade transparency regime. Permitting each IOSCO member jurisdictions to develop a formal (and possibly, non-identical) post-trade transparency regime for certain SFPs markets, may, however, lead to more regulatory fragmentation and increased compliance costs.

Yours sincerely

Sally Scutt
Managing Director
IBFed

Chairman
IBFed Financial Markets Working Group

ICMA
International Capital Market Association

Mr. Greg Tanzer
Secretary General
IOSCO General Secretariat
C/ Oquendo 12
28006 Madrid
Spain

06 November 2009

Dear Mr Tanzer,

Response submission from ICMA ECP Committee:

Re: Transparency of Structured Finance Products, Report of the Technical Committee of IOSCO

On behalf of the Euro Commercial Paper (ECP) Committee of the International Capital Market Association (ICMA), the purpose of this letter is to provide feedback concerning Asset-Backed Euro Commercial Paper (ABECP) considerations relevant to the Consultation Report of the Technical Committee of IOSCO "Transparency of Structured Finance Products".

The ECP market is a professional short-term debt market which offers opportunities for issuers to raise working capital and other short-term funding as well as for institutional investors to make varied and reliable short-term investments. ICMA's ECP Committee represents the main dealers in the ECP market.

We draw attention to our letter of 30 January 2009, concerning the Asset-backed Euro Commercial Paper (ABECP) aspects of the IOSCO industry participants' questionnaire "Transparency of structured finance products in the secondary market", which was submitted to IOSCO's Standing Committee on Secondary Markets (SC2) – a copy is appended to this response for ease of reference.

We also provided very similar input to the Committee of European Securities Regulators' (CESR) consultation paper (CESR/08-1014): "Transparency of Corporate Bond, Structured Finance Product and Credit Derivatives Markets", as part of a broader ICMA coordinated industry response that you will find at http://www.cesr.eu/popup_responses.php?id=4564 (please see paragraphs 94; 97 – 98; and 118 – 130). The overall feedback that CESR received on Asset-Backed Commercial Paper (ABCP) is reflected in paragraphs 95 – 105 of their feedback statement (at http://www.cesr.eu/popup2.php?id=5799). The conclusions reached by CESR pursuant to that consultation formed the basis of their recommendation to the European Commission to introduce a mandatory trade transparency regime for non-equity markets (as per their 10 July 2009 press release at http://www.cesr.eu/popup2.php?id=5800). We draw attention to the fact that with regards to ABCP, CESR came to the specific, contrary conclusion that "…additional post-trade transparency is not one of the pressing topics for participants in these markets. Therefore CESR does not currently see a need for a post-trade transparency regime for ABCPs."

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We strongly support this CESR conclusion. Whilst noting that IOSCO's Consultation Report already acknowledges that the ABCP market has certain distinctive characteristics we believe it would be helpful if IOSCO could also highlight a similar conclusion. This would promote a consistency of approach between that being pursued in the European Union and the rest of the international market.

Should you have any questions, please contact David Hiscock in the first instance.

Yours sincerely,

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CC : ICMA ECP Committee

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ICSA
INTERNATIONAL COUNCIL of SECURITIES ASSOCIATIONS

November 13, 2009

Mr Greg Tanzer
Secretary General
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Re: Public Comment on Transparency of Structured Finance Products

Dear Greg,

The International Council of Securities Associations (ICSA)[1] welcomes the opportunity to provide comments on IOSCO's Consultation Report on the *Transparency of Structured Finance Products* (the "Report"). We would like to compliment the members of the Technical Committee's Standing Committee 2 for the excellent Report that they have prepared. While views amongst ICSA members vary on some of the specific conclusions that were reached, all ICSA members acknowledge and appreciate the balanced and nuanced view taken in the Report. In particular, ICSA members appreciate the Report's acknowledgement that post-trade transparency regimes should be, "… tailored to take into account the unique nature of the market and participants in each jurisdiction, and that each member jurisdiction is best placed to judge the appropriate time, scope and manner for enhancing post-trade transparency." We think this is extremely important given the sharp differences between markets for SFPs in different jurisdictions and for different types of products within the same jurisdiction.

Reflecting the differences of opinion within the industry in general, which are referenced in the Report, there are differences of opinion among ICSA members regarding the need for and

[1] ICSA is composed of trade associations and self-regulatory organizations that collectively represent and/or regulate the vast majority of the world's financial services firms on both a national and international basis. ICSA's objectives are: (1) to encourage the sound growth of the international capital market by promoting harmonisation in the procedures and regulation of those markets; and (2) to promote mutual understanding and the exchange of information among ICSA members. More information about ICSA is available at: www.icsa.bz

advisability of a mandated post-trade reporting system for structured products. Nevertheless, there are a few individual issues upon which we would like to comment. Specifically, we suggest that the Report should stress, to a greater extent than it currently does, the importance of structured finance in providing credit to the real economy, the extremely low level of liquidity in many parts of the market for structured products at the current time, and the need for regulators to ensure that the introduction of post-trade transparency regimes for structured products does not further reduce market liquidity. We also think that the Report should more fully stress the complementary nature of private sector initiatives that aim to restore confidence in the market for structured products by improving the infrastructure of the securitization market. Finally, ICSA members recommend that principles for post-trade transparency of SFPs should not be developed in isolation but instead should be considered in the context of the ongoing global dialogue regarding post-trade transparency for corporate bonds as well as OTC derivatives.

1. Post-trade transparency in the context of barely liquid or non-existent markets

The Report sets out a very clear assessment of the costs and benefits of post-trade transparency for structured products. On the positive side, the Report concludes that post-trade transparency for structured products may improve: (1) the price discovery process; (2) the valuation of products and portfolios; (3) confidence in the market; and (4) the involvement of retail investors. On the negative side, the Report points out that post-trade transparency for structured products may be inappropriate because of the customized nature of SFPs and the illiquidity of markets for SFPs. The Report also notes post-trade transparency for SFPs could have a negative impact on market liquidity due to the loss of confidentiality of positions and investment strategies.

The Report then sets out a balanced set of recommendations detailing specific issues that should be examined by regulators prior to the introduction of a post-trade reporting system for structured products.

Our main concern has to do with the potential negative impact of mandated post-trade reporting on the market for structured products at the current time. At the Report notes, there were only moderate levels of secondary market trading of SFPs prior to the financial crisis. Moreover, as the Report also notes, both primary issuance and secondary market trading of SFPs have declined significantly since the onset of the financial crisis. Indeed, as is detailed in the IMF’s most recent *Global Financial Stability Report*, new issuance of global private label (or non-agency) structured debt fell from a peak of nearly US$5 trillion in 2006 to an estimated US$1 trillion in 2009. The decline would have been even steeper had it not been for the surge in the issuance of mortgage backed securities in the EU, which is comprised almost entirely of issues retained by issuers as collateral for central bank financing.[2]

The decline in new issuance and the virtual disappearance of secondary market trading for most SFPs has contributed to the declining growth in commercial bank lending to businesses and households over the past two years in a number of jurisdictions. The effect of this is greatest in the U.S., where securitization during the past several years is estimated to have funded over 25% of outstanding consumer credit, including nearly 60% of outstanding home mortgages.[3] While securitization played a lesser role in Europe than in the U.S., it was still a significant source of funding in some market segments.[4]

We think that it would be extremely useful for the IOSCO Report to emphasize the critical role that securitization has played in providing liquidity to the real economy and could play in the future. Because of deteriorating bank balance sheets and the prospect of increased capital requirements, it is highly unlikely that deposit-based bank financing alone could substitute for the financing that had been provided by securitization in some jurisdictions and in some markets, most particularly home mortgages. In the absence of such financing, global economic growth could remain constrained for some time to come. This is a critical issue which we believe is not sufficiently underscored in the Report.

As a corollary, we also think that it is important for the Report to stress, to a greater extent than is currently the case, the need for regulators to take a cautious and measured approach to implementing post-trade reporting systems, particularly at the current time, in order to limit any

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[2] International Monetary Fund, *Global Financial Stability Report*, "Navigating the Financial Challenges Ahead", October 2009, page 84. See also Igno Fender and Janet Mitchell, "The future of securitisation: how to align incentives?" *BIS Quarterly Review*, September 2009, pages 27-43.

[3] Cited in George Miller, Executive Director, American Securitization Forum, testimony before the U.S. Senate Banking, Housing and Urban Affairs Subcommittee on Securities, Insurance and Investment, "Securitization of Assets: Problems and Solutions", October 7, 2009, page 3.

[4] Not surprisingly, the authors of the IMF's most recent *Global Financial Stability Report* stress repeatedly that the revival of non-agency securitization is critical for limiting the impact of the financial crisis on the real economy and allowing government and central bank financing to be withdrawn.

negative impact on market liquidity. In particular, as is noted in the Report, post-trade reporting regimes for SFPs must be designed carefully in order to avoid exposure of principal positions and to not discourage market-making in these products. While it is possible that post-trade transparency would contribute to increased liquidity, it is also possible that mandated post-trade transparency could end up harming rather than helping liquidity, thereby hindering the revival of the securitization market and, potentially, negatively impacting global economic growth.

Finally, we suggest that the Report should address more directly the possible accounting issues that may arise if post-trade transparency regimes are mandated for products that are essentially illiquid. As the Technical Committee is aware, markets for certain SFPs, such as agency mortgage-backed securities in the U.S., maintain a certain degree of liquidity. Specifically, SFPs in those markets are traded frequently and can be traded in large blocks with relative ease of execution and settlement. Precisely because of those market characteristics, recent trade prices for those specific products are available and generally reflect the current market valuation of those products. Markets for many other SFPs, however, are much less liquid, with trades occurring much less frequently. For a less liquid SFP, reported prices may not necessarily be a good indicator of the current market value of that specific product These prices may still be useful for investors, as they would be one element in a broader valuation exercise that would include other information such as collateral performance. We are concerned, however, that financial firms holding these illiquid assets may need to use prices derived through post-trade reporting systems for accounting purposes, despite the fact that such prices for many SFPs would not be an accurate reflection of current market valuation of those products. We suggest that this specific issue should be addressed by IOSCO in the final Report.

For all of the reasons noted above, we think it is important that the Report explicitly recommends that the introduction of post-trade transparency regimes should be gradually phased-in, focused on the most liquid instruments, and calibrated in such a way to ensure that market liquidity both overall and in individual product segments is not adversely affected.

2. Importance of industry initiatives

As the Technical Committee is aware, industry participants and their representative organizations are moving forward with important reforms to improve securitization market practices and retool key parts of the market's operational infrastructure.[5] ICSA members believe that these initiatives, which include the provision of frequently updated and standardized reporting data for the underlying assets of SFPs, independent third-party sources of valuation and open access to new data providers' portals, will be extremely important for the recovery of the structured finance market.

These market-based initiatives are referenced in the Report. However, we suggest that the final Report should give more weight to these initiatives, as they will substantially improve transparency early in the transaction chain and therefore are both extremely important on their own and complementary to any regulatory reforms in the structured finance market.

In closing, we would like to reiterate our thanks to IOSCO for the opportunity to comment on this Consultation Report. Please do not hesitate to contact René Karsenti (rene.karsenti@icmagroup.org) and/or Duncan Fairweather (dfairweather@afma.org.au) to discuss the issues contained in this letter.

Yours sincerely,

René Karsenti
Chairman
ICSA

Duncan Fairweather, Chairman
ICSA Standing Committee on
Regulatory Affairs

5 These include the Ten Industry Initiatives to Improve Transparency in the EU Securitization Market, Project RESTART for RMBS transactions and the ASF Credit Card Disclosure Package in the U.S., and the Global Joint Initiative to Restore Confidence in the Securitization Markets.

13 November 2009

Comment on the IOSCO Consultation Report on Transparency of Structured Finance Products

Securitization Forum of Japan

I. Introduction

A. The Securitization industry in Japan welcomes this IOSCO initiative and appreciates the opportunity being provided for comment in the consultation process as to the post-trade transparency of structured finance products ("SFPs").

B. Our comments on the IOSCO Consultation Report on Transparency of Structured Finance Products ("the Report") are based on the characteristics of the market and its participants' trading practices in Japan's securitization market. Although we basically agree with the purposes and the proposed approach stated in the Report, we would like to point out our comments and concerns mainly focusing on the adaptability of the post-trade transparency regime in the Japanese market.

C. Whilst we recognize that the objectives this time do not include an initiative aimed at bringing about the transparency of underlying assets, which was already examined in the consultative report entitled *Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities* in June 2009 ("ABS Disclosure Principles")[1], we would like to mention some related topics on the initiative based on our practical concern about the objectives.

II. General Comments

A. As the Report points out in p. 9, some investors are reluctant to sell into the secondary market because they have already spent substantial resources on performing due diligence. And on the part of secondary purchasers, they are reluctant to buy the instruments due to the heavy burden of due diligence to be committed. From this point, we hope that effective post-trade transparency could reduce the cost and resource for due diligence on both sides and enhance the tradability of SFPs.

[1] For SFJ's comment on the ABS Disclosure Principles, please see "Comment on the IOSCO Consultation Report on the Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities," 10 August 2009, available at http://www.sfj.gr.jp/opinion/data/public/090811.pdf.

B. We acknowledge that a post-trade transparency regime for SFPs is meaningful. But in order to make the regime serve as an effective information tool in the Japanese securitization process, we should first consider the unique nature of the Japanese SFP market such as the following: (1) its relatively small investor base, (2) its prevailing buy-and-hold investment strategy, and (3) the issuance primarily on a private placement basis. Without considering these factors, transparency in terms of price may not necessarily enhance the efficiency of the market.

C. Up to now, there has been no mandatory post-trade transparency regime in the Japanese market; and we have no efficient system in operation for collecting and disseminating trade information even in the sector of corporate bonds and other debt instrument market. We would implement such a regime from scratch, which may mean that market participants incur substantial cost.

D. Prior to the implementation, therefore, we would have to evaluate the benefit brought by the regime and examine whether the benefit well meet cost performance. In this regard, however, market participants of both the buy-side and sell-side are now skeptical about the regime due in particular to the unique feature of SFPs. This will be true even if we introduce a small prototype as a preliminary trial under the *phased-in* approach mentioned in the Report (p. 2).

E. As is the case with other jurisdictions, the buy-and-hold strategy is a common investment style in the Japanese securitization market. This means that most investors try to refer to SFP price provided that it has a reasonable basis supported by relevant information of underlying asset and other deal-specific conditions. Therefore, it may be difficult to provide persuasive reasoning to disclose the pricing information in the context of post-trade transparency whereas ABS Disclosure Principles remain insufficiently treated. In fact, investors could find information necessary to their decision making in some other way; they could estimate reasonable price from typically available market information such as average YTM (Yield to Maturity) of corporate bonds and other debt instruments whose credit is equivalent to the SFPs in which they intend to invest.

F. With information of underlying asset and other deal-specific conditions only provided on a limited basis, not only investors but also regulators could not judge the appropriateness of disclosed market prices, leading to the situation where these prices would never be referred to as fair prices. In this context, we suppose that, prior to the introduction of post-trade transparency, it is still prerequisite to establish a practice pursuant to ABS Disclosure Principles in Japan which comply with the Financial Instruments and Exchange Act (Act No. 25 of 1948, "FIEA") together with education programs aiming at enhancing the ability of investors to do fundamental analyses of SFPs. A post-trade transparency regime, if it inadequately discloses market prices, would distort investors' fundamental research in investing in the SFPs. In the long-run, this will reduce the investors' ability to analyze SFPs, leading to a decrease in prudent market players as well as the SFP market size.

G. Another basic concern pertains to the usability of the prices under post-trade transparency. In fact, investors rarely have an incentive or chance to substitute their portfolio in the course of the investment period. This is due in part to the fact that the market does not always provide investors with abundant securities suitable for substitution. In this case, investors do not necessarily need the market prices publicized in the market. In particular, they have little need for a price that is artificially derived from a model-based approach.

H. On the other hand, we should admit that investors always have a strong incentive to collect their invested proceeds in a full and timely manner, just as they do in other investment sectors. Therefore, it is true that existing low marketability and little availability of price information with regard to the SFPs is a hurdle for efficient secondary trade and substitution. Although we notice that investors enter the SFP market knowing that it has limited liquidity and post-trade information, we should continue to consider how we could develop the market in terms of post-trade transparency in accordance basically with the approach proposed in the Report (pp. 23-24).

III. Comments on 3.3 Existing pricing mechanisms (pp. 13-14)

A. Whether SFPs are publicly offered or offered via private placement depends upon the individual financing situation on the part of originators/sponsors. In general, SFPs in Japan are usually offered via private placement. This is because most of the SFPs arranged in Japan are usually used as an alternative fund-raising tool for bank loans. Just as bankers would lend money without disclosing any clientele information at all, originators/sponsors of SFPs tend to make up the financing scheme on a private placement basis.

B. From the viewpoint of pricing mentioned in the Report (pp. 13-14), the situation that SFPs are usually issued primarily on a private placement basis means that it is generally difficult to quote fair market price in a timely manner; thus, we would heavily depend on a theoretical model-based price with many assumptions under a mandatory post-trade transparency regime. We suppose that this dependence on model-based pricing would raise at least two serious problems. The first problem pertains to the questionable usability of the publicized prices as a benchmark when investors perform their mark-to-market. Secondly, model-based pricing would not be so reliable compared to prices based on actual trading conditions in the market. In other words, model-based pricing could not reflect both the real performance of the underlying asset and the substantial non-public information unrevealed in the market, failing to improve price discovery or reduce information asymmetries stated in the Report (p. 15).

C. Based on the observation above, we suppose that we should first examine what form of post-trade transparency should be considered to ensure the appropriateness of market price. At a minimum, we could say that, where investors to the transaction are all sophisticated institutional professionals, a mandatory post-trade transparency regime based on model-based prices would seem to be too mechanical. Although investors usually adopt a "buy-and-hold" strategy, they are not allowed to mechanically adopt the publicized model-based prices which indicate only a theoretical price. In this case, these professionals' self-responsibility instead of mandatory post-trade transparency would be more suitable. A mere rigid and standardized post-trade transparency regime by authorities, and its uniform application to all types of securitized products, would lack the accuracy required to mark-to-market on the part of investors, leading to market stagnation. In addition, over-reliance on model-based prices would bring about another problem just as we have experienced in the Subprime crisis.

D. A fair market price which reflects the real economic condition surrounding the respective transaction could only be useful as an adequate number for investors in determining whether they should trade out of the position and whether their invested SFPs are substantially overstated on their balance sheet.

IV. Comments on 4. Enhancing post-trade transparency (pp. 15-18)

A. As for potential drawbacks, we should consider the practical side of the post-trade transparency regime so that we could avoid overly rigid and expensive practices. In addition, it is essential to adapt the post-trade transparency regime to the Japanese market based not only on the consideration of the potential benefits and drawbacks as the Report points out, but also on the degree of investors' sophistication.

B. There may be alternatives which would be worth considering in the course of designing the post-trade transparency regime. Examples include YTM and some form of index which indicates the degree of disclosure level of each transaction in terms of data of underlying assets, relevant documentations, and periodic audit trails (p. 19). As mentioned before, the Japanese market has no mandatory disclosure system in operation. We support the idea that it is adequate to enhance the transparency of the underlying asset through ABS Disclosure Principles prior to mandatory post-trade transparency, which is mentioned in the Report (p. 18). This could safely avoid unnecessary implementation cost as well as inefficacy of the regime.

V. Comments on 5. Evaluating drawback and benefits (pp. 19-22)

A. We agree with the observation stated in the Report with regard to the cost efficiency of the post-trade transparency regime. In this context, however, we should keep in mind that it is not only the implementation and operational costs of the regime that should be considered; the financing cost on the part of originator/sponsor should also be considered (pp. 20-21). Under the post-trade transparency regime, originators or sponsors fairly expect that, thanks to the transparency, they could raise money at a lower cost than they can now. Unless a clear and reasonable effect in terms of financing costs is observed, market participants would feel such regime as being rather costly as well as ineffective to enhance market tradability and liquidity. We recommend adding financing costs on the part of originators/sponsors as the third category of potential costs suggested in the Report (p. 20).

B. With regard to the response from industry participants stated in the Report (p. 20), we strongly agree that transparency in terms of market price is important. On the other hand, however, investors seem to have a different viewpoint; they actually want to know not so much about the market price but rather sufficient information as to the transaction they intend to invest in which is in compliance with the FIEA. To be honest, we suppose that we need not artificially establish a mandatory post-trade transparency regime because sophisticated investors could specifically analyze the risk and find a fair price for the SFPs by themselves, provided that detailed information as to the transaction is adequately disclosed.

VI. Comments on 6. Proposed Approach (pp. 23-24)

A. As the Report mentions, it is recommended that each jurisdiction has discretion as to the time and manner for post-trade transparency. There may be cases in which some information other than prices would be rather meaningful information to stimulate secondary trades and improve accuracy of investors' mark-to-market. In particular, we totally agree that, in cases where the jurisdiction should introduce a post-trade transparency regime from scratch, a detailed survey should be required beforehand to decide the most cost-effective means to realize the purpose. This is true for both the prices indicated on a trade-by-trade basis and those on an aggregate trade basis (p. 23).

B. As has been mentioned before, the information derived from the model-based approach tends to be less realistic, often deviating upward from the actual fair market price. Such theoretical market prices could lead investors to misjudgment in their mark-to-market because the approach does not contribute to an efficient price discovery process. Since it could not reflect serious fraud and other wrongdoings relevant to the transaction, it would fail to implicitly provide any material adverse signal for the transaction. This means that investors feel that it is inconvenient to rely on that price as an adequate proxy for their investment decision and valuation. It is advisable that we recognize possible alternatives other than model-based prices; alternatives by which investors could better estimate the fair market price and perform valuation of their SFPs portfolio.

C. As the report on ABS Disclosure Principles proposed, it may be useful to disclose, instead of information derived from a model-based approach, statistical information such as the effect of prepayments on yield and weighted average life in order to better evaluate the market price of the SFPs.

VII. Concluding Remarks

A. With regard to post-trade transparency, we would like to stress again that, as the Report adequately mentions, rule-making based on the individual features of the SFPs and investors in each jurisdiction is essential. A mere rigid and standardized post-trade transparency regime by authorities would provide useless and inaccurate price information, only to result in placing unnecessary burdens on transaction participants, leading to market stagnation.

B. As the Report also points out, we should continue to examine cost-effective measures for the implementation of post-trade transparency. In jurisdictions with a relatively small market size, phasing in post-trade transparency in stages seems to be an acceptable approach. If the transaction volume were to increase considerably thanks to the approach, we could enter the next stage where we could derive market price based on an economically beneficial and statistically meaningful sample of actual quotes from diversified participants.

C. Without such due process of introducing a post-trade transparency regime, we are afraid that originators/sponsors would adopt fund-raising tools other than securitization to avoid any excessive burden for the regime, and investors would only make poor investment decisions due to the regime missing the point of the trading situation and the individual feature of the SFPs.

End of document.

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Transparency of Structured Finance Products
AZ ZKA: 413-IOSCO
AZ BVR: 413-WP-AUFIOS

Dear Mr Tanzer,

Please find enclosed our comments to IOSCO's consultation paper. We are grateful for the opportunity to comment on this important issue. If you have any questions, please feel free to contact Mr Diedrich Lange.

Yours sincerely,
on behalf of the Zentraler Kreditausschuss
Bundesverband der Deutschen
Volksbanken und Raiffeisenbanken e.V. BVR
National Association of German Cooperative Banks

by proxy

Gerhard Hofmann | Dr. Diedrich Lange | **Enclosure**

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Response to the
Consultation Report on Transparency of Structured Finance Products Technical Committee of the International Organization of Securities Commissions

November 2009

* The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the *Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR)*, for the cooperative banks, the *Bundesverband deutscher Banken (BdB)*, for the private commercial banks, the *Bundesverband Öffentlicher Banken Deutschlands (VÖB)*, for the public-sector banks, the *Deutscher Sparkassen- und Giroverband (DSGV)*, for the savings banks financial group, and the *Verband deutscher Pfandbriefbanken (VdP)*, for the mortgage banks. Collectively, they represent more than 2,200 banks.

SUMMARY

- The Zentraler Kreditausschuss ZKA welcomes the IOSCO Consultation Report “Transparency of Structured Finance Products” as well-balanced approach to enhance market transparency in some of the envisaged parts of the relevant markets of structured finance products,
- but doubts that an easy road to solution is given because of the manifold problems and complex aspects of market transparency in these difficult markets;
- in addition ZKA thinks that a harmonized approach will be unavoidable against the background of the G-20 resolution.

ZKA welcomes the opportunity to comment on the Consultation Report on Transparency of Structured Finance Products. We would like to refer to our comments dated 30 January 2009 pertaining to the previous consultation round which we enclose once more for your convenience. In our opinion, the German banking industry's sceptical stance on obligatory transparency measures in the field of structured finance products becomes evident. The ZKA shares the view of IOSCO that "*a lack of post-trade information is not widely regarded as being a direct cause of the difficulties experienced by the SFPs market*". We also concur with the view of IOSCO that "*there are divergent views on the possible benefits and drawbacks of a post-trade transparency regime for SFPs*". More often than not, structured finance products will lack comparability; hence, post-trade transparency will hardly offer any value added. Rather, especially as regards less liquid securities, there is concern over a potential continued decline of liquidity, as sellers will have to worry that the published price level might induce the market to assume that the seller is facing liquidity constraints. Price announcements might also promote herd behaviour.

Although IOSCO's present Consultation Report does not accommodate all issues that have been raised previously by ZKA, it does reflect most of these concerns expressed. The proposal that national jurisdictions shall accommodate existing market conditions and shall endeavour to introduce at least in parts incremental market transparency measures for some particularly appropriate market segments or product areas is a reflection of the heterogeneity of markets and products and of the fact that a standardised transparency regime would incur more costs than benefits. In this context, we especially support the balanced presentation of the pros and cons regarding the introduction of TRACE as well as the reference to the high costs of introducing market transparency systems which may not only be due to system implementation costs, but also due to opportunity costs. Summing up SFPs tend to be traded in such conditions that transaction prices do not constitute a valuable source of information, thus making any post trade information on SFPs irrelevant.

In view of the diverging buy side and sell side interests, we believe that this consultation report is appropriate for the current stage of the discussions. Nevertheless, it is our understanding that, based on the G-20 resolutions, the European Commission and other legislative bodies are aiming for a coordinated approach so that those initiatives to strengthen the markets will eventually result in convergence during the national efforts.