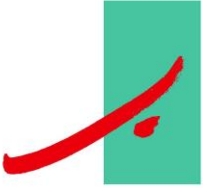

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FBF RESPONSE TO EBA/DP/2014/02 DISCUSSION PAPER RELATIVE TO SIMPLE STANDARD AND TRANSPARENT SECURITISATIONS

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorized as banks and doing business in France, i.e. more than 390 commercial, cooperative and mutual banks. FBF member banks have more than 38,000 permanent branches in France. They employ 370,000 people in France and around the world, and service 48 million customers.

The French Banking Federation welcomes the opportunity to comment on the EBA's proposal for a simple, standard and transparent 'qualifying' securitisation framework following the European Commission's call of advice of December 2013 related to the merits of, and the potential ways of, promoting a safe and stable securitisation market, and in the context of the recent ECOFIN Council's request to the Commission to develop a proposal by summer 2015.

The FBF would like to stress the thorough analysis and massive work performed by the EBA to understand the securitisation market. We generally concur with the analysis and are very interested in some of the proposals, for example the comparison between certain securitisation exposures and covered bonds. We welcome the invitation to implement criteria to qualify a securitisation as simple, standard and transparent (SST), which should boost the securitisation market liquidity and thus increase the financing of the European economy.

We regret however that the high number of proposed criteria and the excessive level of detail of these criteria may reduce drastically the list of eligible transactions, therefore having an opposite effect to the one sought by the EBA. More specifically, a large number of these criteria seem to us more related to risk principles, not necessarily linked to the SST objective. We estimate that the consequences on the securitisation market of introducing too restrictive risk-based labels only based on the underlying assets without considering credit enhancement on the notes (capital structure) could be damaging by giving a false impression of credit soundness to potential investors. In order to expect an impact on the market, this new label needs to be a strong incentive for market participants, including originators.

We believe that the SST should be also considered in the context of the leverage ratio, in order to incentivize investors as well as originators and develop the market.

That is why, as regards the prudential treatment, we also welcome the EBA's Recommendation 5 on a differentiated capital requirement treatment for "qualifying" securitisation positions versus other securitisation positions. In this perspective, the FBF proposes that securitisation assets complying with the SST criteria and credit risk criteria be subject to

(a) a European SSFA which would be calibrated closer to neutrality of Capital before and after securitisation, and

(b) a lower Risk Weight floor.

I. Introduction

Before answering specific questions, we would like to make some general comments on the proposed approach.

1. Number and relevance of criteria

Our view is that even if each proposed criteria may be relevant for specific cases, we fear that most existing securitisations would fail one or several criteria details, leading to a general non-applicability of the label. There is always one or some criterion that, even though it is not relevant to the specific case, constitutes a probable cause for exclusion of transactions. The EBA Discussion Paper does not propose principles, but criteria to select SST and the same set of detailed criteria are unrealistically aimed to be applied to all asset classes of securitisations. As an example we fear that the criteria could be applied to homogeneous large pools of consumer loans, but not to diversified pools of corporates or SMEs, for which simplicity, standards and transparency are assessed differently by the market participants.

We have prepared in annex 3 a simple table to show, for various types of securitisations, which criteria are problematic, and demonstrate why the overall eligibility rate would be very disappointing.

Therefore, we strongly recommend to limit the number of criteria or alternatively to adjust the set of criteria for each underlying asset class.

2. Risk criteria

For capital purposes, risk should not only be assessed on the assets of the SST, but SST with higher underlying risk should also be considered if the securitised notes (especially the senior notes) are well protected and in a simple and transparent manner. We believe that credit risk is already extensively taken into account in the prudential framework.

We recommend that risk criteria should only be used in the selection of the SST which could benefit from a better capital treatment.

3. Incentives

We observe that there have been several initiatives for labelling securitisation, and there are different proposals to segregate eligible securitisation versus non eligible, e.g. securitisations eligible to the liquidity buffer in the LCR, or securitisations labelled PCS ("Prime Collateralised Securities"). Nevertheless, the volumes treated on the market and the production remain very slow. We believe that in order to be efficient, the definition of SST securitisations should be coupled with a more favourable prudential treatment.

We recommend:
As far as solvency is concerned: more favourable treatment should be conditional on risk level and the ABS which comply with the all core SST and risk criteria should be (a) applied a European SSFA calibrated with capital close to equivalence (before and after Securitisation), and (b) subject to a lower risk weight floor.
In addition, senior notes of securitisation passing the core SST criteria but not the Risk weight criteria, should also benefit from the more favourable capital treatment, if they are well protected, i.e. if the attachment point is above a multiplier of 3 times the capital requirement of the underlying asset pool.

As far as liquidity ratio and buffers are concerned: more favourable treatment should be limited to liquid bonds, based on market observations.

As far as leverage ratio is concerned: originator should benefit from the funding of exposure without consideration to accounting re-consolidation due to limited risk transfer.

4. SST – only for public transactions?

As well as giving more liquidity to the ABS market, the initiative should be applicable to private and "club" deals. However confidentiality or commercial issues in trade receivable transactions or risk transfer securitisations would prevent most or all of them from qualifying with the proposed SST criteria.

5. Not Creating Two Opposite Worlds based on underlying assets

Since the EBA's goal is to provide a more efficient securitisation market to service the real economy, the principle should be that underlying assets should be linked to the real economy. The proposed criteria should help any securitisation to become Simple, Standard and Transparent, without discriminating *ex ante* any asset classes. One thing is to encourage proper origination practices, alignment of interest, relevant independent research and appropriate analysis to reflect investment objectives, another thing is to artificially divide securitisation in "good" securitisation and "bad" securitisation. For example, EBA's proposal 5.4 to grant the label on the basis of the risk weight that the solvency framework applies to the underlying exposures does not seem to be rational with regards to the EBA's target of providing more transparency and simplicity. Subprime Mortgages would have been eligible as per this criterion, which tend to prove that risk criteria are not a solid basis for an SST label.

We recommend that risk should continue to be analysed outside of any label consideration or should only be used in the selection of the SST which could benefit from a better capital treatment.

➔ In this spirit, we propose a two-step approach:

(i) identify the set of core criteria which are relevant to assess the simplicity and transparency qualities;
(ii) set the level of risk, simplicity, transparency that allows for differentiation and favourable treatment depending on the applicable prudential framework.

Such approach would be based on the proposed criteria and would cover the different securitisation types (different underlying assets, different structural features).

6. Not excluding ABCP

We consider that ABCP can be simple, standard and transparent securitisation vehicles and we welcome the fact that contrary to the exclusion of ABCPs in the Discussion Paper, the EBA has declared in the public hearing of the 2nd December 2014 in London that ABCP would be included in the consultation and that the EBA was inviting stakeholders to provide written feedback on criteria to define SST structures for ABCP products. Due to the late announcement, it has been difficult for the FBF to work on criteria for ABCP at the same level of detail as the rest of the consultation and we expect more discussion in this respect.

Asset-backed commercial paper ('ABCP') conduits

Cash securitisation using ABCP conduits is a simple and efficient tool for banks to provide financing for a wide range of clients and assets. Using conservatively-sized dynamic credit enhancement, ABCP programs enable banks to extend low-risk secured financing to their clients, and corporates to raise stable and diversified financing through monetization of their assets. Investors have always had a real appetite even in difficult periods, as they value the strength of the structuring, the support of the bank liquidity line (both in liquidity and credit risk) and the diversification.

ABCP conduits assets are "high quality assets"

The assets funded in ABCP conduits are simple assets of good quality and short term. The main part of the underlying assets, funded in multi seller ABCP conduit in EMEA, is trade and auto receivables (70%[1]). The tranching technique enables supporting banks to leave most credit risk with the corporate originator of the assets and play their traditional role of transferring funding to the real economy. The quality of the credit enhancement is always dependent on a thorough analysis of the underlying assets and is calibrated in a very conservative way, following rating agencies criteria. No losses have ever been registered by French banks in relation to trade receivables securitisation transactions financed through their ABCP conduits.

[1] Source Moody's – EMEA ABCP Market Summary: Q3 2013.
Asset Split by Asset Type – Multi-Seller Portfolios: Trade receivables: 45% + Auto loans: 14% + Auto leases: 11% = 70%.

Failing to recognize this low risk in corresponding very low capital charge would have a direct consequence: more capital will immediately increase the price for the clients. In some cases, capital applied to ABCP conduits transactions could even be higher than if bank were lending on an unsecured basis to the corporate. In those circumstances, it is obvious that a structure transaction would no longer make sense, and the client would borrow unsecured, increasing the final risk for the banks sector. Multi-seller ABCP conduit are covered at least by a 100% liquidity facility and did not have commercial paper investors suffer losses due to liquidity crisis (contrary to SIVs – see Appendix 2).

As a result we recommend that the main criteria for SST ABCP, at the ABCP level, should be:

(a) full support, full coverage (of at least 100% of Commercial Papers issued) by liquidity line;

(b) maturity of Commercial Paper no longer than 397 days ;

Please refer also to appendix 2.

II. <u>Answers to specific questions</u>

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

Generally speaking, we agree with the impediments mentioned in the Discussion Paper. One of the impediments to the securitisation market is clearly the 2007-2009 financial crisis and the bad image securitisation suffers from.

Moreover the regulatory uncertainty is also a major concern for both sponsor/originator banks and investors: rules are under discussion or recently published on the banks' side (CRR and various RTS or new securitisation framework) but also on the investors' side (Solvency II and MMF reform in Europe). That is why it is important to find a way to accelerate the regulation process in order to have as fast as possible a stable regulatory framework for securitisation.

In addition, the different regulatory and ECB treatments between asset classes of similar underlying risk (securitisation vs. portfolio of underlying asset, covered bonds) are also impediments to the development of the securitisation market, in terms of capital, liquidity requirements and obligations.

The CRR provision of Paragraph 2 of article 207.2 *"Securities issued by the obligor, or any related group entity, shall not qualify as eligible collateral (…)"* does not recognize securitisations originated by a given institution as eligible collateral when "repo-ed" by that institution, we think that this is also an obstacle for the securitisation market. As far as the SST securitisation framework secures the true sale of the underlying assets, SST securitisation issued by an institution should be recognized as eligible collateral for repurchase transaction of that institution, even if the issuing SPV is recognized as a related entity, as it is the case for covered bond.

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

The question of synthetic securitisations in relation with the SST label has to be analysed following three distinct angles:

a) Use of synthetic transfer to create an arbitrage or a short position;
b) Use of synthetic transfer to mitigate specific cases of impossible or very cumbersome true sale;
c) Use of synthetic transfer to organize a specific risk transfer, and where usually only a junior or mezzanine tranche is transferred to specialised institutions such as hedge funds.

Clearly, case a) has to be ruled out of SST as it is not linked to the real economy, and a simple criteria to avoid arbitrage is to impose on the originator using synthetic transfer to actually hold the underlying cash assets, and commit to hold these assets for so long as the synthetic transaction is in place.

Case b), for public transactions, should not be ruled out of SST as long as counterparty risk mitigation is properly in place. For example, having all the securitised exposures fully collateralised in cash in a segregated account, or having all the underlying assets pledged to the securitisation SPV should be adequate counterparty risk mitigants, without reducing the simplicity of the structure.

Case c) is a powerful risk transfer tool and is widely used by originating banks to reduce their risk exposure on portfolios of assets. In such transactions, originating banks keep full control of the securitized assets on their balance sheet, and retain some securitisation tranches, including in particular the senior tranche. The main regulatory issue here is the treatment of the retained securitisation tranches held by the originating banks. The lack of true sale is not detrimental at all, as they continue to hold and control the assets.

In short, we believe Synthetic Securitisations should not be excluded from the SST eligibility:

- In case c) hereabove, when the underlying assets are held on the balance sheet of the credit institution that originated the assets and holds residual securitisation positions.

- In case b) hereabove, when the synthetic transfer is accompanied by strong additional counterparty risk mitigation.

See Also Appendix 1.

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

The default definition proposed under Criterion 5 (ii) proposes a 90 days past-due threshold. The default definition used in article 178 of the CRR refers to 90 days past-due, but leaves the possibility for competent authorities to replace the 90 days with 180 days for exposures secured by residential or SME commercial estate in the retail exposure class as well as exposures to public sector entities. In most securitisation transactions, the eligibility criteria exclude receivables with missed payments. However, we believe **the default definition in article 178 of the CRR should be retained for bank originators:** if the regulators in a given jurisdiction have decided to use 180 days past-due for certain asset classes, there is no reason why another definition should be used. The default criteria to define SST Securitisation should be consistent with the practice of the CRR. The case of the Public Sector is a good example. Assets such as trade receivables on EMU governments have a low credit risk, but they may not be paid in 90 days or 180 days, depending on the country, without being considered as a default. Moreover a parallel definition of default (one for securitisation, one for capital requirement purposes) would add some complexity in term of data management, history of default and recovery rate management. Also in the criterion 5, delinquencies and defaults which are clearly fully funded by the originator should not be excluded from the underlying exposures of SST.

More details will also been given in answer to question 8 regarding criterion 5(iii) which raises a particular concern.

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

We believe that there should be as little as possible limit on the type of jurisdiction, especially if a proper pledge or charge on the assets can be effected. Therefore countries should not be limited to EEA, and should include countries where assets securitisation is sufficiently developed (US, Australia, Japan, for example).

However, the priority should be the EEA. It is preferable not to jeopardize the implementation of a SST framework in Europe which helps funding European SMEs and the economy, if an extension to other countries means it is more complex to define criteria which include European assets with low loss history and exclude assets classes which have had significant losses and if it would mean delaying the implementation of SST.

Therefore in priority, the framework should be implemented for EEA countries for transactions where :

i) The underlying assets are originated in these countries; or
ii) the acquisition process by the securitisation special purpose entity (SSPE) of the underlying asset are governed by the law of any of these countries; or
iii) The originator or intermediary or the sponsor is established in these countries.

In addition pools of pan European assets should not be excluded (key for trade receivables) as exposures to multiple European countries provides diversification which reduces credit risk.

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

Distribution of voting rights to the most senior tranches is a good practice for SST Securitisation, however this criterion may be an issue for more junior tranches investors if it is required that all voting rights are allocated to the most senior classes. In the current market, securitisations are generally designed to allocate enhanced voting rights to the most senior tranches of credit risk, but certain decisions (e.g. identity of special servicers) are more appropriately allocated to junior tranches investors when they are likely to be more affected than the senior tranches. Removing the control of junior tranches investors over decisions most likely to affect their recovery would certainly lead to reduced demand for those junior tranches.

It is also important to note that some decisions have to be taken by all investors without any distinction of seniority and require approval of each class separately. For example for decisions that affect the economics of the transaction such as the maturity, the interest rate or the principal amount, it would not be justified to allow only the most senior tranche to decide modifications without the approval of the mezzanine and junior tranches.

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

Securitisation contractual documentations could be made available for public disclosure. However, this is not current market standard: : the most important underlying documents can be obtained from the offices of the issuer, but only for public transactions. The timeframe for closing transactions is usually very short, and underlying transaction documents are prepared until the closing date/issuance date. There has not been any difficulty caused by this timing, as the Offering Circular / Prospectus (for public transactions) already provides a detailed description of the transaction and of the main underlying transaction documents. Therefore there is little value to provide all underlying transaction documentations prior to issuance.

A timeframe of 1 month after issuance to obtain the main underlying transaction documents seems reasonable. We believe there could be a certification that the Offering Circular / Prospectus represents fairly the legal documents.

Regarding loan-by-loan level data, if the required information is on the final underlying portfolio, it is not possible to communicate it before the closing (and a fortiori before the pricing date), because the underlying assets of the portfolio may change until the closing date. However loan-by-loan level data on a prospective / provisional portfolio could be disclosed to potential investors.

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

We agree that granularity would be a relevant factor in assessing the credit risk of the underlying portfolio for homogeneous retail pools; however we think that setting a fixed percentage maximum threshold to individual loan exposures is too limiting for the structuring of transactions in asset classes different from the most granular ones of retail assets (consumer or mortgages).

Indeed granularity of debtors is not the only factor contributing to diversification. For pools of corporate loans, it can be also obtained with geographical diversification or industry diversification.

In addition, it is difficult to compare the credit risk of very granular portfolios (mainly retail borrowers) which are by essence measured with statistical approaches, to credit risk of non-granular pools (e.g. commercial real estate, infrastructure projects, aircrafts, corporate loans portfolios, etc.) for which a very detailed credit analysis is thoroughly performed at individual loan level.

Therefore granularity should be considered a prime factor determining credit risk only for specific consumer asset pools such as RMBS, consumer loans etc., which are concentrated in one country. For other asset pools such as corporates and SMEs, granularity is less relevant, and should not be applied.

Only about 40% of the SME securitisations issued in the past 2 years in Europe (rated by Fitch) would pass the top borrower concentration criterion. European trade receivables and lease transactions would also often have a top-borrower concentration above 1%. In the case of trade receivables, the short maturity and specific credit enhancement mechanisms reduce the risk, so that there has been no loss on European securitisation deals. The 1% threshold would be a quasi-insurmountable obstacle to structure efficient risk-sharing transactions on large corporates, and on special asset classes (e.g. infrastructure finance, trade finance, etc.).

We propose to apply a similar approach as proposed in the BCBS document "Revision to the securitisation framework" (published on 11th December 2014): For wholesale assets, pools are deemed granular when the effective number of loans N is equal or above 25[2].

[2] BCBS 11 December 2014 (page 19) : The effective number of exposures (N) is defined as :

For trade receivables, the borrower concentration is a risk only on the part which is in excess of the risk fully funded by the originator. The concentration can be authorized depending on the size of the credit enhancement and the credit quality (rating) of the borrower.

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

Please see below our analysis on some criterion (no comments were made to the criteria not mentioned in the list below):

Comment on Criterion 1: The securitisation should meet the following conditions:

• It should be a securitisation as defined in the CRR (as per Article 4 (61));

• It should be a 'traditional securitisation' as defined in the CRR (as per Article 242(10));

• It should not be a 're-securitisation' as defined in the CRR (as per Article 4 (63)).

Regarding Asset Backed Commercial Paper (ABCP), which is currently explicitly excluded from the scope of simple, standard and transparent criteria, we think that EBA should make a clear distinction between the different kinds of ABCP issued in the market, and more precisely take into account that since the crisis, the ABCP market has significantly changed with the disappearance of SIVs and arbitrage ABCP conduits. Today multi-seller ABCP conduits represent 82% of the European ABCP market. Multi-seller ABCP conduits are useful in funding the real economy and are the principal way certain assets, like trade receivables, are securitised, predominantly to finance the working capital of corporates.

Moreover there are two aspects to be taken into account when looking at ABCP conduits: (i) the regulatory treatment for commercial paper holders, but also (ii) the regulatory treatment for the liquidity facility provided by the sponsor bank to the conduit. It is important to define a specific qualifying securitisation framework for the ABCP investors , by taking into account the quality of the liquidity facility provided by the sponsor (fully supporting liquidity facility) and the fact that the CPs are issued by a multi-seller ABCP conduit. Having a clear framework for qualifying ABCP would be really useful for the current MMF reform in Europe, which could consider ABCP securitisations qualified as SST to be eligible investments for MMF.

Regarding the liquidity facility provided by the sponsor bank to the ABCP conduits, it is important in terms of capital charge for the sponsor bank. Such liquidity facilities are generally high-quality senior securitisation tranches, and should benefit from favourable regulatory treatment, in order to keep attractive for banks this well-functioning tool to finance their clients.

See also Appendix n° 2.

$$\mathrm{N} = \frac{(\sum_i EAD_i)^2}{\sum_i {EAD_i}^2}$$

Comment on Criterion 2: The securitisation should not be actively managed and the underlying assets should either be a whole portfolio or assets randomly chosen, cherry-picking is forbidden**.**

The prohibition of cherry picking should not exclude the compliance with eligibility criteria which could increase or reduce the credit risk of the asset pool compared to the overall originator's portfolio. In particular, there are cases where an originator may want to securitise more risky assets (e.g., LTVs above a threshold) in order to transfer risk, and thereby reduce risk of their portfolios.

The most important element is that the selection is transparent in the respect of the given eligibility criteria and that there is no cherry picking on individual loans, or only to the benefit of the investor (improvement of the asset, for example to improve the quality of the data in the securitized pool).

The securitisations for which the underlying asset pool is "cherry picked" or managed should not be excluded if it is clear in the eligibility criteria that the result of the management / cherry picking process is an improved pool of assets (e.g. replacement of an asset by a better rated asset, exclusion of loans with insufficient information).

Comment on Criterion 3: The securitisations should be characterised by legal true sale of the securitised assets and should not include any severe clawback provisions. A legal opinion should confirm the true sale and the enforceability of the transfer of assets under the applicable laws(s). Severe clawback provisions should include rules under which the sale of cash flow generating assets backing the securitisation can be invalidated by the liquidator solely on the basis that it was concluded within a certain period (suspect period) before the declaration of insolvency of the seller (originator/intermediary), or where such invalidation can only be prevented by the transferees if they can prove that they were not aware of the insolvency of the seller (originator/intermediary) at the time of sale.

This criterion should not be applicable for synthetic securitisation where there is no assignment of assets and so the true sale is not an issue.

See also answer to Q2 and appendix 1.

Comment on Criterion 4: The securitisation should be backed by exposures that are homogeneous in terms of asset type, currency and legal system under which they are subject.

Credit exposure to certain SPE should not be excluded from the scope of eligible assets: for example specialised lending transactions defined by the CRR in article 147 (8).

It is useful to specify that the required homogeneity in term of asset type does not imply that the exposure should be on a unique geographical entity (national or regional) or industry. The implementation of the “non-deteriorating underwriting standards” criteria should not imply a limitation of the originator’s ability to change its underwriting standards depending on market and economic conditions. This criterion seems also to be redundant with the retention criteria.

Also, SST should not exclude assets in multi European countries. Trade receivables for example can contain assets of medium size corporates who export in other European countries. There is not a particular risk that should prevent such trade receivables to be SST. Similarly, multi currency assets should not be excluded when the FX risk is managed.

Comment on Criterion 5: At the time of inclusion in the securitisation, the underlying exposures should not include:

i) Any disputes between original lender and borrower on the underlying assets;

ii) Any exposures which are in default. An exposure is considered to be in default if:

a. it is more than 90 days past-due;

b. the debtor is assessed as unlikely to pay its credit obligations in full without realisation of collateral, regardless of the existence of any past-due amount or of the number of days past due.

iii) Any exposures to a credit-impaired borrower. For these purposes, a borrower should be deemed as credit-impaired where he has been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination or he is, to the knowledge of the institution at the time of inclusion of the exposure in the securitisation, recorded on a public credit registry of persons with adverse credit history, or other credit registry where a public one is not available in the jurisdiction, or he has a credit assessment by an ECAI or a credit score indicating significant risk of default;

iv) Any transferable securities, as defined in Directive 2004/39/EC (MIFID) or derivatives, except derivatives used to hedge currency and interest rate risk arising in the securitisation.

As already said in answer to Q3, the definition of default should be consistent with the definition of default of article 178 (1), particularly regarding national options (number of days past due for some asset classes). Managing two definitions of default could be burdensome and would not be consistent with the recommendations of the Basel Committee on the harmonization of the definitions as requested in its guidelines (“*Principles for effective risk data aggregation and risk reporting”*). In addition, late arrears or default should not be excluded from the underlying asset pools for SST if they are not funded by the notes, but they are fully funded by the originator. The definition of default should be consistent with market practices of the underlying asset in the given jurisdiction (e.g. trade receivable to government).

Comments on Criterion 5 iii):

We have a particular concern, under Criterion 5 (iii), about the definition of 'a credit-impaired borrower' that is clearly problematic. French banks would face an important problem of feasibility on the latter.

A number of jurisdictions do not have the types of credit registers referred to here (e.g. in France), meaning that it would be impossible to check the three-year track record of credit difficulties referred to. Indeed, in France, the situation of a borrower could be known at the time of issuance, but his credit history is not necessarily available to the institutions. As an example, payment incidents are recorded in a database (called FICP and handled by the Banque de France), but they are removed as soon as the incident is cured, as required by French law.

The current proposed credit impairment requirement would exclude in France all consumer loan securitisations (including auto ABS) and RMBS deals, because it will be impossible for French issuers of securitisations to know with certainty if the pool underlying to their issuances does not include this type of exposures (at least it is our interpretation of this criterion iii). If this provision is maintained, it may create level-playing-field issues within the European Union. We urge the EBA to pay close attention to this matter.

We also believe a debt restructuring process should not be an exclusion criterion for non-retail borrowers: if the delinquencies have been cured after debt restructuring, there is no reason to exclude the borrower. For example in the case of commercial real estate, the borrower may have injected equity. Therefore debt restructuring should be a criterion applied to retail consumers only. Moreover, adverse credit history should only be considered on loans. For example, a borrower who is not paying telephone bills because of disputes could be registered as having an adverse credit history. Such borrower should not necessarily be excluded from securitisation pools if his loan-payment record is good.

Comments on Criterion 6: "At the time of inclusion, the underlying exposures are such that at least one payment has been made by the borrower, except in the case of securitisations backed by personal overdraft facilities and credit card receivables"

This criterion is useful for many types of loans in particular to detect frauds. However it cannot work for short term assets such as trade receivables. It is the same situation as for credit cards receivables which are mentioned by the EBA and for which EBA recommends that they should not be excluded on this basis. Short term assets like trade receivables are likely not to have had any individual payment before they are securitised. Trade receivables should not be excluded if there has not been a payment yet made by the borrower.

Comments on Criterion 8: Interest rate and currency risks arising in the securitisation should be appropriately mitigated and any hedging should be documented according to standard industry master agreements. Only derivatives used for genuine hedging purposes should be allowed.

Some securitisation transactions such as some auto loans, revolving credit cards or trade receivables transactions do not have any derivatives for hedging / mitigating interest rate and/or currency risks. In such transactions the interest rate and/or currency risks are covered with other means such as specific reserves, additional or specific credit enhancement / subordination or a level of excess spread high enough (i.e. up to 10%) for rating agencies being comfortable with such interest and/or currency risks hedging / mitigating. Such securitization transactions should not be excluded for the SST label.

Comments on Criterion 9: Any referenced Interest payment under the securitisation assets and liabilities should be based on commonly encountered market interest rates and may include caps and floors, but should not reference complex formulae and derivatives.

Some assets interest reference such as prime UK mortgages are based on cost of fund. This is similar for ABCP conduits which often reference funding cost of conduits. Interest rates based on cost of fund should be eligible to SST.

Comments on Criterion 10: The transaction documentation of those transactions featuring a revolving period should include provisions for appropriate early amortisation events and/or triggers of termination of the revolving period, which should include, at least, each of the following:

(i) A deterioration in the credit quality of the underlying exposures;

(ii) A failure to generate sufficient new underlying exposures of at least similar credit quality; and

(iii) The occurrence of an insolvency-related event with regards to the originator or the servicer.

Concerning the Criterion 10 (ii): failure to generate sufficient asset is not necessarily problematic if the bonds issued by the SSPE are repaid with the excess of cash received or if the situation is temporary or for a small amount. This should not necessarily trigger the end of the revolving period.

Credit Cards, Trade Receivables and short term assets (seasonality adjustments) should be removed from criterion 10 (ii). Additionally, when there is automatic adjustment of the liability size (e.g. trade receivables, credit cards), there should not be end of revolving period.

Comments on Criterion 11: Following the occurrence of a performance-related trigger, an event of default or an acceleration event:

i) The securitisation positions are repaid in accordance with a sequential amortisation payment priority, whereby the seniority of the tranches determines the sequential order of payments. In particular, a repayment of noteholders in an order of priority that is 'reverse' with respect to their seniority should not be foreseen;

ii) There are no provisions requiring immediate liquidation of the underlying assets at market value.

The sequential amortisation payment should concern only the post-enforcement priority of payment or accelerated amortisation priority of payment.

i) It should be made precise that 11 ii) is for underlying loans assets, not for physical collateral of these assets. For example in the auto and car fleets securitisatons the cars are physical assets that can be sold on secondary market which is liquid.

Comments on Criterion 13: The transaction documentation contains provisions relating to an 'identified person' with fiduciary responsibilities, who acts on a timely basis and in the best interest of investors in the securitisation transaction to the extent permitted by applicable law and in accordance with the terms and conditions of the securitisation transaction. The terms and conditions of the notes and contractual transaction documentation should contain provisions facilitating the timely resolution of conflicts between different classes of noteholders by the 'identified person'. In order to facilitate the activities of the identified person, voting rights of the investors should be clearly defined and allocated to the most senior credit tranches in the securitisation.

This criterion will exclude private transactions which do not have an independent trustee. See also answer to Question 5.

Comments on the Criteria 15 : the securitisation should meet the requirements of the Prospectus Directive

This criterion should be applicable only to public securitisation transactions. ABCPs are not subject to the Prospectus directive.

Comments on the Criteria 17 : Where legally possible, investors should have access to all underlying transaction documents.

For ABCP, this criterion should be limited to the ABCP conduit documentation, and not to the documentation of the underlying transactions.

The Prospectus Directive already ensures that, at issuance, the investors have access to all the information that is necessary to make an informed investment decision. If the criteria 15 is already complied with, in our opinion, it should not be necessary to add the necessity to give to the (potential) investors access to the underlying documentation since (i) the information contained in the offering circulars already contains a summary of the main agreements concluded to set-up the securitisation and (ii) too much information may become counter-productive and become an impediment for the investors to assess correctly the risk.

The underlying documents of securitisation transactions usually include a confidentiality provision which prohibit the communication of the underlying legal documentation except in some limited cases. Therefore, such exceptions usually do not include the communication of all the underlying transaction documents to the investors.

In case the legal documentation does not include such a confidentiality provision, French law on professional secrecy does not allow the communication of all the underlying transaction documents to the investors without the prior agreement of the relevant parties to such contracts.

To allow such communication of all the underlying transaction documents to the investors, it would be necessary when drafting the legal documentation to include a specific provision in this respect or to get the prior agreement of all relevant parties (for the outstanding securitisation programs).

It would be preferable to determine the list of the agreements strictly necessary to allow the (potential) investors to assess the risk of the transaction. Certain agreements may contain sensitive information related to the "know-how" of the arrangers on the structuring and/or on the business, organization and strategy of the originators. Leave the possibility to have access to the underlying documentation should not become an instrument allowing "competitive intelligence".

Comments on Criterion 18: "The transaction documentation should provide in clear and consistent terms definitions, remedies and actions relating to delinquency and default of underlying debtors, debt restructuring, debt forgiveness, forbearance, payment holidays and other asset performance remedies. The transaction documents should clearly specify the priority of payments, triggers, changes in waterfall following trigger breaches as well as the obligation to report such breaches. Any change in the waterfall should be reported on a timely basis, at the time of its occurrence. The originator or sponsor should provide investors a liability cash flow model, both before the pricing of the securitisation and on an ongoing basis."

Payment holidays are not necessarily related to delinquency and defaults of underlying debtors. Mortgages commonly allow payment holidays. Payment holidays should be removed from criterion 18. They are already included in "other asset performance remedies".

A liability cash flow model should be made available to investors, but this could be achieved by a 3rd party supplier instructed by the originator at the issuance of the securities.

For ABCP, no Cash Flow model should be required, as timely payments are simply assured by the liquidity line.

Comment on Criterion 19: The transaction should be subject to mandatory external verification on a sample of underlying assets at issuance

On current securitisation transactions, an external review of a sample of underlying assets is often performed, but this is not always the case. For example for non-granular pools, or for assets which are acquired on the secondary market and for pools which need to ramp up, external reviews are not necessary. The trustee (or a party on behalf of the SSPE) should ensure that the assets are in compliance with the eligibility criteria.

The external review on the underlying asset can be done prior to issuance, not at issuance. The audit may be performed on a provisional portfolio of assets substantially similar to those of the final securitised portfolio.

Comment on Criterion 20 : "investors and prospective investors should have readily available access to data on the historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, covering a historical period representing a significant stress or where such period is not available, at least 5 years of historical performance. The basis for claiming similarity to exposures being securitised should also be disclosed."

Historical default and loss performance data are used in structuring the securitisation, in particular by rating agencies. However detailed performance data are currently rarely available to investors and prospective investors prior to a securitisation. If historical data need to be public and available to investors, who could disclose such data ? (for instance commodity financing). This requirement would need to be consistent with the regulatory definition of default under Criterion 5 (ii) i.e. : definition of default for SST securitisation should be the same as per Article 178 of the CRR so that financial institutions will be able to provide this data, otherwise they will have to manage two definitions of default and two set of historical data which is not appropriate (see also answer to Q3).

Depending on the underlying asset type, the requirement on 5 years of historical data could be too difficult to respect and/or not applicable in all the cases / underlying assets. For Trade receivables, it should be 2 years.

Moreover this kind of disclosure requirement is already addressed in Article 8b of the CRA regulation.

Comment on Criterion 21: Investors and prospective investors should have readily available access to data on the underlying individual assets on a loan-by-loan level, at inception, before the pricing of the securitisation, and on an ongoing basis. Cut-off dates of this disclosure should be aligned with those used for investor reporting purposes.

For operational reasons cut-off dates for loan-by-loan data can sometimes differ from those of investor reports. Cut-off dates of loan-by-loan data are often constrained by the originator IT and reporting process. Securitisation investor reports are aligned with the payment dates of the notes which can have a different frequency. The loan-by-loan data should be the latest available before an investor report.

A loan by loan level report is not pertinent for highly granular SME or retail pools that contain far more than 1000 borrowers (more than 100'000 borrowers on auto loans transactions). This information would be of no help for this kind of pool and should rather be aggregated.

Moreover this kind of disclosure requirement is already addressed in Article 8b of the CRA regulation. And ECB eligible ABS are required to publish loan-by-loan information on an ongoing basis once the transaction is live.

See also answer to Q6.

Criterion 22: Investor reporting should occur at least on a quarterly basis.
As part of investor reporting the following information should also be disclosed:

- All materially relevant data on the credit quality and performance of underlying assets, including data allowing investors to clearly identify debt restructuring, debt forgiveness, forbearance, payment holidays, delinquencies and defaults in the pool;
- Data on the cash flows generated by underlying assets and by the liabilities of the securitisation, including separate disclosure of the securitisation's income and interest and fees and charges;
- The breach of any waterfall triggers and the changes in waterfall that this entails.

Debt restructuring, debt forgiveness, payment holidays etc. : we expect many issuers to have difficulties to provide that level of detail on a loan-by-loan basis. Payment holidays may be part of the initial contract and in this case they should not be reported as part of the delinquency performance data.

Finally this kind of disclosure requirement is already addressed in Article 8b of the CRA regulation.

Comment on Criterion A: Underlying exposures should be originated in accordance with sound and prudent credit granting criteria. Such criteria should include at least an assessment of the borrower's creditworthiness in accordance with paragraphs 1 to 4, 5(a) and 6 of Article 18 of Directive 2014/17/EU or Article 8 of Directive 2008/48/EC, as applicable.

It seems that Criterion A is already covered by criterion 4 (ii) : "*originated in the ordinary course of the original lender's business*"… In addition the article 18 of the MCD (Directive 2014/17/EU) or article 8 of CCD (Directive 2008/48/EC) are relevant for loans granted to consumer debtors but would be not applicable to all other asset classes (e.g. assets originated by corporates).

Comment on Criterion B: The pool of exposures to be securitised should be such that the largest aggregated exposure to a single obligor does not exceed 1% of the value of the aggregate outstanding balance. For the purposes of this calculation, loans or leases to a group of connected clients, as referred to in Article 4(39) of the CRR, should be considered as exposures to a single obligor.

See answer to Question 7.
For trade receivables, the borrower concentration is a risk only on the part which is in excess of the risk fully funded by the originator. The concentration can be authorized depending on the size of the credit enhancement and the credit quality (rating) of the borrower.

Comment on Criterion C i) They have to be exposures to individuals or undertakings that are resident, domiciled or established in an EEA jurisdiction,

We would agree for the EEA jurisdiction (but only with a view to the convergence with ECB eligibility criteria, as OECD countries would make more sense from a credit perspective). Also, this criterion should be applicable at origination date only, as the borrower can change their residence / address.

Comment on Criterion C ii): At the time of inclusion they have to meet the conditions for being assigned, under the Standardised Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than: a) [40%] on a weighted average basis where the exposure is a loan secured by a residential mortgage or fully guaranteed residential loan, as referred to in paragraph 1(e) of Article 129 of the CRR; (b) [50%] on an individual loan basis where the exposure is a loan secured by a commercial mortgage (c) [75%] on an individual loan basis where the exposure is a retail exposure (d) [100%] on an individual loan basis for any other exposures

1- Only the funded loans should meet the risk weight conditions, not the unfunded loans which may be part of the portfolio.
2- For residential mortgages, we recommend a 60% risk weight (Standardised approach) limit to take into account jurisdiction where high LTVs are the standard.
3- The risk weight limits should be adjusted with any change of the local regulatory risk weights.

The credit risk criteria and notably B (concentration) and C should not prevent the securitisation of State guaranteed loans (and especially of residential loans) from being compliant with SST criteria.

Also, assets complying with the simple, Standard and Transparent criteria (pillars I, II, III) should be considered as SST.

- When the credit risk criteria (A,B,C) are also satisfied, the securitisations should benefit from a more appropriate treatment for Capital requirements (lower floor, lower surcharge of securitised assets compared to non-securitised assets (Recommendation 4)).
- In addition, for assets complying with all SST criteria and Credit Risk Criteria except the RWA thresholds of Criterion Cii), the FBF members consider that the senior tranches of such securitisation should also benefit from a lower floor and lower capital surcharge, is these senior tranches have sufficient protection. Senior tranches with credit enhancement above a multiplier of 3 times the capital requirement of the underlying asset under the standardized Approach would provide sufficient protection[3].

[3] Calibration could be done using research papers such as: http://www.riskcontrollimited.com/public/Securitisation_Purchases_by_the_ECB_What_is_Senior_Enough.pdf

Comment on Criterion C iii): Under (a) and (b) loans secured by lower ranking security rights on a given asset should only be included in the securitisation if all loans secured by prior ranking security rights on that asset are also included in the securitisation. Under (a) no loan in the securitised portfolio should be characterised by a loan-to-value ratio higher than 100%.

In cases such as the Dutch mortgage market, LTVs of 100% are standard. We would recommend to add some flexibility to the criterion such as limiting the loans with LTVs higher than 100% to 5 % of the portfolio, or to have a limit of 105% LTV at the time of inclusion.

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

Implementing a two-tier framework carries the risk that the market for non-qualifying securitisations would collapse, considering the proposed capital treatment for these assets. With the detailed criteria in the current proposal, the proportion of the non qualifying securitisation could potentially be huge.

This may be mitigated by introducing a modular approach with (i) simpler and fewer core criteria to define the SST securitisations, and with (ii) added specific criteria depending on the application (e.g. capital charge, LCR…) and the type of securitisation (with specific criteria for synthetic securitisation or for ABCP, for example).

For the use of the risk criteria (criteria A, B, C) for capital treatment of Securitisations which comply with the SST criteria (pillar I, II, III), we would also recommend to avoid threshold effects that are implicit in the EBA current proposal (all loans should have a RW below x%, granularity above 1%): These thresholds should not be limits which departs how capital is treated. Instead, the threshold effect would be limited by implementing a penalty for the fraction of the portfolio which does not comply (for example, penalty on the fraction above the granularity limit).

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

Generally speaking, and since the consultative document bases a part of its analysis of SST on credit risk, we think that 'qualifying' securitisations' should benefit from a better capital charge framework than the proposed Basel framework.

The French Banking Federation proposes that:

1- the simple, standard and transparent securitisations would be allowed a different hierarchy of approaches, with a re-calibrated Simplified Supervisory Formula Approach being above the external rating based approach:
    - This would reduce reliance on external ratings.

- Additionally, being simple, standard and transparent, the ratio of capital requirements of the securitized capital structure compared to the capital requirements of the underlying asset pool should be much closer to neutrality. The revised Basel 3 framework for securitisation adds a surcharge for the securitized bonds which is very far from neutrality, and this is not consistent with the history of losses of the high quality securitisation that EBA has noted. Therefore the SSFA should be recalibrated for SST closer to capital neutrality assumptions.

2- SST securitisations should be subject to a lower floor (i.e. lower than the new Basel standard of 15%) for senior tranches. We believe a risk-weight floor of 7-10% would be acceptable for senior tranches of qualifying securitisations. Such a level would still be very conservative compared to the loss history of senior tranches of such securitisations in Europe.

To this end we encourage the EBA to contemplate the proposal of Duponcheele, Linden and Perraudin paper of November 2014 ("How to Revive the European Securitisation Market: a Proposal for a European SSFA") of defining a specific SSFA for 'qualifying' securitisation positions: the 'European SSFA'.

http://www.riskcontrollimited.com/public/How_to_Revive_the_European_Securitisation_Market.pdf
http://www.riskcontrollimited.com/public/Exec_Sum_How_to_Revive_the_European_Securitisation_Market.pdf

Moreover, regarding the leverage ratio, originators should benefit from a deduction (in the denominator) of the non-recourse funding received, without consideration to accounting re-consolidation due to limited risk transfer.

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

Please see also the proposal of Duponcheele, Linden, and Perraudin paper of November 2014 ("How to Revive the European Securitisation Market: a Proposal for a European SSFA").

The application of Simple, Standard and Transparent Securitisation should result in lower risk weights and lower floor for the securitisations which comply with the set of criteria. It should not result in higher risk weights and higher floors from current proposals weights for the securitisations which are not deemed SST.

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

Rating ceilings impact the ratings of the tranches, especially the more senior tranches, i.e. only when using the external rating based approach to capital (ERBA). We believe if a particular asset class is impacted by the general economic environment which also triggers the sovereign rating downgrade, there should be a downgrade of the asset without using a cap. The rating agencies should publish the uncapped ratings, because it would allow investors and regulators to distinguish between transactions structured at the level of the sovereign cap and those structured to AAA level but rated lower because of the sovereign cap. We think that the latter should attract a lower capital charge. We believe there should not be a difference between the securitised assets and the same asset class non-securitised.

More generally, we agree that the securitisation market has unduly and excessively been impacted by the ratings given by agencies which have changed their methodologies and imposed country ceilings which are arbitrary instead of underlying detailed analysis of risk and recoveries. In this area, there is no difference between qualifying and non-qualifying securitisation.

APPENDIX 1: Focus on synthetic securitisations

We feel that some synthetic securitisations are particularly useful for the economy and should qualify as simple, standard and transparent (SST) securitisations. We understand that the EBA has at least 5 potential areas of concerns with regards to synthetic securitisations, to do with (1) their financing role, (2) prudential aspects, (3) the recourse on the assets securitised, (4) the counterparty risk and (5) the standardisation.

(1) Financing role

The question was raised as to whether synthetic securitisations were useful for financing the economy or not. Because they typically do not provide liquidity for the originating banks that use synthetic securitisations for risk mitigation purposes (i.e. not for raising cash) they could be dismissed at first or perceived as less desirable than traditional securitisations.

This would mean overlooking two key features of synthetic securitisations:

(a) They provide capital for banks as recognition of their lower credit risk after putting in place these risk mitigation techniques; capital is often equally constraining for banks as is access to refinancing, if not more. Thus it is fair to say that **synthetic securitisations can improve the ability of banks to finance the economy** by freeing up risk capacity and improving their regulatory capital ratios.

(b) They enable to **transfer risk on non-retail assets** typically not eligible for cash securitisations, e.g. loans to SME, loans to corporates, asset finance (infrastructure projects, shipping, aircraft, …). These assets are not eligible for a securitisation where a true sale is involved, not only because the loan contracts require the consent of the borrower prior to the sale, but because these borrowers value their relationship with the lender and want some assurance that the lender will keep their loan on its balance sheet, which is an indication that the bank will continue to lend them money in the future. Previous experience shows that borrowers insist on keeping loan provisions requiring their consent prior to a sale despite attempts from banks to remove these provisions.

(2) Prudential aspects

The EBA and other regulators have pointed, rightly so, the risks of synthetic securitisations used for regulatory arbitrage. This is extensively discussed in separate consultations on significant risk transfer (SRT) so we will not go into details here. Let's just mention that this concern can be addressed by reinforcing the regulation or bank supervision on SRT tests. One way to look at the question is to ask banks to demonstrate that their synthetic securitisations always involve a significant share of the credit losses of the securitised assets being borne by the investors under a variety of scenarios (loss severity, timing of defaults, etc.). If losses are borne by the investors and not just the originating bank, it is a good indicator that credit risk has truly been transferred. It automatically disqualifies "arbitrage" transactions where an originating bank would provide support to investors and bear the bulk of the losses without actual risk sharing.

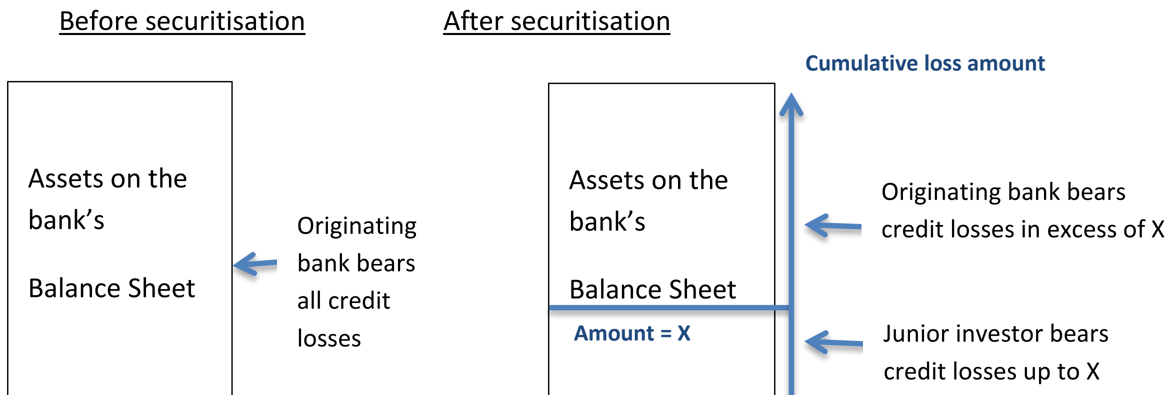
(3) Recourse on the assets securitised

We agree with the EBA that for any entity with a securitisation position, recourse on the assets puts you in a stronger position. This recourse can be achieved differently depending on the origin of the assets:

- in a traditional securitisation where a bank **invests in a securitisation of third party assets**, a true sale of these assets is the best way to ensure effective recourse on the assets ;
- in a synthetic securitisation where a bank **retains a senior securitisation position on its own assets**, the absence of true sale is best because the assets that the bank originated in the first place never leave its balance sheet.

Synthetic securitisations are mainly invested in by non-bank entities (e.g. asset managers or credit funds). For banks the securitisation positions result from a residual risk on their **own assets** after they have hedged a substantial part of the credit risk associated to the assets by selling a junior tranche of the capital structure. Having originated the assets, being the servicer, having the commercial relationship to the borrower, and doing the workout in case of a debt restructuring or a bankruptcy, the bank's recourse on its own assets is certain and is the same whether these assets are hedged, using synthetic securitisation as a credit mitigation tool, or not. Better yet than a recourse to the assets, this direct access to the assets puts the bank who originated them in the strongest possible position and should without a doubt make the bank eligible for the best possible capital treatment on the resulting securitisation position.

Diagram illustrating the bank's position in a synthetic securitisation



- The bank has direct ownership of the assets both before & after securitisation
- Synthetic securitisation is used as a credit risk mitigation tool
- The senior securitisation position results from the risk sharing of the bank's own assets
- To simplify the diagram "after securitisation", we only show the portion of the assets that is hedged. What does not show here is that a portion of the assets remains unhedged to ensure risk retention by the originator (alignment of interest with the investor).

(4) Counterparty risk

(a) Investor viewpoint

(i) in the rare transactions where the investor provides protection in an unfunded format (the investor would typically be an international / supra organization) there is no principal exposure for the investor, so the counterparty risk borne by the investor is limited to the "interest" or "premium", i.e. the protection fee payable by the originating bank ;

(ii) in most synthetic securitisations where the investor must make a cash payment equal to the full notional amount of the credit protection at inception, there are several mechanisms to mitigate credit risk ; the cash proceeds are often placed with a bankruptcy remote custodian. While investors are vigilant with regards to counterparty risk from an economic viewpoint, they don't expect to get a capital benefit for it. Their holdings would typically attract high capital requirements simply because they invest in the most junior parts of the capital structure.

(b) Originating bank's viewpoint

(i) in the rare transactions where protection unfunded the counterparty risk is assessed based on the credit quality of the credit protection provider under the existing credit risk mitigation regulatory framework;

(ii) in most synthetic securitisations where the investor must make a cash payment equal to the full notional amount of the credit protection at inception, there are several mechanisms to mitigate credit risk ; the cash proceeds are often placed with a bankruptcy remote custodian. In a number of cases this cash is invested in AAA-government debt securities to reduce counterparty risk as much as possible.

(5) **Standardisation**

The following criteria are acceptable standards:

- The absence of an active portfolio management on a discretionary basis and/or a cherry-picking practice;
- Underlying exposures homogeneous, in terms of asset type, and standard obligations;
- Underlying assets whose credit risk has not been affected by negative events (i.e. credit impaired borrower, delinquency, default, etc);
- The fulfilment of retention rule (Article 405 of the CRR) in order to ensure the alignment of the originators' and investors' interests;
- The appointment of a servicer (generally the originator bank itself) with expertise and supported by policies, procedures and risk controls well documented;
- no provisions requiring immediate liquidation of the underlying assets at market value;
- Simple referenced interest payments under the securitisation;
- With respect to the relevant criteria, we note that also synthetic securitisation could be considered 'transparent' because the originator ensures the disclosure to investors of data on underlying exposures on a loan-by-loan level as well as disclosure to investors of underlying transaction and quarterly reporting.

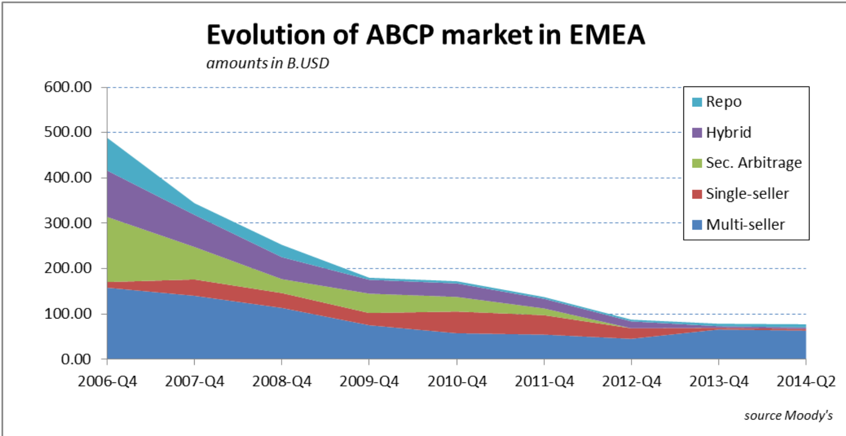
APENDIX 2 : Focus on ABCP

This appendix is dedicated to multi-seller ABCP conduits and has for objective to demonstrate that:

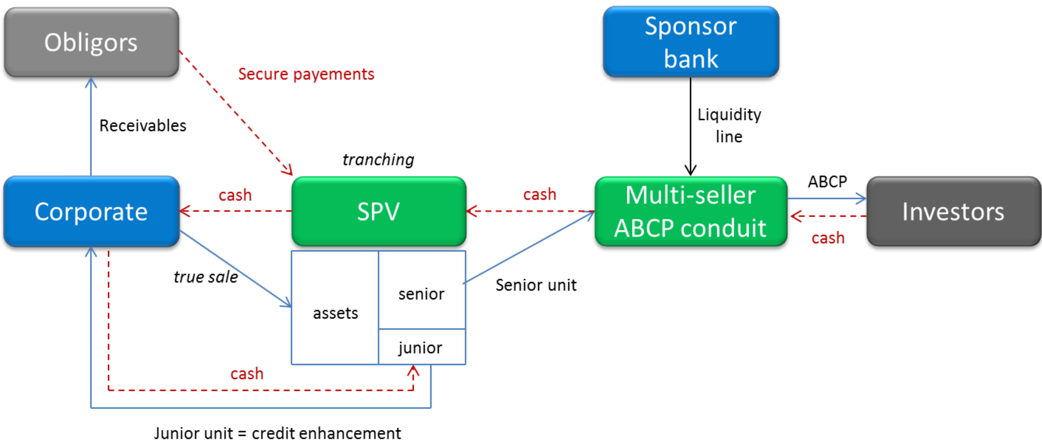
1- The liquidity lines provided by the sponsor bank to the ABCP conduit should be eligible to the simple, standard and transparent (SST) framework and then should qualify to attract less capital charge;
2- The commercial papers issued by the ABCP conduit should be included in the scope of the SST framework even if they do not belong to the term securitisation market, but to the short-term one.

1. Brief description of the ABCP market in Europe

ABCP market is a key part of securitisation markets and provides an important source of funding to the real economy. According to Moody's figures, the ABCP market represents in Europe, as of June 2014, an amount of 56 B.EUR, with the vast majority of the ABCP conduits being multi-seller conduits (ie. 82%), SIVs have disappeared. Since the crisis the volume has significantly shrunk due to the exit of riskier conduits, such as arbitrage conduits and SIVs, but multi-seller ABCP conduits performed well during the crisis: no ABCP investor in a multi-seller ABCP conduit has ever suffered a loss.



Multi-seller ABCP conduits invest in the traditional asset classes, such as trade, auto receivables and are an efficient financing solution to answer working capital needs of corporates across Europe. Multi-seller ABCP conduit activity may be compared to factoring with refinancing on the market.



This graph describes how a multi-seller ABCP conduit financing basically works and enables to see that the two main actors of the conduit financing are: (i) the ABCP investors (eg. mostly MMFs) who provide the funding, covered by a liquidity facility from the conduit sponsor, and (ii) the liquidity line for which the bank that is at risk on the securitisation position must hold capital.

Based on that, we believe that as a sponsor bank, the securitisation position underlying the liquidity line should be eligible to the SST securitisation framework by adapting the criteria in order to include such transactions, for which the sponsor bank is also the arranger.

On the liability side of the ABCP conduit, we also think that it is important to include the commercial papers in the scope of SST securitisations, even if there are related to the short-term securitisation market, because it will help the ABCP to be more liquid (see MMF reform in Europe and Italian Presidency amendments proposal to consider only SST securitisations as eligible for MMFs in Europe). ABCP should be considered by regulators as short term covered bonds and should be granted the same type of regulatory treatment than covered bonds.
It has to be understood that from a market standpoint the liquidity on a given product, like ABCP, depends from its regulatory treatment.

2. Focus on the liability side of the conduit – the commercial papers

Investors in ABCP are of different nature, mostly money market funds (MMF) in Europe, but also banks and insurance companies. As ABCP are securitisation positions, investors have to treat them accordingly to their own regulatory environment. ABCPs have then to cope with the CRR, Solvency II, AIFMD and the MMF regulation.
That is why it is also important to not exclude multi-seller ABCP conduit issuance from the scope of SST securitisations; otherwise this may clearly affect the investors' base of this product and at the end kill ABCP market, even if its role as an alternative and flexible funding is appreciated by banks' clients such as corporates and very important to fund the real economy.
We invite the regulator to talk to financial auto captive companies and see how they are using ABCP to fund their activity and how it helps them to sell cars to their clients. ABCP is clearly considered by these companies as a very important source of funding.
For that reason it is important to develop specific set of criteria for ABCP market, because this product is rather simple, and investors have access to all relevant information to do their own credit risk analysis based on the fact that the product is protected by the liquidity line provided by the bank sponsor of the ABCP conduit.
Regarding multi-seller ABCP conduits the criteria should be, on our point of view, more focused on the quality of the support, than on the underlying assets (which is already taken into account at the level of the liquidity line analysis), and ensure that the funding benefits to the real economy.

3. Focus on liquidity lines provided to ABCP conduits

The liquidity facility provided by the sponsor bank to the ABCP conduit is equivalent in terms of risk for the bank to hold on its balance sheet the underlying securitisation position, and that's why the bank has to hold capital charge in front of this position. Based on that, the liquidity facility should be eligible to the SST securitisations framework, and then be eligible to a favorable capital charge treatment.

To identify the main hurdles of the proposed criteria regarding the ABCP transactions, we checked one by one each criterion to see what criteria should be modified to ensure that ABCP conduit transactions are eligible to the SST framework. We focused here on trade and auto receivables because they are the most representative assets of multi-seller ABCP conduits in Europe (i.e. 74% of conduits asset types in Q2 2014).

Note that regarding trade receivables transactions, that are indubitably useful for financing the real economy, the ABCP conduits are the best way to finance these operations, because of the short term nature of trade receivables and the flexibility needed to finance these transactions backed by short-term revolving assets. In this respect, ABCP funding is a perfect complement to factoring business.

We have listed here only the criteria for which there was an issue for trade receivables and auto loans ABCP transactions, the other criteria being fulfilled. For these criteria we have proposed some amendments to accommodate these transactions.

Pillar I: Simple securitisations

Criterion	ABCP Trade receivables	ABCP Auto loans	Proposed amendment
3. The securitisation should be characterised by legal true sale of the securitised assets and should not include any severe insolvency clawback provisions. A legal opinion should confirm the true sale and the enforceability of the transfer of assets under the applicable law(s). Severe clawback provisions should include rules under which the sale of cash flow generating assets backing the securitisation can be invalidated by the liquidator solely on the basis that it was concluded within a certain period (suspect period) before the declaration of insolvency of the seller (originator/intermediary), or where such invalidation can only be prevented by the transferees if they can prove that they were not aware of the insolvency of the seller (originator/intermediary) at the time of the sale.	**Not always fulfilled** In some cases, the economic transfer of the exposure is not accomplished by a legal true sale, but thanks to secured loans (eg. trade receivables in UK), mainly because of country legal constraints.	Fulfilled	The criterion on "true sale" should be replaced by a criterion on "full recourse on the assets". This criterion should to be confirmed by a legal opinion.
5. At the time of inclusion in the securitisation, the underlying exposures should not include: i) Any disputes between original lender and borrower on the underlying assets; ii) Any exposures which are in default. An exposure is considered to be in default if: a. it is more than 90 days past-due; b. the debtor is assessed as unlikely to pay its credit obligations in full without realisation of collateral, regardless of the existence of any past-due amount or of the number of days past due. iii) Any exposures to a credit-impaired borrower. For these purposes, a borrower should be deemed as credit-impaired where he has been the subject of an insolvency or debt restructuring process due to	**Cannot be fulfilled** In trade receivables transactions, the information on the underlying pool is on a statistic basis and then checking if each obligor comply with the definition of 'credit-impaired borrower' is not feasible.	**Cannot be fulfilled** A number of jurisdictions do not have the types of public registers referred to here (e.g. in France with the FICP), meaning that it would be impossible to check the three year track record of credit difficulties referred to. The current proposed credit impairment requirement would then exclude in France all auto loans securitisations.	Remove the definition of credit impaired borrowers

financial difficulties within three years prior to the date of origination or he is, to the knowledge of the institution at the time of inclusion of the exposure in the securitisation, recorded on a public credit registry of persons with adverse credit history, or other credit registry where a public one is not available in the jurisdiction, or he has a credit assessment by an ECAI or a credit score indicating significant risk of default; iv) Any transferable securities, as defined in Directive 2004/39/EC (MIFID) or derivatives, except derivatives used to hedge currency and interest rate risk arising in the securitisation. In addition, the original lender should provide representations and warranties that assets being included in the securitisation are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due.			
6. At the time of inclusion, the underlying exposures are such that at least one payment has been made by the borrower, except in the case of securitisations backed by personal overdraft facilities and credit card receivables	**Cannot be fulfilled** Trade receivables are payable in a single installment.	Fulfilled	Exception should be made for receivables payable in a single installment, such as trade receivables, corporate credit cards.

Pillar II: Standard securitisations

Criterion	ABCP Trade receivables deal	ABCP Auto loans deal	Proposed amendment
8. Interest rate and currency risks arising in the securitisation should be appropriately mitigated and any hedging should be documented according to standard industry master agreements. Only derivatives used for genuine hedging purposes	**Not always fulfilled** Some trade receivables securitisation do not have any interest and/or currency hedging derivatives.	**Not always fulfilled** Some auto loans securitisation do not have any interest hedging derivatives.	Exception should be made for such transactions.

should be allowed.		
10. The transaction documentation of those transactions featuring a revolving period should include provisions for appropriate early amortisation events and/or triggers of termination of the revolving period, which should include, at least, each of the following: i) A deterioration in the credit quality of the underlying exposures; ii) A failure to generate sufficient new underlying exposures of at least similar credit quality; and iii) The occurrence of an insolvency-related event with regards to the originator or the servicer.	Fulfilled Triggers are included in the transaction documentation.	
13. The transaction documentation contains provisions relating to an 'identified person' with fiduciary responsibilities, who acts on a timely basis and in the best interest of investors in the securitisation transaction to the extent permitted by applicable law and in accordance with the terms and conditions of the securitisation transaction. The terms and conditions of the notes and contractual transaction documentation should contain provisions facilitating the timely resolution of conflicts between different classes of noteholders by the 'identified person'. In order to facilitate the activities of the identified person, voting rights of the investors should be clearly defined and allocated to the most senior credit tranches in the securitisation.	**Not fulfilled** Generally there is no trustee in the case of ABCP transactions. However it is important to understand that the ABCP conduit is between FCT/SPV and investors, which means that at the level of the FCT (resp. SPV) there is a management company (resp. agent) which is regulated and a depositary (IPA) is responsible for issuing ABCP. Moreover each conduit asset is checked by the credit rating agencies rating the ABCP conduit.	In the case of ABCP conduit transactions, this criterion should be considered as fulfilled, because of the presence of management company/agent at the level of the SPV from which the conduit buy its assets.

Pillar III: Transparent securitisations

Criterion	ABCP Trade receivables deal	ABCP Auto loans deal	Proposed amendment
15. The securitisation should meet the requirements of the Prospectus Directive.	**Not fulfilled** No Prospectus for ABCP conduit transactions, but as the sponsor/arranger of the transaction, the bank as all the relevant information of the deal.		Should not be requested in the case where the bank who is taking the risk (eg. sponsor bank) has full access to the information of the securitisation transaction, by structuring/arranging the transaction.
16. The securitisation should meet the requirements of Article 409 of the CRR and Article 8b of the CRA (disclosure to investors).	**Be careful with Art 8b of CRA** Fulfilled by the ABCP conduit for ABCP investors regarding the Art 409, but no template available for CRA3 on ABCP/trade receivables.	Fulfilled by the ABCP conduit for ABCP investors regarding the Art 409.	Remove the reference to Art 8b if the CRA
17. Where legally possible, investors should have access to all underlying transaction documents.	**Fulfilled for the sponsor bank, but not for the final ABCP investor** No underlying transactions available for ABCP investors today –investors report are sent monthly with information by programmes. Regarding the sponsor bank, underlying data are available and disclosed by the servicer of the transaction.		The sponsor bank being recognized as an originator for the transaction, this requirement should not be applicable in that case.
20. investors and prospective investors should have readily available access to data on the historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, covering a historical period representing a significant stress or where such period is not available, at least 5 years of	**Fulfilled for the sponsor bank, but not for the ABCP investors.**		The sponsor bank being recognized as an originator for the transaction, this requirement should not be applicable in that case.

historical performance. The basis for claiming similarity to exposures being securitised should also be disclosed.		
21. Investors and prospective investors should have readily available access to data on the underlying individual assets on a loan-by-loan level, at inception, before the pricing of the securitisation, and on an ongoing basis. Cut-off dates of this disclosure should be aligned with those used for investor reporting purposes.	**Fulfilled for the sponsor bank, but not for the ABCP investors**	The sponsor bank being recognized as an originator for the transaction, this requirement should not be applicable in that case.

Credit risk criteria

Criterion	ABCP Trade receivables deal	ABCP Auto loans deal	Proposed amendment
B. The pool of exposures to be securitised should be such that the largest aggregated exposure to a single obligor does not exceed 1% of the value of the aggregate outstanding balance. For the purposes of this calculation, loans or leases to a group of connected clients, as referred to in Article 4(39) of the CRR, should be considered as exposures to a single obligor.	**Generally not fulfilled** However it is important to have in mind, that trade receivables deals that are in ABCP conduits are senior securitisations positions, with a credit enhancement structured to take into account concentrations in the underlying pool (*via* a floor credit enhancement methodology or external credit insurance to cover over-concentrations)	Fulfilled	See general comment on the granularity.
C. The underlying exposures should fulfill each of the following criteria:			
C. i) They have to be exposures to individuals or undertakings that are resident, domiciled or established in an EEA jurisdiction, and	**Not always fulfilled**	**Not always fulfilled**	See general comment on the proposed limitation by jurisdiction

C. ii) At the time of inclusion they have to meet the conditions for being assigned, under the Standardised Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than: a) [40%] on a weighted average basis where the exposure is a loan secured by a residential mortgage or fully guaranteed residential loan, as referred to in paragraph 1(e) of Article 129 of the CRR; (b) [50%] on an individual loan basis where the exposure is a loan secured by a commercial mortgage (c) [75%] on an individual loan basis where the exposure is a retail exposure (d) [100%] on an individual loan basis for any other exposures.	Fulfilled	Fulfilled	
C. iii) Under (a) and (b) loans secured by lower ranking security rights on a given asset should only be included in the securitisation if all loans secured by prior ranking security rights on that asset are also included in the securitisation. Under (a) no loan in the securitised portfolio should be characterised by a loan-to-value ratio higher than 100%.	**Not applicable for TR**	**Not applicable for Auto loans**	

APENDIX 3 : COMPLIANCE WITH CRITERIAS

The anwers provided in this table represent the participants' views on the general feasibility of structuring future securitisation transactions respecting the criteria proposed by the EBA. This feasibility would require a flexible implementation and interpretation of the criteria. It is highly likely that detailed prescriptive rules will not fit every type of portfolio. If deemed necessary, detailed criteria, or detailed rules implementing these criteria should be adapted as much as possible to each type of portfolio, each jurisdiction etc..

Yes	A positive answer does not mean that existing transactions would necessarily qualify, but that the criterion could generally be respected in future transactions
	A lack of answer (yellow) indicates that the criterion would work for certain assets or investors but not for others
No	A negative answer signifies that the criterion cannot be respected in a great majority of cases and would most likely prevent a securitisation from qualifying

	French Residential mortgage or fully guaranteed loans	Auto Loans	Credit cards / Consumer Loans	Equipment or Vehicle Leases	Auto Fleet Leases	Trade Receivables	Large C
Securitization Structure	RMBS Public Issue	ABS Public Issue	ABS Public Issue	ABS Public Issue	ABS Private Issue	Usually funded by ABCP	Private Synthetic Risk Transfer
Issuer / Borrower	Bank	Bank	Bank	Bank	Bank / Corporate	Corporate	Bank
Overall Eligibility	No	No	No	No	No	No	No
Pillar I: simple securitisations							
Criterion 1	Yes	Yes	Yes	Yes	Yes	Yes	No
Criterion 2	Yes	Yes	Yes	Yes	Yes	Yes	No
Criterion 3	Yes	Yes	Yes	Yes	Yes		No
Criterion 4	Yes	Yes	Yes	Yes	Yes	No	No
4 i)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4 ii)	Yes	Yes	Yes	Yes	Yes		Yes
4 iii)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4 iv)	Yes	Yes	Yes	No	No	Yes	No
Criterion 5							
5 i)	Yes	Yes	Yes	Yes	Yes	No	Yes
5 ii)	Yes	Yes	Yes	Yes	Yes		Yes
5 iii)	No	No	No	No	Yes	No	Yes
5 iv)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5, addition	Yes	Yes	Yes	Yes	Yes	No	Yes
Criterion 6	Yes	Yes	Yes	Yes	Yes	No	No
Pillar II: standard securitisations							
Criterion 7	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Criterion 8	Yes			Yes	Yes		Yes
Criterion 9	Yes	Yes	Yes	Yes	Yes	No	Yes
Criterion 10							
10 i)	Yes	Yes	Yes	Yes	Yes		Yes
10 ii)	Yes	Yes	Yes	Yes	Yes	No	Yes
10 iii)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Criterion 11							
11 i)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
11 ii)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Criterion 12							
12 i)	Yes	Yes	Yes	Yes	Yes	Yes	
12 ii)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
12 iii)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Criterion 13	Yes		Yes	Yes	Yes	No	Yes
Criterion 14	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pillar III: transparent securitisations							
Criterion 15	Yes	Yes	Yes	Yes	Yes	No	No
Criterion 16	Yes	Yes	Yes	Yes	Yes		Yes
Criterion 17	Yes		Yes	Yes	Yes		Yes
Criterion 18	Yes	Yes	Yes	Yes	Yes		Yes
Criterion 19	Yes	Yes	Yes	Yes	Yes		Yes
Criterion 20	Yes	Yes	Yes	Yes	Yes	No	No
Criterion 21	Yes	Yes	Yes	Yes	Yes		Yes
Criterion 22	Yes	Yes	Yes	Yes	Yes		Yes
Credit risk criteria							
Criterion A	Yes	Yes	Yes	Yes	Yes	No	Yes
Criterion B	Yes	Yes	Yes		No	No	No
Criterion C							
C i)	Yes	Yes	Yes	Yes	Yes	No	No
C ii)		Yes	Yes	Yes	Yes		Yes
C iii)	Yes	Yes	Yes	Yes	Yes		Yes

COMMENTS ON THE OBSTACLES CREATED BY PROPOSED SST CRITERIA

ASSET	SECURITISATION TYPE	PURPOSE	WHERE SST ELIGIBILITY COULD BE USEFUL	OBSTACLES IDENTIFIED IN PROPOSED CRITERIA	CONCLUSION
French Residential mortgage or fully guaranteed loans	RMBS Public Issue	One of the most traditional asset classes for securitizations. RMBS offer a **funding tool** of the large volumes of retail clients' loans weighing on European banks' balance sheets. RMBS structures can also be used for **risk transfer** purposes, with investors also purchasing junior tranches	Treatment of Tranches held by investors Treatment of residual securitisation positions held by the originator in RMBS with risk transfer	It will be impossible for issuers of securitisations in a number of juridictions to know with certainty if a borrower has not been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination. Citerion C ii will become problematic with the new proposed Standardised Approach risk weights. It would be better to avoid references to bank prudential risk weights and only use objective criteria such as the residential loans average LTV, which could be set at 90% (average LTV amount currently corresponding to a 40% risk weight under the standardized approach)	Criterion 5 iii) needs to be significantly redrafted, or cancelled Criterion C ii) needs to be redrafted
Auto Loans	ABS Public issue	One of the traditional asset classes for securitisation. Lenders are often specialised with limited access to general-purpose funding. Securitization offers a proven **funding tool**.	Treatment of Senior Tranche(s) for investors	It is usually not possible in many jurisdictions to confirm that a borrower has not been the subject of an insolvency or debt restructuring process due to financial difficulties within three years prior to the date of origination. For example, in Germany the information is not available. In France, payments incidents must legally be removed from registry when the incident is closed.	Criterion 5 iii) needs to be significantly redrafted, or cancelled

Credit cards / Consumer loans	ABS Public Issue	One of the most traditional asset classes for securitizations and traditional **funding tool** for retail clients.	Treatment of Senior Tranche(s) for investors	Identifying clients with financial difficulties over the past 3 years is often not possible. Some revolving credit cards (as well as some auto loans) securitisations are structured without interest hedging.	Criteria 5 iii) to be excluded or amended.
Equipment or vehicle Leases	ABS Public Issue	Another traditional **funding tool** for SMEs and Retail clients, with well-established securitization history	Treatment of Senior Tranche(s) for investors	Equipment residual values are always an accepted component of the repayment risk. Identifying clients with financial difficulties over the past 3 years is often not possible.	Criteria 4 iv) and 5 iii) need to be amended.
Auto Fleet Leases	ABS Private Issue	Securitization of the leased fleet is a well-adapted **funding tool** for this capital-intensive business	Treatment of Senior Tranche(s) for investors	Leases are exposed to residual-value risk on the vehicles. But this a well-established market and diversified risk over many different vehicles sold at different dates. Fleet clients concentration will not fit the proposed granularity criterion	Criterion 4 iv) needs to be amended to allow well-diversified residual-value risk. Granularity rules also need to be adapted to this customer type.
Trade Receivables	usually funded by ABCP	Securitisation of Trade Receivables is a tried and tested **funding tool** for the working capital needs of many corporates. Multi-seller ABCP conduits offer the most efficient, flexible and cheapest solution.	Treatment of Senior Tranche for banks financing the receivables or extending liquidity line to the ABCP conduit. Treatment of ABCP for investors (senior tranche protected by bank liquidity line)	<u>Simplicity</u>: the proposed criteria are not well adapted to short-term, revolving receivables purchased based on a statistical portfolio analysis, often from multiple jurisdictions, and with dynamic credit protection. True sale is not always possible. <u>Standardization</u>: there is no trustee in ABCP transactions. <u>Transparence:</u> receivables transactions are subject to strict confidentiality clauses protecting corporates and cannot fulfill transparency rules for ABCP holders. These investors are protected by the bank sponsoring each ABCP vehicle. Bank sponsors, exposed to the senior tranche securitisation risk, have access to	As currently drafted, SST rules would not work for trade receivables or multi-seller ABCP vehicles. This could cause significant damage to this important funding source. Specific rules should be developed for these asset classes and securitisation structures.

				the required information, but not necessarily in the same form as public transactions. Credit risk: the 1% granularity limit does not work for most corporates who extend trade credit to some large clients. Some of these clients may also be located outside the EEA.	
Large Corporate Loans	Private Synthetic Risk Transfer	Banks extend significant amounts of credit to large corporates and on large specialised-lending projects (infrastructure, energy finance, asset finance) and often seek to **transfer some of their risk (and reduce regulatory capital)**. Investors are attracted by the risk characteristics, long-maturity profiles or specific sector exposures of these loans, often not available in the capital markets. Synthetic risk transfer is usually the only practical solution for investors unable or unwilling to purchase whole loans.	Treatment of residual tranches held by banks (mainly senior, with some junior amounts held in particular for risk-retention purposes)	Simplicity: Portfolios of large loans are not homogeneous in terms of jurisdictions, sectors, currencies, maturities, amounts etc.. Asset selection must remain flexible to make transactions feasible.Standardization: synthetic transactions obey a different logic from public ABS, for example in the case of protection buyer/servicer defaultTransparence: need to be adapted to the specific assets.Credit risk: large corporate loans portfolios cannot benefit from the same granularity as retail exposures and often extend beyond the EEA.	Proposed SST rules are not adapted to large corporate loan portfolios to investors.Banks exposed to residual tranches of risks on such portfolios should not be penalized by the fact that they did not transfer the securitized assets.Lack of direct control by the investor over the assets is compensated by other structural features (collateral..)