Deutsche Bank

Deutsche Bank AG

Winchester House
1 Great Winchester Street
London EC2N 2DB

Tel +44 (0) 20 75458000

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Deutsche Bank response to the European Commission targeted consultation on the functioning of the EU securitisation framework

Dear Sir or Madam,

Deutsche Bank welcomes the opportunity to provide its views on the EU Securitisation Framework.

Currently, financing in Europe is mainly via bank lending, at a time when the global and European economy is in a transitional phase, away from bank lending to financial markets funding. In addition, policy-makers want funds channelled to Covid-19 recovery, while also supporting sustainability and digitalisation objectives.

Securitisation is an effective way to support European capital markets in this phase:

- They can directly link investors and users, and thus tailor to the preferences of either counterparty.
- These investors in turn support capital to innovative start-ups. Securitisation is an effective and efficient financing channel in such instances.

In addition, securitisations can help with balance sheet relief for all European banks, which will occur due to the implementation of the Final Basel III package. The EBA expects capital requirements to increase by around 20%. This will put pressure on banks' balance sheets and consequently reduce lending and increase rates.

The European securitisation market, however, remains underdeveloped. A key reason why it has not grown in recent years is the regulatory framework:

- Strict requirements, especially on disclosure for private securitisations, and due diligence for investors exceed what they need and thus function as barrier to entry and a cost to the market.
- The bank prudential framework does not take a risk-sensitive approach to securitisations (e.g. tranche Risk Weighting). This creates disincentives for banks to use or invest in them.

As the existing framework has not been able to stimulate the European securitisation market and extend European capital markets, it could also potentially inhibit supporting the green transition of the European economy.

A review of the EU securitisation framework is much welcomed, with special focus on:

- Disclosure should be better attuned to investor needs:
  - Banks already have established relations with investors, so bilateral arrangements would allow more flexibility for bespoke deals.
  - The framework should set out disclosure principles and favour bilateral disclosure over standardised templates.
- The prudential treatment of securitisation can be made more risk-sensitive:
  - Risk Weighting is not risk sensitive, especially the non-neutrality p factor within both the standardised and the internal model approaches (SEC-SA, SEC-IRBA). This raises Risk-Weighted Assets (RWA).
  - This creates headwinds for banks acting as both originator and investor.
  - The methodology for the determination of the tranche maturity should be revised in order to reflect that in practice expected maturity is typically longer than the 5 years currently required by the EBA guidelines. This will unlock the relevant RWA benefit.
- The framework for Non-Performing Exposure (NPE) securitisations should be further improved, especially in order to deal with the aftermath of COVID-19. The adjustments made via the Capital Markets Review Package were a start, but additional amendments will be beneficial.
- The framework should be more in tune with the political objectives of green finance. This could be achieved not just through additional disclosure, but also changes in the capital charges on the basis of tranche maturity.
- The Significant Risk Transfer (SRT) test is a key methodology for banks to reduce their capital charges through securitisation. The proposals for improving the test should be carefully reviewed to ensure it can be fulfilled in practice for the relevant transactions and thus achieve its original objective.

We include more details about our views as responses to the questionnaire in the Annex, which does not contain any confidential information and can thus be published. We also contributed to and support the responses submitted by associations AFME, EBF and IACPM. We include specific cross-references, where especially relevant.

Best regards

[Signed]

Koen Holdtgrefe
Co-Head of Government and Regulatory Advocacy

Annex - EC Securitisation Consultation

Effects of the regulation

Question 1.1. Has the Securitisation Regulation (SECR) been successful in achieving the following objectives:

	Fully agree	Somewhat agree	Neutral	Somewhat disagree	Fully disagree	No opinion
Improving access to credit for the real economy, in particular for SMEs						*X*
Widening the investor base for securitisation products in the EU					*X*	
Widening the issuer base for securitisation products				*X*		
Providing a clear legal framework for the EU securitisation market				*X*		
Facilitating the monitoring of possible risks			*X*			
Providing a high level of investor protection			*X*			
Emergence of an integrated EU securitisation market				*X*		

Question 1.2. If you answered 'somewhat disagree' or 'fully disagree' to any of the objectives listed in the previous question, please specify the main obstacles you see to the achievement of that objective.

Widening the investor base for securitisation products in the EU:

SECR has introduced a prescriptive framework covering both investors and issuers. Whilst detailed guidance can be helpful, the regulatory obligations and prudential capital and liquidity treatment for credit institutions, investment firms and re-insurers is disproportionate to the risk exhibited by securitisations. Key impediments to the development of the securitisation market by widening of the investor base include:

- *Non-risk aligned prudential treatment of securitisation for credit institutions and re-insurers, including their liquidity treatment;*
- *Highly prescriptive due diligence requirements, which represent a barrier to entry for investors, compared to other financial instruments.*

Widening the issuer base for securitisation products:

Constraints on the growth in the issuer base, e.g. banks and insurers, due to:

- *Prudential and liquidity treatment;*
- *For EU banks, the current high supply of alternative cheap sources of funding (e.g. European Central Bank's – ECB Targeted longer-term refinancing operations – TLTRO);*
- *The disclosure requirements under SECR, in particular, the mandatory template standardisation by the European Securities and Markets Authority (ESMA) even for private transactions.*

In particular on disclosure, extensive data requirement and standardisation is a poor substitute for sufficient due diligence and risk management and can even create complacency.

While there may be a case for a regulatory requirement for detailed templates for public transactions, they are less useful for private transactions. In the latter case, investors are fewer and have deeper and more frequent interaction with the originator/issuer. They have the sophistication and experience to determine for themselves what data they require in order to conduct a meaningful risk and credit analysis. They also have the willingness and ability to demand disclosure of that information by the originator/issuer.

Providing a clear legal framework for the EU securitisation market:

Developing a single rule book to apply to different market participants (e.g. EU credit institutions and investment firms, (re)-insurers and asset managers) is helpful in creating consistency and developing a level playing field. However, there are areas where further clarity is needed, for example:

- *The due diligence requirements on institutional investors under Article 5(1)(e) when investing in non-EU securitisations.*
- *Whether non-MiFID-regulated investment firms are permitted to act as sponsors.*

- *Challenges in the application of and compliance with Article 9, especially in relation to acquired portfolios, forward-flow transactions and transactions with a sponsor.*

Emergence of an integrated EU securitisation market:

This ambition remains largely unfulfilled, due to the various brakes on growth of the market overall (including the SECR regime itself, but also prudential treatment and the availability of plentiful cheap central bank funding) that have not created the environment necessary for the market to grow.

Question 1.3. What has been the impact of the SECR on the cost of issuing / investing in securitisation products (both STS and non-STS)? Can you identify the biggest drivers of the cost change? Please be specific.

2. Private securitisations

The legal framework acknowledges the bilateral and bespoke nature of so-called private securitisations and does not require them to disclose detailed information about the transaction to potential investors in the same way that it does for public securitisations. However, this needs to be balanced against the need to ensure adequate supervision of private transactions, which requires access to sufficient information on the part of supervisors. As a result, the current legal framework requires private securitisations to fill in the same data templates as public securitisations.

Question 2.1. Are you issuing more private securitisations since the entering into application of the EU securitisation framework?

Yes, significantly
Yes, slightly
No change
No, it has decreased

Question 2.2. What are the reasons for this development (please explain your answer)?

Private securitisation issuance is common in a number of instances including, commercial mortgage-backed securities (CMBS), synthetic securitisations, non-performing exposure securitisations and bi-lateral and / or warehouse financing.

Deutsche Bank has not significantly changed the volume of private securitisations, both traditional and synthetic, that it originates. The main rationale for private securitisation is confidentiality concerns linked to public securitisation, e.g. on the potential public disclosure of private borrower information or issuance in third countries based on local laws.

The EU securitisation framework did not make such securitisations easier, in fact it has indirectly, via ESMA templates, increased the regulatory burden. Therefore, there is no regulatory base to increase private securitisation, which are still driven by client demand.

Private securitisations are also not as effective was for banks to raise funding.

See also the responses by associations AFME and IACPM for more details on this topic.

Question 2.3. Do the current rules enable supervisors to get the necessary information to carry out their supervisory duties for the private securitisation market?

Yes
No
No opinion

Please explain your answer.

There is a significant amount of information available to supervisors. However, the problem is fragmentation of the information requirements for private securitisations from National Competent Authorities (NCA).

In particular, information gathering is not limited to financial market supervision. Bank originators will also use securitisations to achieve capital relief via Significant Risk Transfer (SRT). In these cases, prudential regulators and supervisors will require extensive information about the transactions in questions. We see a growing challenge in coordination and communication between NCAs of banks, insurers and financial markets.

All the information is available – in COREP, ESMA and similar reports – but not necessarily shared between supervisors at local level. Very detailed information per deal is also provided in notifications to the supervisory teams. All this information, once collected by one authority, should be made available to other relevant authorities, in order to avoid duplication.

Challenges for supervision on a European level could be remedied by better information sharing across the various supervisory and regulatory authorities in the EU. Increasing or creating more reporting requirements for institutions will only burden market participants, without directly contributing to better supervision.

See also the responses by associations AFME and IACPM for more details on this topic.

Question 2.4. Do investors in private securitisations get sufficient information to fulfil their due diligence requirements?

Yes
No
No opinion

Please explain your answer.

We believe that Articles 5 and 7 of the SECR provide an appropriate principles-based framework for disclosure. Investors in private securitisations receive all the information they require to perform their own due diligence, monitoring and reporting requirement.

The existing process, format and content of bespoke reporting/disclosure agreed between investors and issuers/originators meet the requirements of Articles 5 and 7. In fact, investors receive significantly more information than prescribed by Article 7. That is because private transactions are typically bespoke bilateral transactions where there is a relationship between the investor and the originator. Investors will tailor the transaction and the relevant information requirements to their risk management framework and the specificities of the underlying portfolio (e.g. performing vs non-performing underlying exposures). This information is typically negotiated with the originator/issuer on a bilateral basis and provided separately.

Question 2.5. Do you find useful to have information provided in standard templates, as it is currently necessary according to the transparency requirements of Article 7 and the associated regulatory and implementing technical standards?

Yes
No
No opinion

Please explain your answer.

Standard templates are useful for large public deals where senior, rated tranches are placed in the market. They are not useful for private deals with a smaller number of specialised and sophisticated investors. Instead, the existing process of providing bespoke reporting/disclosure agreed between originator and investors, which meet the principles of Article 7, is more effective in meeting the regulatory objectives and general risk management and due diligence expectations.

Our preference for using the servicer reports stems from the ability to obtain the data directly from the servicer's source systems. We expect that the requirement to translate servicer data to ESMA template form, might introduce elements of interpretation. Also, we have observed that some fields are marked as not available (ND), which suggests that the data required to populate these fields is not readily available.

See also the response by association AFME for more details on this topic.

Question 2.6. Does the definition of private securitisation need adjustments?

Yes
No
No opinion

If you answered 'yes' to question 2.6, please explain why and how should the definition of private securitisations be adjusted.

The difference between a public and private securitisation draws its distinction from compliance with Directive 2003/71, which outlines the requirement for a prospectus to be published when securities are offered to the public or admitted to trading.

3. Due diligence

The transparency regime in the SECR requires that the originator, sponsor and SSPE of a securitisation make a range of information available to the holders of the position, to competent authorities and, upon request, to potential investors. The information is provided via templates and is intended to enhance the transparency of the securitisation market as well as to facilitate investors' due diligence and the supervision of the market. The following questions aim to find out whether the information that is currently provided to investors is appropriate, sufficient and proportionate for their due diligence purposes and whether any improvements can be made.

Question 3.1. Do you consider the current due diligence and transparency regime proportionate?

Yes
No
No opinion

Please explain your answer.

The due diligence and transparency requirements, and more specifically the Regulatory Technical Standards (RTS) instituted by ESMA (Section 3), is not entirely relevant for investors in private securitisations and overly burdensome to the originators of these transactions. That is because the data required by the RTS is not proportionate to the risks of the specific transaction. In particular, investors are typically interested in analysing the structural features in a particular transaction, as well as the portfolio dynamics, such as concentration or jump-to-default risk. Fields that do not serve this purpose could be removed. We include specific examples in our response to question 3.2 below.

See also the response by association AFME for more details on this topic.

Question 3.2. What information do investors need? How do investors carry out due diligence before taking up a securitisation position?

Professional investors typically carry out their own loan-level portfolio due diligence, according to their internal procedures, prior into entering into any transaction. The originator of these transactions aims to provide as much data and information as possible. If the investors considers the information as insufficient, they will not invest.

Generally speaking, that data and information includes (among other things) a reference obligation list that gives details about each obligation in the reference portfolio, allowing investors to perform their own loan level due diligence, as well as bank and securitisation

level performance data, and information on governance, risk management and the credit and collection policies and procedures of the bank.

Question 3.3. Is loan-by-loan information disclosure useful for all asset classes?

Yes
    please specify (multiple choice accepted)
    Auto-loans/leases
    Trade receivables
    Residential mortgages (RMBS) SME loans
    Corporate loans Leases Consumer loans
    Credit-card receivables
    Other – please specify
No
No opinion

Please explain your answer.

Question 3.4. Is loan-by-loan information disclosure useful for all maturities?

Yes
No
No opinion

Please explain your answer.

Question 3.5. Does the level of due diligence and, consequently, the type of information needed depend on the tranche the investor is investing in?

Yes
No
No opinion

Please explain your answer.

Investors in first loss tranches face higher risk, so they generally carry out a deeper analysis:

- ***They analyse the performance of the banks' corporate loan portfolio and similar securitisations;***
- ***They carry out their own loan-level due diligence, governed by their internal policies and procedures, with a specific focus on concentration risk.***

Question 3.6. Does the level of due diligence and, consequently, the type of information needed depend on whether the securitisation is a synthetic or a true-sale one?

Yes
No
No opinion

Please explain your answer.

The type of information requested by investors depends more on the risk of the securitisation (e.g. underlying assets, credit enhancement etc) rather than whether it is a synthetic or true-sale securitisation.

Question 3.7. Are disclosures under Article 7 sufficient for investors?

Yes
No
No opinion

Please explain your answer.

Information disclosure is understood to be too prescriptive.

If you answered 'no' to question 3.7, please specify what is missing?

The professional specialised credit investors in private securitisations usually have certain data which they require specifically for the transaction in which they are investing, in order for them to comply with Article 5 SECR and their due diligence requirements. In general, in private securitisations there is a stronger relationship and higher level of interaction between an investor and the originator on an ongoing basis which allows for a tailored set of information to be provided to the investor on an ongoing basis.

Standardisation of information for private transactions leads to more compliance costs with limited added value in terms of due diligence quality.

Question 3.8. Do you find that there are any unnecessary elements in the information that is disclosed?

Yes
No
No opinion

Please explain your answer.

See response to question 3.2 above.

Question 3.9. Can you identify data fields in the current disclosure templates that are not useful? Please explain your answer.

Each professional specialised credit investor will have their own requirements, and they will differ for each trade. See response to questions above.

Question 3.10. Can the disclosure regime be simplified without endangering the objective of protecting EU institutional investors and of facilitating supervision of the market in the public interest?

__Yes__
No
No opinion

Please explain your answer.

__The current mandatory ESMA templates were originally designed for public true sale transactions, whose senior rated tranches are eligible for funding from the ECB. Private securitisations are different from public ones, because they generally transfer a different type of risk (mezzanine and first loss risk only). Therefore, the public templates are not fit for purpose. Professional specialised credit investors in private securitisations require different, and additional, information as mandated by their own internal due diligence policies and procedures.__

__See also the response by association AFME for more details on this topic.__

4. Jurisdictional scope

The Joint Committee of the ESAs issued an opinion to the Commission on the jurisdictional scope of the Securitisation Regulation, identifying some elements of the legal text that require clarification. This section of the questionnaire seek feedback on the issues identified by the Joint Committee.

Question 4.1. Have you experienced problems related to a lack of clarity of the Securitisation Regulation pertaining to its jurisdictional scope?

__Yes__
No
No opinion

Please explain your answer.

__Article 5 SECR imposes due-diligence requirements for institutional investors. In accordance with paragraph (1) (e), the investor must verify that "the originator, sponsor or Securitisation special purpose entity (SSPE) has, where applicable, made available the information required by Article 7 in accordance with the frequency and modalities provided for in that Article." It was not clear for investors which information was required to receive in case all sell-side parties are established in a third country.__

__Recently the ESA opinion clarified that it is sufficient if the investor in a third country securitisation receives the same information as required by the ESMA template, without having received the ESMA template as such. However, this is an issue for EU banks entering__ *into third country securitisations. While the investors do receive asset-level data, those third country sell-side parties are unlikely to be willing to provide additional information which is not produced or used by that originator in its business. Therefore, this represents an existential issue for the non-EU securitisation lending businesses of EU lenders.*

If the wording were to be clarified to require detailed reporting in the form of the ESMA templates, or to require provision of information in relation to all the data fields in those templates, this will clearly put EU lenders at a competitive disadvantage. Article 5 (1) (e) should therefore be amended accordingly as proposed below.

In addition, there is lack of clarity on the jurisdictional scope (i.e. whether it applies to third country subsidiaries) of other requirements in the SECR, which are not yet covered by the ESA opinion, most notably Articles 4 and 8.

It should be clarified that for banks (based on CRR Article 14) except for Article 5 (that applies on a consolidated basis) all other Articles of the SECR are only applicable to entities established in the EU and their third country branches, and not their third country subsidiaries. This is extremely important for banks headquartered in the EU, as it ensures they are not facing an uneven playing field for products done via subsidiaries competing with non-EU peers in foreign markets, most notably the U.S. This is especially relevant for Article 4.

An additional issue concerns non-MiFID investment firms and whether they are permitted to act as sponsors. The definition of sponsor refers to Article 4 (1) point (1) of Directive 2014/65/EU (MiFID II). That definition is based on activities performed by the entity, regardless of whether the entity is subject to MiFID itself. As a result, third-country group entities that are not are not subject to MiFID could also qualify as sponsors, if they perform the activities mentioned in the respective MiFID definition. However, SECR is not clear on this point.

We would propose the following clarifications/changes in Article 5(1)(e) Securitisation Regulation:

- *Third country originators will not (as per the reference to Article 7) provide the ESMA templates to EU investors. Hence the reference to Article 7 should be deleted for the case of third country originators/ sponsors. Article 5(1)(e) should be amended as follows: "if established in the Union, the originator, sponsor or SSPE has, where applicable, made available the information required by Article 7 in accordance with the frequency and modalities provided for in that Article. If established in a third country, the originator, sponsor or SSPE has, where applicable, made available asset-level data such that the investor can do its own due-diligence, but the originator, sponsor or SSPE shall not need to provide the full list of data as required by the ESMA template;"*
- *The definition of sponsor should clarify that third country entities can also be sponsors. Specifically, Article 2(5) should be amended as follows: "'Sponsor' means a credit institution, whether located in the Union or not, as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, or an investment firm, whether located in the Union or not, as defined in point (1) of Article 4(1) of Directive 2014/65/EU other than an originator, that: […]"*

See also the response by association AFME for more details on this topic.

Question 4.2. Where non-EU entities are involved, should additional requirements (such as EU establishment/presence) for those entities be introduced to facilitate the supervision of the transaction?

Yes
No
No opinion

Please explain your answer.

We would not immediately see the necessity for additional requirements. Such requirements would create additional cost and an additional barrier to the participation of investors or originators in the securitisation market.

EU investors in any case already report all of their investments to their own supervisors, so the supervision of EU investors is already assured, regardless of the origin of the transaction.

Question 4.3. In transactions where at least one, but not all sell-side entities (original lender, originator, sponsor or SSPE), is established in the EU:

Should only entities established in the EU be eligible (or solely responsible) to fulfil the risk retention requirement under Article 6?

Yes
No
No opinion

Please explain your answer.

We would not see the added value of jurisdictional rules that require the entity to be based in the EU.

The purpose of risk retention is to align the interests of the sell-side commercial parties (i.e. excluding the SSPE) with those of investors. Within that framework, there are often a number of parties who could potentially fulfil the risk retention. The main aim is to have entities with sufficient control over and interest in the portfolio.

Besides the regulatory requirements for risk retention, the market also imposes pressure to ensure that the entity who is retaining the risk is a commercially sensible one, and not merely one that is formally eligible to perform that role.

A jurisdictional requirement would thus create additional barriers for investors in EU securitisations and thus limit financing options for banks and corporates.

Specifically, a jurisdictional requirement could mean that some transactions would:

- *Be redeemed early (because there are restrictions on the ability to change the identity of the risk retention holder) – this would also create marker volatility;*
- *Be restructured to change the risk retention holder – this would also create administrative burden;*
- *Not be done at all, because of no commercial interest in an EU risk retention holder.*

We provide below an example:

- *We assume a portfolio that is disposed by an EU original lender.*
- *A non-EU buyer finances its acquisition by way of a securitisation.*
- *There is no sponsor.*

Under current rules, the buyer (as a "limb (b) originator") would fulfil the risk retention. This is also the correct policy outcome. That is because:

- *The original EU lender has disposed of the portfolio entirely and may even no longer exist.*
- *Even if the EU original lender still exists, it has no current interest in, or control over, the portfolio performance going forward.*
- *On the other hand, the non-EU buyer has both interest in and control over the portfolio. The buyer will also have done a detailed due diligence on the portfolio as part of the acquisition process and will be better placed to take the junior risk.*

With a jurisdictional requirement, however, the original EU lender would have to fulfil the risk retention because it is the only EU sell-side party eligible in this transaction. This goes against the lender's objective to sell the portfolio, and hence not to have any involvement in the deal. Commercially, this EU entity would not be the appropriate risk retainer. If there was a jurisdictional requirement in place, the transaction would likely not be done.

We would also like to raise a general point about the definition of servicers and risk retention. The provisions in relation to NPE securitisation in Art. 6 (1) SECR require that only servicers that can demonstrate expertise in servicing NPEs are able to undertake risk retention. That definition does not include master servicers or special servicers that may sub-contract certain activity to experts in servicing NPEs.

- *Master servicers are employed to oversee the servicing group and are responsible for the actions of the servicers. They are often tasked with coordination, management and regulatory aspects of the portfolio being serviced. They also monitor the compliance of each servicer to contractual arrangements and regulatory requirements.*
- *Special servicers are employed for very specific cases related to NPE, such as setting out payment plans for non-performing borrowers on the basis of their capabilities. This task is narrower than servicing the entire portfolio, but crucial to a successful resolution.*

Where employed in NPEs, these entities are equally well-placed to perform the functions of risk retention. To that end, we suggest amending Article 6(1) SECR, so that the RTS on risk retention can also be amended to open the possibility to such entities to also perform risk retention functions.

We further recommend that other obligations, including those in Articles 7 (transparency requirements) and 9 (credit-granting requirements) SECR, are updated to allow for the servicer to undertake activities similar to what an originator or sponsor would be required to.

Should the main obligation of making disclosures under Article 7 be carried out by one of the sell-side parties in the EU? In this case, should the sell-side party(ies) located in a third country be subject to explicit obligations under the securitisation contractual arrangements to provide the necessary information and documents to the party responsible for making disclosures?

Yes
No
No opinion

Please explain your answer.

Article 7(1) SECR already makes clear that the transparency requirements fall on all three of the originator, sponsor and SSPE. The appointment of a reporting entity under Article 7(2) SECR is generally understood as mechanical – it does not necessarily relieve the other of the two of responsibility for complying.

If making disclosures under Article 7 is required to be undertaken by the sell-side party located in the EU, this would constrain the choice of reporting entity to one who may be inappropriate from a practical or commercial point of view.

For example, if an originator (located in a third country) is also the servicer of a portfolio, they will likely be preparing the reference pool disclosure information. Forcing the parties to appoint the EU located entity (e.g. the SSPE) would be counterproductive and add cost to the transaction, because of the need for the originator to pass the reports to the SSPE, who then (presumably following some governance processes designed to protect the directors of the SSPE) makes them available to investors. In either case, the SSPE would be directly subject to liability for any breaches of Article 7.

At any rate, it is unclear to what extend there should be a need to provide Article 7 information at all in the situation where there are no EU investors. Non-EU investors are not required to obtain this information and may thus not even review it when it is provided.

Should the party or parties located in the EU be solely responsible for ensuring that the "exposures to be securitised" apply the same credit-granting criteria and are subject to the same processes for approving and renewing credits as non-securitised exposures in accordance with Article 9?

Yes
No
No opinion

Please explain your answer.

Similar to the above, removing the responsibilities from the appropriate entity to that which is located in the EU will not help strengthen the legislative framework and likely add uncertainty and complexity to the framework.

Should a reference to sponsors located in a third country be included in the due diligence requirements Article 5(1)(b) of the SECR? How could their adequate supervision be ensured?

Yes
No
No opinion

Please explain your answer.

A requirement for a "sponsor" to meet credit granting standards as if it were an asset creator would not be appropriate, because sponsors typically establish and manage securitisations that purchase third party assets. In any case, institutional investors, typically perform a risk-based assessment of the transactions they are entering into, and receive information on an ongoing basis to appropriately monitor the performance of transactions.

We therefore recommend that Commission could reconsider the appropriateness of the application of credit granting standards to sponsors more generally under Article 9 SECR, before making any further changes to Article 5(1).

See also the response by association AFME for more details on this topic.

Question 4.4. Should the current verification duty for institutional investors laid out in Article 5(1)(e) of the SECR be revised to add more flexibility the framework?

Yes
No
No opinion

Please explain your answer.

The recommendations of the High Level Forum on CMU was that Article 5(1)(e) should not apply to third country transactions and that a "proportionate" approach should be considered instead. This is necessary, in particular for EU banks acting through their third country branches or subsidiaries as investors, originators or sponsors of securitisations in connection with third country securitisation transactions with, for example, non-EU originators and / or SSPEs.

EU banks and their affiliates investing in third country securitisation lending transactions perform a risk-based assessment of the transactions they are entering into and already receive asset-level data before entering into a transaction. This helps determining whether their lending criteria have been satisfied. They also continue to receive such data on an ongoing basis that allows monitoring. This information may be different from the ESMA templates.

If EU banks were required to obtain information from their clients according to the ESMA templates, this would put them at a significant competitive disadvantage compared to their non-EU competitors for those same clients' business. That is because it would be unlikely that non-EU originators would make an investment in information technology systems to solely to satisfy EU banks or affiliates, especially if they can receive funding from other non-EU banks.

The third country equivalence regime proposes by ESAs would be unlikely to provide meaningful flexibility. That is because we are not aware of any jurisdiction with requirements comparable to those of ESMA, without that meaning that there is lack of high-quality information provision elsewhere. In addition, equivalence decisions are a weak basis for cross-border transactions, as they could be withdrawn at short notice, thus creating more uncertainty.

We would recommend to apply proportionality for due diligence, in line with the recommendation made in the Final Report of the High Level Forum on the CMU of 10 June 2020. The framework should permit EU investors to judge whether they had received sufficient information (including information contractually promised to be provided on an ongoing basis) to make an informed judgment about the risks of taking an investment decision. That is common for other asset classes besides securitisation.

Finally, we do not support the requirement of disclosure or reporting in respect of third country securitisations via a securitisation repository. This could breach contractual obligations or local laws on confidentiality of information and as a result risk excluding EU investors from transactions. This policy position is already recognised by EU law, in the form of recital (13) and Article 7(2) of SECR.

If you answered 'Yes' to question 4.4, how can it be ensured that the ultimate objective of protecting EU institutional investors remains intact?

We believe that EU institutional investors are sufficiently sophisticated, experienced and equipped to make judgments on a case-by-case basis about whether they have received information related to the risk profile of the securitisation. If they were not satisfied, we believe they would decline to invest.

Question 4.5. Should the SECR and the Alternative Investment Fund Managers Directive (AIFMD) be amended to clarify that non-EU AIFMs should comply with the due diligence obligations set out in Article 17 of the AIFMD and Article 5 of the SECR with respect to those AIFs that they manage and/or market in the Union?

Yes
No
No opinion

Please explain your answer.

Question 4.6. Should the SECR be amended to clarify that sub-thresholds AIFMs1 fall within the definition of institutional investor thereby requiring them to comply with the due diligence requirements under Article 5 of the SECR?

Yes
No
No opinion

Please explain your answer.

5. Equivalence

The SECR does not include an equivalence regime and Article 18 of SECR requires that originators, sponsors and SSPE of an STS securitisations are established in the EU. The Commission is tasked to investigate whether an equivalence regime for STS securitisations should be introduced.

Question 5.1. Has the lack of recognition of non-EU STS securitisation impacted your company?

Yes
No
No opinion

If you answered yes, please provide a brief explanation how was your company affected.

Transactions that meet the STS requirements, whether they are undertaken in the EU or outside the EU, should be able to obtain the STS status and benefit from the relevant prudential capital and liquidity requirements. That would allow EU banks to have more aligned incentives for investing in and originating or sponsoring STS labelled securitisations in third countries. This, in turn, would enable a better liquidity management and diversification, without the limitations of the jurisdictional scope.

Question 5.2. Should non-EU entities be allowed to issue an STS securitisation?

Yes
No
No opinion

Please explain your answer. If you answered yes, how should the second sub-paragraph of Article 18, that requires that the originator, sponsor and SSPE involved in a securitisation considered STS shall be established in the Union, be revised?

EU investors should be subject to the same prudential treatment, regardless of whether they invest in STS securitisations where the sell-side entities are EU-based or based in third countries. This would reduce concentration risk and give EU investors greater choice. It would also help grow use of the label and increase liquidity in the market.

The original proposal made by the European Commission for the SECR in 2015 was for STS status to be open to all countries, provided they met the STS requirements. The exclusion of non-EU countries from the STS framework was a later addition in the legislative process. We would support revisiting the jurisdictional requirements contained in Article 18.

In addition to removing the jurisdictional barriers (allowing entities from any country to qualify by complying with EU STS criteria), a framework could be established for transactions originated in third countries to be STS recognised. Such a framework could follow the Basel STC requirements and where third country securitisations meet such requirements that would be afforded the same prudential treatment as is given to EU STS labelled securitisations.

Question 5.3. Should securitisations issued by non-EU entities be able to acquire the STS label under EU law?

Yes, in case the securitisation is issued in a jurisdiction that has a regime declared to be equivalent to the EU STS regime;

Yes, in another way, for example by other mechanisms used in financial services legislation like recognition or endorsement;

No

No opinion.

Please explain your answer.

See our response to question 5.2.

Question 5.4. Which considerations could be relevant to introducing any of the above mechanisms (e.g. equivalence/recognition/endorsement/other) and which could be the conditions attached to such mechanisms?

The mechanism should be by recognition or meeting the relevant criteria to be seen as STS labelled based on the Basel STC requirements.

6 Sustainability disclosure

SECR requires that where the underlying loans are residential mortgages or auto loans/leases the available information related to the environmental performance" of the underlying assets is published for STS securitisation. This obligation was amended with the capital markets recovery package by including a derogation, whereby originators may, instead, choose to publish "the available information related to the principal adverse impacts of the assets financed by underlying exposures on sustainability factors". The Commission is asked to investigate whether the requirements in Articles 22(4) [term STS] and 26d(4) [on-balance-sheet STS] about publishing the available information related to the environmental performance of the assets should be extended to securitisation where the underlying exposures are not residential loans or auto loans or leases, with a view to mainstreaming environmental, social and governance disclosure.

Question 6.1. Are there sufficiently clear parameters to assess the environmental performance of assets other than auto loans or mortgages?

Yes, for all asset classes
Yes, but only for some asset classes (please specify)

- *Mortgages*
- *Auto loans*
- *Loans linked to sustainable investment (solar systems, efficiency upgrades etc.)*

No
No opinion

Question 6.2. Should publishing information on the environmental performance of the assets financed by residential loans and auto loans and leases be mandatory?

Yes, the information is currently available
Yes, but with a transitional period to ensure the availability of information
Yes, with a grandfathering arrangement for existing deals
No
No opinion

This should not be mandatory but should be required if such securitisation seeks to have an ESG accreditation.

Question 6.3. As an investor, do you find the information on environmental performance of assets valuable?

Yes
No
No opinion

Describe the use you have made of it?

The information is useful as a comparison tool across different asset pools, because it helps investors assess differences between originators, changes over time, etc.

Question 6.4. Do you think it is more useful to publish information on environmental performance or on adverse impact and why?

Adverse impact should be published where it is possible to assess or otherwise available. For cases where that is not the case, disclosure of environmental performance should be sufficient.

Question 6.5. a) Do you agree that these asset specific disclosures should become part of a general sustainability disclosures regime as EBA is developing?

Yes
No
No opinion

Asset specific disclosures should only apply to securitisations which are marketed as ESG bonds/securitisations. Applying the same standard to all transactions regardless of how they are marketed creates additional costs and barriers to issuance and should be avoided.

Question 6.5. b) Should ESG disclosures be mandatory for (multiple choice accepted):
Securitisation that complies with the EU green bond standard;
RMBS;
Auto loans/leases ABS;

The SECR and the STS regime already impose a very high standard of mandatory diligence and disclosure, including, for example, in Article 22(4) information relating to environmental performance. For most public ESG securitisations, the critical diligence and disclosure is in relation to the ESG eligibility criteria, how that ESG criteria meets the requirements of the relevant ESG framework, and details of verification that has been carried out. All of this can be well achieved within the existing EU framework, including the Prospectus Directive. A mandatory ESG disclosure regime for all securitisations/forms of collateral would be counter-productive to the growth of the ABS market (i.e. it has the potential to create needless additional cost and time burdens for products where such disclosure is simply not necessary).

For most ABS deals (with the main exception being Collateralised Loan Obligations – CLO) the collateral pool is static, so ESG KPIs at the pool level would be hard as there no path to improve on them. Thus, criteria would need to be on the sponsor, originator, servicer, or some combination thereof (as an example, for RMBS deals, the KPIs could be on the mortgage lender that originates the loan).

Question 6.6. Have you issued or invested in a green or sustainable securitisation? If yes, how was the green/sustainability dimension reflected in the securitisation? (multiple choice accepted)

Green or sustainable underlying assets

Yes, "the day 1 portfolio" in case of a static deal or "the eligibility criteria" in case of a revolving deal to include only assets that align with Green/Social Bond principles (in case of public transactions) and/or with DB's own sustainability framework (in case of private transactions)

Use of proceeds for green/sustainable projects. If so, please describe how the use of proceeds principle is applied

There have been a number of precedent transactions that combine ABS deals with Use of Proceeds concepts that are found in corporate bond deals. Essentially for a Green ABS deal of $X, some amount of the ABS deal's static collateral pool qualifies as Green ($Y), and then the remaining amount ($X-$Y) follows a corporate Use of Proceeds path where asset originations over a period of time will cover ($X-$Y). It is important to note that the Green loans originated since the close of the Green ABS deal will never end up in that ABS collateral pool, just that they will be allocated against it (in a ledger) and not be used as Green assets for any other deal.

Green/sustainable collateral AND use of proceeds for green/sustainable projects. If so, please describe how the use of proceeds principle is applied

Not arranged a mixed day 1 and future use of proceeds securitisation transaction so far

Other (please describe)

Question 6.7. According to the Commission proposal for a European green bond standard, a securitisation bond may qualify as EU green bond if the proceeds of the securitisation are used by the issuing special purpose vehicle to purchase the underlying portfolio of Taxonomy-aligned assets. Is there a need to adjust this EuGB approach to better accommodate sustainable securitisations or is there a need for a separate sustainable securitisation standard?

Yes
No
No opinion

[If so, what should be the requirements for a securitisation standard?] Please explain your answer.

The EU taxonomy is an excellent starting point for green/social bonds including ABS, but it has not been written with securitisations in mind. Outside of standard assets like mortgages and motorised vehicles with clear guidance under the taxonomy, securitisations see a variety of niche asset classes. A dedicated securitisation asset standard would facilitate corresponding issuance. As an example, there is a shortage of EU taxonomy-friendly sustainable collateral in the securitisation space. Given the importance of ABS as a tool in financing markets, clearly allowing for transitioning assets initially could lead to successfully development of a sustainable securitisation market.

A securitisation standard should include structural guidance.

- *Securitisation transaction where the full collateral portfolio is not sustainable yet but have (i) a floor amount of such sustainable assets and (ii) with a stated goal of migrating collateral to sustainable with a short or medium time frame, should be able to qualify for sustainable securitisation label.*
- *Clarity around application of sustainability-linked financing principles to securitisation would also be beneficial. As the securitisation vehicles are not entities of substance, the linked KPIs need to apply to different aspects of the transaction such as the collateral or originator or servicer, etc.*

Another crucial point in a securitisation-specific standard would be to clarify the relationships and overlaps against other securitisation specific regulations such as risk retention rules, STS rules, ESMA reporting templates, ABS QE programme eligibility, rating provider rules etc.

7. A system of limited-licensed banks to perform the functions of SSPEs

We refer to the response by association AFME for this section.

SECR text has tasked the Commission to investigate if there is there a need to complement the framework on securitisation by establishing a system of limited licensed banks, performing the functions of SSPEs and having the exclusive right to purchase exposures from originators and sell claims backed by the purchased exposures to investors.

Question 7.1. Would developing a system of limited-licensed banks to perform the functions of SSPEs bring added value to the securitisation framework?

Yes
No
No opinion

Question 7.2. If you answered 'yes' to question 7.1, please specify what elements should such a system include?

8. Supervision

We feel that feedback to this section is more appropriate by supervisory or other regulatory authorities.

The Joint Committee of the ESAs' report on the implementation and functioning of the securitisation framework noted some possible shortcomings in the supervision of the market. This section seeks to gather additional feedback in the areas identified by the Joint Committee.

Question 8.1. Are emerging supervisory practices for securitisation adequate?

Yes
No
No opinion

Question 8.2. Have you observed any divergences in supervisory practices for securitisation?

Yes
No
No opinion

Question 8.3. If you answered ‘yes’ to question 8.2, please explain your answer.

Question 8.4. Should the Joint Committee develop detailed guidance (guidelines or regulatory technical standards) for competent authorities on the supervision of any of the following areas.
the due diligence requirements for institutional investors (Art 5) Yes
No
No opinion

Please explain your answer.

risk retention requirements (Art 6) Yes
No
No opinion

Please explain your answer.

transparency requirements (Art 7) Yes
No
No opinion

Please explain your answer.

credit granting standards (Art 9) Yes
No
No opinion

Please explain your answer.

private securitisations Yes
No
No opinion

Please explain your answer.

STS requirements (Articles 18 – 26e) Yes
No
No opinion

Please explain your answer.

Question 8.4. Are any additional measures necessary to make sure that competent authorities are sufficiently equipped to supervise the market?

Yes
No
No opinion

Please explain your answer.

Question 8.5. Do supervisors consider the disclosure requirements (both the content and format) for public securitisations sufficiently useful?

Yes
No
No opinion
Please explain your answer. In particular, if you answered ‘no’, how could they be improved?

Question 8.6. Do supervisors consider the disclosure requirements (both the content and format) for private securitisations sufficiently useful? If not, how could they be improved?

Yes
No
No opinion

Please explain your answer. In particular, if you answered ‘no’, how could they be improved?

9. Assessment of non-neutrality correction factors impact

The current regulatory capital framework for securitisations is built on non-neutrality correction factors to capture the agency and model risks prevalent in securitisations. These include

the (p) factor, a capital surcharge on the tranches relative to the underlying pool’s capital set at a minimum of 0.3 (30% capital surcharge) for SEC-IRBA (Article 259(1) of the CRR) and at 1 for SEC-SA (Article 261(1) of the CRR) (100% capital surcharge)

the capital floors, whereby the lowest risk weight that may be assigned to the senior securitisation tranche may not be less than 15% (10% in the case of a simple, transparent and standardised -“STS”- securitisation)

Question 9.1 a) In your view, is the capital impact of the current levels of the (p) factor proportionate, having regard to the relative riskiness of each of the tranches in the waterfall, and adequate to capture securitisations’ agency and modelling risks?

Yes
No
No opinion

Question 9.1 b) If you would favour reassessing the current (p) factor levels, please explain why and what alternative levels for (p) you would suggest instead.

The re-calibration of the securitisation Risk Weight framework was part of the post-2008 crisis reform to strengthen prudential regulation. However, this re-calibration of Risk Weight methods did not take into consideration market changes, including regulations introduced to enhance investor protections and create a prudentially safer asset class. These covered, for example:

- Risk retention requirement to better align incentives between originators, original lenders and sponsors and investors;
- Enhancement to credit underwriting standards and ongoing monitoring procedures (e.g. mortgage directive);
- Investor due diligence requirements require investors to undertake appropriate due diligence and not solely rely on external ratings;
- Performance reporting to investors in securitisation; and
- Regulations governing external ratings provided by credit rating.

Furthermore, the re-calibration of the securitisation Risk Weight methods has been undertaken independent of the proposals under the Final Basel III, in particular the Output Floor and the changes to the internal ratings-based approaches. In this context and given the expected enhancement of banks' RWA outcomes, it is appropriate to look again at the Risk Weighting of securitisation as an asset class.

Improved market structure, regulatory changes enhancing investor protection and reducing complexity, as well as the Final Basel III mitigate agency and modelling risks. Specifically, a reduction of the p-factor is required under both the Internal Ratings-Base Approach (SEC-IRBA) and the Standardised Approach (SEC-SA). The factor determines the overall level of capital required for the portion of tranches that reside above securitisation exposures that absorb losses up to the amount of capital that would be required for the underlying exposures, if held directly by the bank.

It is important to note that the U.S. did not adopt the hierarchy of methods within the revised securitisation framework and instead use the SSFA and SFA formulae, which contain lower p-factors than the risk weight framework adopted by the EU.

To better risk align the capital requirements and take into consideration the aforementioned improvements to securitisation, the table below provides recommended changes to the p-factor and a comparison to the U.S.

p-Factor		Europe	US
SEC-SA (Art. 261 – 262)	Current:	▪ Non-STS – 1 ▪ STS – 0.5	Under SSFA – 0.5
	Recommendation:	▪ Non-STS – 0.5 ▪ STS – 0.25	
SEC-IRBA (Art. 259 – 260)	Current:	▪ Floor (STS & non-STS) – 0.3 ▪ Max range – 0.75 (for STS) to 1.5 for low risk mortgage pools (non-STS)	SFA still in use and while p-factor is not an explicit input in the SFA formula, implicitly it is close to 0.

p-Factor		Europe	US
	Recommendation:	▪ Non-STS – Floor of 0.25 & Cap of 0.75 ▪ STS – Floor of 0.1 & Cap of 0.3	

NPE Securitisations:

Whilst the question was specific to the current levels of the p-factor, it is important to highlight that NPE securitisations risk weight methods can be better recalibrated.

The approach of subjecting securitisations of NPE to a different risk treatment compared to securitisations of performing assets is one that we support. We were therefore encouraged by the initiative undertaken by the European Banking Authority (EBA) to investigate how the risk weight methods should be re-calibrated to better align the risk and regulatory capital requirements.

The publication of the EBA's opinion[1] provided a comprehensive overview of the European NPE landscape and prudentially sensible recommendations on how to re-calibrate the Risk Weight formulae and clarification on the determination of maximum capital requirements available for immediate use.

The Capital Markets Recovery Package[2] adopted earlier this year, whilst providing a separate Risk Weight framework for NPE securitisations, did not appropriately leverage the comprehensive foundation set by the EBA's opinion to develop a prudentially responsible but appropriately risk sensitive framework. This approach would have also had the benefit of being better calibrated in view of the Final Basel III reform.

We recommend including the securitisation caps as per the EBA's Opinion.[3] In particular:

- *SEC-IRBA using Advanced IRBA risk parameters – A full net basis calculation as the appropriate approach for determining the maximum Risk Weight for the most senior tranche and maximum RWA amount for all the securitisation positions held by an institution in a single securitisation; and*
- *SEC-SA and SEC-ERBA – A maximum Risk Weight of 100% for the senior tranche where the non-refundable purchase price discount ("NRPPD") is at least equal to 20% (our rationale is provided below) or in the case the originator was able to apply that same Risk Weight on the underlying portfolio pre-securitisation.*

[1] EBA opinion is the opinion of the European Banking Authority to the European Commission on the Regulatory Treatment of Non-Performing Exposure Securitisations issued on 23 October 2019.
[2] Capital markets recovery package is Regulation (EU) 2021/558 of the European parliament and of the Council of 31 March 2021
[3] Refer to pages 7, 8, 27 & 28 of the EBA's Opinion paper

The CMRP's approach removes risk sensitivity in determining the risk weight for the most senior tranche. For example, a senior tranche of a NPE securitisation secured by Residential or Commercial Real Estate will have a lower risk, due to the appraised market value of the collateral securing the underlying loans, compared to a pool of unsecured NPEs. It is more risk-aligned to distinguish between different risk profiles of underlying NPEs. Furthermore, senior tranches generally benefit from credit enhancement to the purchase price of NPE portfolios in the form of funded equity tranches. This further reduces the risk of the senior tranche compared to the underlying NPE portfolio.

For defaulted assets in respect of which a write-down of at least 20% has already been taken, the Risk Weight of the underlying assets would be 100%. It therefore makes sense to say that, where a pool of defaulted assets has been sold into a securitisation with a NRPPD of at least 20% (rather than the current 50% as a minimum standard for "qualifying" NPE securitisations), the senior tranche should never be Risk Weighted at more than 100%. This amounts to an administrative adaptation of a principle already acknowledged by Basel to be sound.

A re-calibration of the SEC-IRBA using the Advanced IRBA risk parameters and SEC-SA formulae, should also be considered, as this is most optimal solution in maintaining risk sensitivity for NPE securitisations. This will also incentivise better and more prudent risk management practices than simply fixing a single risk insensitive Risk Weight.

An illustration of the Risk Weight impact on a senior tranche of a NPE securitisation using a hypothetical example is set out below. Summary of the adjustments to the relevant formula functions are:

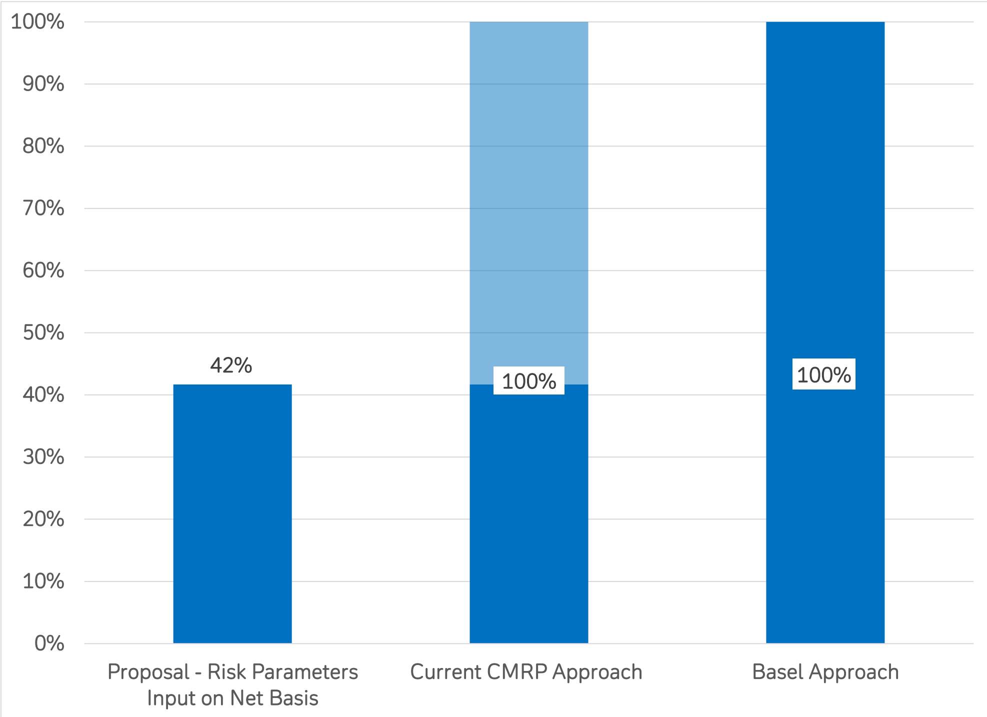
- *SEC-IRBA using Advanced IRBA risk parameters: Risk parameters including, KIRB and ELGD adjusted to recognise the NRPPD and tranching and securitised exposure value based on purchase price. In addition the supervisory parameters A, B C, D and E based on the row wholesale, non-senior, non-granular; and*
- *SEC-SA: Adjusting the non-neutrality p-factor to 0.5 and re-purposing the delinquency ratio ("W").*

Note that Risk Weight number generated by the revised SEC-IRBA and SEC-SA formulae is floored at 50%.

These examples show how the work begun by the EBA can be further progressed to develop appropriate SEC-IRBA and SEC-SA Risk Weight functions for securitisation of NPEs. Re-calibrated formulae will allow for an alignment between risk and capital and allow securitisation to play a key risk management role in a market ready for the COVID-19 rcovery and the Final Basel III.

SEC-IRBA using Advanced IRBA Risk Parameters:

The graph below provides an illustration of the Risk Weight for the most senior tranche where risk parameters are included on a net basis, current approach within the CMRP and Basel approach.



__Assumption common to all approaches illustrated in the graph above are:__

Gross Basis Risk Parameters:	
Securitised Portfolio Notional	*100*
Securitised Portfolio Purchase Price	*30%*
NRPPD	*70%*
Percentage of Portfolio Defaulted	*100%*
ELGD	*71%*
BE(EL)	*70%*
LGD - BE(EL)	*1%*
KIRB	*71%*
Effective Number (N)	*100*
Senior Tranche Thickness	*21%*

__The calculated senior tranche Risk Weight for the approach labelled "Proposal – Risk Parameters Input on Net Basis" has been based on risk parameters input on a "net basis", tranching performed on the net purchase price rather than gross notional of reference pool and supervisory parameters A, B, C, D and E being from the row labelled, Wholesale – Non-senior, non-granular.__

"Full Net Basis" Risk Parameters:	
Securitised Pool Net Notional	*30*
Senior Financing Balance	*21*
Senior Tranche Thickness	*70%*

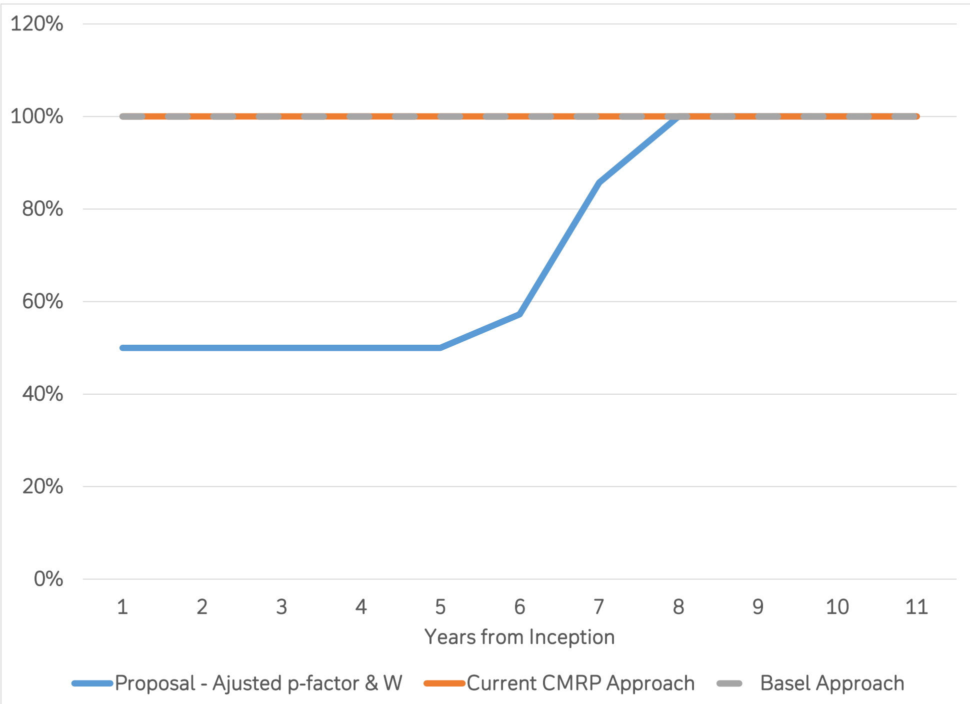
ELGD	*3%*	*- NRPPD netted & rescaled for purchase price*
Capital Requirement	*3%*	*- NRPPD netted & rescaled for purchase price*
BE(EL)	*0%*	*- NRPPD netted & rescaled for purchase price*
KIRB	*3%*	*- NRPPD netted & rescaled for purchase price*

	A	*B*	*C*	*D*	*E*
Wholesale, Senior, granular	*0*	*3.56*	*-1.85*	*0.55*	*0.07*
Wholesale, Non-senior, non-granular	*0.22*	*2.35*	*-2.46*	*0.48*	*0.07*

Note that overall Risk Weight in the above graph is based on the lower of the Risk Weight resulting from the formulae and maximum Risk Weight cap based on the full net basis set out in the EBA's opinion.

SEC-SA:

The graph below compares the senior tranche Risk Weights between; (i) a proposal that adjusts the p factor and delinquency ratio ("W"); (ii) current approach within the CMRP; and (iii) the Basel approach.



Assumptions common to all three approaches in the graph above are set out in the table below.

Securitised Portfolio Notional	*100*

Securitised Portfolio Purchase Price	*30%*
NRPPD	*70%*
Percentage of Portfolio Defaulted	*100%*
Securitised Portfolio RWA	*150*
Non-Performing RW	*150%*
KSA	*12%*
Attachment Point (based on pool notional)	*79%*
Detachment Point (based on pool notional)	*100%*

Assumptions specific to the different approaches are set out in the tables below. In particular, the line graph labelled "Proposal – Adjusted p-factor & W" considers a p-factor of 0.5 and W that begins at 20% for the first year and accretes up to 100% over a further 10-year period. Where the 10-year period is considered for illustrative purposes.

	Proposal - Adjusted p-factor & W	*Current CMRP Approach*	*Basel Approach*
p-factor	*0.5*	*1*	*1*
Min NRPPD	*20%*	*50%*	*50%*
Senior Tranche Max RW	*100%*	*100%*	*100%*
Senior Tranche RW Floor	*50%*	*N/A*	*N/A*
Delinquency Ratio ("W")	*See Separate Table Below*	*100%*	*100%*

Years from Inception	*1*	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*	*11*
Delinquency Ratio (W)	*20%*	*28%*	*36%*	*44%*	*52%*	*60%*	*68%*	*76%*	*84%*	*92%*	*100%*

Rationale for Adjusting p-factor and Delinquency Ratio ("W") under the SEC-SA:

The non-neutrality p-factor is a surcharge to the securitised portfolio RWA such that the sum of the RWA of all the tranches is more than the RWA of the securitised pool by the p-factor. Therefore, a factor of 1 translate in to a surcharge in the RWA of 100% for all the tranches compared to that of the securitised portfolio.

For NPE securitisations, reducing the p-factor from 1 to 0.5 can be justified on the basis that the NPE portfolio carries a high Risk Weight (i.e. 150%) hence a 100% surcharge (or p-factor of 1) is sufficiently conservative. It would also bring the p-factor in line with that used within SSFA implemented in the U.S.

The conventional use of the delinquency ratio ("W") has been to track non-performance of the securitised pool. For NPE portfolio, W would be 100% and hence suggesting that the portfolio has instantaneously become non-performing, which is misleading and therefore, *the delinquency ratio should be re-purposed. In the example above, we propose a delinquency factor based on a supervisory provided table, which for the initial year would begin at 20% and accrete over the following 10 years to 100%.*

The basis for the SEC-SA proposal is to: (i) retain a simplified, standardised approach; (ii) minimise variability in Risk Weights across the market; and (iii) retain risk sensitivity based on the seniority of each tranche. Additionally, the accretion of W (increasing in each year of the transaction) reflects the economic reality that some underlying exposures may be easier to resolve (resolution occurs early in the transaction), whilst over time, the residual NPE portfolio may contain exposures that are more complex to resolve, therefore carrying more risk.

Question 9.2 Are current capital floor levels for the most senior tranches of STS and non-STS securitisations proportionate and adequate, taking into account the capital requirements of comparable capital instruments?

Yes
No
No opinion

Please explain your answer.

In relation to NPE securitisation, we refer to our response to Question 9.1 for a proposed floor on the Risk Weight resulting from the SEC-IRBA and SEC-SA formulae.

Question 9.3 Are there any alternative methods to the (p) factors and the capital floors to capture agency and modelling risk of securitisations that could be regarded as more proportionate?

An alternative, to the use of p-factor to capture 'agency' risk, such as servicer default/termination, would be to carve out the p-factor from the formula, and include a scaling factor to the formula-driven Risk Weight to reflect servicer risk. The scaling factor would be determined based on observed servicer defaults/termination in public deals over 10+ year period (rating agencies would probably be able to pull this data).

Please provide evidence to support your responses to the above questions.

10. Maturity

With reference to question 9, the level of the maturity of the tranche has an important impact on the calculation of the (p) factor in SEC-IRBA, the look-up table of SEC-ERBA, and indirectly in the calibration of the (p) factor in SEC-SA in order to keep the relative capital charges under the hierarchy of approaches. EBA Guidelines on the determination of the weighted average maturity of the contractual payments due under the tranche have provided a methodology to calculate the maturity of a tranche in a more accurate way, helping to mitigate that impact.

Question 10.1. Do you think that the impact of the maturity of the tranche is adequate under the current framework?

Yes
No
No opinion

Please explain your answer.
Under the current framework one can linearly interpolate between 1 and 5 years maturity to achieve an RWA benefit if the notes have a maturity shorter than 5 years. One also can use historical prepayment rates for the underlying security and asset class to derive the expected maturity.

The issue is that almost all ABS and CLO exceed 5 year expected maturity, both from day 1 when they are issued and even many years later, even when taking prepayments in consideration. The only space that gets some benefit is AA and A CLOs when the CLOs are around 4 years old. As such almost no securities are benefitting from this change of taking prepayment speed into consideration. This has left a large part of securities that dealers avoid owning due to the heavy RWA charge associated with the risk. This is especially the case for AA, A, BBB and BB rated securities.

The associated liquidity gap from the lack of demand means that investors may find it harder to sell their holdings, especially during market turmoil. That is because, when markets are disrupted, investors rely on market-makers to find the clearing price level. However, dealers (banks) will not want to own these securities due to the RWA impact. As a result, the investor can end up with drawdowns on the asset class.

The concern is that the increasing illiquidity could eventually lead to investors exiting the market altogether. That will further undermine the market size and capacity, especially for these securitisations.

Question 10.2. Is there an alternative way of considering the maturity of the tranche within the securitisation framework?

Yes
No
No opinion

Please explain your answer.

We would recommend using real data metrics for each sub-asset class to derive expected maturities for those securities. This is of particular benefit to ABS which currently sees no benefit from prepayment speeds being allowed.

With both ABS and CLOs there has been enough issuance and enough data to show how long after issuance bonds mature. One could then take the average of this and apply that as the expected maturity.

11. Treatment of STS securitisations and asset-backed commercial papers (ABCPs) for the liquidity coverage ratio (LCR)

This section is not relevant for DB

STS securitisations currently qualify as level 2B assets under the LCR delegated act, subject to certain additional requirements laid out therein. If STS securitisations were reclassified as level 2A, up to 40% of a credit institution's liquidity buffer could be made up of STS securitisations.

ABCPs may qualify as STS securitisations but do not meet the necessary requirements to qualify as liquid assets for LCR-purposes.

Question 11.1 a) Should STS securitisations be upgraded to level 2A for LCR purposes?

Yes
No
No opinion

Please explain your answer.

Question 11.1 b) If you answered 'yes' to question 11.1(a), should specific conditions apply to STS securitisations as Level 2A assets to mitigate a potential concentration risk of this type of assets in the liquidity buffer.

Please support your arguments with evidence on the liquidity performance of STS securitisations or parts of the market thereof, providing in particular evidence of the liquidity of the asset in crisis times such as March 2020.

Question 11.2 a) Should ABCPs qualify as level 2B assets for LCR purposes?

Yes
No
No opinion

Please explain your answer.

Question 11.2 b) Should specific conditions apply to ABCPs as level 2B assets for LCR purposes.

Please support your arguments with evidence on the liquidity performance of ABCPs, providing in particular evidence of the liquidity of the asset in crisis times such as March 2020.

12. SRT tests

The guidance on SRT and insight into the principles articulated in the relevant EBA report for achieving SRT for NPE was particularly relevant.

Although the guidance was relevant, its application was limited by the recently-published European Commission answer from 17 June 2021 to Member of European Parliament José Manuel García-Margallo y Marfil (PPE) question of 24 March 2021 (E-001621/2021).[4] The answer covered in particular the possibility to avoid the application of the CET1 loss-cover (Prudential Backstop) in cases of SRT for NPE securitisations. The answer linked the SRT treatment to achieving accounting de-recognition under IFRS. The Commission answer requires that both SRT and accounting de-recognitions must be achieved, in order to exclude the securitised portfolio from the NPE Prudential Backstop requirement.

Unlike SRT, the IFRS de-recognition is not based on the analysis of a risk transfer. It is rather based on an assessment that considers both i) control of the asset; and ii) transfer of substantially all the risks and rewards. The practical application of measuring the transfer of substantially all the risks and rewards assesses the variability in cash flows before and after transfer, establishing a maximum of 10% retention threshold.

This difference between accounting and SRT assessment poses the following issues for traditional and synthetic securitisations:

- *For traditional securitisations:*
  - *IFRS accounting de-recognition relies on an assessment that references the variability in cash flows before and after transfer. The variability is calculated by reference to the probability of various outcomes. These probabilities are subjective and difficult to substantiate. This is not a risk transfer methodology as contemplated by SRT.*
  - *SRT can be achieved at retention levels higher than the 10%.*
  - *By linking it to the accounting de-recognition, the Commission has effectively lowered the threshold to 10% risk transfer.*
  - *This is a particular problem for first-loss risk retention. A junior tranche with a trance thickness of 25% would require a 20% holding to achieve the minimum risk first-loss retention of 5%.*
  - *It is unlikely that full IFRS accounting de-recognition would be achieved with a holding of 20% of the first loss tranche using this variability assessment.*
  - *It is most likely that, under IFRS, the transferor would be required to recognise the assets based on its level of continuing involvement, which is a form of partial recognition.*
- *For synthetic securitisations:*
  - *It is rare to de-recognise the referenced assets.*
  - *Consequently, the NPE Prudential Backstop charge will continue to apply to the securitised portfolio, even if SRT is achieved.*

Securitisation remains an effective method to de-risk balance sheets from risky assets. Its continued use for NPE portfolios will likely to be limited if the NPE Prudential Backstop continues to apply to the securitised portfolio, even if SRT is met, as implied by the Commission answer.

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[4] Answer for question E-001621/21 (europa.eu)

We suggest that the Commission revises the guidance from the above-mentioned answer so that securitised portfolios can be excluded from the NPE Prudential Backstop if the SRT requirements are met. Such revision can be provided via amendments to the CRR Article 247, as follows:

Article 247

Calculation of risk-weighted exposure amounts

(1)Where an originator institution has transferred significant credit risk associated with the underlying exposures of the securitisation in accordance with Section 2, that institution may:

(a) in the case of a traditional securitisation, exclude the underlying exposures from its calculation of risk-weighted exposure amounts, the minimum loss coverage, and, as relevant, expected loss amounts;

(b) in the case of a synthetic securitisation, calculate risk-weighted exposure amounts, the minimum loss coverage, and, where relevant, expected loss amounts, with respect to the to the underlying exposures in accordance with Articles 251 and 252

The recent EBA report on significant risk transfer (SRT) recommended improving the current SRT tests, the specification of the test on the commensurate transfer of risk (CRT test) and the implementation of a new principle-based approach test (PBA test).

The allocation of the lifetime expected losses (LTEL) and the unexpected losses (UL) of the underlying portfolio plays a fundamental role in those tests. In synthetic securitisations in particular, the consideration of optional calls and the application of Article 252 of the CRR on maturity mismatches affect the outcome of the tests. Optional calls shorten the expected life of the deal, reduce the LTEL as a result, and favour the allocation of the UL to the tranches that provide credit enhancement, while, at the same time, such calls may trigger the application of Art. 252 on maturity mismatches, thus increasing the capital charge on the tranches retained by the originator.

Question 12.1. Do you agree with the allocation of the LTEL and UL to the tranches for the purposes of the SRT, CRT and PBA tests, as recommended in the EBA report?

Yes
No
No opinion

Please explain your answer.

The new proposed tests are impossible to pass in practice for amortising CLOs with pro-rata to sequential triggers. The main reason is that the LTEL + UL are sufficiently close to the tranche thickness for most real-life existing CLO transactions, such that soon after a CLO starts to amortise the tranche thickness reduces to the point the LTEL + UL exhausts the tranche including for the evenly loaded scenarios.

As a theoretical example, a LTEL + UL of 6% (calculated at time t=0), for a CLO with tranche thickness of 7.5%, (this is typical for investment grade large corporate portfolio) would mean *that once the CLO had amortised to around 80% of the initial portfolio size, the remaining equity tranche would be exhausted with the full allocation of LTEL and UL to it. That would mean the tranche would stand no chance of passing the proposed SRT tests (LTEL + 2/3 UL), if that is also needed to be applied on top of the evenly and back loaded scenarios.*

One issue is that the LTEL and UL are calculated as an absolute amount using the full portfolio size at time t=0, but then allocated to an amortising portfolio where the remaining LTEL and UL would be lower, given the reduced size. This might be because the tests have not been designed with an amortising CLO (with pro-rata to sequential triggers) in mind. However, the majority of synthetic securitisations are amortising.

Our proposal is that the LTEL + UL allocation be scaled in line with the size reduction.

A second issue is that the back-loaded scenario is extreme, as it allocates the full UL in the last year of the transaction. This makes it impossible to structure an economically viable CLO and most of the existing SRT transactions would fail for this reason. In any case, the UL should be scaled down in line with any size reductions in the underlying portfolio (e.g. for amortising CLOs to reflect the proportionally reduced risk).

A third issue is that, by allocating the LTEL and UL (calculated at t=0) in the scenarios (evenly-loaded and backloaded), and then imposing the condition that in the future the SRT tests (LTEL + 2/3 UL) need to pass on top of that (i.e. even though LTEL and UL amount of losses will already have been allocated to the transaction), it means that the transaction needs to withstand up to around 2x LTEL + (1.67) x UL. This is an extremely severe scenario that most transactions would fail to pass.

We believe that the SRT test should aim to assess how the tranche itself, and not the SRT status, can withstand the proposed shock (LTEL+UL).

Our proposal is that the effective 'double-allocation' of LTEL and UL should be eliminated for these tests, especially since UL is already a measure of the unexpected loss and so sufficiently extreme and unlikely on its own. To do that, we propose to clarify that the SRT does not need to apply in addition to the evenly-loaded and backloaded scenarios.

Finally, we understand that the EBA has contemplated considering the CLO maturity to use in the SRT test and capital calculations as the time of the earliest call option. Treating the CLO maturity to be the same as the optional time-call date could make the proposed SRT tests less difficult to pass. They could thus be seen as a way to overcome the afore-mentioned issues.

However, the premise of the time-call would be incorrect. That is because there should not be an assumption that there is a positive incentive to call for the originator at that point. The time call is a valuable option for the originator to manage the hedging via these portfolios. The options is structured to ensure there is no incentive to call as required by the CRR. In any event, setting the maturity as the optional time call would not eliminate the fundamental issues with the tests that we explained above.

Question 12.2. What are your views on the application of Art. 252 of the CRR on maturity mismatches when a time call, or similar optional feature, is expected to happen during the life of the transaction?

We do not think that the time-call is a positive incentive such that the CLO maturity should be treated as being the same as the earliest call option date.

For an amortising portfolio and factoring-in rating transitions over the course of a transaction, the economics do not deteriorate. Furthermore, where there is credit quality deterioration of the underlying portfolio, there is in fact a negative incentive to call. If the portfolio quality improves, the time-call becomes a valuable tool for the originator to effectively refinance the transaction with improved economics. This is also demonstrated in practice, 'despite' the majority of our transactions having time-calls, the time call is rarely exercised at the earliest call-option date, and when it has been exercised it has and can be demonstrated that there was no structural incentive to call, but simply a reflection of being able to 'refinance' the required hedging with improved economics.

13. SRT assessment process

Section 5 of the EBA report on SRT laid out a series of recommendations on a suggested process for assessing SRT and standard documentation to be submitted to the originator's competent authority.

Question 13.1. What are your views on the EBA-recommended process for the assessment of SRT as fully set out in Section 5 of the EBA report on SRT?

In principle, the distinction between i) fast track for 'qualifying securitisations' and ii) a longer and more in-depth review that Competent Authorities (CAs) could apply to 'non-qualifying securitisations' (structural features review) is sensible. However, banks have high volume securitisation platforms with a lead time that is significantly shorter than three months. It is therefore critical that CAs are not only able, but also willing to agree with originators on a tailored fast-track process with a shorter period than the generally applicable 3-month-long process (e.g. repeat transactions).

Specifically:

- *5.1 para. 169 b): Explicit point in time feedback from the CA should not be required on whether SRT has been achieved or not. Requiring explicit feedback puts an undue burden on the banks, and creates additional burden for CAs. Instead, the CA could be required to review the ex-ante information provided and only be required to issue an objection stating the reason(s). Without objection until closing of the transaction, tacit approval should be assumed to have been received.*
- *5.2.3 para. 176: The fast-track SRT assessment process should not be limited to those transactions that do not exhibit certain structural features. Repeat transactions with similar structural features, the first of which may have already gone through a structural features review, should also qualify for the fast-track SRT assessment process.*

- *5.2.3 para. 178: Transaction notional size should not be a factor when assessing if that transaction is a 'qualifying transaction'. That is because defining a maximum notional or capital relief amount in any manner would be arbitrary.*
- *5.2.4 para. 181: The 3 month ex-ante review should be much shorter, as its main purpose is to identify whether a transaction falls into the 'Fast track' or 'Structural features review' path. Given the relatively well defined criteria for this, it should be possible to determine this within 4 weeks. The originator can be required to submit their opinion and rationale, if they believe the transaction should qualify for the Fast Track path in order to aid the CA's evaluation. As it is currently laid out, a Fast track transaction does not have certainty of No Objection until 4 months after submitting the original ex-ante review material, and with a 'Structural features review' transaction this could be up to 6 months. Given the detailed assessment and analysis the Originator needs to submit for the Preliminary notice, which can take 1-2 months to complete, this means such transactions may not have certainty of SRT relief for up to 7 to 8 months. Where a bank deems it necessary to free up some capital relatively quickly in times of uncertainty in the markets (e.g. in order to aid more lending to support the economy during Covid-19), these transactions would no longer be an effective tool to achieve this given the long potentially long time-frames.*
- *5.2.4 paras. 182-184: The specific SRT assessment and notification periods and deadlines by the CA appear unrealistic. See comment on para. 169 b).*
- *With regards to the requirements that there is a 'freeze period' between the end of month 2 and 3, it might be difficult in certain transactions that the securitisation's structure and draft documents should not undergo any major changes without the CA's prior consent.*

Finally, the complex and comprehensive SRT tests should be done at inception and not on an ongoing basis. It is important that this is reflected in the future SRT and COREP reporting, which should be simplified. That is in order to reduce the burden on originators who have run similar tests on an ongoing basis for reporting purpose only. It should be made clear that the CA should only impose additional or more frequent reporting based on its power under the CRD in extreme cases.

Question 13.2. Do you agree with the standardised list of documents that the EBA report on SRT recommended for submission to the competent authority for SRT assessment purposes?

No issue.

Question 13.3. Once it has been established that the regulatory quantitative and qualitative criteria are met and transactions are in line with standard market practices, should a systematic ex-ante review be necessary?

Yes
No
No opinion

Please explain your answer.

Once it has been established that the regulatory quantitative and qualitative criteria are met and transactions are in line with standard market practices, a much shorter ex-ante review should be required (see response to question 13.1 regarding para. 181 of the EBA SRT report). Where transactions pass the updated/proposed quantitative tests and are in line with standard market practices with respect to the various features, then a much shorter ex-ante review period should suffice.

Transactions where the entire or almost the entire risk is sold to third parties could be exempt from these requirements. In such cases, originators are still burdened by extensive reporting requirements, when closing such transactions. This burden is increased by quarterly report mandates. Pre-close reporting represents a concern for many securitisation transactions. That is because, in many cases, the relevant information on deal structure, assets etc. only becomes available shortly before closing. Reliable reporting several months before closing is challenging or has a high cost for the originator, which is not justified, because SRT will be met and the risk will be sold.

Supervisors aiming to confirm SRT should primarily rely on publically available data. Quarterly reporting by market participants should be restricted to non-public data.

Question 13.4 Should the ex-ante assessment by the Competent Authority be limited to complex transactions?

Yes
No
No opinion

Please explain your answer.

See our response to question 13.3.

14. Amendments to CRR

Section 6 of the EBA report on SRT recommended a set of amendments of the CRR to simplify and improve the current SRT tests.

Question 14.1 Do you agree with the recommendations on amendments of the CRR as fully laid out in Section 6 of the EBA report on SRT?

Yes
No
No opinion

Please explain your answer.

15. Solvency II

Insurance companies allocate only a small portion of their investments to securitisation positions. The Commission would like to know whether Solvency II standard formula capital requirements or other factors cause limited demand by insurance companies.

The below answers are based on discussions with European insurers, they do not refer to our own approach, as we do not have an insurance business.

Question 15.1. Is there an appetite from insurers to increase their investments in securitisation (whether a senior tranche, mezzanine tranche, or a junior tranche)?

Yes
No
No opinion

Subject to more favorable regulatory treatment – see next question.

Question 15.2. Is there anything preventing an increase in investments in securitisation by insurance companies?

Yes
No
No opinion

Please explain your answer.

Overall the development of the European securities market is comparatively small. Many insurers have no exposure to securitisation. Insurers with non-zero allocation still have limited exposure, often with a narrow range of securitisation or restricted to specific investment. Compared with the U.S., this constitutes an underdeveloped market. U.S. insurers allocate more than ten per cent of their assets in securities. At the same time they constitute a key investor in the United States securities market. E.g. at year-end 2019, out of USD ~7 trn of assets:

- *USD ~225 bn in Agency MBS*
- *USD ~220 bn in non-agency MBS*
- *USD ~315 bn in ABS (~10% total market) on U.S. insurers' balance sheet*

(Source: NAIC, https://content.naic.org/sites/default/files/capital-markets-special-report-cash-invested-assets-2019.pdf)

We understand that among the key drivers for the lack of investment in securitisation by insurers is the capital treatment under Solvency II Standard Formula. In particular, the capital charge (SCR) for securitisation is i) at best (for Senior STS), slightly higher than for bonds of same credit quality and duration; ii) sometimes higher than the SCR for the underlying pool (e.g. AAA RMBS vs. Residential Mortgages); iii) at worst (for non-senior or non STS), the required capital is too high to justify investment.

We include below an illustration of the spread shock implied by spread SCR for sub-5y bonds and securitisation instruments according to Solvency II.

Source: EU 2015/35 (SII directives), Deutsche Bank calculations.

The above-mentioned treatment does not just prevent current or future investment. At the inception of Solvency II, the capital treatment under the Standard Formula (SF) for all securitisations was punitive, including for those with high credit quality. This resulted in a complete divestment from securitisation assets by European insurers, apart from a few using sophisticated Internal Model.

Subsequent amendments to Solvency II led to a reduction in capital charge and the introduction of STS-specific treatment, but those come after insurers had fully divested. The step-by-step reduction in Solvency II capital charge has come too late to allow insurers to maintain their pre-Solvency II securitisation exposure and too slowly to generate sufficient renewed interest. For many European insurers, securitisation is now considered as a new asset class, in which they have little to no expertise. That creates a barrier to entry for future investments.

Other aspects of Solvency II that also inhibit investment in securitisation are:

- *No spread SCR exemption for securitisation guaranteed by EU Sovereign or regional government and local authorities, while other credit investment benefitting from these guarantees attract 0% Spread SCR.*
- *Unrated non-STS securitisation attracting Spread SCR of 100% Market Value.*
- *Exclusion from low SCR treatment of STS securitisations on residential mortgages with LtV >100%.*

Question 15.3. Is the current calculation for standard formula capital requirements for spread risk on securitisation positions in Solvency II for the senior tranches of STS securitisations proportionate and commensurate with their risk, taking into account the capital requirements for assets with similar risk characteristics?

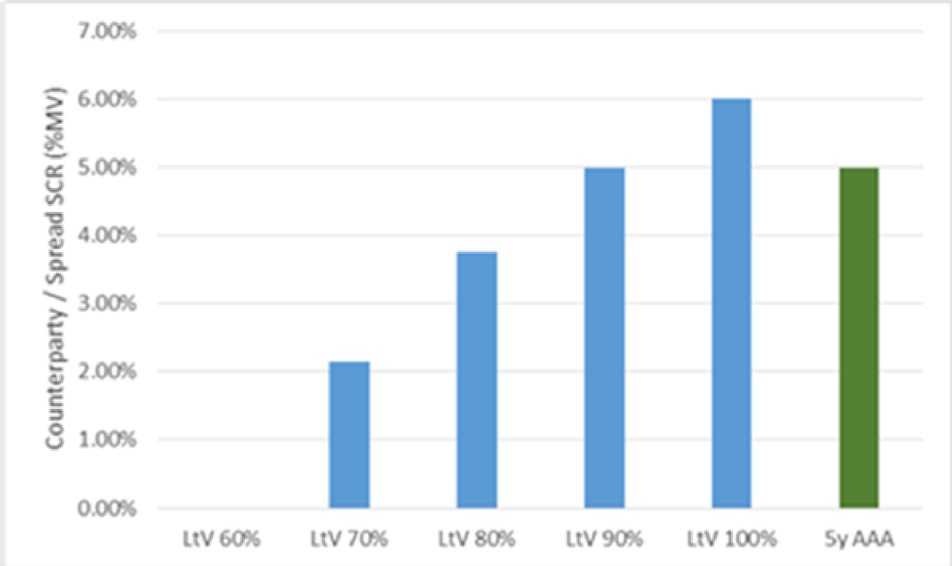
Yes
No
No opinion

Please be specific in your reply and, where relevant, provide a comparison, including where appropriate with internal models and their relative impact on the share of securitisation investments.

STS Senior securitisations benefit from a lower capital charge under Solvency II compared to other securitisations. However, this capital charge is slightly higher than the one associated with bonds of same credit quality and duration. For STS RMBS, the senior tranche may attract a capital greater than the one associated with the underlying Residential Mortgages (if those are treated under the counterparty risk module)

Potential improvements could be 1) to align the SCR for senior STS securitisations to those of Covered Bonds, 2) to cap the capital charge for the most senior securitisation tranches at the SCR of the underlying asset pool.

Illustration – SCR for 5y AAA RMBS and Residential Mortgages with different LtV



Source: EU 2015/35 (SII directives), Deutsche Bank calculations

To address this inconsistency, the capital charge for the most senior securitisation tranches could be capped at the SCR of the underlying asset pool.

Question 15.4. Is the current calculation for standard formula capital requirements for spread risk on securitisation positions in Solvency II for the non-senior tranches of STS securitisations proportionate and commensurate with their risk, taking into account the capital requirements for assets with similar risk characteristics?

Yes
No
No opinion

Please be specific in your reply and, where relevant, provide a comparison, including where appropriate with internal models and their relative impact on the share of securitisation investments.

The SCR for non-senior STS trance is currently ~3x the SCR for bonds of equivalent CQS and duration. This results in much lower return on SCR (RoSCR) for these tranches compared to corporate bonds. The higher credit risk associated with non-senior tranche is already captured by lower CQS compared to Senior tranches; a significantly more punitive SCR calibration for non-senior tranches effectively prevents investment in non-Senior STS.

This 3x ratio of Solvency II capital charges between senior and non-senior STS is consistent with the one observed under CRR. We recommend for this relative consistency between the two regimes to be restored.

Question 15.5. Is the current calculation for standard formula capital requirements for spread risk on securitisation positions in Solvency II for non-STS securitisations proportionate and commensurate with their risk, taking into account the capital requirements for assets with similar risk characteristics?

Yes
No
No opinion

Please be specific in your reply and, where relevant, provide a comparison, including where appropriate with internal models and their relative impact on the share of securitisation investments.

The SCR for non-STS tranches is currently ~8-14x the SCR for bonds of equivalent CQS and duration (or ~7-12x the SCR for equivalent senior STS tranches). This high SCR is one of the main reasons for lack of investment from European insurers into CLOs and CMBS.

The relative increase in SCR between STS and non-STS securitisations could be aligned with the one used under CRR (x2); this would improve the consistency between insurance and bank approach to non-STS securitisation and the attractiveness of those assets for insurers.

Question 15.6. Should Solvency II standard formula capital requirements for spread risk differentiate between mezzanine and junior tranches of STS securitisations?

Yes
No
No opinion

Please explain your answer.

Question 15.7. Should Solvency II standard formula capital requirements for spread risk differentiate between senior and non-senior tranches of non-STS securitisations? Please explain your answer.

Yes
No

No opinion

Please explain your answer.

Introducing different capital treatments for senior and non-senior tranches may decrease the reliance to rating agencies, with CQS no longer the key driver of the SCR. Separate treatment could also allow a more favourable treatment for high quality, non-STS senior tranches, compared to the current punitive capital charge. In line with question 15.3, the capital charge for the most senior securitisation tranches could be capped at the SCR of the underlying asset pool.

However, in line with question 15.4, widely divergent calibration between senior and non-senior tranches may not be justified and would prevent investment in the latter.