FÉDÉRATION
BANCAIRE
FRANÇAISE

30th September 2021

FBF RESPONSE TO THE TARGETED CONSULTATION ON THE FUNCTIONING OF THE EU SECURITSATION FRAMEWORK

When posting its preliminary answer to the above-mentioned consultation (on September 17th on the website of the European Commission), the French Banking Federation announced that it would provide a more comprehensive answer by the end of September, according to the timetable granted by the European Commission.
This more detailed answer lies below.

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1. 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.

From a general point of view, the FBF considers, like the EBF, that the regulatory framework could be improved in a number of aspects to achieve the objectives listed in question 1.1 and detailed below. The proposals dedicated to achieve the said objectives have been reiterated by the High-level forum on the Capital Markets Union and the FBF expects that implementing those proposals would have a positive impact on all those objectives that have not been met.

For example, (i) adjusting the capital non-neutrality factor (as proposed by the CMU HLF), would provide further incentives to securitise and lower regulatory costs for both issuers and investors, thereby increasing overall volume of issuances, in turn improving access to credit in the European Union and contributing to the emergence of a solid EU securitisation market, (ii) recalibrating the risk weights for senior tranches for originators and sponsor institutions, (iii) upgrading the HQLA eligibility of securitisations, (iv) having more targeted disclosures at least for private securitisations (and potentially public ones), and (v) making the significant risk transfer (SRT) process simpler and more efficient would have a similar positive effect (for more specific proposals, please see the relevant sections in this document).

If the regulatory framework does not set the right incentives, the framework will miss its purpose to promote the securitisation activity and to create an integrated securitisation market. Furthermore, the discussion about the review of the securitisation framework comes at the same time as the implementation of the Finalisation of Basel III. Considering that the output floor is calibrated based on the standardised approach that is over-calibrated and not risk-sensitive enough for securitisation, further attention should be paid to this topic to avoid that the reform efforts around securitisation are not undermined.

More specific comments are the following:

Improving access to credit: so far, the securitisation market has not shown any meaningful growth since the implementation of the SECR. While admittedly Covid-19 and monetary policy have played an important role in this development, it is hard to argue that the SECR improved access to credit yet. Reasons for that (in addition to what has been mentioned above) may be the following:

- Costs and governance required for securitisation remains too high for some issuers (SMEs notably), particularly disclosure requirements.
- SMEs or small lending institutions traditionally finance themselves via private warehouse transactions with banks when using securitisation, before targeting capital markets exit (with punitive RWs for bank financers).
- Access to funding at competitive rate for corporates, via trade receivable securitisation, has been somehow limited by some differentiations between STS criteria for ABCP vs non-ABCP for trade receivables transactions and between their RW rules (as per article 243).

Widening the investor base: The SECR has missed the opportunity to widen the investor base since small institutional investors are deterred from investing in ABS, given the fixed costs associated with due diligence. Not directly related to the SECR, the capital treatment for insurers under Solvency II is overly punitive and should be reviewed to incentivise broader participation of insurers in securitisation transactions.

Widening the issuer base: We have seen new issuers entering the market, especially start-ups, finance companies, fintechs and other players without access to central bank money and/or the covered bond market. However, this trend already existed before 2019. The SECR should have reopened the market for traditional issuers (larger banks) by offering a competitive product, but even with the limited benefits of STS, European securitisation is still not at a level playing field with other wholesale funding products. There is potential for new issuers using securitisation for capital purposes, but the synthetic STS amendments are relatively new, so it is not yet possible to see a trend. In addition, the recalibration of the risk weights for senior tranches of securitisation for originators and sponsors banks is crucial to ensure the development of the issuer base.

Integrated EU securitisation market: Although the SECR wishes to contribute to the integration of EU securitisation markets, we consider that the limited progress regarding the widening of the investor base through the current SECR, curbs any actual integration of the EU securitisation market. Besides, other elements of the CMU action plan (like harmonisation of insolvency legislation) must be completed before market integration can actually take off. It is also important to note that, even if the already achieved harmonisation has been helpful in reducing complexity, compliance costs due to prescriptive requirements because of an overly conservative interpretation of the regulation (i.e. requirements for private securitisations as part of the standardised ESMA templates) remain high. In addition, it is the impression of FBF that some rules remain unclear and are applied differently at the national level, such as what is required for SRT prenotification. More guidance, consistency and clarity could be useful.

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.

As mentioned above, regulatory cost due to capital non-neutrality is an important factor and concretely results in selling a higher portion of the first loss piece to get capital relief during the lifetime of the transaction compared to the previous CRR text (so called Supervisory Formula Approach). Even if not needed from a credit perspective, the sale of a higher portion of junior risk to investors (for example, extremely skilled credit funds requiring internal rates of Return in the double digits) to obtain capital relief makes such transactions much more expensive for the originator. Other examples are synthetic securitisations where the operational costs have been raised due to the requirement for an additional set of very rigid disclosure templates which have not replaced the existing and tailored investor reporting, and also SRT where uncertainty about the outcome and the delivery date of the SRT test/assessment play a negative role. Also for synthetic securitisations, a very conservative non-neutrality parameter in the capital treatment of securitisations under the CRR, unclear prudential rules (e.g. SES exposure definition) and uncertainty of the future capital regime (SES, finalisation of Basel III, etc.) impact negatively the cost analysis. Therefore this solution as a risk transfer tool is more and more penalised.

For issuers, additional costs are also related to adjustments in the reporting systems (in order to produce the new data templates and standardised investor reports), additional compliance activities and IT (for example the setting up of the IT platform to populate the templates, which can be even more demanding for some types of securitisations due to specific requirements). For STS additional costs are incurred in order to deliver the STS specific information.

Aside from the abovementioned, there are also additional costs per transaction (repository fees, STS verification fees, cash flow model expenses).

For investors, new requirements for additional due diligence also generate additional costs for regulatory compliance.

2. Private 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)?

Feedback from our members suggests that their number of private securitisations has not increased. It also indicates that private transactions have not grown in the EU market at the detriment of public issuance.

In this respect, two key factors should be taken into consideration, so as not to bias the analysis:

- First, the number of private transactions is artificially inflated due to the way these transactions are reported to ESMA.
- Second, private financing acts as the first step to facilitate future public issuance.

i) the number of private transactions is artificially inflated

Many ABCP transactions that were already in place before STS have been changed into STS-compliant transactions in 2019 and 2020. There is an incentive for banks to do so on their traditional transactions that can qualify as STS, so as to get the capital benefit on the portion that they finance through their conduit.

These transactions are typically large, syndicated deals with 3 or 4 participating banks. As part of that process, each ABCP bank has to post an STS notification to ESMA for the portion that it finances through its conduit. As a result, the same transaction can be subject to 3 or 4 different STS notifications on the ESMA website. There is no such duplication for term/public deals, where only one notification per transaction is performed by the originator.

For instance, the latest market data published by PCS[1] shows the following figures: 172 ABCP v. 86 Term. (2020 full – Total); 29 ABCP v. 27 Term. (2021 YTD – Total). When looking

[1] https://pcsmarket.org/newsletter-jun2021/#market

at these figures, it would be natural to assume that in 2020, the majority of STS transactions were private ABCP ones, and that in H1 2021, the market has become more balanced between ABCP and public transactions. However, such conclusions are far from the truth. We estimate that the number of STS ABCP transactions posted in 2020 should be divided by at least 2.5 to take into account that most of these notifications are for the same transaction, as explained above. Therefore, with this correction, the estimated number of ABCP STS transactions in 2020 would not be higher than 172/2.5 = 69, which is lower than the 86 notifications for term/public deals during the same period.

The fact that there are less ABCP STS transactions in H1 2021 on the ESMA website is also consistent with the fact that the conversion to STS of existing ABCP deals mostly occurred in 2019 and 2020, and that there remains less stock to convert this year.

ii) private financing acts as the first step to facilitate future public issuance (the growth in private transactions is naturally followed-up by a growth in public issuance, while the opposite is not true)

Private financings are often extended in situations where financing through the public ABS market is not initially feasible. This includes different cases, e.g.:

- Emerging companies such as innovative fintechs or growing specialised lenders originating mortgages, consumer/car loans/leasing, that do not have yet sufficient track record and volume of assets to do a public ABS issuance. In that case, banks are funding the asset growth through private warehouse lines. Once the balance of originated assets is large enough and the company is ready, there is a public market issuance that refinances the private bank financing. There is a real incentive for such companies to go for a public issuance when they have reached critical size and accumulated experience and data, as it usually means diversification and a cheaper cost of funding than in the private market.
- Acquisitions of asset portfolios or origination companies by typically PE groups. Such acquisitions require private funding, given both the confidentiality involved and the time sensitive nature of the acquisitions. Once the acquisition is completed, there is often a refinancing in the public market, given again the incentive for the acquired being to benefit from a cheaper cost of funding in the ABS market.

Therefore, private financings can often act as the first step to facilitate a future public issuance. Most of the new originators that have entered the public ABS market in recent years were first privately financed through banks. Once they have access to the public market, they continue to do so. So to allow a vibrant and diverse public ABS market, it is necessary to encourage the private market as well. This is why the High Level Forum made it a priority last year (among others) to:

- recalibrate capital charges applied to senior tranches, in line with their risk profile, for originating and sponsor banks;
- not impose standardised ESMA disclosure templates for private transactions.

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

Explanation:

This question seems addressed to supervisors in priority.

Answering it from our standpoint, we would like to recall that disclosure requirements and supervisory reporting requirements serve different purposes and should be kept distinct from each other:

- Disclosure requirements correspond to the market authorities' mandate of ensuring investor protection (when investing in public securities).
- Supervisory reporting addresses capital adequacy, financial stability and market oversight needs by supervisory authorities and should be addressed based on the type of institutions, on the specificities of the products and the needs of supervisors.

Having said that, one could note that supervisors currently already have access to very detailed information.

First, for SRT transactions, the originator is required to provide very extensive information about the transaction to their supervisors, both as part of the initial SRT assessment and over the life of the transaction.

Second, for private transactions where banks provide securitisation financing to their clients, banks collect detailed information as part of a banking relationship and their credit process. Such information can be provided to supervisors as part of reviews or anytime on demand. This relationship entails close contact with the clients/originator, regular dialog with management, access to detailed information as well as the development of a wider relationship to offer other types of financings or services. Banks thus conduct a thorough due diligence to get the necessary comfort before accepting a new transaction. As part of such due diligence, banks have access to all the information they think is relevant to perform a thorough risk assessment. Such risk assessment is carried out both initially and on an ongoing basis through quarterly risk monitoring and annual reviews.

Finally, through the COREP reporting, banks disclose all their private and public securitisation exposures to their supervisors. Banks are also subject to specific disclosure requirements in the Pillar 3 framework. Consequently, SECR-related disclosures are largely duplicative and not targeted to supervisory needs.

Question 2.4:

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

-Yes

-No

-No opinion

Explanation:

In general terms:

Investors in private securitisations (who are highly specialised like credit funds) carry out their own extensive due diligence and receive bespoke reporting, which better suits their needs and is not necessarily based on the content of the ESMA templates.

The Art 7 disclosure should cover the due diligence requirements under Art 5.3.a (risk) and b (structural features). The requirements of Art 5.3.c (STS) can be fulfilled with the help of the STS verification (which is to be made available as per Art 7).

Therefore, we do not see the need to further strengthen the transparency requirements for the originator.

More specifically, with regard to private client funding:

We would first like to emphasize that investors in private and in public transactions have different profiles, take on different risks and do not have the same information needs.

Banks providing securitisation financing to their clients (on-balance sheet or via ABCP conduits) do so as part of banking relationship. This relationship entails close contact with the clients/originator, regular dialog with management, access to detailed information as well as the development of a wider relationship to offer other types of financings or services. Being the ones taking the risk on private financings (on-balance sheet or via ABCP conduits), banks thus conduct a thorough due diligence to get comfortable before accepting a new transaction. As part of such due diligence, banks have access to all the qualitative and quantitative information they think is relevant to perform a thorough risk assessment. This involves, among others:

- Carrying out due diligence on the originator and the servicer, including requesting third-party audits;
- Analyzing the evolution in the underwriting criteria of the originator and the credit quality of the obligors;
- Studying the asset pool composition, recent trends and historical defaults, recoveries and delinquencies;
- Examining legal and regulatory risks associated with the obligor contracts;
- Checking the collateral valuation history and methodology for secured receivables such as mortgages;
- Calculating the contractual asset cash flows to derive the pool and financing amortisation profile;
- Stress testing the assets cash flows and ensuring that the securitisation financing facility can withstand severe losses scenarios which are typically quantified to be consistent with the investment-grade stress scenarios used by rating agencies;
- Carrying out an independent analysis (by the internal Risk function of the bank) of all the above information and any additional information and a formal Credit Committee process before entering into a new transaction.

So in practice, banks view the originators as clients and view themselves as helping clients getting access to competitive securitisation funding, compared to unsecured financing. However, in the regulations, banks are simply classified as “investors”, at the same level as an ABS investor in a public transaction, with no close relationship with the originator, no ongoing access to the originator’s management and no involvement in the structuring of the deal.

For these reasons, we believe that:

- Investors in private transactions, as well as sponsors, have access to enough information, which is due to the very specific nature of the origination process.
- There should be a distinction in the regulation between investors in private and in public transactions as they take very different roles and risks. This should be done by exempting private securitisations from the obligation to provide the standardized ESMA templates.

Finally, and for the avoidance of doubt, in the case of own account securitisation, the issuing bank that retains some tranches should not be seen as an “investor”. Indeed, retained tranches represent a residual risk that was already on the balance-sheet before securitisation. Consequently, this should be clarified in the regulation, notably given the absence of agency risk (please refer to section 9).

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

-Don’t know/No opinion/not applicable

Explanation:

Market participants strive to fill adequately ESMA templates for a number of private securitisations. The required information is sometimes very granular, mixes important and secondary information, and expresses a level of detail which is sometimes excessive or inadequate. But the main issue is that this information is not really useful in practice to detect, assess and monitor risk, hence is considered as an unnecessary and costly burden.

As pure examples, here are some of the issues identified in relation to these templates:

- the underlying exposure templates contain many fields that cannot be filled; since all fields are mandatory. Then the only solution is to use “ND”. However, ND is not really contributing to transparency, and ND1-4 will have to be gradually phased out, which will lead to reporting problems.
- while the underlying exposure templates for asset classes like RMBS or Auto ABS have been designed with mortgages and car loans in mind, for many other asset classes the templates are not suited to the specifics of the asset classes (with Corporate/SME as a striking example) or non-existing at all (e.g. trade receivables). In addition, line by line information is useless for short-term revolving pools (credit cards, trade receivables) that are better monitored through aggregate indicators (excess spread, ageing balance etc.). So for many asset classes, it is almost impossible or meaningless to insert the data in the rather artificial categories as required in the templates.
- the Investor report and significant events templates are one-size-fits-all reports that have to cover a wide range of securitisations with different characteristics.

- According to our observation, standardized templates are more useful for large public deals, but less so for private SRT deals with their specific characteristics and a limited number of specialized investors.

In the private financing business, banks contractually agree with their clients/originators on the necessary information to monitor their securitisation transactions. It is worth noting that there was already enough transparency before the ESMA templates were introduced, thanks to the reports used by private market participants. Most importantly, the type of information required by banks to assess the risk they are taking on is different from the content and format of ESMA reports. For instance, the reporting required by banks needs to be aligned with the way the transaction features such as eligibility criteria, concentration limits, performance tests and specific covenants are defined. This means that each reporting is “tailor-made” to reflect the specificity of each deal. The “one-size fits all” approach of the ESMA templates is not workable for this purpose.

For on-balance sheet securitisation, ESMA templates are not appropriate for deals like synthetic securitisations that involve a small number of specialized investors. Some may incidentally not even be “institutional investors” in scope of SECR and, therefore, will not even be required to verify that the securitisation complies with Article 7 transparency requirement. Instead, such investors will simply ignore the reporting made available under Article 7 (even though the EU originator will nevertheless be required to prepare Article 7 reporting) and will instead be focusing on (and expecting) much more bespoke disclosure and reporting.

We thus propose that ESMA templates should not be required for private deals for which detailed and bespoke reporting is already available.

The recent suggestion by ESAs of extending from public to private deals the obligation to post ESMA templates, systematically and every quarter through an official data repository, is therefore unnecessary and potentially damaging for the private market, and consequently for the growth of the public market, as it would add another layer of costs and unnecessary constraints.

If it was required by the authorities, private deals could provide a highly summarized and standardized identification report for the sole purpose of oversight of the market activity.

Question 2.6:

Does the definition of private securitisation need adjustments?

-Yes

-No

-Don’t know/No opinion/not applicable

Explanation:

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

In our view, the main issue in this field is to alleviate the disclosure requirements for private securitisation, rather than focus on the definition of private securitisation. This disclosure requirements alleviation is key, and should clearly be prioritised. Indeed, there is no need to refine the perimeter of private securitisations, if the associated requirements remain inadequate and excessive.

Having said this, if the requirements for private securitisations were alleviated, a clarification of the notion of private securitisations could be useful.

The current criterion to differentiate between a private and a public transaction is the existence of a prospectus, which is clear and objective. However, the definition of "private securitisation" should also encompass private financings, including loans, which constitute securitisation positions.

Private financing could be defined as financing that have one or more of the following features:

- Existence of a banking relationship between funder and originator.
- Financing bilateral transactions or syndicated in a small club of banks/investors
- Securitisation funding provided in the legal form of committed facilities with a drawn an undrawn part. Ability to draw in different currencies to match the currencies of the assets
- Absence of external ratings
- Funding provided for warehousing purposes with the intent to repay the facility through the issuance on the capital markets
- Borrowing base structures whereby the amount of the junior tranche is recalculated at each period and needs to increase if assets performance deteriorates, assets become ineligible or concentration limits are exceeded.

Conversely, there are a number of features that could be indicative of public transactions:

- A transaction with an approved prospectus for the purposes of the Prospectus Regulation is almost certainly most appropriately treated as public. Conversely, a transaction with no offering document of any kind is almost certainly most appropriately treated as private. But a transaction with an offering document that is not an approved prospectus for the purposes of the Prospectus Regulation could easily fall into either camp. For instance, CLOs have no prospectuses but offering memorandums but are usually more public in the way they are distributed.
- A transaction with a listing/admission to trading should normally be treated as public, but this may not always be true, particularly where the listing is a "technical listing" on a stock exchange and is obtained mainly for the purposes of e.g. ensuring bond-style withholding tax treatment rather than to generate liquid public market in the securities.
- Transactions where an announcement is made through a formal channel to a wide audience for the purpose of soliciting investor interest (leading to a "public bookbuild") will normally be public, but this is not strictly required for a public transaction.

- The presence of a syndicate of banks underwriting the transaction and selling it on to end investors is a feature indicative of a public deal.
- Existence of external ratings.

The above indicators could be used to determine a decision tree to classify a transaction as private or public. Further work and dialog is required between the authorities and the market participants to establish such a decision tree.

3. Transparency and Due diligence

Question 3.1:

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

-Yes

-No

-Don't know/No opinion/not applicable

Explanation:

The regime is not proportionate with the regimes applicable to any other capital markets product in the EU. While the principles defined in the regulation are correct, their transposition into detailed prescriptive rules is unnecessary and burdensome.

We consider that providing a large volume of pre-defined information often does not give more clarity and ends up taking out the focus from the relevant data. Feedback from investors tells us that they prefer more emphasis on information that is really useful and less on data that do not provide any insight but still have to be subjected to due diligence. This is particularly true for private transactions where investors can and do request from issuers all relevant data. Data templates are more relevant for public transactions where investors are not in a position to negotiate specific information and where a certain amount of standardisation is necessary to be able to successfully place or resell the transactions in the market.

One of the main issues with pre-defined data templates is that they fail to properly take into account the great diversity of underlying assets, jurisdictions and securitisation structures. Securitisation is only a tool used to tranche the risk in a wide variety of situations which do not lend themselves easily to pre-defined and detailed reporting templates to allow investors to carry out their due diligence.

Question 3.2:

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

Investors always carry out due diligence, but it differs per investor how they have organised this for securitisation positions. At the same time, the type of transaction also plays a role. All information they need to know and is relevant to them is bespoke and differs from what they get through repositories.

For private transactions, due diligence varies depending on asset class and specific risk profile of each securitised portfolio.

Banks providing securitisation financing to their clients do so as part of a banking relationship. This relationship entails close contact with the clients/originator, regular dialogue with management, access to detailed information as well as the development of a wider relationship to offer other types of financings or services. Banks thus conduct thorough due diligence before accepting a new transaction. As part of such diligence banks have access to all the information that they ask for to perform a thorough risk assessment.

Concerning synthetic securitisation, the Due Diligence performed by specialized credit investors in junior tranches covers the dynamics of the underlying credit portfolio (historical analysis, concentrations, behaviour in crisis, etc.) as well as originating bank-specific features (Underwriting standards, servicing policy, retention, etc.). In addition to insight into the originator's credit process, investors need information on the loans that allow to monitor, benchmark and assess portfolio future risk/return performance. Detailed loan-by-loan data is e.g. not relevant at all for granular portfolios. Moreover, the format of the information has also to be carefully discussed to protect confidentiality.

Question 3.3:

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

-Yes

-No

-No opinion

Explanation:

Transactions with very large number of underlying assets (large retail pools of loans such as credit cards, consumer loans, residential mortgages, and also most trade receivables) do not lend themselves to a loan-by-loan analysis and are primarily analysed with statistical techniques. The information given on other types of assets, such as corporate loans, needs to be carefully negotiated to take into account confidentiality aspects. Pre-defined, prescriptive, and one-size-fits-all rules on loan-by-loan information disclosure are inappropriate.

Question 3.4:

Is loan-by-loan information disclosure useful for all maturities?

-Yes

-No

-Don't know/No opinion/not applicable

Explanation:

Loan-by-loan information for short-term revolving assets (such as credit cards or trade receivables which typically mature within a few months and are replaced with new receivables) is not useful. These assets are rather monitored through aggregate indicators such as excess spread for credit cards or ageing balances for trade receivables.

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

-Don't know/No opinion/not applicable

Explanation:

Typically, investors buying junior or mezzanine tranches (for example in synthetic on-balance-sheet transactions) will carry out more detailed due diligence on various stress scenarios to analyse the amount of credit losses from the underlying portfolio they may have to cover, and the impact on the overall performance of their investment. On the other hand investors in senior tranches expect to be well protected from credit losses and will primarily test the robustness of the overcollateralization. This process is simpler. Moreover, in certain cases like ABCP conduits, investors also benefit from full protection from the sponsor bank, even in extreme cases where a senior tranche could suffer some credit losses: the due diligence relies primarily on the analysis of the sponsor bank.

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

-Don't know/No opinion/not applicable

Explanation:

Synthetic or true sale are just techniques. The level of due diligence/disclosure depends on the risk position an investor takes, not the technique of transferring the risk.

Question 3.7:

Are disclosures under Article 7 sufficient for investors?

-Yes

-No

-Don’t know/No opinion/not applicable

Explanation:

The principles defined under article 7 are appropriate. Detailed prescriptive rules to apply these principles should be reviewed and simplified.

Question 3.8:

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

-Yes

-No

-Don’t know/No opinion/not applicable

Explanation:

The main problem with the detailed prescriptive disclosure rules is that they are not adapted to the very wide diversity and market practices of securitisation transactions.

Question 3.9:

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

Each securitisation transaction can have specific and different issues with the current reporting templates. The templates are very detailed and include fields that are unnecessary for a line-by-line approach.

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

-Don’t know/No opinion/not applicable

Explanation:

The securitisation market is composed of many different asset classes and structures, each with its own characteristics. A prescriptive detailed disclosure regime ends up not providing the required information in many situations and constituting an extra burden for everybody, while originators and investors continue to rely on other information better adapted to each transaction. The general principles established in the regulation are largely sufficient to protect the market, together with an adequate level of supervision. Supervision should also take into account that securitisation is not a single asset class, but a broad universe of underlying assets and structures, hence standardised detailed reporting is irrelevant.

4. Jurisdictional Scope

Question 4.1:

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

-Yes

-No

-Don't know/No opinion/not applicable

Explanation:

It is clear that an original lender, originator or sponsor located in the EU is subject to EU laws and as such, to SECR as far as direct obligations apply to it. On the contrary, it is also clear that an original lender, originator or sponsor located outside of the EU is not subject to the direct requirements set out in SECR.

Article 14 CRR was indeed amended to clarify that supervised subsidiaries are only subject to the due diligence requirements set out in article 5 SECR, rather than to the whole chapter 2 SECR. The commonly accepted understanding is that entities are in-scope of the SECR only if they are supervised by a regulator appointed pursuant to article 29 SECR. However, as noted in the ESA's opinion, the last sentence of article 14 §1 is confusing as it seems to include "subsidiaries that are not subject to the regulation" in the general requirements of article 5 SECR, although in a differentiated manner ("ensure compliance with those provisions" versus "required to meet the obligations"), and without providing for any consequences in case of breach. This would certainly need to be clarified.

Article 5.1 details the application of these due diligence requirements in certain situations depending on the location (inside or outside of the EU) of the original lender, originator or sponsor, in particular in terms of credit granting criteria and risk retention obligations.

Article 5.1(e) refers to the due diligence requirements applicable to in-scope investors in terms of verification of the compliance by the originator, sponsor or SSPE with their disclosure obligations under article 7 SECR, without distinguishing whether the originator, sponsor or SSPE are located inside or outside of the EU.

Whilst the general understanding was that the detailed disclosure requirements (including in particular the ESMA reporting templates) apply to EU transactions (and in particular when the lender, originator or sponsor are located in the EU), it was assumed that these detailed requirements could not be practically applicable to third-country transactions. This understanding was that article 5.1(e) only applies when the originator, sponsor or SSPE are required to comply with article 7 SECR, which is not the case when they are located outside of the EU (based on the use of the phrase “where applicable” in the regulation). On this basis, in-scope investors have made their own assessment of the information disclosed by the originator, sponsor or SSPE to determine whether they were in a position to carry out a due diligence exercise in line with the requirements set out in article 5 SECR, and therefor had access to disclosure in line with the general requirements of article 7. Under this understanding, in-scope investors did not require third-country originators, sponsors or SSPEs to fill in the ESMA reporting templates, but instead to provide proportionate disclosure that is substantively in line with article 7 SECR requirements. The recent ESA’s opinion suggests that the current regulation may be in contradiction with this broad understanding and in fact require the same level of detailed information, in the same format.

As noted in the ESA’s opinion, this does not seem to be achievable in practice, because third-country originators, sponsors and SSPEs are unlikely to be willing to comply with detailed EU regulation, which in this particular case, would require significant IT and other operational developments while providing extremely limited benefit to them apart from solely dealing with this particular regulation. Moreover, these entities are generally already complying with regulations in their own jurisdiction, and are unlikely to be willing to comply with two separate but overlapping sets of regulations. This is particularly true because non-EU investors would not require the reporting in such form, so that in practice third-country originators, sponsors and SSPEs would be incentivised to engage with non-EU rather than with EU investors.

Beyond the significant loss of business opportunities, this would also result in the exclusion of EU investors from the global securitisation market, and EU participants being seen as less competitive or even less qualified to serve their clients than other investors. Further, EU investors would be precluded from diversifying their geographic exposures. Overall, this would therefore impair the goodwill that EU investors have built with participants in other market and, due to a reduced significance of EU investors in the global securitisation market, would undoubtedly have adverse consequences on their capacity to participate even in the EU securitisation market in the end.

As explained under question 3, banks usually provide bespoke services to original lenders, originators and sponsors, by means of structuring and funding private securitisation transactions, whether as an alternative source of funding or as a preliminary phase to a public transaction (e.g. warehousing). In the context of these private transactions, they generally act as investors and as such, are subject to article 5 SECR. The capacity of EU banks to present themselves to the market as arrangers, underwriters, lead managers or other securitisation service providers, depends on their ability to be active and engage with the market players to the greatest extent. This means that they have to be active in all significant securitisation market segments and places, including outside of the EU.

There are several situations where an EU institutional investor would be in-scope but would need flexibility in the way it would comply with its due diligence requirements:

- EU institutional investor acting through an EU-based entity, investing in a securitisation exposure issued by a third country SSPE, backed by assets originated by a third country original lender, originator or sponsor;
- third country branch of an EU institutional investor, investing in a securitisation exposure issued by a third country SSPE, backed by assets originated by a third country original lender, originator or sponsor;
- third country consolidated subsidiary of an EU institutional investor, investing in a securitisation exposure issued by a third country SSPE, backed by assets originated by a third country original lender, originator or sponsor;

- third country non-consolidated subsidiary of an EU institutional investor, investing in a securitisation exposure issued by a third country SSPE, backed by assets originated by a third country original lender, originator or sponsor.

In each of these situations, EU investors may be prevented from investing should template reporting be required, because a third country originator, sponsor or SSPE is extremely unlikely to be willing to comply with the highly technical, detailed disclosure requirements of Article 7 on top of the disclosure already in place pursuant to local regulation and market practice. Accordingly, maintaining a proportionate approach to the due diligence requirements is critical to ensuring that EU investors have the ability to remain active in the global marketplace.

However, there is a gradation of the link with the EU on the one hand, and with the third country on the other hand, and there may be a gradation of the way the detailed application of the disclosure requirement could apply to these different situations:

- in the first case, too cumbersome constraints may lead to a severe or total loss of business opportunities (with the competitive and operational side effects discussed above),
- in the second and third cases (which should be treated the same way for these purposes), it would question the very existence of such third country presence;
- finally in the last case, as discussed above, it is unclear to which extent article 5 would be applicable at all, although we believe it should not normally be (as suggested in the ESA's opinion).

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

-Don't know/No opinion/not applicable

Explanation:

This in practice would prevent EU investors from investing in most third-country securitisations, as the parties involved are unlikely to be willing to add an EU entity just for the purposes of complying with SECR, especially given the strong competition from non-EU investors. The global securitisation market is broad enough to ensure that non-EU transactions can be fully subscribed without targeting EU investors. Whilst this may have certain marginal pricing effects, this would have to be balanced with the additional costs, operational challenges and constraints that adding an EU-based entity would create for a non-EU counterparty. In addition, such EU-based entity would most likely not have any substance or substantive role in the transaction and would therefore not provide any actual improvement for investors. On the other hand, should counterparties simply refuse to do so and avoid transacting with EU investors, such investors would be restricted in their investment capacities thereby increasing geographic concentration risk, reducing liquidity, increasing volatility and reducing their market footprint and competitiveness.

As far as supervision is concerned, EU investors report all their investments to their regulators regardless of the location of the other parties involved.

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:

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

-Yes

-No

-Don't know/No opinion/not applicable

Explanation:

The purpose of the risk retention requirement under article 6 is to ensure that an entity that has an actual interest in the securitised assets on the one hand, and the actual power to deal with these assets on the other hand, retains a significant part of this risk to ensure alignment with the investors' interest. Imposing that the entity should be the one that is based in the EU would add an artificial constraint that would prevail over this main objective. This would not add any significant comfort in terms of control, while limiting the substance of the alignment of interests.

B) *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

-Don't know/No opinion/not applicable

The entity responsible for disclosures should be the one that has practical and commercial access to the required information and the ability to process it in the most efficient manner.

Moreover, the fact that one entity is designated to effectively disclose the information would not relieve the other parties from their obligations under article 7.

C) *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

-Don't know/No opinion/not applicable

Explanation:

For the same reasons as explained above, this responsibility should lie with the entity that in practice has the power to grant credits, and more specifically those credits, all or part of which are to be securitised in that particular transaction. If that entity is not located in the EU, imposing that another entity should be responsible for this on the sole basis that it is located in the EU would undermine the objective of this requirement.

D) *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**

Explanation:

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

-Don't know/No opinion/not applicable

Please see our response to question 4.1 above.

We would suggest following the conclusion of the High Level Forum, that article 5.1(e) should not strictly apply to third country securitisations. Instead, a proportionate approach would seem to be more appropriate, as discussed in our response to question 4.1 above.

As discussed above, imposing on non-EU branches and subsidiaries of EU banks the requirement that non-EU originators, sponsors or SSPEs must comply with the detailed disclosure requirements as set out in the RTS and ESMA templates, would create such an extremely unlevel playing field that potential clients could very well cease doing business with EU investors entirely given the multitude of non-EU investors standing ready to do the same business without the additional regulatory burden.

As discussed above, there may be a gradation of the detailed application of the disclosure requirements depending on how close the link between the investor and the EU is, i.e. whether the EU investor is acting out of an EU-based entity, or out of a non-EU branch or subsidiary. In the case of a subsidiary, the fact that such subsidiary is supervised by an EU regulator or not should also be taken into account.

Whilst EU-based entities are generally looking at non-EU investments as opportunities to engage with a broader marketplace and client basis, and to diversify their risk exposures, non-EU branches and subsidiaries are generally based in third-countries to create a lasting presence in these distinct markets. For these purposes, it is critical that they can offer services to local counterparties on the same level playing field as their local competitors. This goal cannot be achieved if EU regulatory constraints apply to them in a way that affects directly their local counterparties by imposing additional requirements on them. It is of utmost importance that they can adapt their services to the practices and regulations that prevail on the targeted market. This is a fundamental condition for them entering or maintaining themselves in such market.

This is particularly true with respect to private securitisations where, as discussed in relation to question 3, investors and in particular lending banks should have adequate flexibility to determine the level and type of information they require to assess the risk they are considering investing in.

Moreover, in private securitisations where, by their nature, there is a limited number of investors and there is generally no placement strategy that could encourage the parties to target certain geographic regions, originators and sponsors do not need to target EU investors specifically and can rely on non-EU investors and banks to provide them with the expected services and funding. They would therefore most likely not be willing to endeavour to comply with additional and redundant regulation that would not otherwise be applicable, solely to accommodate EU market participants.

Notwithstanding the above, there is no argument that such investments should be made without conducting proper due diligence; instead, such due diligence should simply be carried out in compliance with the general objectives set out in article 5 SECR, and with a proportionate approach to ensure that the information made available to investors substantively conforms to the requirements detailed in article 7 SECR. Consistent with such proportionate approach, each EU investor should remain responsible for determining whether the information received is satisfactory and sufficient to carry out its due diligence obligations in a way that complies with the requirements of article 5.1(e) SECR, rather than having the regulator prescribe equivalence in generic terms.

If you answered ‘Yes’ to question 4.4, how to ensure that the ultimate objective of protecting EU institutional investors remains intact:

EU institutional investors that invest in third country securitisations are sophisticated and regulated investors and are equipped to determine the level and nature of information they need to make an investment decision based on adequate due diligence. The main guidelines set out in article 5 SECR would remain applicable and institutional investors would be accountable for the compliance with these requirements. The supervisor will be in a position to control this process *a posteriori*.

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

-Don't know/No opinion/not applicable

Explanation:

Question 4.6:

Should the SECR be amended to clarify that sub-thresholds AIFMs fall within the definition of institutional investor thereby requiring them to comply with the due diligence requirements under Article 5 of the SECR? (The Alternative Investment Funds Managers Directive provides for a lighter regime for AIFMs whose AIFs under management fall below certain defined thresholds)

-Yes

-No

-Don't know/No opinion/not applicable

Explanation:

5. Equivalence

Question 5.1:

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

-Yes

-No

-Don't know/No opinion/not applicable

If yes, please provide a brief explanation how:

Question 5.2:

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

-Yes

-No

-Don't know/No opinion/not applicable

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?

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

-Don’t know/No opinion/not applicable

Explanation:

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?

6. Sustainability 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

-No

-Don’t know/No opinion/not applicable

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

-Don’t know/No opinion/not applicable

Question 6.3:

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

-Yes

-No

-Don’t know/No opinion/not applicable

Describe the use you have made of it?

Question 6.4:

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

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

-Don’t know/No opinion/not applicable

Question 6.5 (b):

Should ESG disclosures be mandatory for (multiple choice accepted):

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

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

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

-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

-Don't know/No opinion/not applicable

Explanation:

If yes, what should be the requirements for a securitisation standard:

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

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

-Don't know/No opinion/not applicable

Question 7.2:

If you answered Yes to question 7.1, please specify what elements should such a system include?

8. Supervision

Question 8.1:

Are emerging supervisory practices for securitisation adequate?

-Yes

-No

-Don't know/No opinion/not applicable

Question 8.2:

Have you observed any divergences in supervisory practices for securitisation?

-Yes

-No

-Don’t know/No opinion/not applicable

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:

A) *the due diligence requirements for institutional investors (Art 5)*

-Yes

-No

-Don’t know/No opinion/not applicable

B) *risk retention requirements (Art 6)*

-Yes

-No

-Don’t know/No opinion/not applicable

Explanation:

C) *transparency requirements (Art 7)*

-Yes

-No

-Don’t know/No opinion/not applicable

Explanation:

D) *credit granting standards (Art 9)*

-Yes

-No

-Don’t know/No opinion/not applicable

Explanation:

E) *private securitisations*

-Yes

-No

-Don’t know/No opinion/not applicable

Explanation:

F) *STS requirements (Articles 18 – 26e)*

-Yes

-No

-Don’t know/No opinion/not applicable

Explanation:

Question 8.5:

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

-Yes

-No

-Don’t know/No opinion/not applicable

Explanation:

Question 8.6:

[if you are a supervisor] Do supervisors consider the disclosure requirements (both the content and format) for public securitisations sufficiently useful?

-Yes

-No

-Don’t know/No opinion/not applicable

Explanation:

If no, how could they be improved

Question 8.7:

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

-Don't know/No opinion/not applicable

Explanation:

If no, how could they be improved

9. Assessment of non-neutrality correction factors impact

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 capital non-neutrality induced by the p factor is excessive for a broad range of portfolios, both under SEC-IRBA and SEC-SA, as explained and illustrated in the HLF on CMU report in 2020. One could further add that model risk, which was defined in 2012/2014 BCBS papers as "incorrect model specifications and error from banks' estimates of inputs to capital formulas" and was the main justification with agency risk for introducing "non-neutrality" in the securitisation framework, has been largely mitigated by a number of EU initiatives such as TRIM or IRB Repair.

We believe that a significant reduction of the p factor is all the more needed that the Basel III output floor is expected to have a very negative impact on securitized exposures. Such impact is due to a double layer of conservatism: first, with the use of the SA to floor the RWA of the underlying portfolio; second, with the use of SEC-SA, which leads to a much higher capital charge than SEC-IRBA all things equal. Simulations performed on several portfolios show that own account securitisation structures would become totally inefficient in terms of RWA release. Halving the p factor as recommended by the HLF would be a step in the right direction but would only partially offset this impact (by ~50% on average).

The consequences of the output floor are particularly worrying with regards to own account securitisation, either synthetic/on-balance sheet (where by definition the senior tranche is retained), or cash (banks typically retain most of the senior tranche to the extent authorized by the JTSs to obtain SRT recognition): at the same time, **it seems fair to assert that own account securitisation are exposed to virtually zero agency risk or model risk** as explained below, which warrants a more significant reduction in the p factor for this category of securitisation transactions.

We indeed believe that both agency risk and model risk, which constitute the theoretical justification of "p" as a non-neutrality factor, need to be analyzed differently depending on the type of transactions and the role played by the banks.

In the case of own account securitisation (cash and synthetics), the originator of the securitisation has also originated the assets and often continues to service them: it thus has an intimate knowledge of these assets. In addition, it often structures or actively participate to the structuring. Also, the SRT assessment process consists in a thorough review of the transaction allowing a precise understanding of the modelling. In brief, there is no agency risk and virtually no model risk involved for the originator in own account securitisation.

We also believe that private client funding (either through balance sheet or ABCP) constitutes a separate, intermediate category with limited exposure to agency and model risks. Banks providing such funding have direct access to the client and to detailed information to perform their due diligence. They also have an intimate knowledge of the structure and models and rely on internal credit expertise.

Investors in public securitisations are still exposed to some agency risk given the limited time to conduct their due diligence and the absence of direct relationship with the originator. One should note however that retention, due diligence requirements and transparency rules have significantly reduced agency risk for public investors since the 2008 crisis.

As a consequence of the above, we believe the p factor should be revised taking into account the following principles:

- Under SEC-SA, own account securitisation, either under cash or synthetic format, and whether the transaction is STS or non-STS, should benefit from "p" factors significantly below 0.5.
- Under SEC-SA, private client funding under securitisation format should benefit from "p" factors below 0.5 but greater than the ones applying to own account securitisation.

- Under SEC-IRBA, the p factor floor should be suppressed for own account and private client funding (whether the transaction is STS or non-STS); the maxima should be more significantly reduced for own account than for private client funding.
- Both under SEC-SA and SEC-IRBA, p factors should be reduced for other securitisation exposures, although to a lesser extent than for own account and private client funding.

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

-Don't know/No opinion/not applicable

Explanation:

As explained in our response to question 9.1, the non-neutrality induced by the p factor and the risk-weight floor on the senior tranche is disproportionate and **the risk-weight floor on senior tranches, now set at 10% for STS and 15% for non-STS, should be recalibrated**: based on those RW, senior tranches attract between c. 25% and c. 50% of the total risk-weight of the securitisation transaction, although they support only a minimal share of the risk (less than 1%).

We believe that the recalibration of the RW floors on senior tranches should reflect the differences between three main categories of securitisation transactions, as explained in our response to question 9.1: own account securitisation, private client funding, and investment in public transactions.

With regard to banks as investors in public transactions, a conservative level of RWs and the distinction between STS and non-STS can make sense: indeed investors may not be able to fully assess the credit risk of the securitized assets given the asymmetry of information between investors and originator or sponsor banks.

However, there is no reason for such punitive RWs, and distinction between STS and non-STS should not play a role for originating banks or for banks funding privately their clients through securitisation.

As previously explained, originating banks have an intimate knowledge of assets that they have originated and by definition we should assume that a securitisation is always "STS" for the originator.

- As a consequence, for this category, we recommend reverting to the previous RW floor of 7% irrespective of STS and cash or synthetic format.

When providing private funding to clients requiring senior financing of asset pools, banks have first-hand knowledge of the credit risk of the pool of assets and constantly monitor the performance of the assets and transaction; they also initiate and/or structure the transaction and are thus fully aware of the legal documentation.

- As a consequence, for this category, we also recommend reverting to the previous RW floor of 7% irrespective of STS and cash or synthetic format.

In other cases, including investments in public securitisation, the floors could be maintained at 10% for STS and 15% for non-STS.

This would be in line with current capital requirements for comparable instruments such as covered bonds. The latter are subject to a RW of 10% for AAA to AA- rated instruments (issuance rating or issuing bank rating). Under F-IRB the applicable RW are the following for these instruments, significantly lower than the current securitisation RW floors (the 1 year default rate of a Baa1 corporate is 0.11% in Moody's historical data).

PD	Subject to Asset Value Correlation	Not subject to Asset Value Correlation
0.03%	5.21%	3.83%
0.05%	7.08%	5.21%
0.07%	8.63%	6.37%
0.10%	10.62%	7.86%

It should be noted that even if the capital charges applied to senior tranches were recalibrated following our recommendations, the securitisation prudential regime would still remain very conservative, with a reduced but still significant non-neutrality.

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?

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

Please refer to our responses to questions 9.1 and 9.2.

10. Maturity

Question 10.1:

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

-Yes

-No

-Don't know/No opinion/not applicable

Explanation:

Question 10.2:

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

-Yes

-No

-Don't know/No opinion/not applicable

Explanation:

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

Question 11.1 (a):

Should STS securitisations be upgraded to level 2A for LCR purposes?

-Yes

-No

-Don't know/No opinion/not applicable

Explanation:

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.

It is essential for the success of securitisation that a level playing field is provided in the context of the LCR. It would also bring additional stability to the market with a broader and solid investor base. To facilitate a deeper and broader capital market for securitisations, haircuts and classifications for LCR qualifying securitisations should be improved and aligned more closely with those of covered bonds of equivalent credit quality.

Not only has STS securitisation not been adequately recognised in the LCR rules but in some ways the transposition of the STS framework into the LCR rules actually made things worse by failing to carry over previous references to the Standardised Approach limiting LCR eligibility to AAA ratings when previously CQS 1 allowed ratings from AAA to AA, as well as by excluding non-STS securitisations completely.

Finally, the current treatment of securitisation in the LCR does not sufficiently take into account improvements achieved in the regulatory framework as well the performance of securitisation during the financial crisis in comparison to similar asset classes.

Illustratively, senior STS tranches [of a jumbo securitisation issue] with an AA- rating (equivalent to Covered Bonds) could be categorized as high quality liquid assets of the highest level (Level 1) and those tranches could be considered in the liquidity coverage ratio (LCR), with haircuts similar to those applying to covered bonds. The calibration of the eligibility criteria for level 2A and 2B should be done in a similar fashion allowing A- STS notes to qualify as Level 2A and non-STS AA- positions to be considered, as was the case before the introduction of the STS label, as level 2B assets. It could also be considered to extend eligibility to a broader range of STS tranches, i.e. tranches with a BBB- rating, for the level 2B.

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.

For the 40% liquidity buffer of a credit institution to be made up exclusively of securitisations, the market in the EU would have to grow very considerably. Also, the existing LCR rules already make provision to mitigate concentration risk by limiting shares and haircuts. These are already set very conservatively for STS securitisations (non-STS securitisations do not quality for LCR at all). Should the Commission be willing to contemplate changes to the LCR rules then further detailed discussion will be required to set appropriate parameters for both STS and non-STS securitisations.

Securitisations have a strong track record of liquidity, in many cases as good as covered bonds (see the study published in 2014 by Risk Control Limited "Covered Bond versus ABS liquidity: A comment on the EBA's proposed HQLA Definition ") which showed in summary that:

- while on average covered bond bid-ask spreads were narrower than those of securitisations generally speaking, spreads for the more liquid securitisations were narrower than those of covered bonds, especially during the sovereign debt crisis of 2011-2012;

- some short maturity securitisations such as auto-loan backed securitisations demonstrated liquidity which was comparable to covered bonds and indeed markedly superior to nonPfandbriefe covered bonds; and
- there was a danger in relying on a single dataset and on methods which relied heavily on frequency of trading and turnover - rather than using trading cost measures such as spreads. For example, during the global financial crisis, when investors in auto ABS wished to dispose of their paper they were able to do.

Question 11.2 (a):

Should ABCPs qualify as level 2B assets for LCR purposes?

-Yes

-No

-Don't know/No opinion/not applicable

Explanation:

ABCP programmes in Europe are structured with fully supported liquidity lines which makes them very much like 'short term covered bonds'. ABCPs are also high quality short-term instruments which liquidate into cash over a short timeframe, usually 1-3 months. Therefore, in principle we believe they should qualify for the LCR and if they are STS ABCP they should qualify as Level 2A assets not Level 2B.

The main goal pursued by all sponsors of ABCP programmes in Europe is to expand the investors base for achieving stability in its funding. This is quite easy to achieve in US where investors are well educated about ABCP and find multi-seller fully supported ABCP attractive. Therefore, the US investor base for ABCP programmes issuing USCP is quite broad and can easily be tapped into. Investors who would typically invest in such ABCP programmes are money market funds, separate managed accounts, banks, corporate, municipalities, and who are typically confident with investing in ABCP issued by ABCP programs sponsored by European banks.

In Europe, the situation is however different. The European investor base for ABCP is made up mostly of money market funds (up to 70%). The remaining part of the investor base is made up of banks, corporate, supranational organisations. Some large European investors are reluctant to invest even in multi-seller fully supported ABCP programmes for a number of reasons (including complex regulation and lack of attractiveness of yield), with one of the main considerations for their reluctance, which applies even to those investors who are comfortable with the risk and well understand ABCP structures, being the fact that ABCP do not qualify for LCR and are not eligible as Eurosystem collateral.

Increasing the attractiveness of the ABCP programmes sponsored by European banks to a broader base of European investors in ECP and NeuCP is essential to facilitating the funding of the working capital of European companies (and, consequently, the recovery and expansion of the European economy) in line with the strategy of the sponsoring banks. An important step to unlocking that investor base is to make ABCP qualify for LCR. This will enable ABCP programmes to attract more bank investors and to increase liquidity in the European ABCP market by attracting other types of investors which would, in turn, smooth out the risks of potential liquidity disruptions and deliver better yield and market protection to the ultimate sellers.

Moreover, eligibility of ABCP for LCR would create the missing 'business case' to trigger the need for an STS label at the programme level as mentioned in the ESA JC report (article 44) § 129 page 55. Indeed, if an ABCP Programme qualify as level 2B assets for LCR purposes, it would qualify as level 2A asset for LCR purpose if it is STS.

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.

Such ABCP should be issued by ABCP programmes with fully supported liquidity provided by their sponsor banks. The concentration limit applicable to ABCP within level 2B should not be differ from any other asset category.

The liquidity of ABCPs did come under strain during March 2020 but this was because of the lack of central bank support provided rather than anything to do with the quality of ABCP. This was in strong contrast to the actions of central banks in other global markets such as the US and Australia which intervened to support their local ABCP markets.

Regarding liquidity performance of ABCP, one can say that it has been very good since Q3 2020 due to the accommodative monetary policy of ECB and FED. During Covid 19, there have been brief tensions in ABCP liquidity in March 2020, due to key investors in Europe (MMF) facing withdrawals from their clients. The consequence has been a reduction in maturities of ABCPs issued in Europe and an increase of the spreads paid to investors. Unlike in US where ABCPs have been supported by the FED, ABCPs have not been supported in Europe in the context of the emergency programmes of the central banks. This resulted in some banks drawing the liquidity lines provided to their sponsored conduits while other purchased the CPs issued by their sponsored conduits. Due to the direct support provided by the FED to ABCP, the US ABCP market recovered much more quickly (probably 1 month) than the European ABCP market.

12. SRT tests

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

-Don't know/No opinion/not applicable

Explanation:

We do not.

As detailed below, we question more broadly the relevance of both the PBA and the CRT tests as proposed by the EBA. Also, were the CRT test to be implemented, a number of questions should be clarified first (without creating further complexity) and the stress scenarios should be significantly reviewed to ensure sensible allocation of the LTEL and UL.

1. On both the PBA and the CRT tests:

Our primary concern is that the tests, as described in the EBA consultative paper, are complex and not clearly described at all: for example, the methodology does not state that the clean-up call should be considered to determine the last year of the transaction. It is also unclear how to determine the value of the UL for the purpose of the application of the test and this could be interpreted in different ways by the Competent Authorities.

- Our recommendation: we suggest to the Commission, before introducing any new SRT regulation, to perform an impact study on existing transactions that benefited from a non-objection to insure that the proposed test i) do not produce unintended consequences and that ii) the methodology for running those tests is sufficiently clear.

2. On the CRT test more specifically:

FBF Members have a number of significant concerns with the proposed allocation of LTEL and UL to the tranches of a securitisation for the purposes of the SRT, CRT and PBA tests set out in the EBA report.

In particular, we draw your attention to the fact that as currently calibrated, the back-loaded scenario is unduly penalizing. Typically, simulations show that it would have blocked, if in place, real-life transactions that have received a non-objection from our supervisors. Indeed, while in our view back-loaded scenarios can make sense, they should remain realistic i.e. all the losses should not materialize during the last year of the transaction, which simply makes the test impossible to pass.

- Our recommendation: we suggest that irrespective of the amortization profile (either sequential or pro-rata), the back-loaded scenario be modified, requiring that 2/3 of LTEL plus UL occurs proportionally in the last 1/3 of the securitisation life, while 1/3 of LTEL plus UL occurs proportionally in the first 2/3 of the securitisation life (being considered as running until the clean-up call date). We also suggest that a common guidance be issued to precise that the EL should be allocated to the tranches before the UL when calculating the tests.

It is to be noted that the back-loaded scenario would remain very conservative even with this smoother allocation of the LTEL and UL.

3. On the PBA test more specifically:

We believe this test serves no purpose. Its stated objective is to ensure that at least 50% of the UL of the underlying exposures is transferred to third parties i.e. that the mezzanine tranche sold is thick enough. This requirement is not necessary as institutions use SRT securitisation to release a minimum amount of RWA, which would not be achieved if the mezzanine tranche were too thin: indeed in such case, the non-neutrality of the securitisation risk weighting frameworks makes any capital relief impossible. We are able to quantitatively illustrate on a synthetic securitisation, where only the mezzanine tranche is transferred (very common situation for synthetic securitisation), that a too thin mezzanine tranche either does not create any RWA relief (although a small part of the UL is transferred) or generates a non-significant amount of RWA relief. In the second case, there is no interest for the originating bank to mobilize internal and external resources (lawyers, servicer) and to remunerate investors, for such a limited risk transfer and capital benefit.

- Our recommendation: the PBA test could be abandoned.

Finally, we find it important to grant flexibility to supervisors with regards the outcome of the SRT/CRT tests, which may not be adapted to the profile of every underlying portfolios or transaction structures. In other words, the outcomes of such tests should remain one element to be taken into consideration as part of the SRT assessment.

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 believe it is important to explain first why originators use calls in synthetic securitisations. From inception, the economics of a transaction mechanically deteriorate due to the maturity-effect of the underlying assets, independently of the amortization profile and of the evolution of the credit quality of these assets. Indeed, as time goes on, the maturity of the underlying assets decreases under A-IRB and so does the risk-weighting (and capital needs), while the cost of protection remains stable: as a result, the economic efficiency of the transaction deteriorates to a point where it makes sense to exercise a call.

This is an inherent feature of synthetic securitisation and it should be distinguished from a "positive incentive" to call the transaction as per CRR Article 238 according to which: "Where there is an option to terminate the protection which is at the discretion of the protection buyer <u>and the **terms of the arrangement** at origination of the protection contain a positive incentive for the institution to call the transaction before contractual maturity, an institution shall take the maturity</u> of the protection to be the time to the earliest date at which that option may be exercised; otherwise the institution may consider that such an option does not affect the maturity of the protection."

In our view, the CRR makes it clear that the "positive incentive" should result from "terms of the arrangement". This is typically the case when the transaction exhibits specific features such as a margin step-up, but the existence of a call option does not entail a "positive incentive" by itself. Instead, we understand that the existence of the only call option, without any other specific terms and arrangement does not constitute a positive incentive at origination, otherwise the regulator would have simply imposed the existence of a maturity mismatch as soon as a call option exists.

This is all the more important that originators cannot afford to have the time call date being considered as the maturity of the credit protection due to the very penalizing maturity mismatch set out in CRR Article 252.

Our recommendation: we urge the regulators not to consider that the mere existence of a time call in a transaction creates a "positive incentive" but to restrict such notion to the existence of specific features that actually provide an incentive to call, such as a margin step-up.

13. SRT assessment process

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?

We welcome EBA's willingness to differentiate between transactions that do not exhibit complex features ("simple transactions") and more complex ones, the first category benefitting from a quicker assessment process. These efforts, however, have led the EBA to determine a number of "structural features" and related "safe harbours", which in our view has two significant downsides.

The first downside is the resulting complexity of the proposed framework. The criteria to determine structural features and related safe harbours are both numerous and, quite often, unclear, raising more questions that themselves will require further specifications. Almost a year since the publication of EBA's report on SRT and after in-depth discussions with the regulators, supervisors and within trade associations, uncertainty remains on almost every structural feature and safe harbour described in the report, not to mention the calculation of the tests. In our view, the introduction of additional new concepts and rules, which themselves require further guidance, will not simplify of the SRT assessment process.

Such complexity entails a longer and more uncertain process, which precisely runs against the stated objective of a smoother and more efficient SRT assessment process. Indeed the EBA has proposed to create a 3-month assessment period to determine whether a transaction can go through the fast track or not, which basically would lead to 4 months (at the very least i.e. not taking into account all intermediate steps and the ability of competent authorities to "stop the clock") for "simple" transactions and to 6 months (at the very least) for "complex" transactions. In our view, however, 3 months is enough time to perform the SRT assessment for virtually any transaction.

Our recommendation is thus not to implement EBA's recommendations 19, 20 and 21, and pursue bilateral discussions with Competent Authorities to further improve the SRT assessment process.

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?

As we recommend not to implement EBA recommendations 19, 20 and 21, this question does not really apply. This being said, our members already provide most items listed to their competent authority.

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

-Don't know/No opinion/not applicable

Explanation:

We believe this question cannot simply be answered by "yes" or "no" as it is important to know what kind of "ex-ante review" is meant here and under which timeframe it is meant to be performed.

Ex-ante assessments, provided they are conducted in a reasonable timeframe, can contribute to mitigating regulatory risk. We are thus not opposed in principle to ex-ante assessments but feel they could be performed much more efficiently in at least two cases.

First, we believe that transactions similar to previously validated transactions should benefit from a quick assessment process: a maximum of 1 month seems a reasonable target in this case.

Second, one month seems enough time to determine whether a transaction is "simple" or not, i.e. in line with standard market practices and without exotic features. Upon such determination, the Competent Authority should be able to grant a non-objection.

Question 13.4:

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

-Yes

-No

-Don't know/No opinion/not applicable

Explanation:

Same answer as above.

14. SRT Amendments to CRR

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

-Don't know/No opinion/not applicable

Explanation:

We do not favor the formalization of such technical items in a level 1 text, except for the recommendation about the "market test" (as part of recommendations 12 on the PBA test and 13 on the CRT test) which does not require any further technical analysis.

On other recommendations, substantial uncertainty remains and further discussions are needed before envisaging their implementation.

15. Solvency II

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

-Don't know/No opinion/not applicable

Question 15.2:

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

-Yes

-No

-Don't know/No opinion/not applicable

Explanation:

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

-Don't know/No opinion/not applicable

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:

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

-Don't know/No opinion/not applicable

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:

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

-Don't know/No opinion/not applicable

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:

Question 15.6:

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

-Yes

-No

-Don’t know/No opinion/not applicable

Explanation:

Question 15.7:

Should Solvency II standard formula capital requirements for spread risk differentiate between senior and non-senior tranches of non-STS securitisations?

-Yes

-No

-Don’t know/No opinion/not applicable

Explanation: