Response to the Green Paper on an EU framework for simple, transparent and standardised securitisation

Frankfurt am Main, May 2015

Question 1

- **A. Do the identification criteria need further refinements to reflect developments taking place at EU and international levels? If so, what adjustments need to be made?**

General remark:
The criteria should be formulated according to the general principle of "substance over form". Otherwise, it would be difficult to give the market the security that it needs, namely that STS securitisations which benefit from favourable regulatory treatment retain their status over their entire term – irrespective of the assessor. With so many criteria, some of which are very detailed, if this is not ensured, even fairly small, purely formal and materially insignificant divergences could lead to far-reaching consequences for the investor in terms of the regulatory treatment. This would seriously impede the establishment of an STS ABS market. In this respect, we also refer to our response to Question 4.

Required modification of the eligibility criteria of simple, transparent and standardised securitisation (STS)

- **Modification of the non-impairment requirement necessary**

  a) Term and replenishment structure

Besides that overall, we agree in principle with the criteria for term and replenishment structures as set out in the delegated acts under the LCR and Solvency II that are already harmonised with regard to the foundation criteria. However, we see **some need to adapt and refine some criteria to avoid the exclusion of well-established and marketable securitisations, such as auto ABS, as "qualifying securitisations"** that, from the investor's perspective, already meet the requirements for simple, standardised and transparent securitisations.

In particular, **with regard to loan and lease receivables, the non-impairment requirements that are not based on accounting rules and that are too broad, partly unclear and too complicate to implement need to be adjusted.**

b) The non-impairment requirement according to the delegated acts under the LCR and Solvency II and the EBA discussion paper on SST securitisation cannot be implemented without further specification.

Without further specification, it is not feasible to issue asset backed securities that fulfil the non-impairment criteria. This is a very critical point because credit institutions report that, in order to safeguard the value of their investments, investors have begun to require "qualifying securitisations" that are LCR and Solvency II compliant and are already showing some reservations if such compliance cannot be guaranteed. We assume that this trend will increase over the next few months. However, partially vague legal requirements currently render it unclear how these requirements should be interpreted and implemented. In addition, several challenges arise in relation to their implementation. For instance, it is currently not feasible for originators to meet investor's expectations as to LCR and Solvency II compliance. Potential investors may display greater reservation with regard to investment in ABS in the future because price discounts are to be expected on the stock exchange if ABS should turn out of not being eligible as high quality liquid assets and high quality type 1 securitisations according to the delegated acts under the LCR and Solvency II regime. Against this backdrop, we recommend that action is taken quickly.

c) The requirements relating to the quality of the loans should be more balanced and credit risks of non-securitised and securitised loans should be better spread between originators and investors

On the one hand, it is necessary to ensure that the underlying assets are of an appropriate quality of and to avoid an adverse selection of loans to be securitised. On the other hand, efforts should also be made to avoid a selection being made of underlying loans whose credit quality is significantly better than that of other originated loans that are not to be securitised. From a financial stability point of view, a scenario in which only high quality loans are securitised while the rest remain on the credit institution's balance sheet is undesirable. This could undermine the quality of credit institutions' remaining on-balance-sheet receivables. This point could become important if the EU Commission's initiative is successful and if credit institutions increasingly use asset backed securities. **We therefore believe that, in order to ensure a high degree of financial stability within the financial system, the right balance must be struck by spreading the credit risks of originated underlying assets in the system. To achieve this, we recommend modifying the non-impairment requirements with regard to the underlying assets.**

d) The requirement of "simplicity" with regard to underlying assets should focus on the simplicity of their assessment and the degree of certainty of such assessment in order to prevent the occurrence of tail risks.

We are convinced that it is highly important for investors to be able to assess the quality of the underlying assets adequately and for such assessments not to be complicated and challenging in terms of the level of uncertainty inherent in such assessments. The criterion of "simplicity" should thus refer to the simplicity of such assessments rather than to the underlying assets themselves. Such an assessment is simple if the following prerequisites are given: The credit and business processes, especially the underwriting standards, but also the collection and dunning process as well as the internal controls and internal audits are the same for the non-securitised and securitised portfolios; the underwriting standards have been stable over time in substance and transparent information including vintage curves exist in regard to the historical performance and the development of the non-securitised portfolio and former securitised portfolios. Based on such information and conditions investors can easily compare the performance of securitised and non-securitised loans. Conclusions can be reached just on the basis of the past quality and performance of corresponding portfolios, adjusted, if necessary, by forward-looking macroeconomic information. In addition, it is important that the loans to be securitised are selected randomly from a target portfolio in order to avoid any assessment bias. To simplify the assessment and to reduce uncertainty, it is reasonable to exclude loans that are in default according to Basel II or the CRR and that show evidence of impairment according to the applicable accounting standards, with the need for specific allowances. Furthermore, to give investors greater reassurance and to exclude loans that could indicate a significant increase in credit risk, it is common practice for existing high quality ABS to exclude delinquent loans and to require that at least one, and at times even two, payments have been made before securitisation. This practice reduces uncertainty and significantly simplifies the assessment of the credit quality of the underlying assets for investors.

To sum up, we believe that the criterion of "simple" should refer to a simple assessment to reduce the uncertainty of the occurrence of unexpected losses rather than to the high quality of individually selected underlying loans.

According to the eligibility criteria of the delegated acts and the proposal by the EBA, defaulted loans according to Article 178 and credit-impaired borrowers of the underlying loans shall be excluded from the definition of high quality securitisation. However, **the definition of impairment is unfortunately not based on accounting rules and unnecessarily too broad, partly unclear and difficult to implement. In particular, this relates to the requirement that loans to be securitised as qualifying shall be assessed by an ECAI (external credit assessment institution) or given an internal credit score, with the assessment or credit score not indicating a significant risk of default. It is, however, completely unclear at present what an indication of "significant risk of default" actually means.** If the supervisory authorities interpret the term "significant risk" according to IFRS 9 published in July last year, SME securitisations won´t have any chance in Europe. Over 90 % of Europeans companies are below investment grade and therefore not of low risk.

The creditworthiness of SMEs in particular is often based on their relatively low equity level and not "investment grade", i.e. equivalent to "investment grade", although the company's creditworthiness is satisfactory. The problem might be heightened by the EBA's proposal in its Discussion Paper on simple, standard and transparent securitisations (14 October 2014) to allow only the securitisation of loans for qualifying securitisation that will have a certain risk weight based on the standardised approach. According to the recent Consultative Document issued by the Basel Committee on revisions to the standardised approach to credit risk (27 March 2015), this would mean, for instance, that all corporate SMEs with revenues of up to €5 million and an equity ratio of 33% would be excluded from qualifying securitisation, irrespective of whether there is a significant single risk or not. If only one-third or half the loans in a bank portfolio that are in any case linked to low risk weights can be securitised, we do not believe that the intended effect of boosting financing opportunities for SMEs as a means of creating growth and jobs will be achieved. Because credit institutions have limited capital resources as a result of Basel III and owing to the increase in capital requirements by the EBA and the ECB in order to enhance the resilience of credit institutions, capital is now a scarce resource at credit institutions, a fact which is restricting expansion of the lending business. Consequently, banks already seem to be focusing their lending on customers who absorb fairly low levels of capital. However, such companies do not generally experience problems in obtaining funding by means of loans, for example. Hence, it would seem more important to ensure that loans which are originated in the normal course of business based on the transparent underwriting standards of the credit institution concerned to be securitised as qualifying. This would enable the transfer of credit risk and free up capital for new credit business.

It should also be noted that securitisation refers to the securitisation of pools of receivables rather than to single risks. Diversification effects play an important role when assessing the quality of a portfolio if this is sufficiently granular.

Provided that underwriting standards are stable in substance over time, such diversification effects increase the predictability of cash flows, reduce the uncertainty of each assessment and thus also reduce the level of unexpected losses, which is important for simple transactions. In other words, the probability of defaults or the expected losses being slightly elevated is less of a problem than the deviation and the level of deviation of such expectations on a pool level. To enable a “simple” assessment, simple, standard and transparent securitisation should ensure to a high degree of certainty that such deviations from expectations, especially under stressed conditions, are significantly lower than those of non-qualifying securitisations and that losses under such circumstances will be within the expectation of stressed scenarios.

There needs to be an awareness of the fact that problems may arise not from the level of expected losses in a baseline scenario and the level of unexpected loss in a stressed scenario, but rather from the level of unexpected losses owing to “tail risk”. Unexpected losses are those that are fairly unlikely but still possible under certain circumstances in stressed conditions. From a statistical point of view, unexpected loss features exceed the expected loss at a certain confidence level. The confidence level is typically very high for highly rated ABS tranches. Unexpected loss is, however, the tail risk beyond the defined confidence level and beyond the assumptions of stress test scenarios. Unexpected losses are typically covered by credit enhancements. However, unexpected losses that are not covered would result in a default. Owing to the significantly higher predictability and reliability of the assessment with regard to the baseline and stress test scenario, it is extremely unlikely that the senior and junior notes of simple, standardised and transparent securitisations will suffer a loss. In contrast to such STS securitisations the tail risk of non-STS securitisations is significantly higher.

Expected losses on a portfolio level are typically fully covered by the interest payment from the securitised loans or by the discounts based on internal interest rate to cover the interests to be paid for the ABS tranches. To withstand a stressed scenario, credit enhancements such as cash reserves, over-collateralisation by purchase price discounts or excess spreads exist to cover unexpected losses. Even rating agencies meanwhile require a high level of credit enhancement that helps withstand even severe economic distress. From a conceptual point of view, simple, standard and transparent securitisations should help to reduce uncertainty with regard to the deviation of the expected losses rather than focusing on the expected probabilities of default (PDs) or losses themselves.

Based on these observations, we believe that a typical feature of simple, standard and transparent securitisations should be that the underlying assets can be assessed simply and in a manner that allows them to be easily compared with the non-securitised portfolio. It would therefore be reasonably possible on the one hand to conclude from the observed losses that incurred in the past while taking account of the macroeconomic view of the expected losses and to perform reliable and conservative stress tests, on the other hand, to estimate the level of unexpected losses supported by historical data in a business cycle. Thus, instead of excluding loans with “significant” risks, which can be very restrictive if the defined PD threshold is low, we suggest that it would be more appropriate to place greater importance on the criteria that enable a “simple” and “reliable” assessment.

The non-impairment requirement needs to be amended. Otherwise many loans could be excluded from securitisation that nowadays are still included in securitised portfolios of high quality securitisations and in reality have proven low level of defaults and losses over the whole business cycle. Mainly SME transactions would be hit.

e) There is a high level of uncertainty as to the prerequisites of using ECAIs and credit scores

Apart from the fact that it is totally unclear when a credit assessment by an ECAI or a credit scoring indicates a significant risk, the documentation does not make it clear whether external credit assessments and internal credit scorings can be used alternatively or whether they have to be used in combination. The wording would allow both interpretations. The latter would be associated with significantly high additional costs.

In addition, **there is a high degree of uncertainty about the prerequisites for the use of ECAIs and internal scores. At present it is unclear which ECAIs and which credit scorings could be used under which conditions.** Many originators of high quality ABS still use the credit standardised approach and thus have no IRB approval by the supervisory authorities, although many of them have scoring and rating procedures and models in place that are validated annually, that, at least with regard to the discriminatory power, are comparable with those of IRB credit institutions, and that usually perform significantly better than that of ECAIs. As to the level of sophistication of originators using the credit standardised approach, notably in the retail business, a distinction can be made between originators that use the internal application scorecard only to support the credit decision process in order to decide on credit applications on the basis of on an acceptance policy and a cut-off score that discriminate between loans that should be accepted and loans that should be rejected and originators that additionally estimate and validate PDs assigned to the score grid so as to use such PDs for internal capital management purposes and building portfolio provision in the first month.

Although assessments by ECAIs are often used in the credit process to provide additional piece – albeit not universally, particularly if the internal score does not indicate a "green" case – they cannot be used for the credit standardised approach. Therefore, the CRR requirements regarding the use of ECAI assessments are not implemented. In addition, **it should be noted that the EU intends to reduce the dependency on external ratings. The new requirement would, however, increase the dependency on external ratings and scorings.**

f) Problems with regard to the comparability of "significant risks" across Europe

To ensure comparability across Europe of "significant risk", a PD threshold would have to be determined. The use of scoring and PD models is not free of model risks. The same problems exist with respect to model risks for ECAI scores. In addition, it should be noted that the default definition in Europe has not yet been harmonised. In some countries in the European Union such as Italy, a borrower is first deemed to be in default after more than 180 days. This means that the PDs of countries that use the "more than 90 days past the due date" criterion are more conservative and thus not comparable with those based on 180 days. As a result, ABS from countries which have implemented the default definition on the basis of more than 90 days past the due date would be discriminated against by comparison with ABS of countries which have implemented the default definition based on more than 180 days past the due date because the PDs for one and the same portfolio would be higher in the case of the "more than 90 days past due" criterion. As a result, based on the default definition of more than 90 days past the due date, more borrowers would have to be excluded as representing "significant risk" than if the default definition based on more than 180 days past the due date were applied. Ultimately, the "qualifying securitisations" of Italy, for instance, would not be comparable with those of Germany, which would be detrimental to the confidence in the comparability of "qualifying securitisations" across Europe and to the emergence of the European capital market union. The problem cannot be resolved by the definitions in the delegated acts to the LCR and Solvency II requiring the exclusion of "credit-impaired" loans that have an ECAI credit assessment or a credit score "indicating a significant risk that contractually agreed payments will not be made compared to the average obligor for this type of loans in the relevant jurisdiction". In contrast to a standard PD, national supervisors might define national PD thresholds for their market, which would further hinder the comparability of "qualifying securitisation" and would also be detrimental to the targeted capital markets union for securitisations.

At present, many high quality securitisations, such as auto ABS, are not based on ECAI assessments or internal credit scoring but on the non-delinquent status; credit decisions are based on application scorecards that are validated annually but not approved by the supervisory authorities for capital purposes under the IRB approach. Accordingly, all underlying exposures that are delinquent at the time of the selection (pool cut), or additionally in case of replenishment after incorporation at any time after issuance, are excluded from the selection. If these proved and tested processes, which, in combination with the acceptance policies of the credit institutions and based on internal assessments, have ensured low losses of the securitised underlying assets even in crisis times, are amended now, they would have to be changed at some point in the future, and would exclude additional loans that are today securitised successfully while maintaining low loss levels of the underlying loans.

g) High uncertainty and implementing challenges with regard to the non-impairment requirement

Furthermore, it is currently not clear under which conditions and for how long a credit history is deemed adverse or no longer adverse after a company has recovered or a private person is able to pay after a phase of unemployment. The proposed non-impairment requirement might, in particular, prevent the recovery of SMEs after an economic downturn as due to increased financing costs even if the company has meanwhile moved to good credit quality status.

It is also doubtful whether it is worth excluding companies such as SMEs that have recovered after an insolvency or debt restructuring process if they are no longer impaired under the applicable accounting rules. Even according to the accounting rules, a post-recovery assessment needs to be made of whether the borrower is still credit-impaired. If this is the case, such loans would be exempted from the securitisation of high quality ABS if the exclusion was based on applicable accounting rules. According to the current proposal, such borrowers would be excluded for three years irrespective of their current creditworthiness, which would be detrimental to the recovery of such companies. In addition, it should be made clear that, on the basis of a "debt restructuring process", only those borrowers should be excluded where the "debt restructuring" is recorded on an "official" register or where the originator has knowledge on the "debt restructuring process". This is because it can be difficult to obtain knowledge of "private debt restructuring processes" involving third parties.

Finally, credit institutions report that it will be difficult to implement the requirements because the required information is often not stored in a structured manner in the originators' IT systems, which could technically support the exclusion of the loans defined as credit-impaired according to a new definition that significantly deviates from the credit-impairment definition under accounting rules. Thus, it is unclear how to exclude borrowers and lessees that are no longer credit-impaired according to accounting rules or in default and are meanwhile serviced in the normal course of business after their recovery, but to be excluded as credit-impaired according to the EBA Discussion Paper and the delegated acts to the LCR and Solvency II. The information required to identify such borrowers is often only available in an unstructured manner in credit agency reports. Highly granular ABS can comprise up to 90 thousands contracts. Credit institutions report that it is virtually impossible to check all these contracts manually. As a result, many existing high quality ABS structures would not qualify although their high performance even under stressed conditions during the last crisis has been proven.

h) Expected impact on the securitisation market if the non-impairment requirement is not modified

It is currently impossible to comply with the existing non-impairment requirements. This will result in reservations on the part of investing credit institutions and affect the market adversely. Thus, unless amended, the effect of the new non-impairment requirement is likely to be that issuers of ABS will be deterred from issuing ABS for a substantial period of time until they will have clarity about the requirements and will have accumulated enough assets under the new required underwriting standards. Any such issuance hiatus would be bad for European securitisation markets.

i) Recommended requirements regarding the minimum credit quality criteria for the underlying assets

With regard to the eligibility criteria for securitised loans in qualifying securitisations, we recommend that these criteria should also be “simple” with regard to their interpretation, free of preconditions, “simple” to implement and “robust” with regard to assessment, as unbiased as possible, objective and comparable across Europe.

As an alternative, which should be at least eligible for retail transactions too, we advocate objective minimum credit quality criteria already used, which do not need further guidance and interpretation, can be complied with simply and are applied consistently across Europe as a means of ensuring harmonised application of minimum credit quality criteria.

- **Proposed solutions**

We propose to exclude all exposures that are in default according to Article 178 of Regulation (EU) 575/2013 (“CRR”) or Basel II and that are credit-impaired with objective evidence of impairment according to the relevant accounting standard or Appendix A of IFRS 9 or that are overdue. Thus, we suggest that the non-impairment requirement be modified and combined with a non-default requirement as follows:

"**at the time of selection of the securitised pool or when incorporated into the pool of underlying exposures at any time after issuance, the underlying exposures do not include exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013, that show evidence of impairment according to the applicable accounting framework requiring to build specific provisions or that are delinquent. The time between the pool selection and the issuance must not exeed three months"**.

- **Rationale**

No further guidance is needed on the default definition according to the CRR, the definition of evidence of impairment based on the relevant account framework and the outstanding delinquencies and no addition implementation cost is implied which might impede the issuance of "qualifying" securitisations.

The delinquent status is a clear and objective credit quality indicator of "significant risk" that can be measured simply and does not rely on any credit assessments or model risks. This would also help to reduce reliance on the assessment of external credit agencies. In addition, it would facilitate the identification of the exposure to be excluded. Because the risk of new originated loans to be securitised may increase significantly, which cannot be seen based on the delinquent status at inception, it is important to require at least one payment, but better two payments, without delinquent status to have been made.

The time reference point for the exclusion of defaulted, credit-impaired or delinquent loans or lease receivables must be related to the time of the selection, the so called poll-cut and not the issuance date. It has to be noted that by nature there is a certain time lag between selection and issuance date. To ensure that the time span between both dates is not too long the maximum period should be three months.

In addition, to ensure a forward-looking perspective and with regard to prudent selection of the receivables to be securitised in line with existing business practices and based on a prudent acceptance policy and underwriting standards on the part of the originator, we propose the following:

Only loans and leases originated in the ordinary course of business should be eligible for securitisation. To ensure a forward-looking perspective, the credit acceptance process must be supported by an internal or external scoring or rating procedure. To avoid any adverse selection, the loans and leasing contracts originated according to the internal policy should be selected randomly from a target portfolio. Combining these elements would establish a prudent procedure that would be in line with good market standards.

Loans that are delinquent or credit-impaired based on the applicable accounting rules should be excluded. At least in retail transactions this should be the case.

Given the significantly increased risk weights proposed by the Basel Committee in the credit standardised approach for corporate SMEs, which would result in the exclusion of larger parts of the originated portfolios from securitisation that are currently still securitised, we recommend dropping this requirement.

B. What criteria should apply for all qualifying securitisations ("foundation criteria")?

Based on the delegated act under the LCR, the criteria seem appropriate in principle as foundation criteria, with the exception of the requirements in paragraph 2 with the items (a) minimum requirement as to the external rating of the ABS tranche and (b) seniority of the ABS tranche and the paragraphs 10 and 11 (issuance volume).

In addition, from a conceptual point of view further consideration should be given as to whether the requirements relating to the underlying assets (e.g. exclusion of loans that are in default or credit-impaired) should not be better included in the point regarding minimum credit criteria, even if these criteria serve to simplify the assessment of the underlying exposures.

Question 2

- **A. To what extent should criteria identifying simple, transparent and standardised short-term securitisation instruments be developed? What criteria would be relevant?**

- **B. Are there any additional considerations that should be taken into account for short-term securitisations?**

Short-term securitisation instruments are mainly represented by asset-backed commercial paper (abbreviated ABCP in the following) programmes. Such programmes (also referred to as "conduits") have now been a segment of the securitisation markets for almost 20 years. Such ABCP programmes serve predominantly as a funding tool for the real economy by way of purchasing assets from industrial companies (i.e. trade receivables) or by way of purchasing assets from captive and other real economy financiers (i.e. real economy loans or leases). They issue short dated commercial paper to institutional investors or larger corporates. Such ABCP programmes for the real economy are typically structured as "multi-seller programmes". As the term indicates, this means that several pools of (different) assets are combined within the programme. Each of such pools derives from one company (or a group of affiliated companies) and represents a small ABS transaction in its own right (with an individual structure and specific criteria for the selection and servicing of its receivables). The sponsor (or programme administrator) bundles such transactions at the programme level and issues short-term ABCP against all assets in the programme. Investors are therefore exposed not only to one diversified pool of assets (as in an ABS bond) but to various different pools from different sellers and industries. Naturally, such programmes may contain hundreds of thousands of receivables with a mixture of asset classes, currencies and regional distribution. Owing to the relatively short maturity of the receivables, maturing assets are constantly replenished (usually on a monthly basis) with new receivables from the sellers. New sellers may also be added (or removed) from the programme, with the result that the programme composition changes over time. To ensure timely payment of commercial paper issued, the programme sponsor also builds liquidity facilities (in the amount of at least the ABCP outstanding) into the programme.

Such facilities serve two main purposes:

- They ensure that the programme has sufficient liquidity available to repay maturing ABCP (if any newly issued ABCP is insufficient to raise enough cash for the repayment of maturing ABCP);
- They ensure (in most cases) that the risk (including default risk) of the assets (and the individual security structure) are absorbed by the liquidity bank. This is achieved by an unconditional drawing right in case of cash shortfalls, irrespective of the performance of the assets. Such programmes are deemed to be "fully supported").

It is very important to distinguish such fully supported multi-seller ABCP programmes from term securitisations. For an ABCP investor in a programme of this kind, the main risk is the credit risk of the liquidity provider (who is usually also the programme sponsor and administrator). He has to bear any risk inherent in the assets. Only if the liquidity provider failed to fulfil its (unconditional) duty to cover the risk and provide cash for the programme, would the investor be exposed to the (various) pools of assets and its individual risk mitigants (i.e. credit enhancements). However, even in this case, the investor has the advantages that are specific to any ABS transaction: the assets are separated by way of a legal true sale from the (corporate) originator (the assets would not be part of the originator's insolvency estate). Investors would rank senior to the (bank) liquidity provider and the assets would serve as collateral for the repayment of the ABCP. Additionally, the pool structures often have several (individual) risk mitigants in place (including, but not limited to, first loss retentions, commercial credit insurance coverage, reserve accounts, etc).

This unique scheme with its double layer of protection (liquidity bank coverage plus pool structure) places investors in fully supported multi-seller programmes in an extremely secure position for their short term investment. We therefore strongly advocate developing separate, specific criteria for simple, standard and transparent ABCP investment positions.

Such criteria could consist of the following items (covering simplicity, standards and transparency):

- The securitisation positions (i.e. asset backed commercial paper) are short term in nature, not exceeding 397 days;
- The securitisation positions (i.e. the ABCP) are issued by an ABCP programme whose investment policy clearly states that only such assets can be purchased that originally derive from real economy activity (including, but not limited to, receivables from the sale of goods or services or financing contracts that provide any purchaser of such goods with financing within the normal lifetime of the merchandise – such as auto loans or leases or as equipment leases);[1]
- The ABCP programme is covered by liquidity agreements from regulated financial institutions that fully absorb the risk of the underlying assets (fully supported programmes). Such liquidity facilities must at least cover the full amount of the ABCP outstanding at any one time and must be granted over the legal lifetime of the ABCP issued;
- The assets purchased within the programme are transferred via legal true sale and separated from the estate of the original seller or the liquidity bank. It is mandatory to appoint a security trustee who will act in the interest of the ABCP investor if a liquidity bank fails to perform its duties;
- ABCP investors receive sufficiently detailed information on the programme's legal structure and the fully supported nature of the liquidity facility (usually in the form of an investment memorandum). In addition, investors receive monthly reports (investor reports) no later than approximately four weeks after

[1] Unquestionably, SIVs or arbitrage conduits are not covered by the described ABCP programmes, even if the underlying assets in such SIVs or arbitrage conduits result from real economy activity.

the relevant reporting date. Such reports must display the general composition of the pool assets and liabilities (at least asset classes, currencies, the liability structure, the name of liquidity provider, the programme rating) as well as the main character and performance of the transactions in the programme (consistent with established market practice). For the purpose of dispelling doubt, it is not imperative for loan-by-loan information on the underlying assets to be provided.

As mentioned above, the liquidity provider plays the most important role in such programmes. Unlike the ABCP investor, the liquidity bank does not benefit from risk absorption by a third party. Liquidity in fully supported programme is usually provided on a pool-by-pool basis, i.e. each transaction within the programme has its own liquidity facility. However, it is common market practice for the programme sponsor/administrator to provide all such liquidity facilities.
The willingness and economic inducement to provide liquidity facilities for the programme is crucial for the provision of ABCP programmes in the real economy. Even if ABCP investors (predominantly non-banks) are privileged in terms of regulatory treatment, the funding effect of ABCP programmes for the corporate sector can only be maintained (and potentially expanded) if the supply of adequately regulated (and priced) liquidity facilities is secured. Therefore, it is essential for simple, standard and transparent criteria to be developed for liquidity facilities.

Such criteria can, in principle, be derived from the criteria for term ABS. However, some specific features of ABCP must be taken into account. These are (*inter alia*) as follows:

- Liquidity facilities are bilateral, private credit agreements between the programme and the liquidity bank. As such, they are legally not designed as securities (e.g. they do not fall under the Prospectus Directive, they are not public, they are only transferable under certain circumstances such as downgrading of the liquidity bank, and they are not listed or otherwise registered);

- The information exchanged between the liquidity bank and the corporate originator contains sensitive information about the corporate's customers and receivables management. This data is not only protected by law but also includes the corporate's business secrets of the (e.g. terms of trade). Any disclosure of this information other than to the sponsor/liquidity bank would be disastrous for the corporate and its competitive position;

- Liquidity providers who also act as programme administrators (which is usually the case) have sufficient knowledge and direct access to the underlying receivables so that the implementation of a third party with fiduciary rights (in case of the enforcement of receivables) is not necessary (and in fact could be counter-productive in an emergency situation such as seller/servicer default). For legal reasons, programmes/transactions have built trustee functions into the documentation. However, these are often fulfilled by the administrator.

Apart from the fact that specific criteria need to be developed for the securitisation of trade receivables (regardless of whether ABCP programmes or ABS bonds are concerned), this asset class features characteristics that differ fundamentally from bank assets such as residential mortgages or consumer loans. The following points should be considered:

- Trade receivables are one-off payments (no instalments). The requirement for one payment to have been made does not apply;

- Trade receivables are originated in the normal course of a corporate's business as a consequence of product or service delivery, not in order to earn risk margins through credit exposure. Therefore, they do not follow the equivalent of a bank-like underwriting process with credit approvals, etc;

- Portfolios of trade receivables mirror the business activities of the corporate (and its affiliates included in the transaction). Therefore, trade receivable pools may comprise several currencies, jurisdictions of different OECD countries (depending on the location of the company's customers), geographical diversification or concentration (as the case may be) and/or debtor concentrations (e.g. a car supplier may have only 5-10 core customers and thus high and changing debtor concentrations). Requirements regarding homogeneity or granularity do not apply to such portfolios (or may be mitigated by insurance coverage);

- Trade receivables are relatively short-dated, usually no longer than 180 days.

Question 3

- **A. Are there elements of the current rules on risk retention that should be adjusted for qualifying instruments?**

- **B. For qualifying securitisation instruments, should responsibility for verifying risk retention requirements remain with investors (i.e. taking an "indirect approach")? Should the onus only be on originators? If so, how can it be ensured that investors continue to exercise proper due diligence?**

With respect to the established rules covering risk retention and in accordance with the TSI response to the EBA proposed criteria / EBA Discussion Paper on simple, standard and transparent securitisations (Pillar 2: standard securitisation), the securitisation should fulfil the CRR retention rules (Article 405 of the CRR) to qualify.
In our view, the responsibility for verifying risk retention requirements should remain with investors; there is no need to adjust the implementation of the risk retention requirements. We therefore have no significant comments at this time.

Question 4

- **A. How can proper implementation and enforcement of EU criteria for qualifying instruments be ensured?**

- **B. How could the procedures be defined in terms of scope and process?**

C. To what extent should risk features be part of this compliance monitoring?

The criteria should be clearly and simply formulated and in implementing them, care should be taken to ensure that different players arrive at similar results when applying the rules.

In this process, there are basically four options:

- The originator/sponsor can carry out the comparison with the criteria and ensure that the criteria are all fulfilled;
- The investor can do this;
- The competent supervisory body determines whether the transaction is a qualifying securitisation or not;
- A third party separate from the three aforementioned players determines whether the criteria are fulfilled and also safeguards the overall interests of all market players by transparently moderating, organising and steering the process of developing and implementing quality standards for the securitisation market.

In similar processes and approaches all four options are currently used in practice, with different weightings and structures.

It definitely makes sense, on the one hand, not to overburden the government bodies with detailed checks and admissions and, on the other hand, not to rely solely on self-attestation by the securitising party and the due diligence by the investor that is compulsory under the CRD II, but to introduce third parties whose reputation and existence are inextricably bound up with the quality of the securitisation market standards between the two.

<u>Healthy markets rely on trust and cooperation and deteriorate if that trust and cooperation erode</u>. Such institutions therefore should not only be duty bound to monitor compliance with the regulatory standards through their work. <u>Rather, they should see themselves as a central hub for market players and in that connection work with originators, investors and regulators on the ongoing further development of the quality standards</u>.

Tried and tested models for cooperation between governments and private businesses with regard to developing and implementing quality standards already exist. Probably the best known and worldwide most successful model in regard to creating trust and cooperation between market participants and public entities comes from the German Institute for Standardisation (DIN), which serves as a meeting place for representatives of industry, commerce, consumers, the trades, other service providers, research organisations, technical inspection institutions and public authorities. For decades the cooperation between German government and DIN in respect of developing and implementing quality standards has been excellent and has been formulated in a cooperation agreement that has been in existence for more than 30 years. See: DIN and the Federal Government. This agreement was also a model for similar cooperation at the European level referred to as the "New Approach".

At TSI – also drawing on our more than 10 years of experience of working in the German securitisation market – we see the need for a private institution which, while safeguarding the overall interests of all participating market players – banks, investors and supervisors – transparently monitors, organises and steers the process of developing and implementing quality standards for the securitisation market.

In Germany TSI pursues that concept, which has long proved its value in German industry.

TSI's task is, among other things, to develop quality standards for German securitisations and to implement them by means of a certification process. In its work, TSI also has the support of public German entities. For the past three years Prime Collateralised Securities (PCS) has had a similar function at the European level.

On the basis of this experience, what is needed are, in our view, organisations which have relevant market experience and market proximity, a clear track record in the development of market standards and close contact with the market, the regulatory authorities and the legislator. The additional advantage of officially including such market regulating organisations would be that they could give early warning of undesirable developments through regular communication with the regulators and contribute to further development of the quality standards.

- **How might the implementation of the new EU quality standards for STS securitisations be envisaged?**

On the basis of our experience, we consider the following to be important:

1. Although investors are generally subject to the regulatory obligation to check whether a transaction fulfils all relevant STS criteria, they must also have unconditional trust in their classification of the transaction as STS. Such trust calls for more than an investor's due diligence. Investors need the assurance that their judgement and classification is shared by the market and by supervisors.

2. All STS transactions should therefore be easily and publicly available and clearly identified as such. The originator should confirm in the listing prospectus that the STS criteria must be complied with for the term of the transaction.
3. Furthermore, compliance with the STS criteria should be imposed on the originator checked by a highly-experienced market organisations. These should be charged with implementation by the responsible supervisory authority.

4. All STS securitisations should be included on a centrally-managed and publicly accessible STS list over the entire transaction term.

5. The originator should primarily be responsible for ensuring that the transactions included on such a list meet the STS criteria over the entire transaction term.

6. To avoid misuse and moral hazard, however, the originator as well as the respective STS transaction should be subject to a certification process conducted by an independent body.

7. On first certification of an originator, the certification and independent body – which could be TSI or PCS – would review not only the specific transaction but also the originator and its lending process and loan processing or origination processes. A transaction is certified for the first time following an inspection of the transaction documents, the representations and warranties, etc on the one hand and on the basis of on-site inspections and discussions on the other.

8. Other follow-up transactions of a certified originator should be certified by the certification body using simple, standardised and cost-efficient methods based on the transaction documents.

9. By publishing the certified transaction on the STS list, the standardised certification report containing the decision-making criteria applied by the certification body before issuing the certification label would also be made available to the public.

10. Deviations from the STS criteria that are ascertained or reported during the course of the transaction should be examined initially by the certification body and the originator. The certification body must inform the relevant supervisory authority of any cases in which deviation is confirmed.

11. In the case of a serious breach of the STS criteria, the supervisory authority concerned should be able to revoke part or all of the originator's STS licence.

12. Similarly, the supervisory authority should be in a position to revoke the certification license granted to the certification body in the event of gross negligence.

The proposed procedure would have the following advantages:

On the one hand, beyond its own assessment, the investor would gain assurance that the transaction meets the STS criteria and that the regulatory privilege is therefore applied over the term of the transaction. On the other hand, the originator would also be held

liable as it is responsible for compliance with the STS criteria. In addition, a market-based and experienced institution would be involved as a certification body and act as an intermediary between the market, supervisor and originator. This intermediary would be responsible for ensuring compliance with the STS criteria over the transaction term and for reporting deviations to the supervisory authority. The supervisory authority would be able to impose effective sanctions by revoking the originator's licence on the one hand and the certification body on the other.
Furthermore, the procedures would be cost-effective and the basis on which the decisions are made would be made publicly transparent.
Using experienced certification bodies, such as TSI and PCS, would also offer the advantage of orderly communication between the supervisory authority and the market about the performance of the criteria.

Question 5

- **A. What impact would further standardisation in the structuring process have on the development of EU securitisation markets?**

- **B. Would a harmonised and/or optional EU-wide initiative provide more legal clarity and comparability for investors? What would be the benefits of such an initiative for originators?**

- **C. If pursued, what aspects should be covered by this initiative (e.g. the legal form of securitisation vehicles; the modalities to transfer assets; the rights and subordination rules for noteholders)?**

- **D. If created, should this structure act as a necessary condition within the eligibility criteria for qualifying securitisations?**

Further standardisation would go a long way to helping to expand the market. It would enhance comparability for investors and by thus creating a level playing field with similar credit products such as covered bonds, it would also make securitisations more attractive.

In the European capital market there are only a few very large investors. Pension funds and large asset managers with an investment volume of billions of euro are thin on the ground. The market is dominated by medium-sized insurance companies and banks, whose investment lot sizes are naturally smaller. In such conditions, standardisation helps to reduce the fixed costs associated with investment decisions and makes the capital market more efficient. In particular, a slightly more complex product such as securitisation would stand to gain.
On the one hand, it would indeed be desirable in connection with the creation of a European capital markets union to standardise the legal framework for securitisations as well as for all other forms of credit transfer instruments at those points where particular risks could arise for investors. On the basis of our knowledge of many offering circulars for European securitisation transactions and the risks to which they refer, these risks lie particularly in the areas of tax law, the transfer of assets and insolvency law. From our contacts with German and European politics, however, we are aware of how difficult it is to establish clear, cross-border standardisation in those areas. For that reason we would recommend that the European legislator considers the risk factors that may occur in connection with the usual ABS transactions on other credit transfer instruments on the basis of their underlying legal causes and processes them in the context of further European standardisation of the product according to a list of priorities, beginning with those areas of the law that can be standardised at the European level simply and quickly.

This approach would also be in line with the intention of the EU Green Paper on Capital Markets Union, in which it is proposed that a start be made with standardisation that is practicable and can be quickly implemented, from there pressing forward more deeply into the more difficult areas of standardisation.

Logically, the highly complex issues relating to standardisation should therefore not be turned into necessary conditions within the eligibility criteria for qualifying securitisations, which, according to the Green Paper, should be implemented at an early stage.

The capital markets union project, however, needs uniform framework conditions with regard to taxation, insolvency law and civil law in connection with the securitisation of the underlying assets in order to ensure its long-term success. Standard European rules should also apply to the transfer of assets or to the legal position of special purpose vehicles. As said this is of significance not only for securitisations. Portfolio transactions, the private placement market and credit funds would also benefit over the long term from a reliable European framework. However, because such harmonisation might take some time to achieve, we propose a staged approach. In the first stage, priority should be given to ensuring the eligibility of ABS that fulfil the eligibility criteria and their recognition as "qualifying" assets. The second stage, which could be started in parallel, would be concerned with harmonising insolvency law, civil law and tax law with regard to securitisation. This would simplify assessment for investors significantly, as well as contribute to the standardisation and comparability of ABS across the European Union and streamline the prospectus.

Question 6

- **A. For qualifying securitisations, what is the right balance between investors receiving the optimal amount and quality of information (in terms of comparability, reliability, and timeliness), and streamlining disclosure obligations for issuers/originators?**

- **B. What areas would benefit from further standardisation and transparency and how can the existing disclosure obligations be improved?**

- **C. To what extent should disclosure requirements be adjusted – especially for loan-level data – to reflect differences and specificities across asset classes, while still preserving adequate transparency for investors to be able to make their own credit assessments?**

In answering this question, we would like to focus first of all on true sale term transactions, as considerable experience of standardisation and transparency has been gained in connection with this form. For short-term securitisations, investors have other information needs. Synthetic securitisations may overlap at many points with true sale transactions, so that reports need only be adjusted slightly.

- **Term and replenishment structures**

In terms of standardisation, a major step forward would be to establish standardised investor reports for each asset class, available as standardised Excel spreadsheets, in order to allow quick comparability. As this is already an integral part of every TSI certification, TSI has developed excellent model examples for most asset classes. Standardised investor reports of that kind enable a broad range of investors to analyse transaction performance and to make comparisons between originators. It is, of course, also important for the reports to be published.

For all TSI certified transactions, for instance, all investor reports (in xls and pdf format) are added throughout the duration of the transaction to all other relevant transaction documents (offering circular, presale und new issue reports by the rating agencies, the mandate's declaration of undertaking) and published on the TSI website.

With regard to loan-level data, a guiding principle should be that market participants have access to the same information as rating agencies.

- **ABCP**

Investors in fully supported ABCP programmes must have sufficient information about the legal structure of the ABCP programme and the responsibilities and roles of the programme parties (especially the liquidity provider and the administrator). The circumstances in which a liquidity bank may opt out of its obligation must be clearly recognisable. An information memorandum describing the legal structure and programme documentation (in the form commonly used) is sufficient. It is not mandatory to disclose seller or debtor names or any documentation connected with single transactions within the programme. Moreover, disclosure of loan-by-loan data is not obligatory.

In essence, liquidity providers should have the same level of information as investors in ABS bonds (with the exception of loan-by-loan data in case of trade or lease receivable securitisations in an ABCP programme). However, such information may not be made public due to the protection rights and business secrets of sellers (see also Question 2).

On an ongoing base, information supplied to ABCP investors should be in a form equivalent to current market practice. Information should be provided on a monthly base (see also Question 2).

Question 7

- **A. What alternatives to credit ratings could be used, in order to mitigate the impact of the country ceilings employed in rating methodologies and to allow investors to make their own assessments of creditworthiness?**

- **B. Would the publication by credit rating agencies of uncapped ratings (for securitisation instruments subject to sovereign ceilings) improve clarity for investors?**

The rating agencies take account of the ongoing risk interdependence of states and financial intermediaries in Europe when rating financial instruments. This treatment – however well founded it may be – is even applied to asset based instruments and naturally impedes the formation of a standardised European capital market.

Because existing regulations tie far-reaching regulatory consequences to the ratings, the disintegrative impact of such ratings is reinforced. It would therefore actually be worth considering whether the rating agencies should be required – at least for all asset based financial instruments – to publish two ratings, one that is based only on the risk of the underlying and a second one that takes account of the risk interdependences existing with the states concerned. For regulatory purposes, the uncapped rating should then be used.

Question 8

- **A. For qualifying securitisations, is there a need to further develop market infrastructure?**

- **B. What should be done to support ancillary services? Should the swaps collateralisation requirements be adjusted for securitisation vehicles issuing qualifying securitisation instruments?**

- **C. What else could be done to support the functioning of the secondary market?**

The market for ancillary services is narrow. 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, alternative counterparties are very unlikely to 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.
Furthermore, consideration could also be given to the extent to which, for qualifying securitisations, state bodies with good ratings (EIB, promotional banks) should be more involved in the ancillary services.

Finally, the capital requirements in the trading book should not be increased if it is a STS ABS. This is justified because STS ABS that are well-established in the market exhibit significantly lower spread risks than complex, difficult assessable securitisation tranches. Otherwise, trading book institutions will be deterred in the future from holding ABS in the trading book and from providing market maker services, which would be extremely detrimental to the liquidity of STS securitisations.

According to the recent Consultative Document published by the Basel Committee in December 2014 on the outstanding issues for the fundamental review of the trading book, the capital requirements for securitisation will partly increase extremely and will significantly exceed the capital requirements in the banking book. From a conceptual point of view, this is due to the fact that securitisation positions in the trading book must be backed with capital to cover the credit spread risk, the general interest rate risk and the default risk.

Notably, calibration of the capital requirements to cover the credit spread risk causes major problems because the recent proposal from the Basel Committee is based on historical data which are strongly biased by the subprime RMBS crisis in the US market and the spillover to other ABS segments as a result of fire sales by structured investments vehicles that were highly leveraged and had mismatched funded and that have since disappeared from the market.

In addition, the recent proposal by the Basel Committee as to the capital requirement to cover the spread risk no longer differentiates between ABS in the investment grade segment, with the result that the capital requirement is also significant for high quality triple A ABS. Furthermore, as it is virtually impossible to isolate the credit spread risk, the general interest rate risk and the default risk, there in an overlap of risks that results in capital requirements being too high.

As a consequence, we strongly recommend that a distinction should at least be made between STS and non-STS securitisations in the trading booking and that higher capital requirements should not be imposed for STS securitisations in the non-correlation trading portfolio.

Question 9

- **With regard to the capital requirements for banks and investment firms, do you think that the existing provisions in the Capital Requirements Regulation adequately reflect the risks attached to securitised instruments?**

  - **Term and replenishment structures**

With regard to highly rated high quality ABS, we are of the opinion that the existing calibration with a floor of 7% continues to be appropriate. To date, rule-makers in Europe have sent two contradictory signals. On the one hand, the evolution of the securitisation market needs to be boosted in order to enhance the funding of the real economy. On the other hand, the regulatory requirements and frameworks will be significantly tightened more than seven years after the outbreak of a financial crisis caused by problems in the subprime RMBS segment in the USA. Such tightening should therefore not apply to qualifying securitisations.

The consistently high performance of high quality European securitisations with a triple-A rating further justifies a floor of 7%. In addition, it should be noted that the increase of the floor capital requirement was motivated by model risks and risk associated with the structure. However, model risks and risks relating to the structure are significantly reduced in the case of simple, standard/comparable and transparent securitisations. A floor risk weight of 15%, and thus a doubling of the capital requirements, would be inappropriate for such securitisations and would impede the further development of the ABS market. This is particularly important given that most bank investors are IRB banks.

  - **ABCP**

For sponsors/liquidity banks of multi-seller ABCP conduits that serve to finance real economy assets (e.g. trade receivables and loans and leases) the use of the Internal Assessment Approach (IAA) for their respective liquidity commitments has proved to be a sustainable and prudent method and the respective risk weights adequately reflect the economic risks of such credit exposures.

(Regulated) investors in ABCP programmes usually use the rating based approach (RBA) or the standard approach (SA) to determine risk weights for their commercial paper exposures. Similarly the RBA and SA adequately reflect the economic risks of such investment. In the light of the experience gained, the present framework takes better account of the risks than the current BCBS proposals.

Question 10

- **If changes to EU bank capital requirements were made, do you think that the recent BCBS recommendations on the review of the securitisation framework constitute a good baseline? What would be the potential impacts on EU securitisation markets?**

  - **Term and replenishment structures**

No, this is not our view. See our response to Question 9. A floor risk weight of 15%, and thus a doubling of capital requirements, would be inappropriate for such securitisations and would impede the further development of the ABS market. In addition, it has to be noted that if an IRB bank has no IRB model available for securitisations as from 1 January 2018 because the level of investments does not justify the development of an independent IRB securitisation model or if sufficient data are not available to develop such an IRB model, under the revised securitisation framework the IRB bank has to apply the external ratings based approach. Based on five years tranche maturity, this means that the risk weight will be 20%. This is almost a triplication of the capital requirements for high quality triple-A rated ABS.

  - **ABCP**

With respect to multi-seller ABCP conduits, the BCBS proposals would lead to severe damage for corporates and SMEs because it hinders the ability to access capital markets via a securitisation of trade receivables and/or loans and leases. This is due to the fact that an exaggerated risk weighting on the liquidity line exposure will cause the sponsor bank to cease to offer ABCP as a financing tool and rather (if economic circumstances allow) offer bilateral loans to such customers. As a result the corporate sector will have less access to capital market financing and traditional bank lending would have to fill this gap. We believe that this is not only inefficient and counterproductive but also not in line with the spirit of the EU Commission underlying the desire to create a capital markets union.

The level of the capital charge on liquidity lines (which are usually derived from the internal ratings obtained from the IAA approach but then have to be mapped with the external rating scale to obtain the respective risk weights) is crucial for the survival of this financing instrument. There has to be a level playing field with other forms of corporate financing including (un)secured credit lines or corporate bonds. As it stands at present, the BCBS proposal leads to capital charges that are five to six times higher than before and consequently to capital charges that often exceed those for unsecured corporate loans.

Question 11

- **How should rules on capital requirements for securitisation exposures differentiate between qualifying securitisations and other securitisation instruments?**

  - **Term and replenishment structures**

The capital requirements in the banking books should be based on historical data for qualifying and non-qualifying exposures and should differentiate between the most significant ABS segments. These ABS segments should be based on the differentiation already used by the ECB and ESMA for the loan level templates. The rationale is, that in addition to the fulfilment of certain eligibility criteria as “qualifying”, the special risk characteristics of the underlying assets have significant impact on the risk profile of the ABS transaction. Furthermore ESMA an

ECB took the decision to require the disclosure of loan level data according to these segments.

In addition, we generally recommend segmentation between European and non-European ABS. The reason is that in the past European ABS has tended historically to outperform US ABS. This applies in particular to European ABS that would probably not be eligible as "qualifying". Such segmentation also seems necessary to avoid harsh cliff effects on European non-qualifying securitisations that might have sound quality. In any case, a situation should be avoided in which historical data on US subprime ABS are used to calibrate the capital requirements for European ABS. Otherwise, the capital requirements might be far too high for European non-qualifying ABS.

As the empirical findings – for instance, those of the EBA in its Discussion Paper – suggest, the historical losses of "qualifying securitisations" and non-qualifying securitisations with the same external rating differ significantly. This should be reflected in the capital requirements for ABS segments in line with the ESMA/ECB segmentation. The capital requirements and especially the capital floor for qualifying securitisation should not be higher than today if this can be justified on the basis of historical data.

The hierarchy established in the Basel Committee's securitisation framework should not be changed. Despite some reservations regarding rating agencies, the External Ratings Based Approach has the highest risk sensitivity after the IRB Approach. In addition, rating agencies have learned from their past mistakes, distinctly improved their rating methodology and are now supervised by ESMA. Thus, even in the External Ratings Based Approach, a floor risk weight of 7% should be envisaged for qualifying triple-A rated securitisation tranches.

- **ABCP**

For investments in fully supported ABCP it should be recognised that the risk of such investment is primarily assumed by the liquidity bank. Accordingly, fully supported ABCP has more the character of covered bonds rather than a securitisation exposure. Capital requirements of such commercial paper should therefore reflect the double default protection as well as the short-term nature of the investment. Applying the same risk weights as for normal securitisation exposure (especially if non-qualified) would far over-subscribe the low risk character of the instrument.

For liquidity facilities to ABCP transactions, risk weights are usually calculated by using the internal assessment approach (IAA). These internal models must be approved by the regulatory bodies before implementation und undergo annual back-testing and revision. They have proved to be a very reliable and prudent methodology. They (must) also act as basic risk assessment tools for the internal risk evaluation of the liquidity bank. Banks therefore have wide-ranging procedures and controls in place to ensure proper handling of such tools (including risk management reviews, internal audits, etc). In contrast with other internal models (such as the supervisory formula), the results that are derived from this IAA tool are not risk weights *per se* but rating notches according to commonly used rating scales. These ratings then are mapped using the external rating-based approach to the respective risk weight. This "translation" builds in an additional conservative element as risk weightings from external ratings are less favourable than those from internal sources. It is important for the funding effect of the real economy sellers in ABCP transactions for the risk weights that banks need to charge for their liquidity facilities to be on a level playing field with other financing instruments. The current proposals of the revised securitisation framework (BCBS 303) lead to at least a doubling (and up to five times) of the risk weight as it is today. As a result, many ABCP transactions would carry risk weights that are far higher than the risk weight of an unsecured credit facility for the corporate seller. As a result, banks will no longer be willing to provide liquidity facilities at the current pricing levels to their corporate clients or may even close their ABCP business. This will put unwanted pressure on the corporate sector and its ability to obtain funding from the capital markets.

For the real economy, it is therefore essential for future risk weights for ABCP liquidity facilities to properly reflect the low risk profile of securitisations and for the risk levels thus determined to be comparable with similar risk positions for corporate loans.

Question 12

- **Given the particular circumstances of the EU markets, could there be merit in advancing work at the EU level alongside international work?**

Yes. In our opinion, this could even be said to be an automatic consequence of the European Commission's recent Green Paper on the planned capital markets union. According to that document, the aim is to establish by the end of 2019 a full European capital markets union that enables Europe's business sector, particularly smaller and medium-sized enterprises, to be less dependent on banks for their financing, and gives a broader range of investors access to investment opportunities.

The capital markets of Europe have so far lagged far behind the USA. However, Europe has very few of the major investors in these markets, particularly hedge, venture capital and pension funds. This development is the result of patterns of behaviour that have evolved over generations and because of institutional circumstances, such as the social organisation of retirement pension schemes, which can hardly be changed in the next few years.

Europe's corporate structure and culture are also fundamentally different from those of the USA. 99.8% of all enterprises, which account for just under 60% of the gross value added and provide around 67% of all jobs in the private sector, have a turnover of less than EUR 50 million. There is hardly a single enterprise of that size that issues shares or bonds.
Moreover, many successful, large family enterprises with turnovers in the high three-digit million range and above are little integrated into the traditional capital market and cannot warm to the capital market transparency and disclosure requirements.

These underlying conditions clearly imply that the envisaged capital markets union cannot be a copy of the US market, and that Europe must follow other routes. As is also emphasised in the Green Paper, the first step is to achieve an intelligent networking of bank and capital market financing. The key elements in that kind of network are already in place in Europe, e.g. in Germany with certificates of indebtedness (which combine the features of credit and bonds), with bank-like credit funds (which purchase illiquid loans and obtain refinancing through equity and borrowing from investors) as well as with the capital market product of securitisation.

There is no doubt that securitisation has, in this connection, the greatest potential as we move towards the capital markets union – particularly if the promotion of the securitisation market in the course of the capital markets union is not limited to genuine true sale term transactions but short-term commercial paper with underlying trade and leasing receivables and synthetic securitisations are also accepted. Europe therefore needs rules that differ from those of the USA; Europe needs a market for qualifying securitisations.

Question 13:

- **Are there wider structural barriers preventing long-term institutional investors from participating in this market? If so, how should these be tackled?**

See the following table:

Type of investor	Legal basis	Investments in ABS – current situation	Investments in ABS – future rules
Insurance companies	For investments in restricted assets of insurance companies the following applies: Article 54 of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz,* **VAG**) read in conjunction with the regulation issued pursuant to Article 54(3) of the VAG, the Regulation on the Investment of Restricted Assets of Insurance Undertakings (Investment Regulation, *Anlageverordnung* – AnlV). The AnlV was last amended on 3 March 2015; the rules relating to ABS, however, have remained unchanged. The rules of Article 54 of the VAG and the AnlV are explained by BaFin in detail, in particular in the **Circular 1/2002 (**Investment in Asset Backed Securities and Credit-Linked-Notes**) and 4/2011 (VA)** (Guidance Notes on the Investment of Restricted Assets of Insurance Undertakingshttp://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Rundschreiben/rs_1104_va_anlagers.html).	Basically possible – share in the collateral pool is limited	With the introduction of Solvency II on 1 January 2016, capital requirements apply for ABS investments that depend on duration and credit rating: ABS Type 1: E.g.: AAA, 1 year: 2.1% A, 5 years: 15.0% ABS Type 2: E.g.: AAA, 1 year: 12.5% A, 5 years: 83.0%

Building and loan associations (building societies)	In accordance with the Building and Loan Associations Act (BauSparkG), investments by building and loan associations (building societies) must be primarily in debt securities of "safe" issuers, alongside which, pursuant to Article 4(3), No 5, of the BauSparkG, investments in "other" listed eligible debt securities are permitted. BaFin considers that residential mortgages, ABS and structured bonds with derivative elements do not fall within the scope of "other" debt securities (Letter from BaFin dated 16 November 2005).	Not possible	No changes planned/known
Pension funds	Investments by pension funds must comply with the Regulation on the Investment of the Restricted Assets of Pension Funds (Pension Fund Investment Regulation – PFKapAV).	Basically possible	No changes planned/known
Social insurance carriers	The fundamental legal source for law governing assets of social insurance carriers is the paragraphs of the Social Security Code **(SGB) IV**. The SGB generally applies to all kinds of social insurance, unless special rules of the individual social insurance branch take precedence over the general rules. The basic principles of investment by social insurance carriers are governed by the Social Security Code IV, paragraphs 80-86 – in this case, in particular Article 83 (Investment of reserves) and by supplementary provisions of the Social Security Code.	Investments in ABS are possible without restrictions	No changes planned/known

Government pension reserves	Act on a National Pension Reserve (Pension Reserve Act, *Versorgungsrücklagegesetz - VersRückIG*). There are corresponding laws at federal state level.	Investments in ABS are possible without restrictions	No changes planned/known
Alternative investment funds	Directive 2011/61/EU on Alternative Investment Fund Managers, also referred to as the AIFM Directive, regulates managers of alternative investment funds. In Germany the Directive is implemented in national law in the Capital Investment Code (KAGB) and in the AnlV.	Basically possible	Similar requirements are made of AIFM as of banks (according to the CRR).
Money market funds	The main legal basis is the Capital Investment Code (KAGB) read in conjunction with the AnlV**.** The European Commission has presented the draft of a Regulation on Money Market Funds, which is still being discussed at the European level.	Basically possible	According to a more recent EU draft by the European Parliament, ABS investments will be possible if the ABS tranche is recognised as a highly liquid asset in accordance with the delegated act to the LCR based on the CRR. However, the current proposal of the European Council Working Group envisages that money market funds may invest only in simple, standard and transparent securitisations with residual terms of up to 397 days, which would not help. We therefore support the proposal by the European Parliament with some amendments for ABCP.

Question 14:

- **A. For insurers investing in qualifying securitised products, how could the regulatory treatment of securitisation be refined to improve risk sensitivity? For example, should capital requirements increase less sharply with duration?**

The relative capital requirements under Solvency II for securitisations compared to other asset classes are far too high. This applies even for recognised high quality type 1 securitisations. Thus, from an economics point of view it will be completely unattractive for insurance companies to invest further in ABS. For high quality junior ABS with a single A-rating the capital requirements are even prohibitive. Although the historical loss ratio of single A-rated auto ABS in Europe, for instance, has been 0%, insurance companies will be required to hold 49.8% of their capital when the bond has a term of three years. High quality single A-rated junior ABS bonds with a term of five years will even be subject to a capital requirement of 83%. Such capital requirements have to be applied even if insurance companies intend to hold the ABS until maturity. At present, insurance companies often hold ABS until maturity because the amortisation profiles, which guarantee regular cash inflows according to the amortisation profile of the underlying securitised assets, are highly suited to the need of insurance companies to manage their assets and liabilities. In such cases, no market or spread risk exists. As a result, although it evidence can be provided to show that spread risk and default risk have been at zero level for a junior Auto-ABS bond, for instance, insurance companies will have to hold nearly 50% of the capital for a three-year junior ABS bond. This is nowhere near appropriate.

However, the capital requirements are also far too high for insurance investors that might not intend to hold the ABS until maturity and where a potential spread risk exists. This applies especially to type 2 securitisation, including junior bonds of high quality securitisations. The reason is that the US subprime RMBS are included in the historical data of type 2 securitisations. Thus, we recommend enforcing different capital requirements for European and for non-European securitisations. As outlined above, we do not believe that it is appropriate to impose a capital requirement of 83% on an ABS bond with investment grade and a maturity of five years. However, the capital requirements for high quality type 1 securitisations are also too high. Insurance investors who intend to hold, for instance, triple A-rated auto ABS until maturity will have to hold 6.3% of their capital over a maturity of three years. For triple-A SME type 1 securitisations with a maturity of six years, the capital requirement would increase to 12.6%. We do not believe that insurance companies will be ready to invest in such securitisations because the capital requirements are simply too high.

Having said that, we see some potential for a general recalibration on the basis of a more forward-looking but prudent perspective where appropriate.

Calibration of the capital requirements is intended to cover the spread risk of such paper.

During the last financial crisis the spreads of ABS increased dramatically for the following reasons: highly leveraged structured investment vehicles (SIVs) with high transformation and liquidity risks arising from maturity mismatch were forced to resort to fire sales, which had an immediate dramatic impact on the prices and spreads of ABS. That affected not only low quality but also high quality securitisations such as auto loan securitisations. Such SIVs dominated the market before the crisis fostered by US GAAP, which allowed abstaining from consolidating such SIVs. However, the business model of such SIVs based on realising transformation profits was not sustainable. As reaction to this development, US GAAP was amended with regard to the consolidation of SIVs. During the crisis, the SIVs disappeared from the market and have never returned. After these bad market experiences, there are no indications that SIVs could emerge and play a significant role in the ABS market again.

In addition, as it was the first severe crisis in the ABS market caused by the RMBS segment in the US market, there was no previous experience of the stress resilience of other ABS segments, in particular in Europe, because the ABS market in Europe was not very mature at that time. The lack of experience led to high levels of uncertainty about the quality of other ABS segments, which was boosted further by fire sales of the aforementioned SIVs, resulting in temporarily high price discounts and high spreads. Since then, investors have gained more experience and have been able to observe the very good performance of most European ABS transactions, even during the most recent crisis. In addition, due to the increasing professionalism of institutional investors, intense due diligence processes by investors and reduced dependency on the assessment of rating agencies as the only information, investors are in a much better position to differentiate between “high quality” and “less high quality” ABS. However, these positive developments in combination with new regulations under CRD II and III that set minimum operational requirements and help to restore market confidence are not reflected in the historical data, which exhibit extremely high spread levels at the height of the crisis. In addition, the intended differentiation between STS and non-STS securitisation might have a further positive impact by signalling to investors in stress circumstances to retain confidence in such STS paper, with the result that severe price discounts and high spreads can be avoided in the future even in severely stressed market conditions. To consider all these positive developments that are not included in the historical data, we recommend abstaining from using the data relating to the height of the ABS crisis because they are biased as a result of the entirely temporary loss of confidence in the market. As an alternative, we recommend using historical data from one year after the crisis until the present. These data should be complemented by realistic stress test scenarios to withstand even severe market distress but not with the unrealistic assumption that there will be no confidence at all in the ABS market in the future. We are convinced that an appropriately formulated definition of STS securitisation can help to avoid a future spillover of the loss of market confidence, which is reflected in a sharp increase of credit spreads from any subprime segment to STS securitisation. This should be considered in an appropriate stress test scenario for STS securitisations.

On the basis of such an approach, we are convinced that it would be possible to achieve prudent but more realistic capital requirements that would enable insurance companies to invest in ABS. However, a less sharp increase of capital requirements would not help if the capital requirements are not reduced significantly under Solvency II. The reduction of the capital requirements under Solvency II should be of the highest priority because insurance companies are the biggest investors in debt instruments in Europe. To date, the proportion of investments by insurance companies in securitisation has fallen to around 1% in Europe and is about to fall further. If the proportion of investment in securitisations by insurance companies could be increased to 5%, this might significantly and sustainably stimulate the ABS market in Europe.

In a nutshell:

- Calibration of type 1 securitisations should leave out the historical data from the height of the last ABS crisis because these data are completely biased and not an appropriate basis from which to realistically estimate the capital requirements under stressed conditions. The reason is that these data reflect the entirely temporary loss in market confidence. However, without a certain level of confidence in the market, no market will function. Historical data from the height of the last crisis and thus extreme peaks of spreads only reflect the extreme high level of uncertainty, but not the experience that European high quality securitisation performed very well during the last crisis because this was first evident after the crisis. In the future, investors can build on the experience that high quality securitisations have performed very well and that can expect that to be the case in the future, too. Differentiating between STS securitisation and non-STS securitisation will also help. To achieve a prudent but forward-looking perspective, we recommend complementing the historical data without the data from the height of the last crisis with scenario data that are prudent but more realistic so as to reflect stressed market conditions in the future.

- We recommend an approach that differentiates depending on whether or not the insurance company intends to hold the ABS until maturity. An intention-based approach of this kind has been successfully established in the banking industry for many years and was confirmed by the Basel Committee in its most recent Consultative Document on this topic. According to this approach, there should be no capital requirement for the spread risk if the insurance company intends to hold the ABS bond until maturity. The capital requirements to cover the default risk should also be same for insurance companies and banks because there is no reason why they should differ.

- Junior bonds should be eligible as type 1 securitisation in order to avoid severe cliff effects.

Calibration of type 2 securitisations should differentiate between European and non-European securitisations so as to reflect the better performance of European ABS.

- **B. Should there be specific treatment for investments in non-senior tranches of qualifying securitisation transactions versus non-qualifying transactions?**

Yes, at least junior bonds of qualifying securitisations should benefit from preferential treatment in order to avoid harsh cliff effects. We therefore recommend abstaining from requiring seniority of a tranche to benefit from lower capital requirements for banks and insurance companies.

Question 15:

- **A. How could the institutional investor base for EU securitisation be expanded?**

  - **Term and replenishment structures**

    1. It is most important to ensure that the capital requirements for banks will not be increased in the banking and in the trading book.

    2. The huge investment potential of insurance companies should be tapped. To achieve this, the capital requirements will have to be recalibrated on the basis of STS securitisations (see our proposal under Question 14).

The planned money market restrictions for securitisations should not be put into effect. Certain kinds of securitisations that are of high liquidity according to the delegated act to the LCR can be a very good admixture to other liquid assets. Investments of money market funds in ABS were significantly higher before the crisis. Thus, there is a potential to increase the proportion of highly liquid ABS in the stock without endangering the stability of money market funds.

- **ABCP**

The investor base for ABCP is dominated by financial institutions and large corporates outside the banking sector. The largest groups of investors are money market funds, insurance companies and large corporates. Banks do invest in ABCP but to a lesser extent. As ABCP is effectively seen as bank risk with underlying assets (similar to covered bonds) but – in contrast to unsecured bank-CP – carries a small add-on in yield owing to the more complex structure than plain bank CP, ABCP is a well-regarded short-term investment for many institutional investors. Demand certainly outstrips supply in the current European ABCP market.

However, it is important for institutional investors to be supervised by other regulations (e.g. Solvency II, Money Market Fund Regulation) and to have similar high quality investment criteria that will continue to allow them to invest in ABCP.

- **B. To support qualifying securitisations, are adjustments needed to other EU regulatory frameworks (e.g. UCITS, AIFMD)? If yes, please specify.**

- **Term and replenishment structures**

Rules should be harmonised as far as possible to avoid that originators have to adhere to different requirements which sometimes even contradict itself. See also 15 with respect to required changes of regulations.

- **ABCP**

As mentioned above, Solvency II and the Money Market Fund (MMF) Regulation need to have similar carve-outs or qualifying criteria for ABCP transactions as in the bank regulation. The existing regulations for insurers and MMFs are primarily designed for ABS bonds and do not cover certain (mostly formal) aspects of the ABCP market.
Another relevant regulation for ABCP is CRA3. Disclosure requirements regarding loan-by-loan data and underlying documentation cannot be fulfilled in ABCP transactions (see Question 2).

Question 16

- **A. What additional steps could be taken to specifically develop SME securitisation?**

From our perspective, the equal treatment of synthetic securitisations and true sale securitisations would support the development of a market for SME securitisations. This applies in particular against the background that banks in Germany employ almost predominantly synthetic securitisations to securitise SME loans. Synthetic securitisations are an essential tool for banks to transfer expected and/or unexpected loss risk to the capital markets where adjustments to the banks risk profile is desired. It frees up regulatory capital as a limiting factor to extend new credits. Securitisation of banks' assets transforms illiquid loans to more liquid assets and provides capital markets capacity for customer loans where bank capacity is limited as well as providing non-bank investors with investment opportunities. Hence, synthetic securitisations support banks' ability to transfer the risk on loans and subsequently influence customers' access to funding for their business activities.

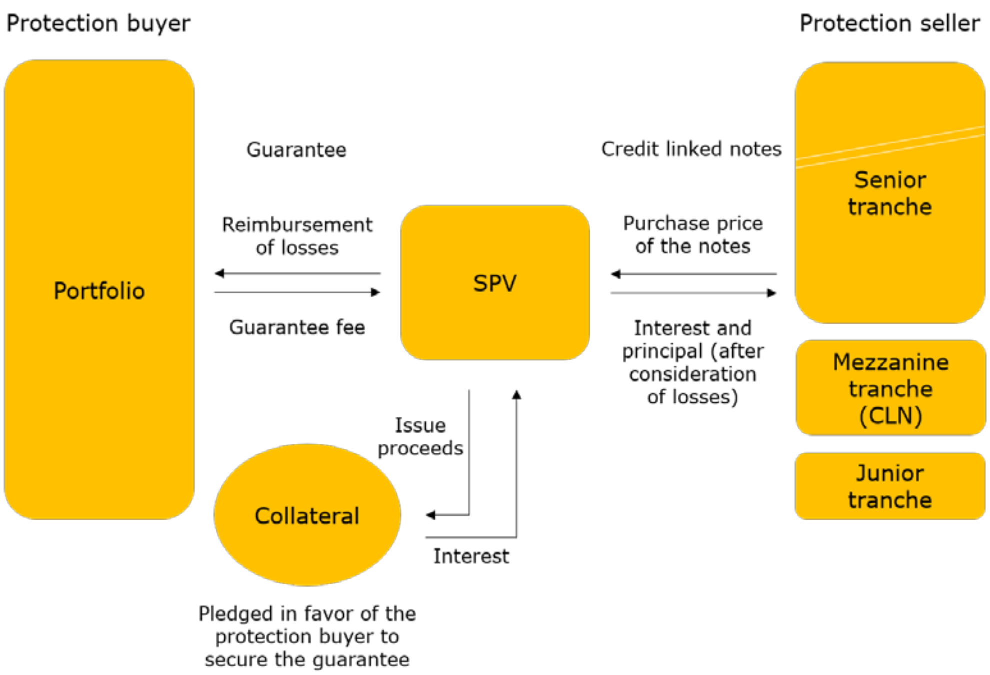
Unfortunately, the ongoing discussions about "qualifying securitisations" exclude synthetic securitisations. It is often argued that synthetic securitisations are more complex than true sale securitisations and include significant amount of counterparty risk. We do agree that synthetic securitisations (e.g. synthetic CDOs) can be more complex, but in many cases they are not. Synthetic securitisations of plain vanilla (real economy) on balance sheet assets such as SME loans (as opposed to synthetic CDOs) are generally structured in a simple and transparent way.

Often the transactions and associated documentation are less complex than for true sale transactions for both issuer and investor as the sale of assets is not involved. Depending on the jurisdiction, setting up an insolvency remote true sale structure can be challenging (e.g. in German transactions a refinancing register is often used to ensure insolvency remoteness) as opposed to a transfer of credit risk in a synthetic deal. Furthermore, synthetic securitisations do not bear commingling and set-off risks, which further simplifies the transaction structure. Counterparty risk in synthetic securitisations likewise arises when the cash collateral in funded transactions is deposited with another bank.

Furthermore, there is a variety of situations in which executing a synthetic securitisation rather than a true sale securitisation is in the best interest of the bank and its customers. For example, some bank customers do not want the bank to sell their loans (transfer clause limitations). Synthetic transactions are hence the only way to manage such risk properly while taking account of client concerns.

The table below summarises the substantial features of true sale and synthetic securitisation from an originator's perspective.

The following diagram shows a typical structure of currently employed synthetic transactions:



	True sale securitisation	Synthetic securitisation
Regulatory capital relief	✓[2]	✓
Additional funding	✓	x
Legal transfer of assets	✓	x
SPV necessary?	✓	x
Counterparty risk	↓	⇔[3]
Cost	↑	⇔
Complexity	↑	⇔
Administrative effort	↑	⇔
Legal documentation	↑	⇔

Legend:

✓ **Yes**	x **No**	↑ **High**	⇔ **Medium**	↓ **Low**

[2] If only capital relief is desired, in most of the cases a synthetic securitisation is more efficient than a true sale securitisation.

[3] The originator only faces counterparty risk if the guarantee is not fully collateralised or if the cash deposit account is not kept by the originator.

To sum up, we consider synthetic securitisation transactions an important capital management tool for banks (not only with respect to SME portfolios) as they help banks to release regulatory capital and therefore provide them the opportunity to grant new loans to bank customers. Against this background and the often limited access of such customers to capital markets, we would encourage the EU Commission to facilitate further discussions with the EBA, regulators and banks about structuring simple synthetic securitisations and including them in the definition of "qualifying securitisations".

- **B. Have there been unaddressed market failures surrounding SME securitisation, and how best could these be tackled?**

- **C. How can further standardisation of underlying assets/loans and securitisation structures be achieved, in order to reduce the costs of issuance and investment?**

We consider standardisation of the main structural features to be beneficial for both true sale and synthetic transactions as it reduces complexity and supports transparency as well as product and general market understanding. This results in cost reductions for issuance and investment, even if they are difficult to quantify, and has a positive impact on financial market stability.

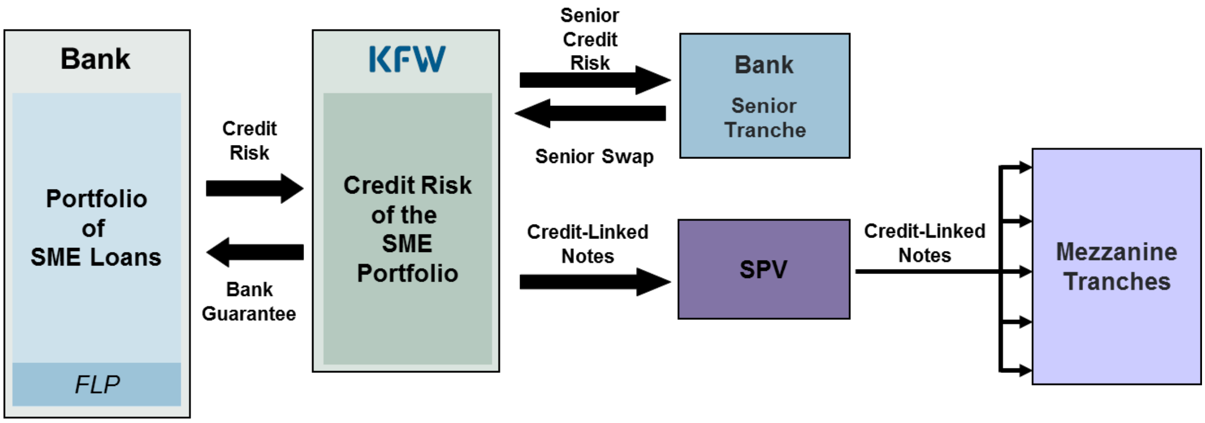
However, as flexibility is a unique (beneficial as well as potentially adverse) feature of securitisation, careful consideration should be given to the degree of standardisation required for the STS definition. For example, regional market heterogeneities in Europe (e.g. with respect to legislation) often require specific regional and/or underlying asset structural elements. Furthermore, originators need a certain degree of flexibility in order to adapt the transaction to their specific needs (which cannot be done without investors' consent).

The following gives an example of a cross-originator platform for synthetic SME securitisations, demonstrating that such securitisations can be structured in accordance with the concept of STS securitisations.
In 2000 KfW introduced its synthetic securitisation platform PROMISE (Promotional Mittelstand Loan Securitisation) as a promotional

instrument to stimulate new loan origination to SMEs. The basic idea underlying PROMISE was to provide SME lending banks with capital relief for new business. This was achieved by transferring the credit risk of the bank's existing SME portfolios to capital markets.

Approximately 68,000 loans and a pool volume of approximately EUR 34 billion have been transferred in 18 transactions to the capital markets to date. So far, 15 transactions have matured.

The following diagram depicts the structure of a PROMISE transaction. Platform transactions share main structural characteristics such as standard call features, standardised loss allocation and similar credit event definitions. Nevertheless, the platform has also provided flexibility to adapt the transactions to the specific needs of the originating banks.
The performance of SME portfolios securitised under PROMISE has shown a better average performance (in terms of defaults and losses) than expected and originally assumed in the structuring process. So far, no losses have been allocated to rated tranches, i.e. only first loss tranches have been affected (generally held by the originator itself).
KfW's synthetic platform PROMISE (and likewise PROVIDE for mortgage portfolios) therefore demonstrates that synthetic securitisations of real economy assets from the originator's balance sheet can be as soundly structured as true sale securitisations and should therefore be considered (not only for SME securitisations) in the definition of STS securitisations.



With regard to further details on that matter we share the view of the German Banking Industry Committee. In their comments they present very useful and detailed proposals and criteria for the inclusion of certain synthetic securitisations into a European high quality ABS regime.

- **D. Would more standardisation of loan level information, collection and dissemination of comparable credit information on SMEs promote further investment in these instruments?**

Investors require reliable information about the reference portfolio and the transaction structure in order to make a substantiated assessment of a transaction's credit risk. The necessary data and information are already offered to interested investors prior to the launch of new issues and within the scope of continuous transaction reporting.

In addition, the requirements for issuers, originators and sponsors to publish data and information for SME securitisations through the Commission Delegated Regulation (EU) 2015/3 (CRA3) have been extended considerably. The regulation specifies that in addition to the extensive documentation provided about the contractual structure of the transactions, detailed information about individual loans must be published in a standardised format and updated continuously.

Collection and publication of data and information on the underlying receivables over and above these requirements would by no means promote investment in SME securitisations.

The disclosure requirements already agreed upon for the SME securitisation market are very extensive. However, all the data available do not provide an investor with additional information enabling an investment decision to be reached. Care should be taken to ensure that the publication of detailed customer-related information does not put a strain on the relationships between the banks and their good quality medium-sized business customers. To this end, no conclusions may be drawn from the data about the respective customers. Detailed information should only be furnished in absolutely exceptional cases.

The disclosure requirements otherwise impede the use of securitisations for risk and capital management for mid-cap financiers and therefore the potential for new lending.

Question 17:

- **To what extent would a single EU securitisation instrument applicable to all financial sectors (insurance, asset management, banks) contribute to the development of the EU's securitisation markets? Which issues should be covered in such an instrument?**

  - **Term and replenishment structures**

The main investors are banks, insurance companies and funds. All these institutional investors are regulated. It would be beneficial for the European ABS market if all of them had to follow the same or at least comparable rules.

ABCP

As pointed out in Question 15, several regulated institutions are regularly involved in investments of ABCP. These are predominantly insurance companies, money market funds, social security institutions, alternative investment funds, pension funds and – to a lesser extent – banks.
All these institutional investors have distinct regulations for their investment policies. It would be beneficial for the European ABCP market if all of them had the same definition of a qualified ABCP investment.
However, for the future growth of the ABCP market and the ability of the real economy to access attractive ABCP funding, it is of the utmost importance for the liquidity facilities for such transaction to be committed in a stable and balanced regulatory environment. As such liquidity facilities are provided by banks only, the emphasis of regulatory efforts should be on the creation of criteria for simple, standard and transparent ABCP liquidity lines for ABCP sponsor banks.

Question 18

- **A. For qualifying securitisation, what else could be done to encourage the further development of sustainable EU securitisation markets?**

Please refer to our answers above.

- **B. In relation to the table in Annex 2, are there any other changes to securitisation requirements across the various aspects of EU legislation that would increase their effectiveness or consistency?**

Apart from credit risks, securitisations are also exposed to material risks arising from the interaction between the different national tax, civil and insolvency law issues, which are reported and described extensively in every prospectus. The creation of a uniform European standard, at least for the securitisation of bank loans, would be desirable. However, this would require a European securitisation law that would regulate the status of the special purpose vehicle (SPV), the transfer of the assets (European credit register?) and a clear and secure tax environment at a European level.

Public business promotion and economic development programs on a national and EU level, which at present inevitably favours public lending programmes over public capital market programmes, is another key lever for promoting securitisation and economic financing, and hence linking bank and capital market-based economic financing in Europe. However, efficient economic policy should always avoid excessive selectivity in its incentive systems and have an influence on framework data instead. This is obviously easier to achieve through capital market programmes than through credit programmes. Stronger orientation of European and national promotion of trade and industry towards the forthcoming capital markets union would not only contribute to their success, but would also enhance the efficiency of the economic development overall and therefore stimulate economic growth. Linking securitisation and public economic promotion would be the right approach for this. Germany and Europe have gained the necessary experience through KfW's PROMISE and PROVIDE programmes, through public investments in business-oriented ABS transactions through the national promotional banks as well as EIB and EIF and through EIF guarantees in European SME securitisations. This approach should be extended further within the scope of the capital markets union project.

TSI – What we do

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.

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.

Furthermore TSI's concern has always been to establish a brand for German securitization which 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.

DEUTSCHER VERBRIEFUNGSSTANDARD

Another objective 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. And finally the goal is to create a platform for the German securitization industry and its concerns and to bridge the gap to politics and industry.

Events and Congress of TSI

Events of TSI 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.