

**TSI comments on the BoE / ECB
discussion paper
“The case for a better functioning
securitisation market in the European
Union”
(May 2014)**

TSI welcomes the opportunity to comment on the Bank of England and the European Central Bank discussion paper "The case for a better functioning securitisation market in the European Union" published in May this year. We regard the paper as an excellent and comprehensive starting point for further discussion on high quality securitisations.

1. Do respondents agree with the benefits of a well-functioning securitisation market as outlined in Section 2?

Yes. In particular, we would like to refer to the following benefits of securitisation in a well-functioning securitisation market:

- To support and improve the financing of the real economy and thus to contribute to growth and employment in the European Union by converting non-tradable financial assets into securities that can be issued to investors and traded on capital markets;
- To broaden the investor base, to diversify the sources of funding and thus reduce the liquidity risks of originators while lowering the funding costs and thus the financing costs for SMEs, which in turn would contribute to stabilising the whole economy;
- To increase market liquidity, thus increasing the attractiveness for investors and contributing to a robust market with unbiased market prices that appropriately reflect the risks without bias. Increased liquidity would contribute to reducing the liquidity risks of investors which would be justifiably given preferential treatment, under Solvency II and the LCR for example, as high liquid assets as well as in terms of the capital requirement for the trading book and the eligibility as collateral for derivatives. This would reduce counterparty credit risks [EMIR], which in turn would boost market liquidity and contribute to deepening the market (self-amplifying effect);
- To support the diversification of investment portfolios and thus reduce systemic risks due to overreliance on asset classes that were liquid in the past but will not necessarily prove to be liquid in the future;

- To free capital by risk transfer, enabling banks to finance SMEs at reduced costs in the light of increased capital requirements and thus to enable SMEs to participate indirectly in the benefits of the capital market;
- Lowering the vulnerability of the originators' funding means that, as a result of different idiosyncratic risks, that funding is independent of the originator's rating;
- Less encumbrance of the balance sheet compared to covered bonds, thus contributing to greater financial stability. (Supervisory authorities, including recently BaFin, ESMA and ESRB, are increasingly acknowledging the phenomenon of asset encumbrance and addressing it as a matter for discussion. Asset encumbrance is a dynamic phenomenon and is not restricted solely to overcollateralisation at the time of the bond placement but is also related to the behaviour of the issuers in the case of a worsening of creditworthiness and to the criteria set by the rating agencies, in that the amount of overcollateralisation required to achieve or maintain a specific target rating comes into play. In the light of the actual banking restructuring discussion, the advantages of securitisations with regard to asset encumbrance should automatically come to the fore.)
- The securitisation market comprises a long and medium-term (ABS) market and a short-term (ABCP) market. We would also like to draw your attention to the importance of the ABCP market for the real economy. ABCP programmes are used to finance trade receivables (and to a lesser extent lease and consumer receivables) originated by the real economy. According to information available from rating agencies, as of the end of 2013 ABCP programmes sponsored by the six leading German ABCP banks provided real economy companies with committed financing of up to approximately EUR 10 billion. Consequently, real economy companies would benefit directly from a well-functioning ABCP market as they would have the advantages of a deeper ABCP market and lower ABCP spreads.

2. Do respondents agree with the impediments to and economic concerns of investors that have been identified? Do respondents think that there are any additional impediments to investors, and if so, what are they?

Answer to the first question

Yes. The main points are still as follows:

- The revised capital requirements proposed by the Basel Committee are significantly too high in relation to their risks, even if the risk weight were lowered from that proposed in the first draft to the securitisation framework. This applies, in particular, to high quality ABS and high quality ABCP with simple and robust structures. Model risks are significantly overestimated. Thus, floors and capital requirements for securitised loans compared to non-securitised loans are significantly too high. As a result, the higher capital requirements proposed by the Basel Committee seven years after the outbreak of the subprime RMBS crisis in the USA would extremely impede the recovery of the market and exacerbate the present situation; as a result of Basel III and increased capital requirements for significant banks, the availability of sufficient equity is a bottleneck;
- The revised capital requirements as proposed by the Basel Committee are endangering the ABCP business. In relation to high quality ABCP programmes in which the sponsors provide full support and bear the credit risk of the financed asset portfolios of the real economy originators, full support requires banks to provide credit facilities which would potentially fall within the scope of the increased capital requirements for securitisations. This would result in increased funding costs for real economy originators and could even result in a scenario in which a bank would have to apply higher risk weights when financing an originator's granular high quality asset portfolio of than when financing the originator unsecured. The possibility to provide

cheap financing for originators through ABCP programmes would be restricted;

- Capital requirements under Solvency II are still too high for ABS and ABCP. This applies even for high quality Type 1 ABS and ABCP, especially in relation to covered and corporate bonds. In addition, the market will be distorted by the exemption for sovereign bonds. Finally, capital requirements for junior high quality ABS tranches with, for example, a single A rating will be subjected to capital requirements that are far too high and will prevent insurance companies from investing in such products. For instance, the capital requirements being discussed for a junior bond with a quality step 2 and term of five years would result in a capital requirement of 83%! This will endanger the marketability of even high quality ABS transactions because junior tranches are an integral and indispensable part of such transactions;
- In relation to ABCP programmes it has already been recognised by German and European regulators that standardised loan-by-loan reporting is not applicable. This is because ABCP programmes are secured by various portfolios of different originators and may comprise different types of receivables. Furthermore, the underlying transactions are revolving (in relation to trade receivables, fast revolving) and include a vast number of individual debtors which may change monthly or even weekly. We believe that aggregated reporting that shows the relevant performance for each transaction in compliance with the reporting requirements of the CRR provides investors with the relevant information in a clear manner. Providing too much information may even reduce the clarity and therefore have a negative impact. Furthermore, in relation to ABCP, the assets securitised are receivables originated by the real economy.

On the other hand, in terms of investor reporting as a result of standard setting for robust high quality ABS such as TSI and PCS, a considerable amount of standardisation has now been reached so that we see no need for further standardisation. Moreover, we recall the enormous efforts that have been made to deliver loan-level data to the ECB and the Bank of England as part of a process that has just started. We

therefore recommend waiting for the outcome of the experience with the loan-level data before launching a new initiative.

Answer to the second question

Yes. The main points are as follows:

- Although we appreciate the intention of the European Commission with regard to the eligibility of high quality ABS as high liquid 2B assets, the cap of 15% for all level 2B assets together is significantly too low and will result in many level 2B assets meeting the eligibility criteria not being used. Thus, the positive signal sent by the eligibility of level 2B assets will have no positive impact on the costs of funding;
- According to the draft of the Money Markets Funds Regulation, money market funds will not be permitted to invest in ABS if the maturity of the underlying asset is more than 397 days, even if the ABS are eligible as high liquid level 2B assets and are of the highest quality. This is not reasonable and would reduce the investor base and market liquidity. Furthermore, it should be made clear that money market funds may invest in ABCP where trade, lease, loan or consumer receivables are underlying;
- The capital requirements being discussed for ABS under the trading book review would impede market liquidity;
- There is no level playing field in relation to covered bonds because their treatment is significantly preferential compared to that of high quality ABS. That distorts the market and impedes the establishment of a well-functioning ABS market. Examples are significantly higher capital requirements for high quality ABS under both the Basel Committee and Solvency II and a significant less favourable treatment under the LCR in terms of the eligibility of high quality liquid assets; this should be ended. As long as this asymmetric regulatory treatment of similar risks continues, there will continue to be massive effects on institutional investors' portfolio allocation, i.e. they will shy away from ABS and be attracted by whole loans/portfolios of whole loans and covered bonds. This development will substantially hinder a recovery of

the securitisation market and will be to the detriment of financial stability and transparency;

- There is no level playing field for sponsor banks' ABCP and unsecured lending business. Conversely, the capital requirement for a loan granted directly to a company and a loan granted by an ABCP programme sponsor to the ABCP programme to finance a company are not only treated in terms of the internal default probability and credit quality, but are subjected to different treatment merely because of their different legal status. As long as the risk weight for a securitisation position is significantly higher than the risk weight for an unsecured lending position, real economy originators are unable to benefit from the credit quality of their assets and banks would be discouraged from financing high quality asset portfolios rather than from granting unsecured loans;
- Information overflows due to too much information that investors have to analyse in the due diligence process. Greater importance should be attributed to the usefulness of the information in terms of its ability to enable investors to perform due diligence.

3. Do respondents agree with the impediments to and economic concerns of issuers that have been identified? Do respondents agree that the infrastructure concerns raised above affect the economics of securitisation? Do respondents think that there are any additional impediments to issuers, and if so, what are they?

Answer to the first question

In principle, yes. However, the following points are extremely important:

Higher funding costs and worse marketability of ABS due to

- increasing capital charges under the Basel securitisation framework and Solvency II that will cause higher opportunity costs for banking and insurance investors;

- the new liquidity requirements and the intended restricted recognition of high quality ABS as high liquid assets, which will cause additional opportunity costs as part of the liquidity costs.

Unless the capital requirements are reduced, it cannot be ruled out that it will be unattractive to issue ABS because it will be too expensive from a total cost of ownership perspective.

Answer to the second question

The need to deliver loan-level data according to the ECB's specification has been fairly expensive and has required some investment in the infrastructure. Thus, new data requirements should be carefully weighed against their merits. Because the loan-level data project has been finalised, it is no longer a major issue.

Answer to the third question

See above.

General statement

It should also be borne in mind that, in terms of underlying assets, the ABS market is the most transparent market. More detailed information could deter originators from issuing ABS. Moreover, more information does not necessarily mean better information. This applies, for instance, to the information requirements recently proposed by ESMA in its draft regulatory technical standard based on Article 8b of CRA III because originators would be forced to disclose information that is both confidential and relevant for competitiveness. Such requirements are not necessary because the relevant pieces of information for investors are disclosed in the prospectus.

The most crucial factor for the revival of the securitisation market is the provision of a level playing field. As long as a lack of level playing field and asymmetric regulatory treatment of similar risks exists there will continue to be massive effects on institutional investors' portfolio allocation, i.e. they will shy away from ABS and be attracted by whole

loans/portfolios of whole loans and covered bonds. This development will substantially hinder a recovery of the securitisation market and will be to the detriment of financial stability and transparency. For high quality securitisations, the regulatory capital for the senior tranche should never be higher than for the corresponding unsecuritised portfolio. Full synchronisation and full homogeneity between securitised and unsecuritised loans must be assumed.

Finally, there are renewed discussions about increased retention requirements, which alienate issuers. We are convinced that the existing rules under Article 405 of the CRR on the retained interest of issuers appropriately strike the right balance for the alignment of interests between investors and issuers. These rules should therefore not be changed.

4. Do respondents agree that market liquidity may be a barrier to a well-functioning securitisation market?

Yes, at least for liquidity products. For pure credit products it might not be a barrier if the products are focused on buy-and-hold investors or if the instruments have a short maturity.

5. The view of the Bank of England and the ECB is that a “qualifying securitisation” should be defined as a security where risk and pay-offs can be consistently and predictably understood. Do respondents agree with this definition? What characteristics of a “qualifying securitisation” not already included in the principles in Box 3 should warrant such treatments? Do respondents have any comments on the principles in Box 3?

Answer to the first question

Yes. However, high quality ABCP should be reflected (see our answer to the third question below).

Answer to the second question

Although simplicity, structural robustness and transparency are important characteristics by which to identify qualified securitisations, which might make risk assessment easier, the most important characteristic of a qualified securitisation is either its function of refinancing an activity of the real economy or the transfer of credit risk arising from lending to consumers or corporates. If, for example, a certain level of complexity in a transaction is a result of compliance with the legal requirements of one of the European jurisdictions necessary to achieve full legal transfer of the assets for the benefit of the investors, such a transaction should not be regarded as “non qualified” if it refinances a value-adding real economy activity.

Therefore, consideration should be given to the incorporation of synthetic (SME) transactions, in particular, in this classification. Synthetic transactions can be structured in a simple, transparent way and, through their capital relief, can result in positive effects for the real economy.

Answer to the third question

Basically, we agree with the proposed principles for term ABS. However, what is crucial is how these principles are specified in detail. It is extremely important for the specification to be carried out in close cooperation with the industry in order to avoid unintended consequences. For instance, the self-liquidating requirement should not mean that balloon payments, which are typical for most auto loan financing contracts, would be excluded. Recent analyses by Moody’s suggest that the credit performance of auto loans with a balloon payment was better than that of full amortisation contracts without a balloon payment. Furthermore, revolving master transactions should not be excluded either, provided that they meet the other high quality criteria.

Nature of assets: Given the function of asset backed commercial paper (ABCP) programmes as a means of refinancing corporates and the fact

that the industry sector also creates assets which have performed very well during the crisis, trade and consumer receivables should also be mentioned in Article 128. Consequently, the principles in Box 3 should also reflect high quality ABCP transactions in which trade or consumer receivables are securitised in addition to the asset classes already listed in Clause 134 in Box 3.

Furthermore, the criteria for high quality securitisation positions arising in the context of ABCP programmes should be specified. For this purpose, different specifications are required (i) for the securitisation position held by the sponsor of the ABCP programme when granting the supporting liquidity facility and (ii) for the ABCP themselves held by investors.

Proposed criteria for high quality ABCP (see also TSI: "[The potential development of a high quality securitisation market in the EU – Part 2 – ABCP](#)"):

- No re-securitisation;
- No security arbitrage business;
- The ABCP programme is a multi-seller programme;
- The ABCP programme refinances real economy assets;
- The ABCP programme is fully supported;
- The ABCP programme complies with the CRR requirements;
- The key features of the ABCP programme are set out in an information memorandum (or where there is a public listing, in a prospectus).

Proposed criteria for high quality liquidity facilities:

- No re-securitisation;
- No security arbitrage business;
- Refinancing of real economy assets;
- The real economy originator continues to service the refinanced assets (as if they were not securitised);
- The liquidity facility is granted by the sponsor and not a third party;

- The liquidity facility is senior (ranking at least *pari passu* with the ABCP).

Asset performance history: Trade and consumer receivables have shown a remarkably robust performance during the crisis (see also TSI: [“The potential development of a high quality securitisation market in the EU – Part 2 - ABCP”](#)). Based on our business experience, small and medium-sized companies as originators in trade or consumer receivables securitisations in ABCP programmes often do not have the capabilities to provide historical loss data in excess of that which they already reported in the applicable audited financial statements. In the context of the proven performance of trade receivables, we believe that small and medium-sized companies should not be excluded from qualified securitisations through the setting of standards that can only be achieved by larger financial institutions with extensive resources. ABCP transactions can only continue to be a cost-efficient way of funding for the real economy (in particular for small and medium-sized companies) if the reporting and data requirement can be fulfilled by the real economy and not only by institutions.

Expectations of payments: Trade and consumer receivables should also be considered and mentioned. The obligors in trade receivables transactions are in most cases other corporates that are assessed by the originator through a prudent and market standard debtor management, which is by nature different to the credit assessment of financial institutions. At the same time, companies originating consumer receivables are in many cases professionally organised, use score systems and generate highly granular portfolios.

Among producing corporates, for example, longstanding relationships (in many cases, many years) are of greater importance and the activities of supplier and client are more interdependent, especially in the manufacturing and machinery sector. Furthermore, corporates in the production sector have a security attached to the receivable in the form of a reservation of title regarding the item which has been delivered. For loan receivables, this is not appropriate in every case (senior unsecured). Furthermore, in ABCP transactions the sponsor is required

to assess the originator's credit and collection policy in a transaction as part of the transaction execution.

Current and self-liquidating: For the sake of clarification, mention should be made of the fact that ABCP transactions are also self-liquidating and have committed liquidity facilities additionally in place which ensure timely payment.

134: As mentioned above, trade and consumer receivables should also be mentioned in such a list of underlying assets.

140 and 141 Initial data and ongoing data: For ABCP, any loan-level data is not useful as a means of achieving greater transparency because the number of the underlying receivables is extremely high and fast revolving (see also TSI: "[The potential development of a high quality securitisation market in the EU – Part 2 – ABCP](#)"). In addition, the risk of "non-existence" or fraud regarding the assets is covered by the sponsor bank, which closely monitors the transaction and the originator.

143 Servicing and counterparties: In this context we would also like to underline the legitimate interest of corporates to maintain confidentiality regarding their financing operations. Usually, refinancing under an ABCP programme is not public with regard to the identity of the originator, seller and servicer. This is offset by the liquidity facility and the number of different originators (our proposal, a minimum of five for a high quality ABCP programme). On this basis, it is common market practice for the information regarding the originators, sellers and servicers involved to be treated confidentially.

Our experience has shown that a very high level of confidentiality is important for small and medium-sized companies (as well as for large companies) when we seek their consent to the true sale of their loans. Our experience has also shown this to be a very sensitive topic and we consider that confidentiality regarding the financial terms as well as the bank relationship is in the interest of the real economy. This also underlines and supports the positive acclaim for synthetic transactions for the securitisation of loan receivables.

Conversely, care must be taken to ensure that transactions that do not fulfil all criteria for “qualifying securitisation” are not automatically labelled as faulty or even dangerous and are punished even more. They may also be of high quality, albeit with slightly different characteristics.

6. Do respondents think that a liquid market for “qualifying” securitisations used for funding would result from a “qualifying certification”?

Yes, if also the planned regulatory conditions are not be exacerbated further. As impediments we see the planned revised provisions on the trading book (Fundamental Review on the Trading Book by the Basel Committee), the current draft of the Regulation on Money Market Funds and the new liquidity regulation which will probably limit the eligibility of all level 2B classes to 15% of the liquidity buffer. Moreover, eligibility as collateral under EMIR would support liquidity.

7. These principles may then provide a framework to aid various authorities and market participants to set their own eligibility criteria. How might such a framework be developed? What role could the appropriate authorities play in the process of certifying that a transaction is a “qualifying securitisation”? What are the associated risks?

Answer to the first question

Such a framework should contain a set of criteria that should discriminate between high quality and less high quality and should be evidenced as far as possible on the basis of the experiences of the last financial crisis. They should provide for a simple, transparent and robust securitisation market. The criteria themselves should be unambiguous, robust and clearly formulated to avoid legal uncertainty and facilitate implementation.

Moreover, consideration should be given to the fact that different regulations serve different purposes. Thus, it does not seem possible or desirable to fully define the same set of criteria for each regulation. The requirements for high liquid assets to be eligible as collateral for derivatives or as high quality for the trading book might differ from the capital requirements in the banking book, where liquidity is not important if the instrument is held to maturity. On the other hand, it would be desirable for the criteria to be standardised as far as possible in order to simplify the assessment of adherence to high quality criteria. This would make it easier for issuers to comply with different regulations. To increase the attractiveness of their issued asset backed securities, issuers will probably seek to comply with credit-related and liquidity-related high quality requirements which add to the number of requirements.

Thus, we propose a building blocks approach with a clear set of credit-quality-related criteria that have to be adhered to for credit products and a set of additional liquidity-related criteria that have to be adhered to for liquidity products. In any case, an important aspect to be avoided is that criteria referring to the same purpose are similar but not the same because different regulators have different opinions on their specification.

Answer to the second question

The framework should be developed in close cooperation with the market and especially with the already existing standard setters such as TSI, PCS and DSA.

Answer to the third question

All the needed regulation frameworks already exist on an EU level – of course not for financial products, but for all other products. The European Commission Directorate-General for Enterprise and Industry has set up regulations for almost every product. The assessment of safety and other preordained EU standards is done by “Notified Bodies”. In the European Union, these are organisations that have been accredited by a Member State to assess whether a product meets the

regulation standards. Assessment can include inspection and examination of a product, its design and manufacture. A Notified Body within the meaning of the EU regulation is therefore an accredited private or public third party which is entitled by an accreditation body to provide verification and certification services. These services are intended to ensure and assess compliance with the previously defined standards and regulations as well as to provide an official certification mark or a declaration of conformity. In the case of HQS, the accreditation body could be the national supervisor or the ECB, the Notified Bodies could be TSI, PCS, DSA, auditing companies, etc. – which means all institutions which have a clear track record in assessing securitisation transactions. The associated risks are the same as for non-financial products but we see the process as having been satisfactorily tried and tested.

8. Do respondents think that harmonisation and further conversion software could bring benefits to securitisation markets? If so, which asset classes should be targeted? How can accessibility to the existing loan level data be improved, so that it provides most value to investors?

Answer to the first question

No. The level of harmonisation would seem sufficient for the time being. It is more important to observe the impact of the loan-level initiative of the ECB and the Bank of England. In addition, past experience of data harmonisation and software conversion has shown it to be expensive. In most cases the additional costs do not outweigh the benefits. If further data harmonisation between the Bank of England and the ECB has to be taken into account, not the maximum of both but the intersection should be selected.

With regard to ABCP, it has to be noted that the originators of the underlying receivables are real economy companies. Any obligation to provide loan by loan information in a strict form, for example, could cause additional costs or even prevent the company from being able to

make use of an ABCP transaction as a funding alternative. Furthermore, there is a risk of such requirements disadvantaging, in particular, small and medium-sized companies with fewer resources and less sophisticated IT systems.

Answer to the second question

See the answer to the first question.

Answer to the third question

No need for the time being. See the answer to the first question.

9. Do respondents think that initiatives currently undertaken by authorities in the area of standardisation of prospectuses and investor reports and trade transparency are sufficient or is there scope for further improvements? Would the availability of prospectuses and standardised investor reports in a single location be helpful to securitisation markets?

Answer to the first question

We are not aware of any new initiatives in the area of standardisation of prospectuses and investor reports, but are of the opinion that the level of standardisation promoted by standard setters such as TSI or PCS is appropriate.

Answer to the second question

Standard setters for high quality securitisations such as TSI and PCS have done a great deal to enhance and standardise investor reports. It is important to strike the right balance between standardisation and flexibility in order to allow for the needs of market participants. Total standardisation of investor reports would also seem to be very difficult to achieve because of the heterogeneity and diversity of existing

portfolios, local credit product differences in the EU and the broad variety of transaction structures. That is why TSI, for example, has only prepared specimen reports for each asset class and the final report is agreed by the originator and TSI in an iterative process in the course of TSI certification.

Nevertheless, to contribute to further improvement and standardisation as far as reasonable, the publication of best and sound practices on prospectuses based on analyses by the ECB or ESMA on a wide range of observed practices in the market could help to foster market discipline. In any case, further regulation should be avoided.

10. Do respondents agree that facilitating investors' access to credit data in an appropriate manner could support the emergence of securitisation markets? Would credit registers be helpful in this respect? If so, which asset classes should be targeted? In what form could access be granted to ensure that borrowers' confidentiality is preserved?

Answer to the first question

No. It is important to strike the right balance between the needs of originators and investors. Otherwise, originators will no longer be willing to securitise. Within the ECB's loan-level data project, in which all stakeholders were involved (originators, investors, the ECB, rating agencies, etc.), the required data sets were aligned. The loan-level data have to be provided for several months. We therefore do not see the need for further data. Further requirements could deter originators from issuance.

In addition, given the current broad discussions on data secrecy, further data bases and available granular client data on the internet might unsettle clients.

Answer to the second, third and fourth questions

No. Loan-level data to be provided in the ECB's loan-level data project were aligned with all stakeholders. Further data extensions do not seem appropriate for the time being. We propose waiting for the outcome of experience with the ECB's loan-level project.

11. In order to aid performance measurement and to provide investors with industry-level data, would it be helpful if certain macro-economic data were disclosed or if banks/ non-banks published certain aggregated standardised data? What are the challenges of providing potential investors with sufficient borrower and loan-level data to enable them to model credit risk, and how can these be overcome? What other elements would in your view help to improve secondary market functioning for high-quality securitisation?

Answer to the first question

No. Such data should be selected and assessed by the investors. In addition, this could be an impediment for small and medium-sized originators which do not have an economic research department. In addition, it could promote herding behaviour if investors base their decisions on such information without carrying out their own assessments.

Answer to the second question

We think that the level of data provision is sufficient. First of all, the outcome of experiences with the loan-level data project, in which all stakeholders were involved, should be awaited instead of thinking about new requirements.

Answer to the third question

For the time being, in terms of market availability, the secondary market for ABS could be more transparent so as to reliably measure trading volume, which in turn is the basis for the construction of certain indices. On the basis of MiFID data, the EBA, for example, seemed unable to capture the whole ABS market when preparing its report on the definition of high liquid assets and therefore asked, via national banking authorities, some institutions to deliver its ISINs. As far as we are aware, it is not possible to identify asset backed securities as a class of securities within the MiFID data. Thus, in order to assess the secondary market liquidity of the ABS market, we recommend urging ISO to extend under ISO 10962 the CFI codes that represent the kind of financial instrument and that usually have to be used when data on security trades have to be reported (MiFID data). Alternatively, an EU classification of financial instruments could be developed that allows asset backed securities to be identified under the reported trades. In addition, we recommend differentiating between the ABS segments according to the classification used for the ECB's loan-level project.

Regarding ABCP, we would like to draw attention to the fact that due to the short-term nature of ABCP, there is no relevant secondary market. The absence of a secondary market does not indicate the illiquidity of ABCP but reflects the fact that short-term paper matures and is repaid before it can be sold.

12. Do respondents think that authorities should consider encouraging the industry to develop such benchmark indices? What risks might these give rise to? What indices would be useful and which could be easily produced?

Answer to the first question

First, the liquidity of the second market should be promoted by stopping the impediments. Later on, this would be reasonable but will happen in any case if it is possible to construe meaningful indices.

Answer to the second question

Wrong signals if the secondary market is not sufficiently deep.

Answer to the third question

First, there is the need for a well-functioning secondary market.

13. Do respondents agree that additional information in the form of a matrix showing implied ratings if the sovereign and ancillary facilities rating caps were to be set at higher levels would be helpful in supporting the investment process and contribute to increased transparency and liquidity?

Yes.

14. How important do respondents see the impediment related to the availability of ancillary facilities? Would the benefits of facilitating SPV bank accounts that fall outside the originator's insolvency estate outweigh the costs of such an initiative? Are there other initiatives in this area that would be beneficial?

Answer to the first and second questions

See the answer to the third question.

Answer to the third question

The market for ancillary services is narrow. Besides the reasons outlined in Nos 119 and 120 of the discussion paper, account banks and/or swap providers fear the costs associated with a downgrade (such as transfer

costs or costs associated with the collateralisation of counterparty risk). If an account bank's or swap provider's downgrade is caused by a systemic crisis, most probably no alternative counterparties will be available for the SPV. As a consequence, its securities will suffer a downgrade although the (credit) quality of the underlying portfolio will remain unaffected. In such a case, investors could be forced to reduce and sell their exposure, which in turn would deepen the crisis.

An initiative pursuant to which receivables of the SPV fall outside the institution's insolvency state would necessarily reduce or even eliminate the rating requirements currently established by the rating agencies if pre-insolvency scenarios, such as a moratorium, are also taken into account. This is not only true for account banks but to some degree also for swap providers since a privileged insolvency/moratorium treatment of claims associated with a swap agreement would substantially enhance the SPV's economic and legal position in an insolvency situation.

15. With regard to the policy options mentioned, are there any other considerations authorities should be mindful of?

Yes, discrimination compared to covered bonds should be stopped (see answer to item 3, third question).

In addition, to avoid unintended consequences in terms of ABS structures with sound quality and cliff effects, we recommend developing a two-tier system that attenuates these impacts. At the top we recommend a set of criteria to qualify an ABS instrument as being of high quality and liquidity (liquidity product). The second class would require criteria for credit-related products to qualify as being of high credit quality.

16. Do respondents think there are other policy options authorities should consider to support the emergence of simple, transparent and robust securitisation markets?

For the time being, we see no alternative.

17. Beyond securitisation, might there be other ways of achieving (some of) the benefits of securitisation as outlined in Section 2? What might be the associated risks of such options?

Answer to the first question

Benefits in term of capital relief could also be achieved by synthetic securitisations if well designed.

Synthetic structures have been used in Germany with great success, not exclusively but in particular over the two KfW platforms PROMISE (SME) and PROVIDE (MBS). Problems relating to other synthetic structures have not occurred in the past because of synthetic structural elements but for other reasons, particularly resecuritisations, (actively managed) arbitrage transactions and structural leverage. The synthetic structuring approach was simply a means to an end. In the future, those kinds of transactions would be excluded by the corresponding high quality criteria and might be subjected to even worse treatment. Consideration should be given to distinguishing between "qualifying securitisation" as discussed above for the purpose of liquidity as well as high quality securitisation with slightly different characteristics for credit purposes supporting the also very important and helpful target of capital relief.

Answer to the second question

If well and robustly structured, risk can be held at a fairly low level.

18. Do the principles set out in Box 3 seem broadly sensible given the objective of encouraging a set of securitisations that are more amenable to risk assessment? Are there any obvious unintended consequences?

Answer to the first question

In principle, yes. However, it is crucial how these principles are specified in detail. Thus, it is extremely important for the specification will be carried out in close cooperation with the industry so as to avoid unintended consequences.

Answer to the second question

That depends on the detailed specification. See the answer to item 5, third question.

TSI – What we do

High quality securitisation in Germany and TSI – the two belong together. True Sale International GmbH (TSI) was set up in 2004 as an initiative of the German securitisation industry with the aim of promoting the German securitisation market.

Over the past ten years TSI has strongly supported the development of the German securitisation market. Its concern has always been to give banks an opportunity to securitise loans under German law on the basis of a standardised procedure agreed with all market participants. Another objective is to establish a brand for German securitisation transactions which sets a high standard in terms of the exclusion of originate to distribute, alignment of interest, transparency and investor information. Finally, the goal is to create a platform for the German securitisation industry and its concerns and to bridge the gap with politics and industry.

Nowadays TSI Partners come from all areas of the German securitisation market – banks, consulting firms and service providers, law firms, rating agencies and business associations. They all have substantial expertise and experience in connection with the securitisation market and share a common interest in developing this market further. TSI Partners derive particular benefit from TSI's lobbying work and its PR activities.

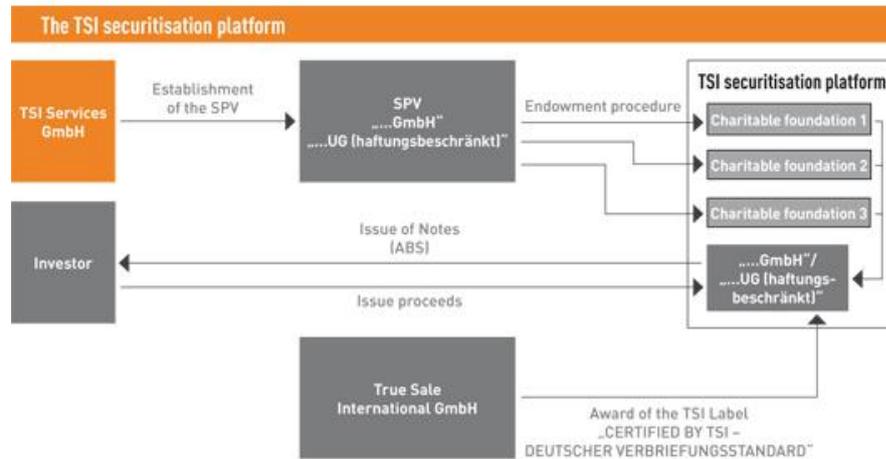
TSI securitisation platform

TSI has been providing special purpose vehicles (SPVs) under German law since 2005. In far more than 90 transactions, German and other originators have already taken advantage of German SPVs as part of the securitisation process.

The [TSI securitisation platform](#) comprises three non-profit foundations, which become shareholders in the SPVs set up by TSI. The non-profit foundations provide support for academic work in the following fields:

- Capital market research for Germany as a financial centre
- Capital market law for Germany as a financial centre
- Corporate finance for Germany as a financial centre

The three non-profit foundations are committed to promoting scholarship and science with a focus on capital market and corporate finance topics.



CERTIFIED BY TSI – DEUTSCHER VERBRIEFUNGSSTANDARD



The high quality of German securitisation transactions reflects the high quality of the standards applied to lending and loan processing.

The brand label [DEUTSCHER VERBRIEFUNGSSTANDARD](#) is founded on clearly defined rules for transparency, disclosure, lending and loan processing. Detailed guidelines and samples for investor reporting ensure high transparency for investors and the originator guarantees, by means of a declaration of undertaking, the application of clear rules for lending and loan processing as well as for sales and back office incentive systems. The offering circular, the declaration of undertaking and all investor reports are publicly available on the TSI website, thus ensuring free access to relevant information.

TSI events and the TSI Congress

TSI events provide opportunities for specialists in the fields of economics and politics to discuss current topics relating to the credit and securitisation markets. The TSI Congress in Berlin is the annual meeting place for securitisation experts and specialists from the credit and loan portfolio management, risk management, law, trade and treasury departments at banks, experts from law firms, auditing companies, rating agencies, service providers, consulting companies and investors from Germany and other countries. Many representatives of German business and politics and academics working in this field take advantage of the TSI Congress to exchange professional views and experience. As a venue, Berlin is at the pulse of German politics and encourages an exchange between the financial market and the world of politics.