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Basel Committee on Banking Supervision

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The Board of the International Organization of Securities Commissions

Submitted via email to: Consultation-2014-10@iosco.org

Re: Response to BCBS/IOSCO Consultative Document on Criteria for identifying simple, transparent and comparable securitisations

The Global Financial Markets Association (GFMA) (including the Association for Financial Markets in Europe (AFME), the Asia Securities Industry & Financial Markets Association (ASIFMA) and the Securities Industry & Financial Markets Association (SIFMA)), the International Capital Market Association (ICMA), the Institute of International Finance (IIF) and International Swaps and Derivatives Associations (ISDA) (together the "**Joint Associations**")¹ welcome the opportunity to respond to the Consultation Document (the "**CD**") entitled "Criteria for identifying simple, transparent and comparable securitisations" published by the Basel Committee on Banking Supervision (the "**BCBS**") and the Board of the International Organization of Securities Commissions ("**IOSCO**" and, together with the BCBS, the "**Authorities**") on 11 December 2014.

The Joint Associations and their members would like to thank the Authorities for producing a carefully thought-out and constructive discussion paper. In the last twelve months it has become apparent that policy-makers within the European Union recognise the positive benefits of securitisation. There has been a joint consultation by the European Central Bank and the Bank of England entitled "The case for a better functioning securitisation market in the European Union" and one by the European Banking Authority along very similar lines to this CD. The Joint Associations are very pleased to see that the Authorities are taking a similar interest in reviving the securitisation markets globally through a regime of simple, transparent and comparable ("**STC**") securitisations. The seven years that have passed since the onset of the financial crisis now provide strong evidence of how well most securitisations have performed, both in credit and in price terms, as well as examples of securitisation's importance as a funding tool for the world's banks and major corporates who employ thousands of citizens.

¹ See attached Annex 1 for a description of each of the Joint Associations.

We strongly support the establishment by the Authorities of the Task Force on Securitisation Markets (TFSM) and we welcome the TFSM's efforts to develop criteria that will help to mitigate the impediments to functioning securitisation markets, including eliminating the stigma attached to such markets and reducing the difficulty in assessing risks associated with securitisation investments.

The "EBA Discussion Paper on simple standard and transparent securitisations" published by the European Banking Authority on 14 October 2014 (the "**EBA DP**") said that "a well functioning and prudentially sound securitisation market in the EU will contribute to strengthening the resilience of the European financial system by providing an alternative funding channel to the real economy and enhanced risk-sharing." This followed the discussion paper on "The case for a better functioning securitisation market in the European union" issued by the Bank of England and the European Central Bank in May 2014 (the "**ECB/BoE DP**") which contained similar sentiments. We agree with these statements and believe that the same arguments apply in respect of the global financial system.

Market participants are very encouraged that the Authorities are now taking the next step to develop a set of criteria for STC securitisations that should provide a sensibly calibrated, globally aligned framework for future regulation of securitisation that avoids the harsh and inappropriate "one-size-fits-all" regulatory approach of the recent past, acknowledges the policy objective of reviving safe and stable securitisation markets and recognises the evidence of the strong credit and price performance of many types of securitisation since the crisis. We further hope that the CD represents the first step in the development of a common set of criteria for STC securitisations accepted around the world so that market participants can more easily structure transactions that will receive the favourable regulatory treatment which we hope will attach to STC securitisations regardless of the domicile of the investors.

Our substantive response consists of overall comments, followed by our answers to the 4 specific questions posed by the CD. Annex 2 contains our detailed thoughts on the 14 proposed criteria set out in the CD for determining whether a particular transaction is "simple", "transparent" and "comparable". Some of our comments reiterate or build on the AFME, BBA, ICMA and ISDA response² to the EBA DP and/or the AFME response³ to the ECB/BoE DP.

A. **Overall Comments**

1. *We are in favour of a holistic, transaction-based (not tranche-based) approach*

The Joint Associations and our members agree with much of the analysis presented in the CD. In particular, we welcome the fact that the Authorities' approach, like that of the EBA DP and the ECB/BoE DP, is largely transaction-based. A number of previous proposals have been tranche-based, with only the most senior tranche of any given transaction being allowed to qualify. This tranche-based approach implies that the purpose of qualification is to reduce or eliminate risk. One of the chief virtues of the transaction-based approach to qualifying securitisation is the focus on transparency and the ability to understand and model risk, rather than an attempt to reduce or eliminate risk. In the words of the CD "The purpose of these criteria is to

² <http://afme.eu/WorkArea/DownloadAsset.aspx?id=12322>

³ <http://afme.eu/WorkArea/DownloadAsset.aspx?id=10999>

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." Indeed, the function of any efficient market is to price and allocate risk, not to eliminate it. In the case of the securitisation markets, the risk that ought to be priced and allocated is the credit risk of the underlying assets, as modified by the structuring of the transaction (via tranching and credit-enhancements such as swaps and liquidity facilities). It follows that investors need the information necessary to properly assess those risks and their ability to bear them so they can price the risk accurately. That makes requirements relating to simplicity, loan-level data and general ability to model the risk sensible and appropriate. STC securitisations should not be risk-free, and should not give the impression of being risk-free. Rather, the badge of "STC securitisation" ought to represent a belief that the risks are capable of being modelled reliably by the targeted investor base using the information made available to them.

2. *The criteria should bear in mind the needs of investors but not at the cost of the needs of originators*

There is an inferred emphasis in the criteria proposed on the benefit to the investor. This is right, in that reassuring investors regarding the simplicity, transparency and comparability of the securitisation assets that they invest in is invaluable in ensuring that the securitisation market can be re-invigorated. We are concerned, however, that the CD does not adequately emphasise the need also for benefits to the supply side of the securitisation markets. Balancing the emphasis of the proposed STC framework on investors with the benefits of securitisation to the originator (in particular ensuring that significant risk transfer, and the capital relief that goes with it, is possible in the context of an STC securitisation) is crucial to ensure a continuing healthy supply side of the securitisation market. Any framework that does not take adequate account of the need to provide capital relief to originators would frustrate the goal, and prevent the realisation of the fundamental benefits, of re-establishing a well-functioning and prudentially sound securitisation market.

The EBA DP accurately describes securitisation "as opening an alternative funding channel to fund the economy, and realising increasing levels of credit risk transfer and hence sharing risk in the financial system". This means that two of the benefits of securitisation are intrinsic to the benefit of the originator, not the investor. If the direct funding benefit is not achievable for the originator, the wider economy will suffer and economic growth will be restricted. If risk transfer is not achievable for the originator, its balance sheet will remain constrained as will the originator's capacity to provide new funding by originating new assets in the wider economy. This means that the interests of the originator, as well as the investor, are critical and cannot be ignored. If meaningful benefits to the wider economy are to be realised, securitisation must regain its traditional function as a tool not just for direct funding but also for risk transfer achieving capital relief for the originator. If securitisation remains as only a direct funding tool (as it has been, by and large, since the onset of the financial crisis) its ability to contribute more strongly to growth, support financial stability and broaden and deepen capital markets will not be realised and it will remain solely as it is today - a relatively expensive funding tool compared to other fixed income instruments.

3. *Harmonisation of the requirements across jurisdictions should be a key goal*

One important way of encouraging growth in the depth and liquidity of the securitisation markets is to facilitate cross-border investments in securitisation products. We believe that the STC framework is compatible with this objective, but only if it has the effect of harmonising the requirements for "qualifying" or STC securitisations across jurisdictions. It is also obvious that the criteria eventually adopted by the Authorities will need to be broad and principles-based in order to allow for appropriate implementation in each of the various jurisdictions that follow the Authorities' approach.

We believe a globally harmonised approach to simple, transparent and comparable securitisations would work best on a principles basis, so as to allow for differences between jurisdictions and also for the potential different uses of the framework: for example, in determining capital requirements, on the one hand, and eligibility of instruments as collateral in central bank funding transactions on the other. This is broadly reflected in the criteria proposed in the CD. However, we are concerned that some of the "additional considerations" within the criteria seem to allow for a wide scope of interpretation of key terms (e.g. "exotic derivatives", "default", "materiality" etc) which could mean that an STC securitisation in one jurisdiction is not in any way comparable to an STC securitisation in another jurisdiction. This would in our view significantly undermine the aims of the framework. It will be important that certain key terms are given a common definition for the framework to be applied consistently.

Where this cannot be achieved, one way to strike the right balance between promoting a framework that is flexible enough to accommodate different uses and underlying legal frameworks etc. and still maintain comparability between transactions would be for regulators to have a system of mutual recognition of each other's STC frameworks. This would give both investors and issuers confidence in the framework on a global basis. It would also allow market participants to structure transactions according to the requirements of their home jurisdictions, safe in the knowledge that investors in other jurisdictions would nonetheless be able to benefit from the improved regulatory treatment associated with an STC securitisation.

4. *We believe synthetic securitisations should be included in the STC criteria, subject to certain conditions*

The members of the Joint Associations believe that, despite the poor performance of some types of synthetic securitisations during the financial crisis, there is justification for the inclusion of certain limited types of appropriately designed synthetic securitisations within the STC definition. This will require the adjustment of some criteria set out in the CD which would otherwise exclude synthetic securitisations - notably Criterion 5 that requires true sale and, in some cases, Criterion 8 that limits the use of derivatives to those used for genuine hedging purposes⁴.

⁴ This would be the case, e.g. where derivatives are used by the securitisation SPV issuer to gain exposure to the underlying portfolio. In that case, the issuer would not be using derivatives for hedging purposes, but to gain exposure to the reference portfolio. This, of course, does not prevent the originator bank from using the overall transaction for hedging purposes.

It should further be noted that allowing certain types of synthetic securitisations to qualify as STC will help to contribute funding to the real economy. They would ease the execution of securitisations of more challenging asset classes such as SME loans and trade credit (both of which often contain clauses preventing legal true sale of the loan or are otherwise more difficult and/or slower to structure through cash securitisations) by transferring risk and freeing up bank capital to make additional loans. This is especially true for SME loans which carry relatively high capital requirements when held on balance sheet (compared with, say, residential mortgages).

Because this is the primary concern of the members of the Joint Associations for ensuring that synthetic securitisations qualify, we would not expect transactions to qualify where e.g. the purpose of the transaction was other than to achieve credit risk mitigation. The Joint Associations acknowledge that there are legitimate concerns about certain features of some synthetic securitisations, but we submit that these concerns would be better dealt with by allowing synthetics to be qualifying securitisations on the criteria/conditions outlined below rather than by excluding them entirely:

- **Reference portfolio to comply:** All of the criteria applicable to the nature of the underlying assets for STC cash securitisations would apply to the reference portfolio of a synthetic securitisation.
- **The purpose of the transaction is to achieve credit risk mitigation:** The transaction must be designed in order to achieve credit risk mitigation in respect of exposures which appear on the consolidated regulatory capital accounts of the group of which the originator is a part.
- **No synthetic re-securitisations:** Synthetic securitisations would only be able to be considered STC if the reference asset portfolio excluded securitisation exposures and transferable securities.
- **Collateralisation:** The notes issued in connection with a synthetic securitisation should be collateralised by cash or such other collateral as may be approved by the competent authority. This will serve to eliminate the counterparty risk that would otherwise result from the synthetic nature of the transfer of credit risk on the reference portfolio. Tranches of a synthetic securitisation need not, however, be collateralised for so long as (and to the extent that) they are retained by the originator.
- **Transparency:** Synthetic securitisations should provide at least the same level and frequency of information in respect of the reference portfolio as an STC cash securitisation would be required to provide in respect of its portfolio of underlying assets.
- **Simplicity of terms:** The key terms for sale of the risk on the reference portfolio, such as credit events, loss determination and resulting note payout profiles, should be simple, clear, straightforward and transparent and disclosed in the same way as an STC cash securitisation.

- **Servicing standards:** The reference assets underlying the synthetic securitisation should be serviced to the same standard as that required by Criterion 13 for STC cash securitisations.
- **Compliance with guidance on high cost credit protection:** STC synthetic securitisations should avoid the kinds of pitfalls identified by the BCBS in its newsletter No 16, dated December 2011⁵. Credit protection purchased at high cost relative to potential losses, or where costs are recognised over the life of the contract but the capital benefit is immediate, or where call dates arise before any likely losses and there are incentives to call the transaction are all indications that a synthetic securitisation is not STC.

In the present regulatory and market climate, there must be a place for synthetic securitisation, not least because cash securitisations can be prohibitively expensive for some asset classes. Where synthetic securitisations are used to facilitate (albeit indirectly) the provision of funding to the real economy because they are easier and faster to structure and incur lower costs for originators (including transaction costs, contingent liabilities and encumbrance costs), the Joint Associations would submit that including certain types of synthetic securitisations in the STC framework would help to achieve the Authorities' policy goals.

An alternative proposal for when an originator acts as investor

An alternative proposal that the Authorities may wish to consider if they decide against allowing synthetic securitisations to qualify is "deeming" any retained tranches of a synthetic securitisation to be STC for so long as they are retained. While the merits of this approach may not be intuitively obvious, it is logical when the purposes of the STC (simple, transparent, comparable) regime are taken into account. It is necessary to consider first the requirements for transparency, then simplicity and comparability.

The transparency concerns of the STC regime would in this case be addressed by the fact that the originator is holding the underlying assets. By virtue of its role as the originator, the originator is familiar with all of the data on the underlying assets that an investor would require.

As for the simplicity and comparability matters of the STC regime, these are concerned either with facilitating understanding by an outsider of the portfolio (the role of originator obviates this need) or with ensuring that structural risks associated with the securitisation process itself are minimised and well understood. Since the originator will be holding the underlying assets directly (as there is no true sale), rather than through its ownership of notes (as it would be in a cash securitisation), these structural risks are effectively mitigated as well.

Of course the same logic would not apply to any sold tranches, but we believe that for retained tranches of synthetic securitisations our arguments set out a logical and reasonable case for their inclusion in the STC framework.

⁵ Available at: http://www.bis.org/publ/bcbs_n116.htm

5. *We believe the benefits of managed CLOs risk being lost as a result of their exclusion*

While managed CLOs are not out of scope of the Authorities' current consideration, they do seem unlikely, on the current proposals, to qualify as STC securitisations. This causes some concern since managed CLOs do serve the useful purpose of adding to the supply of credit available to the real economy, including for SMEs, and in many cases they have performed very well through the financial crisis.

The Joint Associations are in favour of a principles-based, not an asset-class based, approach to the definition of STC. We also believe that the definition should be as inclusive as possible. The revival of the securitisation market will not be achieved if the proposed new approach amounts to a "gold standard" encompassing only, say, 10% of the market. To the extent therefore that CLOs or any other asset class meet the applicable principles then in our view they should qualify.

If not, then another option for managed CLOs would be to address them through a separate regime. A reasonable case can be made that they should be treated differently from "traditional" securitisations. A regime tailored to the specificities of managed CLOs would serve to address the issue without unnecessarily cutting off the benefits provided by this product.

6. *We strongly support the Authorities' modular approach to STC securitisation to ensure the concept is appropriate to each of the circumstances to which it is likely to be applied*

Bearing in mind that the criteria being considered by the Authorities are intended to have a diversity of applications, the Joint Associations would like to emphasise their members' strong support for the Authorities' "modular" approach.

That said, it will, of course, be important to standardise certain of the criteria that apply in more than one regime. An example could be the requirements relating to "asset performance history" or "payment status" which could carry the same meaning, regardless of whether they were being considered for purposes of bank capital, insurance capital or central bank collateral frameworks. This will also facilitate the broad equivalence of requirements in different markets making substituted compliance or other forms of mutual recognition far more likely. That, in turn, would help to create far more efficient markets by significantly simplifying both the structuring process and the consequent and necessary investor due diligence process for transactions intended to be eligible for recognition and make it much easier for, say, asset managers to determine what assets qualify for each of the portfolios for which they are responsible.

7. *The Authorities should encourage national authorities to provide a degree of transitional relief*

To avoid "fire-sales", or other distortions of the market, transitional relief will be required for existing transactions.

Because the criteria proposed are more detailed and complete than market participants would have been able to foresee when structuring transactions to date, we fear that a significant number of transactions already in the market that are broadly simple,

transparent and comparable (and that have performed well to date) will fail to meet at least one of the criteria proposed, even under a principles-based set of rules.

Without transitional relief, there is a serious risk that this will bring about a "fire-sale" of these positions at inappropriately low prices purely because a later-issued transaction structured to the new specifications would benefit from better capital treatment. More broadly, it would be odd if these older transactions became, by default, subject to the same (or harsher) regulatory treatment as new but non-qualifying securitisations under the STC framework.

One way to mitigate this might be for national authorities to apply only certain broad core criteria to instruments issued prior to the introduction of the STC framework. These might include true sale, homogeneity of the pool, exclusion of resecuritisations and synthetic securitisations, and exclusions of securitisations backed by transferable financial instruments or derivatives. Subject to our comments under point 4 above in respect of synthetics, these seem to be sensible criteria to require of "grandfathered" securitisations, with the other criteria applying only to new securitisations issued after the introduction of the STC framework.

8. *Determinations about whether securitisations qualify must be made prior to pricing and must be able to be relied upon by investors*

Related to our desire to ensure a broad and principles-based approach is a concern about certainty. The CD does not address the question of who will be responsible for determining whether a given securitisation exposure is a STC or indeed a qualifying securitisation. From the perspective of the members of the Joint Associations, the most important single factor is that primary market investors must be in a position to determine whether a particular transaction will be an STC securitisation prior to pricing.

Further, there could be a freely available and web-based central register of qualifying securitisations established by national authorities in each jurisdiction that all market participants would be entitled to rely on. This register would set out which of the STC criteria each transaction met so that each market participant could determine based on the register whether the transaction qualified as STC for the particular application/need it had. Transactions would be added to this central register prior to the marketing in order that investors would have the information available to them when making a decision about whether to invest at issuance. This could possibly be achieved by the authorities playing a supervisory role in determining the criteria for a qualifying securitisation, and then appointing and regulating one or more independent, credible bodies to issue certifications (which might be necessary to meet the timing concern outlined above). The establishment of central registers by national authorities would also facilitate initiatives for mutual recognition or substituted compliance by promoting independent, reliable assessments of each transaction.

9. *Some criteria assume the presence of a party with a fiduciary responsibility and this is not the case in all jurisdictions*

The Joint Associations note that a number of the criteria set out in the CD assume that securitisation transactions are always structured in such a way as to include a party with a fiduciary responsibility. This is not necessarily the case in all jurisdictions.

Even in jurisdictions where some transactions are structured using fiduciaries, this is not universal nor is there any consensus that using fiduciaries is suitable in all circumstances. We would urge the Authorities therefore to remove references to parties with fiduciary responsibilities from the criteria.

10. *For private transactions, care should be taken to calibrate disclosure requirements to take into account their particular characteristics*

For transactions in ABCP conduits, and other private securitisation transactions in which banks or other regulated institutions may be investors, the proposed requirements for extensive disclosure to the market of information on the underlying assets, the servicer and other counterparties, their historical performance and experience, third-party or other verification of any such information, and transaction documents and terms, should be treated as met so long as the conduit sponsor, or other investors as applicable (so long as their exposure is to the underlying transactions, rather than to the credit of the sponsor bank), have access to that information (and any prospective investors are given access to that information before they commit to invest).

B. Answers to Specific 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?*

Broadly, yes, but see our comments on specific criteria at Annex 2.

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?*

See general comments above and specific comments on criteria in Annex 2 hereto.

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.*

Why are the short-term securitisation markets important?

We agree with the statement in the CD that "[s]hort-term securitisations (eg ABCP)...are a key part of securitisations markets and provide an important source of funding to the real economy." We would like to stress that the ABCP market is a very important – although sometimes unjustifiably neglected - part of the overall securitisation market as well as being a critical tool in funding the real economy. ABCP is the principal way certain asset classes (e.g. trade receivables) are securitised, predominantly for corporates, making it a significant contributor to working capital supporting trade and business. Although ABCP securitisation is structured differently from term securitisation markets, so that the criteria set out in the CD are not necessarily appropriate for ABCP, we believe that ABCP should be subject to a similar regime to the one described in the CD, but with criteria adapted to suit the specific characteristics of this form of securitisation financing. In this way, ABCP that is STC can continue to support corporate borrowers with a very direct link to the real economy.

More specifically, cash securitisation using ABCP conduits is a simple tool for banks to provide financing for a wide range of clients and assets. Using conservative credit enhancement, ABCP programs enable banks to extend low-risk secured financing to their corporate clients, and for these clients to monetise their assets rather than depending solely on their credit status to raise financing in the unsecured markets. Indeed, depending on the credit quality of the corporate borrower, ABCP is sometimes the only cost-effective way for banks to extend credit at all. Thus, the tranching used in the securitisation process enables banks to fund real economy clients while leaving most of the credit risk with the originator of the assets. The nature and extent of the credit enhancement is always dependent on a thorough analysis of the underlying assets.

That said, assets financed in ABCP conduits are generally of good quality and consist largely of trade and auto receivables, which tend to be granular and predictable in their performance. Despite the fact that the underlying assets do not tend to be especially risky, transactions are nonetheless structured to include conservative levels of credit enhancement (designed to meet credit rating agencies' criteria) in order to ensure that the conduit sponsor bank is not exposed to significant levels of risk via the liquidity facility.

Mainly for those reasons, the Joint Associations would submit that level of regulatory capital required to be held against investments in these transactions already exceeds that warranted by their level of risk. We are therefore deeply concerned by any STC regime that does not cater for ABCP and might therefore worsen an already onerous regulatory capital burden associated with these highly beneficial transactions.

Structural characteristics of ABCP conduits which differ from term ABS

Multi-seller ABCP conduits differ from term ABS in a number of ways, but one of the most important is that they operate on a programme basis under the sponsorship of a regulated bank, which also provides credit enhancement to the ABCP conduit in the form of a liquidity facility which guarantees liquidity to the conduit in an amount covering at least 100 % of the ABCP issued by the conduit. In this way the key credit risk for the investor is not the underlying assets but the quality of the sponsor-

provided liquidity facility. In this sense, multi-seller ABCP conduits are more akin to a covered bond, in that there is full recourse to the sponsor bank, as well as ultimately to the underlying assets.

This feature illustrates why it is crucially important to make a clear distinction between multi-seller ABCP conduits on the one hand, and the discredited structured investment vehicles ("SIVs") and "arbitrage conduits" prevalent before the crisis, on the other. While pre-crisis SIVs and some securities arbitrage conduits did issue asset-backed commercial paper, they did not benefit from 100% liquidity support from sponsoring banks. Instead, they relied on a relatively small amount of external liquidity support together with "internal liquidity" from the underlying ABS and other financial assets which, it was reckoned, could be sold to generate sufficient cash to pay the vehicles liabilities as they fell due. Such structures were therefore heavily dependent on the sale proceeds of the underlying securities held to assure their refinancing, and when this became impossible during the crisis, the structures failed. SIVs and similar structures have now disappeared from the market and even if they reappeared would not qualify for STC treatment (nor should they) because of this element of refinancing risk.

On the other hand, no multi-seller ABCP conduits with full liquidity support suffered losses due to a liquidity crisis. A 100% liquidity facility provided by a bank (subject to the bank having an appropriate liquidity buffer, which is a regulatory requirement in some jurisdictions) to the ABCP conduit ensures the protection of ABCP investors. These structures assure timely payments to investors without relying on the liquidity or market value of underlying assets.

Further, we attach as Annex 3 a paper prepared by AFME in December 2012 which analyses the pattern of liquidity drawings by sponsor banks of multi-seller ABCP conduits over a period from January 2005 to June 2012, and which demonstrates a strong element of stability in liquidity drawings. The paper also contains a more detailed analysis of the differences between SIVs and multi-seller ABCP conduits.

Credit and structural considerations for multi-seller ABCP conduits

In applying the STC concept to ABCP conduits, we must consider two different kinds of exposures.

First, the exposures of sponsor banks under liquidity and credit enhancement facilities (as well as, generally, any third party liquidity and credit facilities, swap transactions and the like) are exposures to the conduit's underlying transactions. In principle these can be evaluated using the same criteria that apply to "stand alone" ABS transactions, except that, since many of them are privately negotiated, even bilateral transactions between the sponsor bank and its customer, some of the formal structural features of securities offerings will not apply. For example, such a transaction may not have a formal offering document or an independent entity with fiduciary responsibilities, though the sponsor bank and other parties have at least as much information about and control of the transaction and the underlying assets as investors in widely-offered ABS. The Authorities should craft STC criteria according to principles that allow STC to include such transactions – not only those in ABCP conduits but also other private transactions that fall within the wide scope of securitisation as defined in the bank capital framework.

Second, the exposures represented by the ABCP itself are very different from exposures to the underlying transactions, as they rely on the sponsor-provided liquidity facilities for timely payment, and not on the value or liquidity of the underlying assets. For the ABCP investors, the structure, enforceability and even the credit quality of the conduit's underlying assets and purchase transactions are of at most secondary importance. The ABCP should be looked at less as tranching exposures to underlying financial assets and more as secured obligations of the sponsor bank, similar to covered bonds, but with short terms.

At the same time, for ABCP to qualify as STC it would be impractical and inappropriate to require that all the underlying transactions in ABCP should qualify as STC.

Depending on what the STC criteria include and how they are drafted, some underlying transactions, though of very high quality, may fail to qualify as STC mainly because they are private transactions that lack some formal characteristics of securities offerings. The underlying transactions, typically, are negotiated privately between the originator and the sponsor bank, and would not allow for the kind of extensive disclosure that would be required to make those transactions STC in relation to the ABCP investors.

Further, because a single ABCP conduit may have many underlying transactions, within the programme, with new transactions being added and others being paid out from time to time, even if all the requisite documents and information were made available, it is difficult to imagine how an ABCP investor would be able to determine whether all the underlying transactions in the programme were STC and likely to remain so until the maturity of its commercial paper. Such a requirement would be both excessive and inappropriate in light of the fact that the ABCP investor had only a short term exposure that relied primarily on the credit of the sponsor bank, and would severely discourage investors from participating in the market.

Formulating a STC framework for multi-seller ABCP conduits

The question is how best to formulate such a framework. Our starting point is existing capital regulation.

Specifically, in recent discussions around regulatory capital treatment for ABCP conduits, it has been necessary to analyse whether ABCP conduits should be treated as "resecuritisations". Most regulators have agreed that they should not, but in any event in the context of this letter the key point is that during these discussions the BCBS recognised that ABCP should not be treated as resecuritation if "the CP was fully supported by the sponsoring bank (i.e. where the sponsor provides support to an extent that leaves the CP effectively exposed to the default risk of the sponsor, instead of the underlying pools or assets) so that the external rating of the CP was based primarily on the credit quality of the bank sponsor" (BCBS, Enhancements to the Basel II framework (July 2009), page 2)⁶.

⁶ Similarly, in the EU regulation on application of due diligence requirements for banks investing in securitisation positions, where the ABCP "is supported by a liquidity facility which fully covers the credit risk of the securitised exposures, institutions may carry out a stress test on the creditworthiness of the

We therefore propose that STC should include ABCP that meets a similar standard (though it need not refer to external ratings). In addition, the STC criteria for ABCP could include that the bank providing that support is subject to short-term liquidity standards as provided in the Basel III framework (as enacted in the relevant jurisdiction), and that the ABCP's remaining term to maturity is not more than 397 days (or not more than two years with repricing within 397 days). For ABCP, it would also be appropriate to include a standard relating to the credit quality of the ABCP, based on external or internal ratings as appropriate according to the jurisdiction and type of investor. A requirement of one of the two highest short-term credit grades (equivalent to A-2/P-2 or higher) would be consistent with standards for investments by money market funds under regulations in effect in the United States and proposed in the European Union. Lastly, care should be taken to calibrate disclosure requirements to take into account the particular characteristics of ABCP conduit funding and in particular the feature that for ABCP investors their credit exposure is to the sponsor bank rather than the conduit's underlying assets, which are, at most, of secondary importance.

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.*

The Joint Associations are broadly supportive of the introduction of a level of standardisation in the securitisation market, although it should be noted that considerable standardisation already exists. However, any initiative toward further standardisation must take account of the fact that there are important and legitimate reasons for variations between transactions in the markets and a balance must therefore be struck between the efficiencies that can be achieved by standardisation and the specific needs of originators, sponsors and indeed investors that lead to differences in transaction terms. Given the multiplicity of asset classes, structural features, transaction party specifications and economic functions of securitisation, it is important not to seek standardisation at any cost which diminishes the utility of the free market choices of issuers and investors, but only standardisation for which a proven, practical benefit can be identified.

It is also important to emphasise that standardisation is not the same as, and does not always help, clarity or usefulness of communication. The Joint Associations are eager to ensure that the emphasis is on communicating in a way that is clear, useful and practical for investors and does not encourage a "tick box" approach to due diligence. Because of the many differences among transactions identified above, these aims are not necessarily served by standardisation of formats, particularly for prospectuses. Indeed, in our process of gathering member feedback for this consultation, one investor member went so far as to say "Standardisation can give a false level of

liquidity facility provider rather than on the securitised exposures." Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014, Article 18(3).

comfort. For investors the key outcome is that the prospectus [is] concise, understandable and contain[s] all relevant information. The format of the documents is largely irrelevant. Trying to force every transaction for every jurisdiction into a standard format is likely to be detrimental to the market (from both issuers and investors perspective)."

As the Authorities may already be aware, standardisation exercises have already taken place in some jurisdictions. Perhaps the most instructive is the extensive work that was undertaken for the standardisation of transaction summaries in prospectuses, for the purposes of the Bank of England's Discount Window Facility eligibility regime. During that work, it quickly became apparent that because of the variations mentioned above it would be impossible to develop a fully standardised format for all securitisation transactions. Instead, an asset class-based approach was adopted.

These difficulties would only be magnified by attempting too ambitious a standardisation process globally. Extending it, for example, to prospectuses would (in addition to the issues outlined above), in our view, be overambitious and would trigger difficult issues of securities law, liability and disclosure – standards for which vary between jurisdictions.

Having said that, we believe that further improvements could be made in disclosure formats in investor reports. These lend themselves best to the advancement of standardisation and an agreement at an international level aiming to standardise the format of investor reports would seem to strike an appropriate balance between these competing objectives. Further, we would suggest that the agreement take the form of a framework within which individual jurisdictions could develop their own standardised templates. Such a framework would help to ensure that the templates from the various jurisdictions were, if not identical, broadly comparable such that mutual recognition or other types of substituted compliance would be feasible. For example, it is important that any template arising out of the Authorities' work should take into consideration the work that has already been done, such as ESMA's work in the EU in the context of reporting obligations under the EU Regulation 1060/2009 (the Credit Rating Agencies Regulation), the SEC's work in the United States on disclosure templates under Regulation AB II and other jurisdictions' requirements.

As for transaction terms, we are very cautious about any attempt to standardise transaction terms as these will vary for a wide variety of legitimate reasons, including structures and conventions of local markets, variations in local laws and the internal organisation of different originators and sponsors, to name but a few.

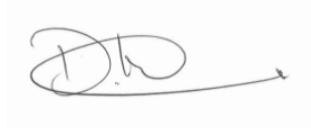
In closing, we wish to emphasise that the engagement of the BCBS and IOSCO with market participants on the revival of global securitisation markets is greatly appreciated. We hope this response is helpful and are grateful for the opportunity to comment on the CD.

Should the Authorities wish to discuss any aspect of our response in further detail, we would be pleased to make ourselves available. Please contact in the first instance Richard Hopkin of AFME (richard.hopkin@afme.eu) or Chris Killian of SIFMA (ckillian@sifma.org).

Yours faithfully



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ISDA

ANNEX 1

Description of the Joint Associations

The **Global Financial Markets Association** (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The **Association for Financial Markets in Europe** (AFME) in London and Brussels, the **Asia Securities Industry & Financial Markets Association** (ASIFMA) in Hong Kong and the **Securities Industry and Financial Markets Association** (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, please visit <http://www.gfma.org>.

The **International Capital Market Association** (ICMA) represents financial institutions active in the international capital market worldwide. ICMA's members are located in 54 countries, including all the world's main financial centres. ICMA's market conventions and standards have been the pillars of the international debt market for over 40 years, providing the framework of rules governing market practice which facilitate the orderly functioning of the market. ICMA actively promotes the efficiency and cost effectiveness of the capital markets by bringing together market participants including regulatory authorities and governments. See: www.icmagroup.org. ICMA is listed on the EU Register of Interest Representatives, registration number 0223480577-59.

The **Institute of International Finance, Inc.** (IIF) is a global association created in 1983 in response to the international debt crisis. The IIF has evolved to meet the changing needs of the international financial community. The IIF's purpose is to support the financial industry in prudently managing risks, including sovereign risk; in disseminating sound practices and standards; and in advocating regulatory, financial, and economic policies in the broad interest of members and foster global financial stability. Members include the world's largest commercial banks and investment banks, as well as a growing number of insurance companies and investment management firms. Among the IIF's Associate members are multinational corporations, consultancies and law firms, trading companies, export credit agencies, and multilateral agencies. All of the major markets are represented and participation from the leading financial institutions in emerging market countries is also increasing steadily. Today the IIF has more than 470 members headquartered in more than 70 countries. For more information, please visit www.iif.com.

Since 1985, **ISDA** has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 66 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, including exchanges, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org

ANNEX 2

Feedback on criteria for qualifying securitisations

Criterion	Comments	Suggested amendments
A. Asset risk		
<p>1. Nature of the assets</p> <p><u>Criteria</u></p> <p>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.</p> <p>As more exotic asset classes require more complex and deeper analysis, credit claims or receivables should have defined terms relating to rental,⁷ 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</p>	<p>The requirement for homogeneity of asset class makes sense but it should be clear that this is intended to apply in a broad way. So, for example, auto loans and leases could be in the same securitised portfolio, as could a range of consumer receivables.</p> <p>It is unclear why it should be necessary that assets all be denominated in the same currency, provided appropriate currency hedging is in place so as to reduce/eliminate exchange rate risk. We would suggest removing this element of the criterion given that the hedging point is covered by Criterion 8 already.</p> <p>Similarly, it is unclear why all assets would need to be governed by the same legal system. UK RMBS routinely include assets from two legal different systems (English law and Scots</p>	<p>1. Nature of the assets</p> <p><u>Criteria</u></p> <p>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.</p> <p>As more exotic asset classes require more complex and deeper analysis, credit claims or receivables should have defined terms clear provisions relating to rental, principal, interest, or principal and interest payments or other rights of payment. Any referenced interest payments or discount rates should be based on commonly encountered market</p>

⁷ Payments on operating and financing lease are typically considered to be rental payments rather than payments of principal and interest.

Criterion	Comments	Suggested amendments
<p>complex or complicated formulae or exotic derivatives.⁸</p> <p><u>Additional consideration</u></p> <p>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.</p>	<p>law) with separate enforcement processes and courts and this does not add more complexity to the securitisation.</p> <p>There is no obvious reason that payment streams should be limited to rental, principal and interest. Why should, e.g. royalty payments be excluded? This should be expanded to cover any income-producing asset.</p> <p>The requirement that the obligations have "defined terms" is potentially confusing. It could be interpreted to mean a defined term as is used in legal documentation (this would mean for example that "rental payments" would need to be a defined term in the securitisation documentation). This language could simply be deleted otherwise something along the lines of "clear provisions" could be used.</p> <p>The terms mentioned in the "additional considerations" will need to be defined if they are to have helpful meaning in this context, but it is important to define them carefully so as not to exclude commonly used market rates such as individual banks' standard variable rates (SVRs).</p>	<p>interest rates, but should not reference complex or complicated formulae or exotic derivatives.</p> <p><u>Additional consideration</u></p> <p>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.</p>

⁸ 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.

Criterion	Comments	Suggested amendments
<p data-bbox="197 300 607 331">2. Asset performance history</p> <p data-bbox="188 368 293 400"><u>Criteria</u></p> <p data-bbox="188 437 786 1098">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.</p> <p data-bbox="188 1134 510 1166"><u>Additional consideration</u></p> <p data-bbox="188 1203 786 1418">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</p>	<p data-bbox="808 300 1429 592">The requirement for historical data would mean it would be very hard for any new asset classes or even traditional asset classes in new jurisdictions to be treated as STC. This is a significant barrier to the development of securitisation markets and one which could have the opposite effect from that intended by the development of the STC regime as a whole.</p>	<p data-bbox="1447 300 2045 368">No specific drafting suggestions but see comments in previous column.</p>

Criterion	Comments	Suggested amendments
<p>substantially similar credit claims or receivables to those being securitised and for an appropriately long period of time.⁹</p> <p>"Substantially similar credit claims or receivables to those being securitised" may need to be defined depending on the application of the criterion.</p>		
<p>3. Payment status</p> <p><u>Criteria</u></p> <p>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 transferor¹⁰ or parties to the securitisation¹¹ are aware of evidence indicating a material increase in expected losses or of enforcement actions.</p>	<p>This criterion is reasonable in principle but the additional considerations are precisely correct. Definitions of the terms "default" and "delinquent" will be needed and these will be complex to develop and apply since they will need to take account of the particularities of the asset classes and variations in the markets in which the terms will be applied.</p> <p>We have also added some wording to ensure that the time at which assets must meet this criterion is clear.</p> <p>In some types of securitisations, particularly those involving replenishing pools of short-term receivables, originators transfer all</p>	<p>3. Payment status</p> <p><u>Criteria</u></p> <p>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, <u>at the time that asset is transferred,</u> are in default, delinquent or obligations for which the transferor or parties to the securitisation are aware of evidence indicating a material increase in expected losses or of enforcement</p>

⁹ 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.

¹⁰ Eg the originator or sponsor.

¹¹ Eg the servicer or a party with a fiduciary responsibility.

Criterion	Comments	Suggested amendments
<p><u>Additional consideration</u></p> <p>The terms "default", "delinquent" and "material increase" may need to be defined depending on the application of the criterion.</p>	<p>receivables in a given category, including receivables which may be delinquent or otherwise ineligible for funding. Those transactions should not be excluded so long as investors do not rely on defaulted or delinquent receivables for repayment.</p>	<p>actions.</p> <p><u>Additional consideration</u></p> <p>The terms "default", "delinquent" and "material increase" may need to be defined depending on the application of the criterion.</p>

Criterion	Comments	Suggested amendments
<p data-bbox="192 296 636 328">4. Consistency of underwriting</p> <p data-bbox="192 365 293 397"><u>Criteria</u></p> <p data-bbox="192 434 786 944">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.</p> <p data-bbox="192 981 786 1385">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.</p>	<p data-bbox="808 296 1424 999">The requirement for consistent origination pursuant to "uniform and non-deteriorating underwriting standards" is inappropriate and excludes a number of transactions that should not be excluded. It would almost certainly exclude securitisations of portfolios bought from other banks or with multiple contributing originators. It is also not workable as a practical matter in the context of underwriting standards that will naturally and appropriately change over time. It would effectively lock an originator into only ever tightening lending standards. This decision should be left to be flexible in the judgment of the originator subject to applicable regulation. Finally, it would reduce the speed of securitisation, with the result of increasing originators' warehousing risk and potentially prevent supply from meeting market demand.</p>	<p data-bbox="1447 296 1935 328">4. Consistency of underwriting</p> <p data-bbox="1447 365 1547 397"><u>Criteria</u></p> <p data-bbox="1447 434 2051 1056">Investor analysis should be simpler and more straightforward where the securitisation is of credit claims or receivables that satisfy uniform and non-deteriorating <u>reasonably consistent</u> 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 <u>pursuant to underwriting standards not less stringent than those the originator applies to origination of similar assets not intended for securitisation.</u></p> <p data-bbox="1447 1093 2051 1417">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</p>

Criterion	Comments	Suggested amendments
		obligations of the securitisation under prudently stressed loan loss scenarios.
<p>5. Asset selection and transfer</p> <p><u>Criteria</u></p> <p>Whilst recognising that credit claims or receivables transferred to a securitisation will be subject to defined criteria ¹² 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.</p> <p>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</p>	<p>The prohibition on active selection of portfolios is inappropriate and should be eliminated. Active selection is critical to allow the construction of portfolios that meet the requirements of both originators and investors.</p> <p>The practical reasons, it is necessary for an originator to depart from a purely random selection process and to exercise some judgment and discretion include:</p> <ul style="list-style-type: none"> - to ensure correct economics of the transaction are achieved, including capital treatment for the originator being more easily calculated or a consistent approach is used; - to meet requirements of junior investors, particularly in jurisdictions where risk retention requirements can be met by them; - to ensure the securitised pool represents assets where the obligor has consented to disclose the features necessary to comply with regulation; and - to comply with IT system limitations in respect of providing sufficient and robust data to meet ongoing disclosure requirements. 	<p>5. Asset selection and transfer</p> <p><u>Criteria</u></p> <p>Whilst recognising that credit claims or receivables transferred to a securitisation will be subject to defined criteria, 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. <u>In order to assist with this, originators and issuers should disclose to prospective investors all material information relating to the process by which assets are selected for inclusion in the</u></p>

¹² Eg the size of the obligation, the age of the borrower or the LTV of the property.

Criterion	Comments	Suggested amendments
<p>terms such that the resulting claims on these credit claims or receivables:</p> <ul style="list-style-type: none"> • 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. <p>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 issuance¹³ and should clearly demonstrate the method of recourse to ultimate obligors.¹⁴ In such jurisdictions, any conditions where the transfer of the credit claims or receivable is</p>	<p>The types of securitisation most influenced by these requirements include SME loan securitisations or social housing securitisations.</p> <p>Please see general comments with respect to the treatment of managed CLOs.</p> <p>Instead, there could be a requirement for the originator to disclose the process by which the assets are selected for the portfolio to be securitised and that selection be done in good faith based on that process.</p> <p>Further, it is not appropriate to require that obligations of the obligors be enforceable against any third party. That is simply not how loans or other income-producing assets are generally structured.</p> <p>We would also suggest the deletion of the word "legal" before "assignment" as this is potentially confusing under some legal systems, including English law, where securitisations are normally done via an equitable sale/assignment (at least initially) that can be perfected into a legal sale at a later date if necessary. We believe that the requirement for the "assignment" combined with the</p>	<p><u>portfolio to be securitised. All assets included in the portfolio should be selected in good faith and according to the process disclosed to investors.</u></p> <p>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:</p> <ul style="list-style-type: none"> • are enforceable against any third party <u>the obligor</u>; • 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 <u>an assignment (or similar isolation)</u> of the credit claims or the receivables to the securitisation; and • demonstrate effective recourse to the ultimate obligation for the underlying

¹³ Eg the immediate realisation of transfer tax or the requirement to notify all obligors of the transfer.

¹⁴ Eg equitable assignment, perfected contingent transfer.

Criterion	Comments	Suggested amendments
<p>delayed or contingent upon specific events and any factors affecting timely perfection of claims by the securitisation should be clearly disclosed.</p> <p>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.</p> <p><u>Additional consideration</u></p> <p>The term "materiality" will need to be defined depending on the application of the criterion.</p>	<p>requirement for review and verification by a legal practice (Criterion 11) is sufficient to meet the Authorities' policy objective here.</p> <p>Equally, some jurisdictions do not achieve the isolation of the assets via a sale/assignment <i>per se</i> and we believe this criterion should not unfairly discriminate against such jurisdictions. As long as the assets are isolated such that the underlying exposures are beyond the reach of the seller and its creditors through insolvency, it seems to members of the Joint Associations that the policy objective is achieved.</p> <p>Finally, the requirement for representations and warranties in the closing wording of this criterion needs to be made more flexible in order to work in local markets. In many markets these representations and warranties are made to the best of the originator's knowledge. In any case, the consequence for the representation being false in respect of any given credit claim is that it must be repurchased by the originator.</p>	<p>credit claims or receivables and are not a securitisation of other securitisations.</p> <p>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 and should clearly demonstrate the method of recourse to ultimate obligors. 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.</p> <p>The originator should provide <u>market-appropriate</u> representations and warranties <u>that as to the enforceability of</u> 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.</p> <p><u>Additional consideration</u></p> <p>The term "materiality" will need to be defined depending on the application of the criterion.</p>

Criterion	Comments	Suggested amendments
<p>6. Initial and ongoing data</p> <p><u>Criteria</u></p> <p>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.</p> <p>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.</p> <p>To provide a level of assurance that the reporting of the underlying credit claims or</p>	<p>The requirement for loan-level or summary stratification data is sensible. The members of the Joint Associations strongly support transparency in the securitisation markets and this type of disclosure is already made in many markets following issuance. It is necessary, however to ensure that the nature of these requirements is not duplicative so that originators can provide the relevant data on one occasion and in one format in order to avoid large increases in marginal costs for making data available with little or no incremental benefit to investors. It is also important to ensure an appropriate grandfathering period is provided by national authorities in order to allow originators the necessary time to modify their technical systems to make available the necessary data in the required format. Additionally, loan-level data is rarely made available prior to issuance because, like transaction documents, the final composition of the portfolio is not determined until shortly before issuance, meaning that there is a risk that investors will make investment decisions based on incorrect or incomplete loan-level data if this is provided prior to issuance..</p> <p>Finally, on the requirement for an independent verification of the initial pool, the Authorities may already be aware that auditors are</p>	<p>6. Initial and ongoing data</p> <p><u>Criteria</u></p> <p>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 following issuance of a securitisation.</p> <p>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.</p> <p>To provide a level of assurance that the reporting of the underlying credit claims or</p>

Criterion	Comments	Suggested amendments
<p>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.</p>	<p>generally unwilling to share their work product with a large number of recipients. Consequently, the current practice in some markets is to carry out verification of the kind described but not provide the resulting auditors' letter to investors. This seems a reasonable compromise solution.</p> <p>In the case of transactions in ABCP conduits, and other private securitisation transactions, these disclosure requirements should be treated as met so long as the conduit sponsor, or other investors as applicable (so long as their exposure is to the underlying transactions, rather than to the credit of the sponsor bank), have access to that information (and any prospective investors are given access to that information before they commit to invest).</p>	<p>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.</p>
B. Structural risk		
<p>7. Redemption cash flows</p> <p><u>Criteria</u></p> <p>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</p>	<p>The Joint Associations believe that this is a sensible requirement in principle, but it is difficult to assess properly without further detail. There are a number of asset classes that fall between those that are clearly sufficiently granular (e.g. credit card receivables, residential mortgage loans, auto loans) and those that are insufficiently granular and distributed to make use of the exception to the refinancing criterion (e.g. single-loan CMBS or</p>	<p>No specific drafting suggestions but see comments in previous column.</p>

Criterion	Comments	Suggested amendments
<p>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.¹⁵</p>	<p>CLOs). For example, it is not unusual for US CMBS transactions to be made of up roughly 60-90 loans, and it is not clear to us whether that would be "sufficiently granular". Similarly, it is necessary to define with more precision what is meant by a "sufficiently distributed repayment profile".</p>	

¹⁵ For example, associated savings plans designed to repay principal at maturity.

Criterion	Comments	Suggested amendments
<p>8. Currency and interest rate asset and liability mismatches</p> <p><u>Criteria</u></p> <p>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.</p>	<p>No comments.</p>	<p>None.</p>
<p>9. Payment priorities and observability</p> <p><u>Criteria</u></p> <p>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.</p> <p>To ensure that junior note holders do not have inappropriate payment preference over senior</p>	<p>The paragraph dealing with debt forgiveness, forbearance, payment holidays and other asset performance remedies is confusing as it appears to be about underlying assets rather than payment priorities. The Joint Associations have no objection to this criterion in principle, but obviously documents must continue to provide for commercial discretion in managing delinquencies and defaults of underlying debtors in order to ensure that any enforcement action taken in individual cases is appropriate to the circumstances and complies with applicable regulation e.g. relating to treating customers fairly.</p>	<p>9. Payment priorities and observability</p> <p><u>Criteria</u></p> <p>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.</p> <p>To ensure that junior note holders do not have inappropriate payment preference over senior</p>

Criterion	Comments	Suggested amendments
<p>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.</p> <p>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.</p> <p>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</p>	<p>It ought also to be clear that commercially sensitive information related to credit risk management strategy can be excluded in order to preserve competition in the marketplace.</p> <p>We would like to emphasise further that it is important for originators to have some flexibility in the way they deliver their liability cash flow model (e.g. via Bloomberg). We would also request that the Authorities make clear that the requirement for a liability cash flow model is limited to a requirement for a simple model that clearly describes how projected cash flows from pool assets flow down the payment waterfall to each tranche of the securitisation.</p> <p>We are concerned about the provisions requiring that "[i]nvestor reports should contain information that allows investors to easily ascertain the likelihood of a trigger being breached or reversed." It is already standard practice in some jurisdictions for the originators to provide information showing the pool performance evolution against the relevant triggers and the Joint Associations encourage this practice. We would submit, however, that the purpose of a trigger is to act as an early warning signal in a transaction and the likelihood of a trigger being breached is inherently unpredictable. Consequently, we</p>	<p>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.</p> <p>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 <u>(without prejudice to the originator's right to restrict access to information relating to its credit risk management strategy)</u>, such that investors can clearly identify debt forgiveness, forbearance, payment holidays, restructuring and other asset performance remedies on an ongoing basis.</p> <p>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</p>

Criterion	Comments	Suggested amendments
<p>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.</p> <p>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.</p> <p>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</p>	<p>would submit that the practice described above is the most helpful means of achieving thing Authorities' policy objective here.</p> <p>The criterion relating to early amortisation is reasonable in principle but does need to be adjusted to reflect certain typical features of the market and structures. Firstly, materiality is important: a minor and insignificant deterioration in credit quality will not and should not lead to early amortisation. Secondly, short term assets such as trade and other receivables often experience seasonal variations in amounts outstanding because they are directly connected to the real economy; this should not trigger early amortisation, especially as the structures financing such assets contain dynamic credit enhancement as a mitigant for the risk. Lastly, other types of transactions such as granular consumer portfolios are unlikely to reference credit quality specifically. As a proxy for credit quality, certain other ratios and triggers (e.g. those relating to delinquency rates and default ratios) will be included such that the substance of the criterion is nonetheless fulfilled. We would amend to make clear that triggers need to cover these concepts but need not reference these concerns specifically.</p> <p>In the event of a performance-related trigger,</p>	<p>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 <u>track the performance of the asset pool against the relevant triggers.</u> 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.</p> <p>Transactions featuring a revolving period should include provisions for appropriate early amortisation events and/or triggers of termination of the revolving period, <u>including encompassing,</u> notably: (i) <u>material</u> 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.</p> <p>Following the occurrence of a performance-related trigger, an event of default or an</p>

Criterion	Comments	Suggested amendments
<p>not be provisions requiring immediate liquidation of the underlying assets at market value.</p> <p>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.</p>	<p>the securitisation should not be forced to switch straight to sequential payments – this is far too blunt, the requirements should allow for firms to be able to use other solutions to resolve problems.</p> <p>We suggest that the Authorities use a more flexible approach, whereby sequential payment is triggered when there is an acceleration or enforcement notice. If this is not remedied, then revolving securitisation structures (e.g. master trusts) may be excluded from qualifying under this criterion, a result which would be unfortunate in a number of markets and which we do not believe the Authorities intend.</p> <p>Also, it should be clear that liquidation at market value can be both beneficial and possible in some circumstances, particularly if investors vote for it. The 2008 financial crisis showed that automatic liquidation is inappropriate for certain structures, such as market value CDOs, but it can also be a reasonable option where there are physical assets (for example, cars) which can be sold on liquid secondary markets. This can be a feature of, for example, auto lease securitisations which can be repaid from the proceeds of sale of the underlying cars. Adjustment of this criterion is therefore required to take account of these typical features of markets and structures.</p>	<p>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 automatic liquidation of the underlying assets at market value.</p> <p>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 <u>via an appropriate medium</u>, 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, <u>in each case, that clearly describes how projected cash flows from pool assets flow down the payment waterfall to each tranche of the securitisation.</u></p>

Criterion	Comments	Suggested amendments
<p data-bbox="197 296 667 328">10. Voting and enforcement rights</p> <p data-bbox="185 365 291 397"><u>Criteria</u></p> <p data-bbox="185 434 784 911">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.</p> <p data-bbox="185 948 510 979"><u>Additional consideration</u></p> <p data-bbox="185 1016 784 1233">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.</p>	<p data-bbox="804 296 1424 1334">The members of the Joint Associations are concerned about the possible inclusion of the requirement mentioned in the "additional consideration". We believe that it would deter investors in more junior tranches of securitisations if it were included and interpreted to require that all voting rights be allocated to the most senior classes. As the market currently stands, securitisations are generally designed to allocate enhanced voting rights to the most senior tranches of credit risk, but certain decisions (e.g. identity of special servicers) are more appropriately allocated to junior classes whose recovery is more likely to be affected than the senior tranches, which may remain intact more or less regardless of the identity of a special servicer. Removing the ability of junior tranches to have at least some influence over the decisions most likely to affect their recovery would be contrary to industry practice and almost certainly lead to reduced demand for those junior tranches. As mentioned above, if the aim of revived securitisation markets is also to allow transactions that achieve significant risk transfer, then disenfranchising junior noteholders will be a significant impediment to achieving that aim.</p>	<p data-bbox="1442 296 1921 328">10. Voting and enforcement rights</p> <p data-bbox="1442 365 1547 397"><u>Criteria</u></p> <p data-bbox="1442 434 2040 874">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.</p> <p data-bbox="1442 911 1787 943"><u>Additional consideration</u></p> <p data-bbox="1442 979 2040 1197">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.</p>

Criterion	Comments	Suggested amendments
	<p>In addition to decisions allocated specifically to junior tranches because of the relative alignment of economic interests, it is also important to note that some decisions are taken by the noteholders in general and require approval of each class separately. The classic example of such a decision is a basic terms modification, i.e. an amendment that affects the fundamental economic terms on which the notes were issued such as the maturity, the interest rate or the principal amount. It would be fundamentally unjust (and likely to result in drastically reduced demand for mezzanine and junior tranches) to allow the most senior tranche to make basic terms modifications without the approval of the mezzanine and junior tranches, even if only to the senior tranche itself. To take an extreme example, allowing this would permit the most senior class to increase the principal amount and/or the interest rate attaching to its own notes, effectively wiping out the value in the mezzanine and junior tranches.</p>	
<p>11. Documentation disclosure and legal review</p> <p><u>Criteria</u></p> <p>To help investors to fully understand the terms, conditions, legal and commercial information prior to investing in a new</p>	<p>The members of the Joint Associations have no objection in principle to the disclosure of transaction documents relevant to the ongoing transaction. From a practical perspective, it is not always possible to finalise all transaction documents with sufficient time before issuance – for example, negotiations between the parties</p>	<p>11. Documentation disclosure and legal review</p> <p><u>Criteria</u></p> <p>To help investors to fully understand the terms, conditions, legal and commercial information prior to investing in a new</p>

Criterion	Comments	Suggested amendments
<p>offering and to ensure that this information is set out in a clear and effective manner for all programmes and offerings, sufficient initial offering documentation¹⁶ 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.</p> <p>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.</p>	<p>often continue until a very late stage. This raises obvious issues with disclosing this documentation prior to issuance, since to do so could raise issues of liability, or cause confusion among investors as to which version of the documentation should be relied upon. The disclosure of draft documentation, which is a solution adopted in some jurisdictions, is not straightforward and requires an appropriate balance to be struck between the freedom of the parties to negotiate the terms of their contracts (which will necessarily be restricted following disclosure of any draft) and the need of investors for transparency.</p> <p>In the short term therefore it seems to the Joint Associations that, from the point of view of a primary investor, full documentation should not be required until after the transaction has settled because by law the prospectus is already required to contain all material information. We would suggest that one month following settlement would be a reasonable deadline for publication of transaction documents, as this is relatively soon after settlement but allows appropriate time for redaction of commercially and personally sensitive items such as personal</p>	<p>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 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.</p> <p><u>Copies of the contractual documentation (redacted as appropriate for personal and commercially sensitive details) should be made available to investors within a reasonable time following issuance.</u></p> <p>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 <u>on behalf of at least one of the transaction</u></p>

¹⁶ 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.

Criterion	Comments	Suggested amendments
<p><u>Additional consideration</u></p> <p>Standards for consistency of information and disclosure could be considered for this criterion.</p>	<p>contact details, bank accounts and fees which are not relevant to continued performance.</p> <p>That said, members of the Joint Associations are keen to ensure the highest levels of transparency in securitisation transactions and we intend to continue exploring the options available to improve the quality and timing of disclosure, including the options for providing transaction documentation to investors as soon in the process as it has practical value for investors without increasing risks for issuers.</p> <p>The Joint Associations are, however, concerned by the requirement for "the terms and documentation of the securitisation [to] be reviewed and verified by an appropriately experienced and independent legal practice." It is not clear to us on whose behalf the legal practice would be reviewing the terms and documentation. Is this in addition to the legal counsel already instructed by the transaction parties in the normal course? If so, who would provide instructions to the lawyers in question? We would also note that lawyers are rarely willing to produce legal opinions addressed to (or indeed disclosed to) a large number of parties, so there remains a question about the work product that would result from this review. It would also be inappropriate to make the legal practice responsible for notifying</p>	<p><u>parties, and an opinion as to the enforceability of the documents delivered to the legal practice's client.</u> Investors should be notified <u>by the transaction parties</u> in a timely fashion of any changes in such documents that have an impact on the structural risks in the securitisation.</p> <p><u>Additional consideration</u></p> <p>Standards for consistency of information and disclosure could be considered for this criterion.</p>

Criterion	Comments	Suggested amendments
	<p>investors of changes to documentation.</p> <p>The Joint Associations are also concerned by the sentence that requires "These should be composed such that readers can readily find, understand and use relevant information." The Joint Associations support the principle of greater transparency, and support the idea that harmonised presentation of information (especially investor report data such as trigger tables and pool data) would be desirable. To that end, we support the standardisation of investor reports. However, standardising transaction documents (if that is what is intended by this sentence) would be difficult and would erode the flexibility in structuring transactions that is necessary to ensure that each transaction meets the needs of its originator. We are also concerned that the Authorities seem to be suggesting that the transaction documents would generally be the source of information on "the legal and commercial information and comprehensive risk factors needed to make informed investment decisions", particularly in respect of public transactions. Where a prospectus is published, that document is generally required to provide all such information and it would be unlikely and inappropriate for investors to seek it in the transaction documents.</p>	

Criterion	Comments	Suggested amendments
	<p>In the case of transactions in ABCP conduits, and other private securitisation transactions, these disclosure requirements should be treated as met so long as the conduit sponsor, or other investors as applicable (so long as their exposure is to the underlying transactions, rather than to the credit of the sponsor bank), have access to the relevant documents and other information (and any prospective investors are given access to that information before they commit to invest).</p>	
<p>12. Alignment of interest</p> <p><u>Criteria</u></p> <p>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.</p> <p><u>Additional consideration</u></p> <p>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</p>	<p>The Joint Associations have no objection in principle to this criterion provided that compliance with local market risk retention rules will be sufficient to fulfil it. It would be particularly beneficial if the varying risk retention rules in different jurisdictions could be aligned or a system of mutual recognition established, although that may well be beyond the scope of the current consultation.</p> <p>The "additional consideration" in relation to this criterion, however, is problematic. In many jurisdictions, the party with a fiduciary responsibility does not concern itself with the commercial terms of the transaction and will almost certainly refuse to review and confirm compliance with risk retention rules. We would suggest deleting this element and relying</p>	<p>12. Alignment of interest</p> <p><u>Criteria</u></p> <p>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.</p> <p><u>Additional consideration</u></p> <p>Parties with a fiduciary responsibility to investors should review and confirm the material economic exposure retained by the originator or sponsor and should confirm</p>

Criterion	Comments	Suggested amendments
the originator or sponsor demonstrates a financial incentive in the performance of these assets following their securitisation.	on mechanisms in place in each jurisdiction to ensure compliance with risk retention rules.	that the originator or sponsor demonstrates a financial incentive in the performance of these assets following their securitisation.
C. Fiduciary and servicer risk		
<p>13. Fiduciary and contractual responsibilities</p> <p><u>Criteria</u></p> <p>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.</p> <p>The party or parties with fiduciary responsibility should act on a timely basis in the best interests of the securitisation note</p>	<p>It is not clear to members of the Joint Associations how servicers' expertise would be measured and by whom. It is possible that this criterion might be appropriate as drafted, but technical guidance by the authorities would be needed to ensure it can be implemented in practice.</p> <p>The requirement for the party or parties with fiduciary responsibility to act on a timely basis in the best interests of the securitisation note holders is likely to cause significant difficulties with trustees in many jurisdictions, who will be unwilling to take on roles with perceived additional responsibility for resolving conflicts in a timely fashion. We would also note that the obligation for persons with fiduciary duties to act in the best interests of the client is superfluous as the basic nature of a fiduciary responsibility is to require that very thing.</p> <p>Equally, in many jurisdictions, the party or parties with fiduciary responsibility to the securitisation do not have any role in the</p>	<p>13. Fiduciary and contractual responsibilities</p> <p><u>Criteria</u></p> <p>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.</p> <p>The party or parties with fiduciary responsibility should act on a timely basis in the best interests of the securitisation note</p>

Criterion	Comments	Suggested amendments
<p>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.</p> <p>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.</p> <p>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.</p> <p><u>Additional consideration</u></p> <p>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</p>	<p>administration of the securitisation vehicle. Instead, the administration of the securitisation vehicle is carried out by a corporate service provider. Under those circumstances, that criterion would be impossible to comply with.</p>	<p>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 facilitated by the trustees, to the extent permitted by applicable law.</p> <p>The party or parties with fiduciary responsibility to the securitisation and to investors responsible for the administration of the securitisation vehicle should be able to demonstrate sufficient skills and resources to comply with their duties of care in the administration of the securitisation vehicle.</p> <p>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.</p> <p><u>Additional consideration</u></p> <p>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</p>

Criterion	Comments	Suggested amendments
exist.		holding in that class, whilst recognising that legislative restrictions over such rights may exist.
<p>14. Transparency to investors</p> <p><u>Criteria</u></p> <p>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.</p> <p>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</p>	No comments.	None.

Criterion	Comments	Suggested amendments
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.		

ANNEX 3

AFME study of historic liquidity funding for multi-seller ABCP conduits

Annex 3: study of historic liquidity funding for
multi-seller ABCP Conduits

February 2015

- The strong liquidity performance of multi-seller asset-backed commercial paper conduits (“ABCP Conduits”), is supported by the data in this document, both for :
 - undrawn liquidity supporting the **utilised portion** of total commitments funded by commercial paper (the “Utilised Portion”); and
 - undrawn liquidity supporting the **unutilised portion** of total commitments (the “Unutilised Portion”).
- In this paper, we refer to the sum of the Utilised Portion and the Unutilised Portion as “Total Commitments”.
- ABCP Conduits:
 - have a 30 year operating history
 - have exhibited strong liquidity performance even during times of stress
 - fund the real economy: trade receivables, auto and consumer loans with good performance
 - are supported by sponsor banks, and
 - are relied upon by customers as a significant source of working capital.
- The data we present in this paper show that, historically, neither type of liquidity has been susceptible to “runs”, even at the most stressful times through the crisis when, for example, liquidity supporting the Utilised Portion never funded more than 5.45% of the Utilised Portion of Total Commitments.
- In other words, through the crisis, ABCP Conduits continued to fund at least 94.55% of the Utilised Portion of their Total Commitments by issuing and selling commercial paper, as they were designed to do.

Section 1

KEY FEATURES OF ABCP CONDUITS

Funding of corporate receivables by ABCP Conduits is key for the real economy

- Multi-seller ABCP Conduits provide European corporates* with a sustainable and resilient funding alternative to borrowing directly from banks.
- At the end of Q3 2014, the European market for multi-seller ABCP Conduits was just over €63 billion, of which a significant portion provided working capital funding to real economy assets in Europe.

* Some large European corporate groups, for example Volkswagen, choose to originate receivables through subsidiaries that are regulated banks. The arguments we made in this paper for “corporates” apply with the same force to them even though technically they are banks.

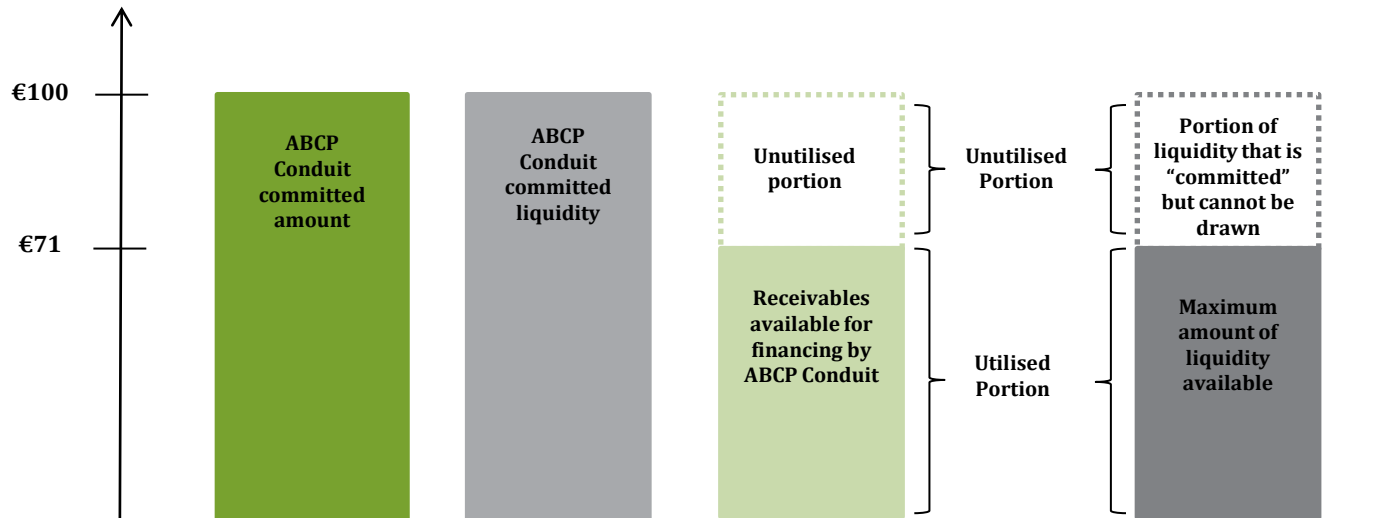
While both SIVs / arbitrage conduits and ABCP Conduits sought their funding primarily from the short-term commercial paper markets, the similarities end there

KEY DIFFERENCES BETWEEN SIVS / ARBITRAGE CONDUITS AND ABCP CONDUITS

SIVS AND ARBITRAGE CONDUITS	ABCP CONDUITS
Held long term financial assets, such as bonds	Fund short term trade receivables which are typically less than 90 days in tenor (with the vast majority shorter than 30 days), as well as other shorter term borrowing such as auto or consumer loans.
Funding need (and liquidity risk) at or close to maximum utilization as most SIVs were fully “ramped up”; they were highly dependent on financial market conditions	Funding need dependent on day-to-day financing needs of customers, namely whether business is good and a high volume of receivables is generated, or business is poor and a low volume of receivables is generated. Not systemic financial risk.
Proved to be illiquid under stress: short-term funding dried up, assets returned to banks’ balance sheets or liquidity drawn, no market for sale of the underlying long term financial assets	Proved to be relatively liquid under stress: short term funding was less affected, some limited liquidity drawings, underlying assets were “real economy”, short term and self-liquidating
Liquidity backup was dependent on financial market conditions: if there was no market for the assets, then liquidity was drawn	ABCP can be issued and liquidity put at risk of drawing only if good quality receivables are presented to the ABCP Conduit for funding. No receivables = No liquidity drawings or issuance of ABCP
Underlying assets performed poorly in credit and market terms: US sub-prime RMBS, US home equity loans, CDOs	Underlying assets were from the “real economy”; have performed and continue to perform well and within tolerances
Mis-used SSPE technology to exacerbate leverage and concentration of risk within the financial system	Well-established traditional use of SSPE technology to complement bank funding and share risk with capital markets investors
No longer active: no investor appetite and new regulations prevent re-emergence	Struggling to cope with new liquidity rules: some conduits have been closed because of the new liquidity rules

Key structural features of ABCP Conduits

- ABCP Conduits are backed by liquidity provided by sponsor banks which are “committed”; however, the Total Commitments cannot be utilised, nor can liquidity be put at risk of drawing, unless specific conditions precedent are met.
- The first and most important condition – *which makes such liquidity very different from “ordinary” committed lines of credit provided to corporates* – is that sufficient receivables of good quality (there are “asset quality” tests) must be available for financing by the ABCP Conduit
- The amount of such receivables will depend on the needs of the day-to-day business of the corporate seeking funding from the conduit, for example:
 - whether business is good, and the corporate is selling high volumes of goods, or
 - whether business is poor, and the corporate is selling low volumes of goods
- Therefore, even if the “committed” amount of an ABCP Conduit and its supporting liquidity facility is €100, if only €71 of eligible good quality receivables are available for financing then no more than €71 of ABCP can be issued. The associated liquidity remains undrawn unless ABCP cannot be issued due, for example, to market disruption.

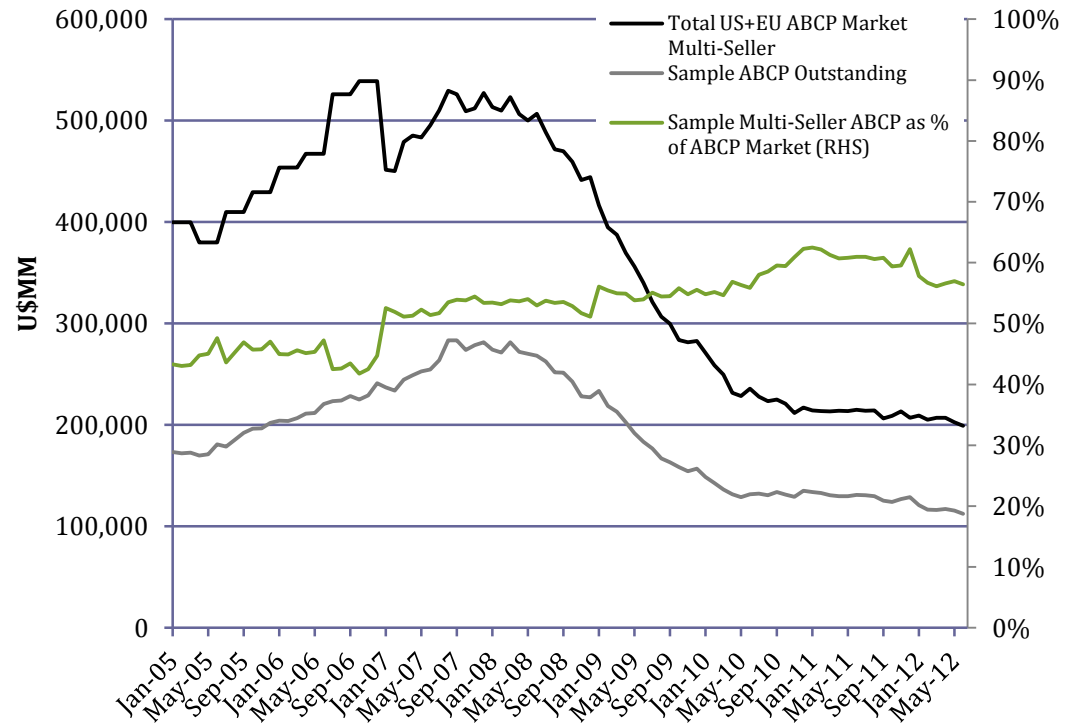


AFME has gathered data from 2005 to 2012, showing historic utilisation across the industry and through the crisis

Jan-05 to Jun-12

- AFME received data from 12 sponsor members representing issuance from over 27 multi-seller, multi-asset ABCP Conduits issuing in the Euro, Sterling and USD ABCP markets.
- Members submitted program commitment amounts, amounts of direct bank funding, ABCP outstanding, liquidity draw amounts, ABCP retained amounts, and the amount placed with government facilities on a month-end basis from January 2005 to June 2012.
- The time line was chosen to incorporate different stages of the economic cycle.
- Our sample represents an average of 55% of the global ABCP market for the period, and since 2009 over 60%.

Sample Size Versus Market 2005-2012



Sources: Moody's, Member Data
Note: Pre-2007 market data is shown quarterly

- Assuming a given size of the Utilised Portion in an ABCP Conduit, the first aspect consists in evaluating how much funding pressure can be created for the sponsoring bank when the market is no longer able to provide the funding in the form of ABCP. Our data demonstrates that funding pressure is limited – see Section 2.
- The second aspect consists in evaluating by how much the Utilised Portion can increase, which – potentially – could add further funding pressure on to the sponsoring bank at times of stress (as per Section 2). Again, our data demonstrates that such growth remains controlled – see Section 3.
- Therefore we have kept both analyses separate and sequential. Firstly, we evaluate the liquidity funding given a certain Utilised Portion; secondly, we go on to analyse the evolution of that Utilised Portion.

Section 2

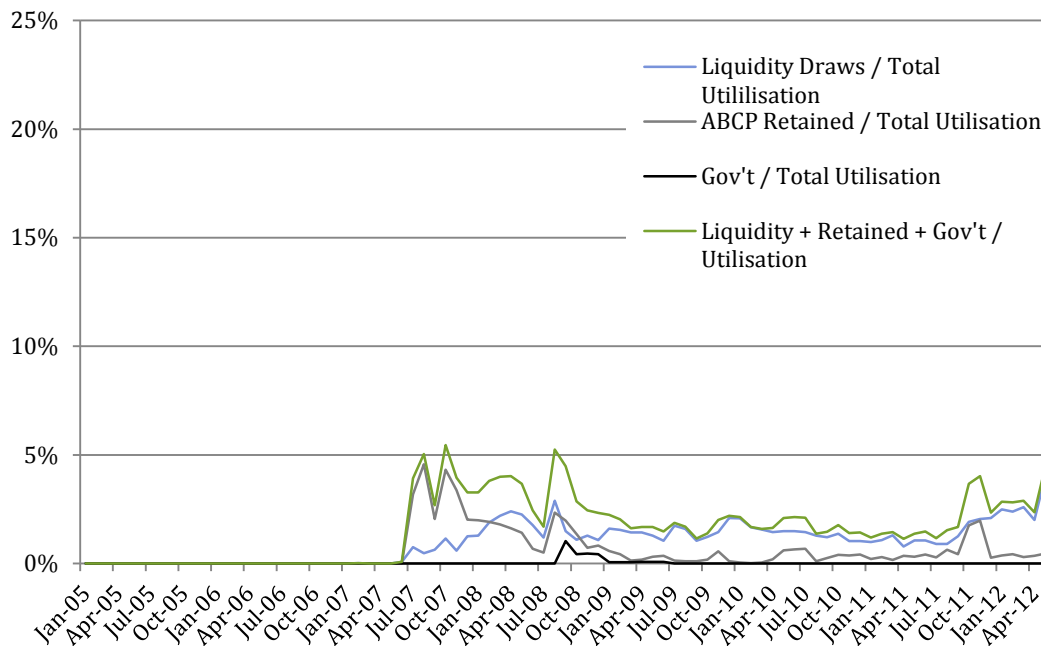
HISTORIC LIQUIDITY FUNDING SUPPORTING THE UTILISED PORTION OF TOTAL COMMITMENTS

Highest liquidity funding = 5.45%

Jan-05 to Jun-12

- We define “Liquidity Funding” to include (1) liquidity draws, (2) retaining ABCP on-balance sheet for non-investment purposes, and (3) accessing government funding relief programs.
- Liquidity Funding proved to be non-existent pre-July 2007.
- The majority of issuers experienced nil, or minor, Liquidity Funding in the post-2007 period.
- In total, Liquidity Funding peaked at c.\$16bn, accounting for only 5.45% of total program funding requirements.
- On average, Liquidity Funding accounted for only c.\$3.3bn of average funding requirements of over \$200bn (1.6%) during the sample period.

Liquidity Funding / Total Commitments, 2005-2012



Note 1: at least five ABCP conduits were or are in the process of being wound up during the sample period. This may skew the reported liquidity draw figure to the high side because at some point in the wind-up process, an issuer may not choose to, or may not be able to, market its ABCP.

Note 2: sponsors who are also dealers of ABCP will, as a matter of course, retain ABCP inventory for market-making purposes. Dealer members were asked to remove this inventory when reporting.

Note 3: liquidity draws primarily occur for two reasons:

1. a genuine market-disruption type event; or
2. as a funding preference where the cost of funding via LIBOR-based liquidity is more efficient than the current market price for ABCP.

Section 3

LIQUIDITY SUPPORTING THE UNUTILISED PORTION OF TOTAL COMMITMENTS

ABCP issuance as a % of Total Commitments remains stable

Jan-05 to Jun-12

- ABCP issuance is constrained by the borrowing base of the assets of the seller; if good quality receivables are not available, ABCP cannot be issued and within a funding cycle there is no risk of the associated liquidity facilities being drawn.
- Of course, ABCP will vary from month to month as the volume of eligible receivables changes. Over time, therefore, and across funding cycles, liquidity could be at risk of being drawn as the Unutilised Portion becomes utilised.
- However, historical data shows that utilisation by sellers has averaged 68% for the sample period, with a standard deviation of 2.94%.
- The Utilised and Unutilised Portion has therefore remained relatively stable throughout the sample period.

ABCP issued and placed / Total Commitments 2005-2012

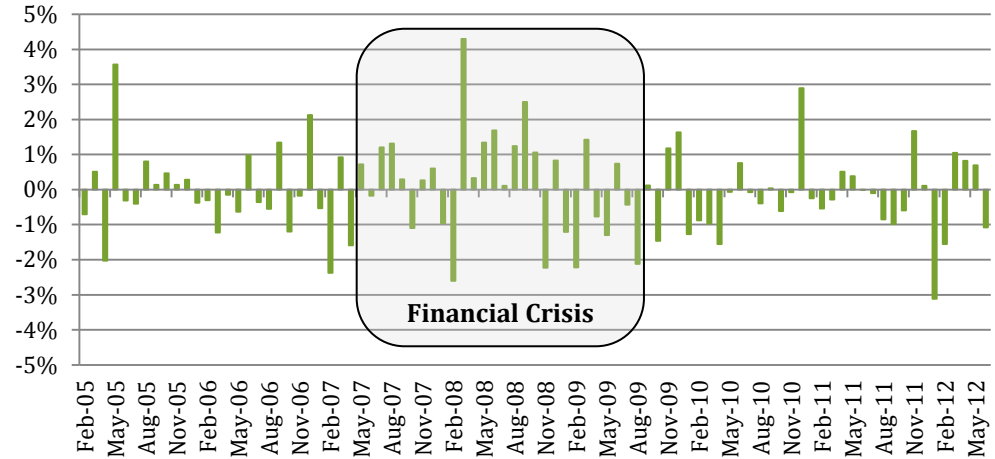


Highest monthly change in Utilised Portion = 4.34%

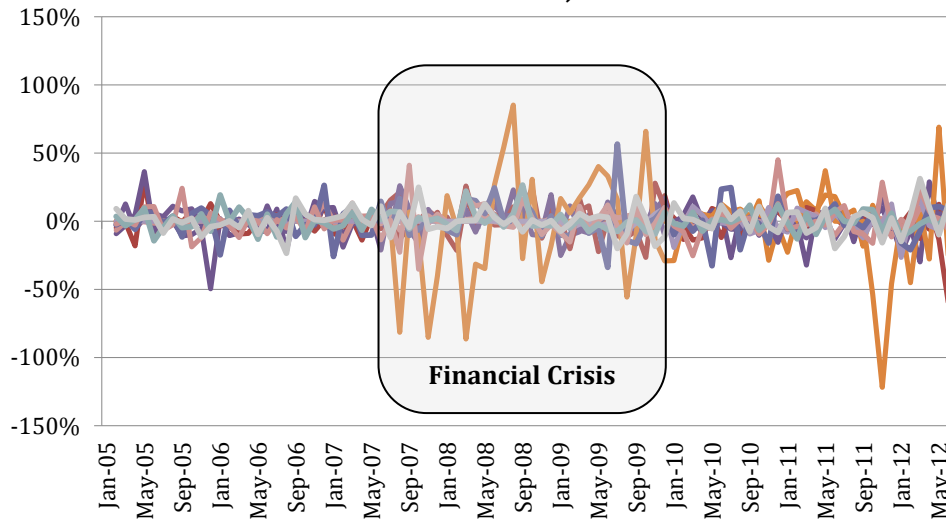
Jan-05 to Jun-12

- Number of observations: 2,403.
- Month over month variations in the Utilised Portion at an aggregate and sponsor level were tracked to assess the correlation between market stress during the financial crisis and increased utilisation of Total Commitments.

Monthly change in Aggregate Utilised Portion as % of Total Commitments, 2005-2012



Change in Sponsor Level Utilised Portion as % of Unutilised Portion, 2005 - 2012



- Low correlation was found during the sample period. This was because the borrowing base restricts increases to the underlying programs, and also because of reduced economic activity.
- Note that the graph on the left reflects not only underlying changes in the Utilised Portion but also an arithmetical feature which tends to exaggerate volatility.
- For example, assume Total Commitments of 100 of which 90 is utilised (and 10 unutilised) in Period 1. In Period 2 the Utilised Portion increases to 95. This is shown in the graph as a change of $5 / 10 = 50\%$. Yet the absolute amount of the extra Utilised Portion is relatively small.

Section 4

SUMMARY OF DATA AND CONCLUSIONS

- The strong liquidity performance of ABCP Conduits is supported by the data in this document both for:
 - liquidity supporting the Utilised Portion; and
 - liquidity supporting the Unutilised Portion.
- For the Utilised Portion, Liquidity Funding was never more than 5.45% of the Utilised Portion of Total Commitments.
- For the Unutilised Portion:
 - at an aggregate level and as a percentage of Total Commitments, the monthly variation in the Utilised Portion never exceeded 4.34%;
 - expressed as a percentage of the Unutilised Portion, this monthly variation never exceeded 13.72%;
 - applying the same methodology but at the individual sponsor level, the data showed an average monthly variation in the Utilised Portion of 8.13%;
 - using a percentile analysis to focus on the more likely scenarios, the 95th percentile in the monthly variations is no more than 16.62%.
- Neither the Utilised nor Unutilised Portions are therefore susceptible to “runs”.
- ABCP Conduits:
 - have a 30 year operating history
 - have exhibited strong liquidity performance even during times of stress
 - fund the real economy: trade receivables, auto and consumer loans with good performance
 - are supported by sponsor banks, and
 - are relied upon by customers as a significant source of working capital

The Association for Financial Markets in Europe advocates stable, competitive and sustainable European financial markets that support economic growth and benefit society.

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