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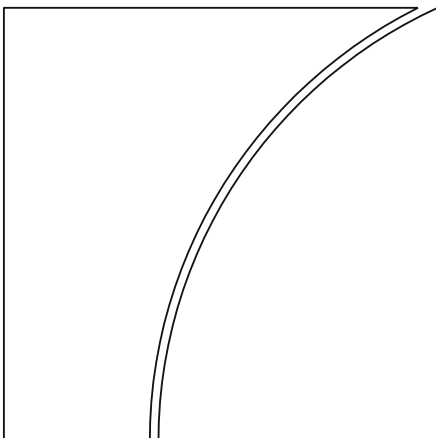
Board of the  
International Organization of  
Securities Commissions

Consultative Document

**Criteria for identifying  
simple, transparent  
and comparable  
securitisations**

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## Glossary of abbreviations

ABS	Asset-backed securities
ABCP	Asset-backed commercial paper
Agency MBS	Mortgage-backed securities issued by the Government National Mortgage Association (Ginnie Mae, a US government agency) or US government-sponsored enterprises the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)
CDO	Collateralised debt obligation: a structured ABS in which the underlying assets that serve as collateral are debt obligations
CMBS	Commercial mortgage-backed securities: debt securities backed by commercial mortgage loans
Conduit	For the purposes of this consultation paper, a financial entity that buys loans and other financial assets, and repackages and sells the assets as securities (ie securitises)
Consumer ABS	Includes asset classes such as credit cards, auto loans and retail consumer asset securitisations
GSEs	Government-sponsored enterprises in the US
RMBS	Residential mortgage-backed securities: debt securities backed by residential mortgage loans
SIV	Structured investment vehicle: a special purpose vehicle that typically buys longer-term instruments and funds them with shorter- and/or medium-term debt
SPV	Special purpose vehicle: an entity that is created solely for a particular financial transaction or series of transactions

# Criteria for identifying simple, transparent and comparable securitisations

## Background and objectives

Earlier this year, the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) established a joint task force to review developments in securitisation markets. This Task Force on Securitisation Markets (TFSM) was charged with identifying the factors that may be hindering the development of sustainable securitisation markets, and developing criteria to identify and assist in the financial industry's development of simple and transparent securitisation structures.

The TFSM has collected data, surveyed national authorities and market participants, and undertaken bilateral interviews as part of its assessment of securitisation markets. With the intention to consider the various types of investors that may be investing in securitisation, the TFSM has focused in particular on the participation of non-bank investors such as insurance companies, pension funds and certain investment funds in securitisation markets.

Building on this work, the BCBS and IOSCO have identified 14 criteria for simple, transparent and comparable securitisations. The aim of this exercise is to provide a basis for the industry and the regulatory community to identify certain features of securitisations which may indicate those securitisations that lend themselves to less complex analysis and therefore could contribute to building sustainable securitisation markets. The purpose of these criteria is not to serve as a substitute for investor due diligence but rather to identify and assist in the financial industry's development of simple and transparent securitisations. These criteria are non-exhaustive and non-binding.

The proposed approach is a modular one: interested parties may complement these criteria with additional and/or more detailed criteria based on specific needs and applications. The criteria are not, of themselves, a prescription for regulatory action, and making recommendations for implementation of the criteria in regulation is out of the scope of this BCBS-IOSCO project. It is noted that the BCBS agreed at its September 2014 meeting to consider in 2015 how to incorporate the BCBS-IOSCO criteria, once finalised, into the securitisation capital framework.<sup>1</sup>

The BCBS and IOSCO would like to take the opportunity to seek comments on these criteria.

## State of global securitisation markets

Term securitisation issuance declined markedly across jurisdictions from the onset of the financial crisis in 2007. More recently, some jurisdictions and asset classes have experienced increasing levels of issuance, though generally not to pre-crisis levels.

<sup>1</sup> See BCBS, "Progress on post-crisis reforms: banking supervisors and central bankers meet to discuss", press release, 25 September 2014, [www.bis.org/press/p140925.htm](http://www.bis.org/press/p140925.htm).

In the US, auto and credit card-backed securitisation has recovered strongly, but mortgage-backed activity remains dominated by agency issuance. Non-agency mortgage-backed and CDO activity remains very low due to the high losses experienced in these areas.

The European securitisation market saw increased activity in 2008–09 as banks retained securitisations to pledge as collateral with various central banks to obtain financing during the financial crisis. Many of these transactions were structured to access central bank liquidity and may not attract private investors. Since then, new issuance levels have fallen to about a third of pre-crisis levels, and a significant proportion of issuance continues to be retained. Issuance placed with third-party investors is still very low, with the exception of auto loan ABS and UK and Dutch RMBS, most of which are placed with the market.

In Japan, annual issuance is less than a third of its 2006 peak, with three quarters of this accounted for by RMBS. Consumer ABS and CMBS issuance, which have declined markedly, account for much of the rest.

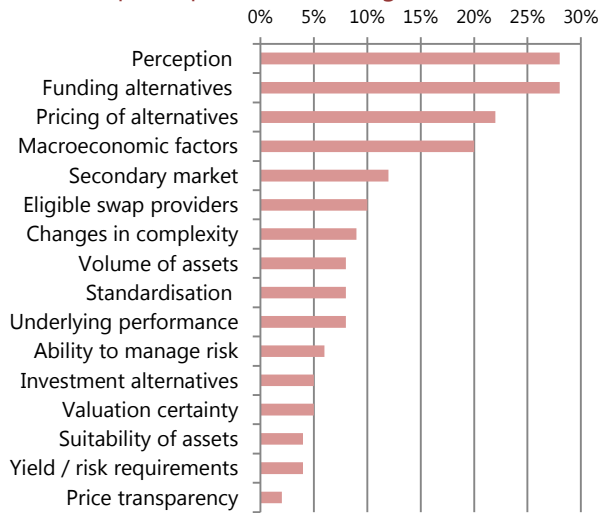
In Australia, issuance in 2008 fell to a fifth of its 2007 level. Consumer ABS volumes have recovered to above their pre-crisis peaks, while RMBS remains less than half its peak level and CMBS issuance has been dormant.

The initial reduction in securitisation issuance during the financial crisis coincided with the collapse of a key constituent of the securitisation investor base – SIVs and conduits funded by short-term wholesale funding, as well as a collapse in demand from money market funds. It is uncertain as to whether this base of funding will return given the losses sustained by certain market participants. The market has also changed its views of the risks of the liquidity facilities that are essential for some of these products. Since then, the combination of the lack of investor confidence in securitisation products fuelled by the negative perception arising from the crisis, pessimistic market conditions (eg lower yield for investors), the availability of cheaper funding alternatives such as from central bank facilities and the uncertainty of the outcome of regulatory developments have reduced securitisation issuance by banks, which constitute an important segment of the market.

## Impediments to sustainable securitisation markets

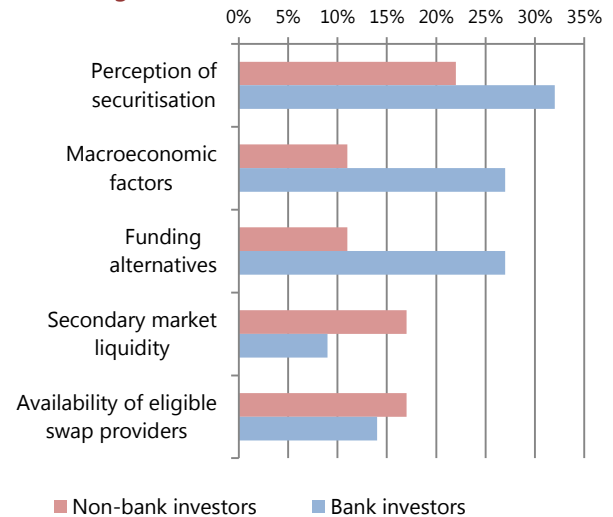
A number of factors could be impeding the functioning of sustainable securitisation markets, and these may vary by jurisdiction and asset class. **Charts 1–3** set out the feedback from the Task Force Survey, conducted in the summer of 2014, on some of the market factors contributing to market developments since the crisis. Chart 1 highlights the views of market participants, including investors and issuers, while Chart 2 compares the views of bank and non-bank investors.

**Chart 1: Most important market factors contributing to market developments since 2009 (% market participants nominating).**



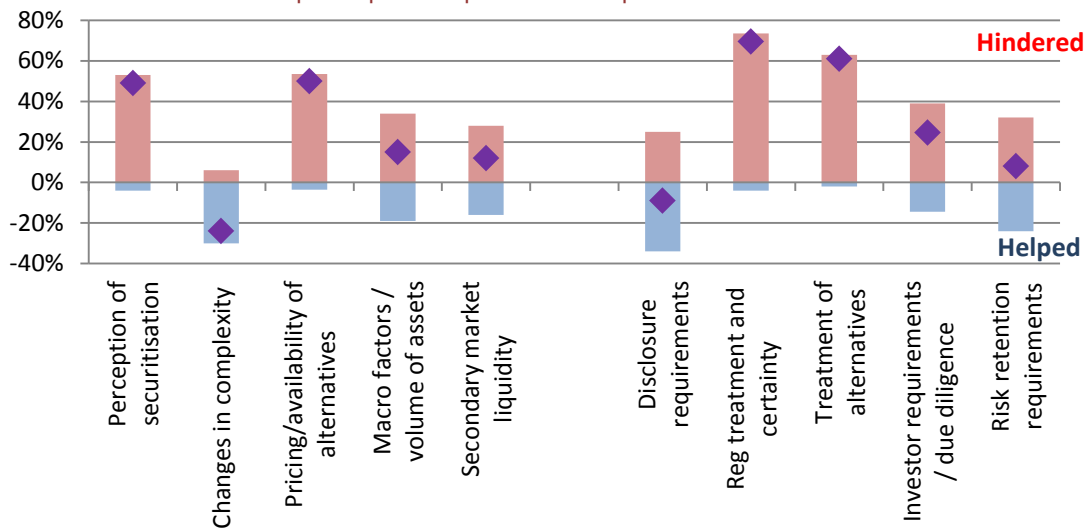
Source: Responses to the TFSM Survey.

**Chart 2: Most important market factors contributing to market developments since 2009 (% investors nominating).**



Source: Responses to the TFSM Survey.

**Chart 3: Balance of market participant responses on impact on securitisation market since 2009**



Regulatory treatment category includes capital and liquidity treatment. Purple markers reflect net results.  
Source: Responses to the TFSM Survey.

Regulatory factors, for example regulatory uncertainty, appeared high on market participant respondents' list of potential impediments, although significantly less so for national authorities responding to the survey. Aside from regulatory treatment, potential revisions of which are outside the scope of the analysis, based on feedback from market participants the BCBS and IOSCO have identified two noteworthy factors: the stigma surrounding securitisation and the difficulty of assessing the risk of such transactions.

## Stigma

Investors' confidence in securitisation as an investment class eroded as losses in mortgage-related securitisation and CDO transactions mounted during the financial crisis. Another criticism that emerged

was that securitisations were too complex and subject to too many conflicts of interest and asymmetry of information among securitisers, originators and investors.

In some jurisdictions, particularly in Europe and the Asia-Pacific region, the reputation of the securitisation markets has not yet recovered. In bilateral interviews conducted by the TFSM, some investors noted that many senior managers, senior advisers and investment committees at institutional investors might have a stigmatised view of securitisation and see little value in developing expertise in and understanding of these instruments.

## Difficulty in assessing risk

The financial crisis brought about rapid and widespread downgrades and losses of large volumes of securitisation tranches during the financial crisis. This raised doubts about the creditworthiness of even the senior tranches of securitisations of high-quality assets. Investors found they had insufficient information on the underlying credit risks to be able to perform a reasonable assessment of securitisation. Performance data on the underlying assets, particularly in the case of new portfolios or asset classes, were often not available to investors. And transparency problems resulting from complex and opaque structural features compounded these difficulties.

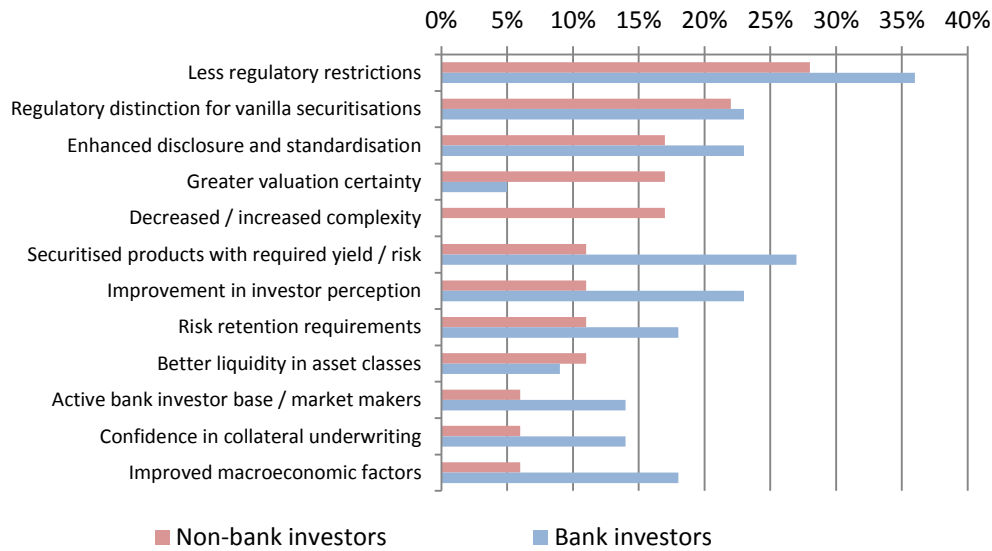
Investors require appropriate systems and the necessary expertise to assess and manage the risks inherent in the assets they hold. The hurdles for assessing securitisations are higher for new investors due to the reasons cited above and the difficulty of comparing securitisation instruments that adds to the analytical burden for each transaction. For example, in some jurisdictions where historical and ongoing performance data on underlying assets are available, they are often provided in an inconsistent manner; securitisations frequently have bespoke offering documents which can be several hundred pages long; and the legal frameworks governing the underlying assets vary by jurisdiction. Even within the European Union, different legal mechanisms exist for transferring underlying assets to the SPV and for foreclosing on these assets.

As a result, the costs relating to investment in securitisation instruments may not be commensurate with their return. In particular, this may be true relative to other, apparently simpler, types of securities and at a time when limited primary issuance activity, in particular in Europe, discourages investors from investing in securitisation-related systems and expertise. This could be a reason why the cost of issuing securitisations has tended to be higher relative to some other forms of funding since the crisis.

Feedback from non-bank investors suggests that enhancing their ability to compare securitisation products within a particular asset class is important, in particular where these have been issued by the same originator or sponsor. Facilitating investors' ability to make comparisons between securitisation transactions is an important goal and could be a key benefit of developing simple and transparent securitisations. Indeed, non-bank investors noted enhanced disclosure and standardisation along with reducing complexity and increasing valuation certainty as the most important factors for increasing future investor participation, in addition to aspects of regulatory treatment. Many investors believe they could benefit from standardised information about underlying assets, transaction documentation, structures, investor reports and some data fields and definitions. Having said that, respondents drew attention to the different levels of standardisation across asset classes, noting that in some cases, for example for auto loan ABS, significant standardisation has already allowed greater comparability.



**Chart 4: Investors' view of most important factors for increasing investor participation**



Source: Responses to the TFSM Survey.

## Simple, transparent and comparable (STC) securitisations

### Concept of STC securitisations

The 2007–09 financial crisis demonstrated that not all securitisations performed equally well, and unveiled a range of drawbacks in various types of securitisation structures across the world. Many opaque and complex securitisations, for example resecuritisations, suffered large losses despite being initially highly rated. Such securitisations relied heavily on unproven diversification benefits from pooling heterogeneous, structured (consumer ABS, RMBS), low-quality (subprime RMBS) and sometimes illiquid (mezzanine tranches of CDOs) assets and arguably exploited the limited capacity of investors and rating agencies alike to understand and appropriately model the embedded credit risks. An important lesson from the financial crisis was thus that the securitisation structure itself can represent a source of risk: complex and opaque structures may render it infeasible for some investors to understand the cash flow-generating mechanism and where disruptions may arise in the future. More generally, investors in such products are prone to model uncertainty when assessing the credit risk and pricing these assets. Furthermore, the financial crisis highlighted that even simple and transparent securitisations could perform poorly if the underlying assets were subject to weak underwriting and poor governance. Therefore, investors need to carry out a careful risk assessment of securitisations, including their own evaluation of the credit quality of the underlying assets.

Both public and private sector bodies have taken steps to address deficiencies in securitisations. Public sector responses to improve securitisation practices have included requirements designed to better align interests (risk retention) and improve transparency (loan-level data in central bank collateral eligibility requirements, eg through the European DataWarehouse initiative).<sup>2</sup> The private sector has also

<sup>2</sup> The delegated acts adopted in the EU under the Solvency II Directives and the Capital Requirements Regulation, for the liquidity coverage ratio, will establish a differentiated risk-sensitive approach to securitisation instruments. The European

undertaken initiatives that aim to restore investor activity in securitisation markets. Labelling schemes have been developed (eg Prime Collateralised Securities at the EU level and True Sale International in Germany) and initiatives have been undertaken to standardise documentation (eg the Dutch Securitisation Association and the Japanese Securities Dealers Association).

The BCBS-IOSCO work is focused on developing criteria to identify and assist in the financial industry's development of simple and transparent securitisation structures. The identification of criteria for simplicity, transparency and comparability is intended to help transaction parties – including originators, investors and other parties with a fiduciary responsibility – evaluate the risks of a particular securitisation and across similar products.

- **Simplicity** refers to the homogeneity of underlying assets with simple characteristics, and a transaction structure that is not overly complex.
- Criteria on **transparency** provide investors with sufficient information on the underlying assets, the structure of the transaction and the parties involved in the transaction, thereby promoting a more comprehensive and thorough understanding of the risks involved. The manner in which the information is available should not hinder transparency, but instead support investors in their assessment.
- Criteria promoting **comparability** could assist investors in their understanding of such investments and enable more straightforward comparison across securitisation products within an asset class. Importantly, they should appropriately take into account differences across jurisdictions.

The purpose of these criteria is to identify and assist in the development by the financial industry of simple, transparent and comparable securitisations, to assist investors with their due diligence on securitisations – not to serve as a substitute for such due diligence.

The proposed approach is a modular one: to identify foundation criteria related to simplicity, transparency and comparability, while acknowledging that additional and/or more detailed criteria, such as those related to credit risks of the underlying securitised assets, may be added based on specific needs and applications, eg investor mandates, regulatory applications and central bank collateral frameworks. The implementation of such criteria, including its potential impact on regulation, is out of the scope of this consultation.

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### How can STC criteria mitigate impediments to functioning securitisation markets?

Stigma	The STC criteria may help to reduce stigma by promoting simpler, more transparent and more comparable securitisations.
Difficulty in assessing risks	By improving simplicity in terms of asset and structural risks, the STC criteria may contribute to a more accurate assessment by both investors and supervisors of the risk of securitisation exposures. And by improving transparency, the STC criteria may help provide investors with greater access to comprehensive and reliable performance information – regarding the underlying assets' profile, and their performance during the life of the transactions, as well as in relation to the securitisation structure. Together, these may help investors conduct a more thorough analysis of the risks and payoffs. Combined with greater comparability of certain elements of securitisation transactions, these could lower the hurdles for assessing securitisations.

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Banking Authority (EBA) also suggested in a recent Consultative Document that a similar approach to identify simple, standard and transparent securitisations be adopted.

## Design of the STC criteria

The BCBS and IOSCO have identified 14 STC criteria which, if satisfied, could indicate that a securitisation possesses a level of simplicity, transparency and comparability that could assist market participants in evaluating the risks of a securitisation transaction.

The criteria have been mapped to key types of risk in the securitisation process:

- (a) Generic criteria relating to the underlying asset pool (**asset risk**)
- (b) Transparency around the securitisation structure (**structural risk**)
- (c) Governance of key parties to the securitisation process (**fiduciary and servicer risk**)

The "asset risk" category includes generic criteria in relation to the underlying asset pool. But, for the reasons discussed above, they intentionally do not address the ultimate credit risk of underlying securitisation pools.

The table below outlines the 14 STC criteria that seek to help identify asset risk, structural risk and fiduciary and servicer risk, noting their purpose with respect to simplicity, transparency and/or comparability. The criteria are set out in full in the annex.

Section	Criteria summary	Purpose <sup>1</sup>
A. Asset risk	1. Nature of the assets	S, T, C
	2. Asset performance history	T, C
	3. Payment status	S, T, C
	4. Consistency of underwriting	S, C
	5. Asset selection and transfer	S, T, C
	6. Initial and ongoing data	S, T, C
B. Structural risk	7. Redemption cash flows	S
	8. Currency and interest rate asset and liability mismatches	S, C
	9. Payment priorities and observability	S, T, C
	10. Voting and enforcement rights	S, T, C
	11. Documentation disclosure and legal review	T, C
	12. Alignment of interests	S, C
C. Fiduciary and servicer risk	13. Fiduciary and contractual responsibilities	T, C
	14. Transparency to investors	T, C

<sup>1</sup> S = simplicity; T = transparency; C = comparability.

## Further areas for review

### Short-term securitisation markets

The BCBS and IOSCO work thus far has focused on term securitisations. Short-term securitisations (eg ABCP), are therefore out of the scope of the current STC criteria. However, they are a key part of securitisation markets and provide an important source of funding to the real economy. Similar to term securitisations in most jurisdictions, the outstanding volume and issuance of ABCP have dropped significantly post-crisis. At the end of 2013, outstanding ABCP in the US amounted to about a fifth of its

2007 peak. In Europe and Australia, the declines have been more significant, with the outstanding volumes about an eighth to a tenth of the 2007 peaks.<sup>3</sup> While much of the decline reflects the effective discontinuation of risky structures such as SIVs, asset-backed extensible notes, mortgage warehouse programmes and other market value programmes, it has also extended to the remaining ABCP structures that now make up the vast majority of the ABCP market, ie multi-seller conduits that invest in the traditional asset classes, such as auto, trade and credit card receivables, equipment leases and consumer loans.

The BCBS and IOSCO are requesting comment on these markets and criteria for these markets, as set out in the questions section below.

## Standardisation of securitisations' documentation

Difficulty in assessing risk has been identified as an important impediment to sustainable securitisation markets. While STC criteria aim to address this deficiency to some extent, other complementary initiatives may also be warranted. Investors have highlighted that more standardisation and comparability of securitisations' documentation could be helpful as they could enhance the efficiency and timeliness of the due diligence process.

The BCBS and IOSCO are requesting comment on standardisation in the securitisation market, as set out in the questions section below.

## Questions

1. Do respondents agree that the criteria achieve the goals they aim to achieve? In particular, do respondents believe that the criteria could help investors to identify "simple", "transparent" and "comparable" securitisations?
2. Do respondents agree with the STC criteria set out in the annex of this paper? In particular, are they clear enough to allow for the development by the financial sector of simple, transparent and comparable securitisations? Or do respondents think they are too detailed as globally applicable criteria? The annex provides guidance on each criterion. Which additional criteria would respondents consider necessary, if any, and what additional provisions would be useful or necessary to support the use of the criteria? What are respondents' views on the "additional considerations" set out under some criteria in the annex? Should they become part of the criteria? Are there particular criteria that could hinder the development of sustainable securitisation markets due, for example, to the costliness of their implementation?
3. What are respondents' views on the state of short-term securitisation markets and the need for initiatives with involvement from public authorities? Do respondents consider useful the development of differentiating criteria for ABCP, in a manner similar to that of term securitisations? The BCBS and IOSCO would particularly welcome any data and descriptions illustrating the state of short-term securitisation markets by jurisdiction and the views of respondents on concrete comparable criteria that could be applied to short-term securitisations.

<sup>3</sup> Source: Fitch.

4. What are respondents' views on the level of standardisation of securitisation transactions' documentation? Would some minimum level of standardisation of prospectuses, investor reports and key transaction terms be beneficial? Do respondents think there are other areas that could benefit from more standardisation? Would a standardised template including where to find the relevant information in the prospectus be helpful? The BCBS and IOSCO would particularly welcome a description, by jurisdiction, of the extent to which different elements of initial documentation are standardised.

## Next steps

The BCBS and IOSCO welcome comments from the public on the questions set out in this consultative document.

Comments on the proposals should be provided by 13 February 2015. All comments will be published on the Bank for International Settlements' and International Organization of Securities Commissions' websites unless a commenter specifically requests confidential treatment.

Comments may be provided as follows:

- **To the BCBS:**
  - using the following link: [www.bis.org/bcbs/commentupload.htm](http://www.bis.org/bcbs/commentupload.htm)
  
- **To IOSCO:**
  - by e-mail to [Consultation-2014-10@iosco.org](mailto:Consultation-2014-10@iosco.org); or
  - by post to:  
*International Organization of Securities Commissions*  
*C/ Oquendo 12*  
*28006 Madrid*  
*Spain*

## Annex

### Criteria for identifying simple, transparent and comparable (STC) securitisations

#### A. Asset risk

##### 1. Nature of the assets

###### Criteria

In simple, transparent and comparable securitisations, the assets underlying the securitisation should be credit claims or receivables that are homogeneous with respect to their asset type, jurisdiction, legal system and currency.

As more exotic asset classes require more complex and deeper analysis, credit claims or receivables should have defined terms relating to rental,<sup>4</sup> principal, interest, or principal and interest payments. Any referenced interest payments or discount rates should be based on commonly encountered market interest rates, but should not reference complex or complicated formulae or exotic derivatives.<sup>5</sup>

###### Additional consideration

Whilst the principles behind this criterion should be understandable, the terms “complex or complicated formulae”, “exotic derivatives” and “homogeneity with respect to geographical origin” may need to be defined, depending on the application of the criterion.

##### 2. Asset performance history

###### Criteria

New and potentially more exotic asset classes are likely to require more complex and heightened analysis. In order to provide investors with sufficient information to conduct appropriate due diligence and access to a sufficiently rich data set to enable a more accurate calculation of expected loss in different stresses, verifiable loss performance data, such as delinquency and default data, should be available for credit claims and receivables with substantially similar risk characteristics to those being securitised, for a time period long enough to permit meaningful evaluation by investors. Sources of and access to data and the basis for claiming similarity to credit claims or receivables being securitised should be clearly disclosed to all market participants.

<sup>4</sup> Payments on operating and financing lease are typically considered to be rental payments rather than payments of principal and interest.

<sup>5</sup> The Global Association of Risk Professionals (GARP) defines an exotic instrument as a financial asset or instrument with features making it more complex than simpler, plain vanilla, products.

## Additional consideration

In addition to the history of the asset class within a jurisdiction, investors should consider whether the originator, sponsor, servicer and other parties with a fiduciary responsibility to the securitisation have an established performance history for substantially similar credit claims or receivables to those being securitised and for an appropriately long period of time.<sup>6</sup>

“Substantially similar credit claims or receivables to those being securitised” may need to be defined depending on the application of the criterion.

### 3. Payment status

#### Criteria

Non-performing credit claims and receivables are likely to require more complex and heightened analysis. In order to ensure that only performing credit claims and receivables are assigned to a securitisation, credit claims or receivables being transferred to the securitisation may not include obligations that are in default, delinquent or obligations for which the transferor<sup>7</sup> or parties to the securitisation<sup>8</sup> are aware of evidence indicating a material increase in expected losses or of enforcement actions.

#### Additional consideration

The terms “default”, “delinquent” and “material increase” may need to be defined depending on the application of the criterion.

### 4. Consistency of underwriting

#### Criteria

Investor analysis should be simpler and more straightforward where the securitisation is of credit claims or receivables that satisfy uniform and non-deteriorating origination standards. To ensure that the quality of the securitised credit claims and receivables is not dependent on changes in underwriting standards, the originator should demonstrate to investors that any credit claims or receivables being transferred to the securitisation have been originated in the ordinary course of the originator’s business to uniform and non-deteriorating underwriting standards.

These should be credit claims or receivables which have satisfied uniform and non-deteriorating underwriting criteria and for which the obligors have been assessed as having the ability and volition to make timely payments on obligations; or on granular pools of obligors originated in the ordinary course of the originator’s business where expected cash flows have been modelled to meet stated obligations of the securitisation under prudently stressed loan loss scenarios.

<sup>6</sup> It is not the intention of the criteria to form an impediment to the entry of new participants to the market, but rather that investors should take into account the performance history of the transaction parties when deciding whether to invest in a securitisation.

<sup>7</sup> Eg the originator or sponsor.

<sup>8</sup> Eg the servicer or a party with a fiduciary responsibility.

## 5. Asset selection and transfer

### Criteria

Whilst recognising that credit claims or receivables transferred to a securitisation will be subject to defined criteria,<sup>9</sup> the performance of the securitisation should not rely upon the initial and ongoing selection of assets through active management on a discretionary basis of the securitisation's underlying portfolio. Credit claims or receivables transferred to a securitisation should be whole portfolios of eligible credit claims or receivables, or should be randomly selected from those satisfying eligibility criteria and may not be actively selected, actively managed or otherwise cherry-picked on a discretionary basis. Investors should be able to assess the credit risk of the asset pool prior to their investment decisions.

In order to meet the principle of true sale, the securitisation should effect true sale or effective assignment of rights for underlying credit claims or receivables from the seller on terms such that the resulting claims on these credit claims or receivables:

- are enforceable against any third party;
- are beyond the reach of the seller, its creditors or liquidators and are not subject to material re-characterisation or clawback risks;
- are not effected through credit default swaps, derivatives or guarantees, but by a legal assignment of the credit claims or the receivables to the securitisation; and
- demonstrate effective recourse to the ultimate obligation for the underlying credit claims or receivables and are not a securitisation of other securitisations.

In applicable jurisdictions, securitisations employing transfers of credit claims or receivables by other means should demonstrate the existence of material obstacles preventing true sale at issuance<sup>10</sup> and should clearly demonstrate the method of recourse to ultimate obligors.<sup>11</sup> In such jurisdictions, any conditions where the transfer of the credit claims or receivable is delayed or contingent upon specific events and any factors affecting timely perfection of claims by the securitisation should be clearly disclosed.

The originator should provide representations and warranties that the credit claims or receivables being transferred to the securitisation are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due.

### Additional consideration

The term "materiality" will need to be defined depending on the application of the criterion.

<sup>9</sup> Eg the size of the obligation, the age of the borrower or the LTV of the property.

<sup>10</sup> Eg the immediate realisation of transfer tax or the requirement to notify all obligors of the transfer.

<sup>11</sup> Eg equitable assignment, perfected contingent transfer.



## 6. Initial and ongoing data

### Criteria

To assist investors in conducting appropriate due diligence prior to investing in a new offering, sufficient loan-level data or, in the case of granular pools, summary stratification data on the relevant risk characteristics of the underlying pool should be available to potential investors before pricing of a securitisation.

To assist investors in conducting appropriate and ongoing monitoring of their investments' performance and so that investors that wish to purchase a securitisation in the secondary market have sufficient information to conduct appropriate due diligence, timely loan-level or granular pool stratification data on the risk characteristics of the underlying pool and standardised investor reports should be readily available to current and potential investors at least quarterly throughout the life of the securitisation. Cutoff dates of the loan-level or granular pool stratification data should be aligned with those used for investor reporting.

To provide a level of assurance that the reporting of the underlying credit claims or receivables is accurate and that the underlying credit claims or receivables meet the eligibility requirements, the initial portfolio should be reviewed for conformity with the eligibility requirements by an appropriate independent third party, other than a credit rating agency, such as an independent accounting practice or the calculation agent or management company for the transaction.

## B. Structural risk

### 7. Redemption cash flows

#### Criteria

Liabilities subject to the refinancing risk of the underlying credit claims or receivables are likely to require more complex and heightened analysis. To help ensure that the underlying credit claims or receivables do not need to be refinanced over a short period of time, there should not be a reliance on the sale or refinancing of the underlying credit claims or receivables in order to repay the liabilities, unless the underlying pool of credit claims or receivables is sufficiently granular and has sufficiently distributed repayment profiles. Rights to receive income from the assets specified to support redemption payments should be considered as eligible credit claims or receivables in this regard.<sup>12</sup>

### 8. Currency and interest rate asset and liability mismatches

#### Criteria

To reduce the payment risk arising from the different interest rate and currency profiles of assets and liabilities and to improve investors' ability to model cash flows, interest rate and foreign currency risks should be appropriately mitigated and any hedging transactions documented according to industry-standard master agreements. Only derivatives used for genuine hedging purposes should be allowed.

<sup>12</sup> For example, associated savings plans designed to repay principal at maturity.

## 9. Payment priorities and observability

### Criteria

To prevent investors being subjected to unexpected repayment profiles during the life of a securitisation, the priorities of payments for all liabilities in all circumstances should be clearly defined at the time of securitisation and appropriate legal comfort regarding their enforceability should be provided.

To ensure that junior note holders do not have inappropriate payment preference over senior note holders that are due and payable, throughout the life of a securitisation, or, where there are multiple securitisations backed by the same pool of credit claims or receivables, throughout the life of the securitisation programme, junior liabilities should not have payment preference over senior liabilities which are due and payable. The securitisation should not be structured as a “reverse” cash flow waterfall such that junior liabilities are paid where due and payable senior liabilities have not been paid.

To ensure that debt forgiveness, forbearance, payment holidays and other asset performance remedies can be clearly identified, policies and procedures, definitions, remedies and actions relating to delinquency, default or restructuring of underlying debtors should be provided in clear and consistent terms, such that investors can clearly identify debt forgiveness, forbearance, payment holidays, restructuring and other asset performance remedies on an ongoing basis.

To help provide investors with full transparency over any changes to the cash flow waterfall, payment profile or priority of payments that might affect a securitisation, all triggers affecting the cash flow waterfall, payment profile or priority of payments of the securitisation should be clearly and fully disclosed both in transaction documentation and in investor reports, with information in the investor report that clearly identifies the breach status, the ability for the breach to be reversed and the consequences of the breach. Investor reports should contain information that allows investors to easily ascertain the likelihood of a trigger being breached or reversed. Any triggers breached between payment dates should be disclosed to investors on a timely basis in accordance with the terms and conditions of the transaction documents.

Transactions featuring a revolving period should include provisions for appropriate early amortisation events and/or triggers of termination of the revolving period, including, notably: (i) deterioration in the credit quality of the underlying exposures; (ii) a failure to acquire sufficient new underlying exposures of similar credit quality; and (iii) the occurrence of an insolvency-related event with regard to the originator or the servicer.

Following the occurrence of a performance-related trigger, an event of default or an acceleration event, the securitisation positions should be repaid in accordance with a sequential amortisation priority of payments, in order of tranche seniority, and there should not be provisions requiring immediate liquidation of the underlying assets at market value.

To assist investors in their ability to appropriately model the cash flow waterfall of the securitisation, the originator or sponsor should make available to investors, both before pricing of the securitisation and on an ongoing basis, a liability cash flow model or information on the cash flow provisions allowing appropriate modelling of the securitisation cash flow waterfall.

## 10. Voting and enforcement rights

### Criteria

To help ensure clarity for securitisation note holders of their rights and ability to control and enforce on the underlying credit claims or receivables, in particular upon insolvency of the originator or sponsor or where the obligor is in default on the obligation, all voting and enforcement rights related to the credit claims or receivables should be transferred to the securitisation and investors' rights in the securitisation

should be clearly defined under all circumstances, including with respect to the rights of senior versus junior note holders.

#### Additional consideration

The criteria could be adjusted by specifying that the most senior rights are afforded to the most senior liabilities to ensure that senior note holders benefit from control of voting and enforcement rights, subject to legislative restrictions over such rights.

## 11. Documentation disclosure and legal review

### Criteria

To help investors to fully understand the terms, conditions, legal and commercial information prior to investing in a new offering and to ensure that this information is set out in a clear and effective manner for all programmes and offerings, sufficient initial offering documentation<sup>13</sup> should be provided to investors (and readily available to potential investors on a continuous basis) within a reasonably sufficient period of time prior to issuance, such that the investor is provided with full disclosure of the legal and commercial information and comprehensive risk factors needed to make informed investment decisions. These should be composed such that readers can readily find, understand and use relevant information.

To ensure that the securitisation's legal documentation has been subject to appropriate review prior to publication, the terms and documentation of the securitisation should be reviewed and verified by an appropriately experienced and independent legal practice. Investors should be notified in a timely fashion of any changes in such documents that have an impact on the structural risks in the securitisation.

#### Additional consideration

Standards for consistency of information and disclosure could be considered for this criterion.

<sup>13</sup> Eg asset sale agreement, assignment, novation or transfer agreement; servicing, backup servicing, administration and cash management agreements; trust/management deed, security deed, agency agreement, account bank agreement, guaranteed investment contract, incorporated terms or master trust framework or master definitions agreement as applicable; any relevant inter-creditor agreements, swap or derivative documentation, subordinated loan agreements, startup loan agreements and liquidity facility agreements; and any other relevant underlying documentation, including legal opinions.

## 12. Alignment of interest

### Criteria

In order to align the interests of those responsible for the underwriting of the credit claims or receivables with those of investors, the originator or sponsor of the credit claims or receivables should retain a material net economic exposure and demonstrate a financial incentive in the performance of these assets following their securitisation.

### Additional consideration

Parties with a fiduciary responsibility to investors should review and confirm the material economic exposure retained by the originator or sponsor and should confirm that the originator or sponsor demonstrates a financial incentive in the performance of these assets following their securitisation.

## C. Fiduciary and servicer risk

### 13. Fiduciary and contractual responsibilities

#### Criteria

To help ensure servicers have extensive workout expertise, thorough legal and collateral knowledge and a proven track record in loss mitigation, such parties should be able to demonstrate expertise in the servicing of the underlying credit claims or receivables, supported by a management team with extensive industry experience. The servicer should at all times act in accordance with reasonable and prudent standards. Policies, procedures and risk management controls should be well documented and adhere to good market practices and relevant regulatory regimes. There should be strong systems and reporting capabilities in place.

The party or parties with fiduciary responsibility should act on a timely basis in the best interests of the securitisation note holders, and the terms of the notes and contractual transaction documentation should contain provisions facilitating the timely resolution of conflicts between different classes of note holders by the trustees, to the extent permitted by applicable law.

The party or parties with fiduciary responsibility to the securitisation and to investors should be able to demonstrate sufficient skills and resources to comply with their duties of care in the administration of the securitisation vehicle.

To increase the likelihood that those identified as having a fiduciary responsibility towards investors as well as the servicer execute their duties in full on a timely basis, remuneration should be such that these parties are incentivised and able to meet their responsibilities in full and on a timely basis.

#### Additional consideration

Consideration should be given to whether parties with a fiduciary responsibility should act in the best interests of the majority of note holders to prevent situations where a single investor in a junior or mezzanine class can affect a blocking vote through a minority holding in that class, whilst recognising that legislative restrictions over such rights may exist.

## 14. Transparency to investors

### Criteria

To help provide full transparency to investors, assist investors in the conduct of their due diligence and to prevent investors being subject to unexpected disruptions in cash flow collections and servicing, the contractual obligations, duties and responsibilities of all key parties to the securitisation, both those with a fiduciary responsibility and of the ancillary service providers, should be defined clearly in the transaction documents. Provisions should be documented for the replacement of servicers, bank account providers, derivatives counterparties and liquidity providers in the event of failure or non-performance or insolvency or other deterioration of creditworthiness of any such counterparty to the securitisation.

To enhance transparency and visibility over all receipts, payments and ledger entries at all times, the performance reports to investors should distinguish and report the securitisation's income and disbursements, such as scheduled principal, redemption principal, scheduled interest, prepaid principal, past due interest and fees and charges, delinquent, defaulted and restructured amounts, including accurate accounting for amounts attributable to principal and interest deficiency ledgers.