TSI feedback on COM(2015)472/F1 of **30 September 2015**
Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012

TSI has been working in the German securitisation market since the beginning of 2004, providing SPVs and securitisation services for SPVs and awarding the German securitisation quality label "DEUTSCHER VERBRIEFUNGSSSTANDARD", which has many points in common with the EU's current STS project. We therefore appreciate the EU's current efforts to establish an STS securitisation framework. We also concur with the European Commission's analyses and objectives that underpin the draft Regulation. High quality securitisations play an important role for the financial system – particularly in Europe, where, because of the high level of bank dominance, securitisations constitute a critical transmission mechanism for the capital market. We consider that the present draft presents a unique opportunity to establish a regulatory framework for European securitisations, whose high quality was demonstrated during the financial crisis; this framework will help to create a branding image among all market players and to ensure broad acceptance within the context of the forthcoming capital markets union.

However, in order to do justice to these objectives and requirements in practice, the draft needs fundamental adjustment on three key points.

1. The rules for the regulatory capital backing of STS securitisations that are presented in parallel to the draft do not take account of the acknowledged quality of such securitisations. They represent a substantial worsening of the present situation – also in comparison with similar investment alternatives such as covered bonds or other forms of credit transfer, such as untranched portfolio transactions.
2. Not all STS requirements and definitions are practicable; several are too unclear. This will result in many high quality securitisation transactions failing to qualify for the STS regime, although there is no question about their quality.
3. The process of regulatory recognition of an STS securitisation, the ongoing supervision of compliance with the criteria and the sanctions procedure enforced in the case of infringement of the regulations will create substantial, incalculable uncertainties and risks among originators, investors and corporate service providers. Against that backdrop, only a few banks will be prepared to take advantage of the STS framework.

All in all, we therefore conclude that the present draft of the STS Regulation, as presented on 30 September 2015, will not achieve the desired objectives and we propose the following amendments as a means of resolving this matter:

On point 1

ERBA Table 4 in Article 262 of the STS CRR should be amended so that, at least for STS securitisation tranches, there is no increase in the risk weight as it is at present. Anything else would send a negative signal to the market.

On point 2

In our opinion, some criteria make no sense in terms of content or technicality and should therefore be deleted. In the case of term ABS, these are as follows:

- Article 8(7)(c) makes no sense in its present context. Moreover, it could be interpreted as meaning that banks may only securitise their loans with quality that is well above average. This cannot serve the interests of reasonable banking regulation.
- In this connection, Article 243(2) (a) and (c) of the STS CRR (criteria for STS securitisations), as included in the accompanying European Commission proposal for amendments to the CRR, should also be deleted. The conditions referred to therein are virtually unimplementable, particularly in the case of commerce-related securitisations (trade receivables, SME securitisations). At least, it should be clarified that no external rating agency needs to be nominated by the originator for the purpose of the determination of maximum credit risk weights pursuant to Article 243 (2) (c) if the originator does not use an external rating agency for the determination of risk weights under the credit standardised approach anyhow. Otherwise, high additional costs could deter affected originators from using the STS instrument in the case external ratings are required by a prospective EBA guideline. This holds true especially because external ratings and their updates would have to be performed for the securitised as well as for the non-securitised portfolio.

The following criteria for **ABCP transactions** should be **deleted**:

- By analogy with term transactions, the corresponding provisions of Article 243(2) (a).
- Replenishment necessity: A particular feature of ABCP programmes is the ability to "breathe" as changes in the volume of receivables occur. Article 12(6)(c) runs counter to the concept of working capital financing and should therefore be deleted.
- Lifetime of underlying: Many auto financing transactions, but particularly also equipment leasing (machine leasing, fixtures and fittings), will be unable to comply with a maximum 2 years WAL or 3 years residual maturity. This severely limits the capacity of STS lease financing transactions for the SME sector. This is also to overlook the fact that the liquidity facility in ABCP programmes has the effect of dual recourse and covers the maturity transformation risk – much as in covered bonds. In the context of the sponsoring bank's liquidity management, the liquidity facility itself must take account of the maturities of the underlying. An additional restriction thus makes no sense. The corresponding clause in Article 12(2) should therefore be deleted.

The following criteria for **term ABS** should be **defined more precisely**:

- Homogeneity criteria (Article 8(4): Here, only the general asset class makes sense as a homogeneity criterion.
- With regard to the securing of servicing in the event of default or insolvency of the service, the criteria should not be higher than for covered bonds. In particular, this should apply if the servicer is both a credit institution and the originator. It should therefore be made clear that the usual replacement clauses, which make it possible to replace the servicer in the event of default or insolvency, are sufficient.
- True sale and clawback criteria: No more should be required than is possible under the applicable national legal framework. Account should also be taken of the German refinancing register with the relevant transfer and trust arrangements.

The following criteria for **ABCP transactions** should be expanded/amended:

- Joint liability: Several originators (multi-seller ABCP) can only be liable for their own negligence and not "jointly". Correspondingly, the sponsor is also liable only for his own negligence. Article 10(4) and Article 13(8) need to be amended.
- Partial STS: Provided that they meet the criteria, transaction-specific securitisation positions should comply with STS, even if the STS programme is compliant. Furthermore, a programme should be deemed to be STS compliant if at least 70% of the underlying securitisation positions are STS (on the basis of nominal values). Article 11 should be deleted and Article 13(1) should include a 30% "threshold".
- External verification: The requirement of external verification with random sampling covering at least 95% of the confidence level cannot be fulfilled for short-term, fast turn-around receivables (trade receivables). In addition, this verification cannot take place in ABCP programmes "prior to issuance", as ABCP is issued daily. Article 10(2) should therefore be added to the exceptions in Article 12(1).
- Loss history: For short-term, fast turn-around receivables (trade receivables), a 7-year history is too long. Rating agencies generally use only a 12-month history in their models. Article 10(1) must be expanded.
- Disclosure rules: The transaction-specific documents in an ABCP programme contain a great deal of confidential information that represents the seller's operating and business secrets, which are protected. It must therefore be ensured that transaction-specific documents can be accessed only by the sponsoring bank, while investors at programme level only receive programme documents or investor reports summarising the situation. Article 5(1)(b) and (c) must contain clarifications to that effect; the second sentence of Article 13(8) must likewise be amended.
- Granularity requirement: Manufacturing companies may have only a few customers and hence high (and changing) concentrations, and they also generally have no appropriate systems or knowledge to be able to determine affiliated enterprises. At programme level, it is also technically impossible

to achieve an aggregation of the same or affiliated customers, as there is no common denominator among various originators that would enable the identification of the same/affiliated customers. Real economy enterprises have their own customer numbering systems, which are not compatible with those of the sponsoring bank. The criterion under Article 243(2)(b) of the STS CRR cannot therefore be fulfilled.

- Residual values: In order to be able to also securitise closed residual values (i.e. with the originators/sponsors guarantee) from leasing transactions, they should basically be allowed under STS conditions. Article 8(9) would need to be expanded accordingly.
- Termination rights or maturity extension options for ABCP by the sponsoring bank providing the liquidity facility should be possible in the interest of their assets/liabilities management. Although instruments of this kind would not be STS eligible, their issuance should not lead to an overall assessment of the programme as non-STS-compliant.

On point 3

The process of STS classification, supervisory monitoring and penalisation in the event of the criteria being infringed by the originator, as presented, is hardly likely to persuade banks and leasing companies to make use of STS.

At no point in the process are the originator and investors given supervisory clarity and confirmation. On the other hand, every supervisory body in Europe can give notice of doubts during the term of the transaction and set in train an extremely complicated clarification process, which ultimately involves all supervisory bodies in Europe.

We consider that this process will result in the following:

a) Only few originators will be prepared to incur the associated risk;
b) If notification of a doubt is given by a European supervisory authority, which will presumably tend to occur in periods of market weakness, the laborious clarification process will entail immense damage to the market – regardless of its outcome.

Neither can be desired with a view to the capital markets union and the revival of the securitisation market. We therefore advocate another procedure, which gives originators and investors security without prejudice to their other obligations. This could be a certification process by a private institution with relevant experience, e.g. TSI and PCS. This institution or the originator/sponsor should also be able to obtain supplementary, generally binding information from the relevant supervisory body in difficult cases. This would give all market players and supervisory authorities concerned the security and clarity that the securitisation market urgently needs if it is to be revived.

„Annex: Synthetic transactions

The STS paper makes no mention of synthetic securitisations. Our view is that the synthetic securitisations identified by the EBA as "balance sheet transactions", which substantially constitute simple loss guarantees covering loan exposures to the real economy, represent a pivotal instrument for the implementation of the objectives of the capital markets union, namely an efficient simple, transparent and standardised intermeshing of business financing via banks with the capital market. These real economy balance sheet securitisations

- have been widely used across Europe for more than 15 years,
- have performed extremely well even during the financial crises,
- contain less structural risk to investors than equivalent true sale securitisations and
- are more simple, transparent and standardised than equivalent true sale securitisations.

When assessing the eligibility for STS treatment of exposures from these synthetic transactions, exposures *acquired* by investors in a synthetic securitisation should be distinguished from the exposure *retained* by the originator of the underlying loans for losses exceeding the amount of the credit protection obtained under a synthetic securitisation:

- The exposure *retained* by the originator of the underlying loans for losses thereunder which exceed the amount of the credit protection under a synthetic securitisation is a risk which the originator already had before and without such securitisation. The risk for the originator in respect of losses exceeding a certain amount remains

entirely unaltered by a synthetic securitisation providing credit protection up to such amount. As the risk for these losses is not affected by the securitisation, the related exposure should benefit from STS risk weights.

- Synthetic securitisation exposures *acquired* by investors should be considered as STS securitisations if they comply with the criteria set out in Article 8, 9 and 10, subject to minor adjustments. Most criteria are applicable to both true sale and synthetic balance sheet securitisations. Some criteria require minor adjustments to account for the structural difference between true sale and synthetic balance sheet transactions. All required adjustments have been submitted to and considered by the EBA in the context of the related consultation."