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Basel Committee on Banking Supervision
c/o Bank for International Settlements
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Board of the International Organization
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Re: Basel Committee on Banking Supervision Consultative Documents on the Criteria for and Capital Treatment of Simple, Transparent and Comparable Short-Term Securitisations (July 2017)

I. Introduction

The Australian Securitisation Forum, the Global Financial Markets Association, the International Capital Market Association, and the Institute of International Finance (the “Associations”)¹ appreciate the opportunity to comment on the Consultative Documents (“CDs”) published by the Basel Committee on Banking Supervision (“the Committee”) and the Board of the International Organization of Securities Commissions (“IOSCO”) (collectively “the Regulators”) entitled “Criteria for Identifying Simple, Transparent and Comparable Short-Term Securitisations” (the “Criteria CD”) and “Capital Treatment for Simple, Transparent and Comparable Short-Term Securitisations” (the “Capital CD”), which together propose a framework for the capital treatment of simple, transparent and comparable (“STC”) short-term securitizations. For convenience, we focus principally on the Capital CD and on the criteria within the context of capital treatment, and consequently address most of our comments to the Committee. The Associations thank the

¹ See descriptions of the Associations at the end of this document.

Regulators for their work in producing the CDs and welcome initiatives to strengthen the global securitization markets.

The comments that follow suggest revisions to the proposals made in the Capital CD that we believe will best ensure the safe, effective, and efficient operation of the markets for short-term securitizations. Among our goals in making these recommendations is minimizing the difficulties that the industry would face if various jurisdictions apply different risk based capital (“RBC”) standards to the same transaction, resulting in different capital treatments for the same transaction across jurisdictions. Such a scenario would result in diminished market liquidity and reduced access to credit for consumers and businesses. To avoid that unproductive outcome, we believe that the Regulators should strive to build a viable consensus among their constituent members regarding the STC criteria to apply to short-term securitizations.

Our specific recommendations regarding the criteria proposed in the Capital CD are the following:

1. The Committee should adopt Alternative Approach 2, under which compliance with the STC criteria for obtaining preferential RBC treatment would be measured transaction by transaction instead of vehicle-wide. Even if, as is likely (see item 4 below), a sponsor bank cannot comply with conduit level criteria as currently proposed, in a transaction-by-transaction qualification procedure, the bank will remain motivated to comply with transaction-level criteria in the majority of cases.
2. The Committee should allow bank-funded short-term privately-negotiated transactions to meet the STC criteria for capital treatment of short-term securitizations.
3. Changes should be made to a number of the proposed transaction-level criteria in order to maximize compliance with them.
4. We recommend material changes to the proposed conduit-level criteria because as presently written it is impractical for an asset-backed commercial paper (“ABCP”) bank sponsor to comply with such criteria.
5. The definition of seller should be revised to incorporate all relevant transaction structures and the definition of sponsor should be revised to include banks that provide credit and liquidity facilities and are affiliates of entities that provide administration services to an ABCP conduit.

We thank the Regulators for giving us the opportunity to assist them in creating what we hope will be a productive framework for the capital treatment of simple, transparent and comparable short-term securitizations. We would welcome the chance to continue this dialogue in whatever manner the Regulators feel would be the most helpful.

II. Alternative Approach 2 Will Maximize Compliance With The STC Criteria For Obtaining Favorable Risk Based Capital Treatment for Short-Term Securitizations.

The Committee proposes a two-tiered approach by which exposures to an ABCP structure, such as a liquidity facility (“facility”), can qualify for favorable RBC treatment. Specifically, the STC criteria set forth in the Capital CD distinguish between transaction-level criteria that would have to be separately satisfied by each transaction purchased by an ABCP conduit and conduit-level criteria that would have to be satisfied by the conduit as a whole. The Committee proposes adopting a “baseline” approach under which exposures will qualify for favorable RBC treatment only if the ABCP structure satisfies the short-term STC capital criteria at *both* the transaction *and* conduit levels. However, we believe that the Committee’s goal of “ensur[ing] that investors are fully protected against all losses, including those arising from a deterioration in the performance of the underlying assets” (Capital CD at 3), can be best achieved by adopting the Committee’s Alternative Approach 2 and requiring compliance with the STC criteria at the transaction level solely on a transaction-by-transaction basis.

Put simply, if favorable RBC treatment is awarded to facilities on a transaction-by transaction basis, a facility provider will be strongly motivated to comply in every transaction where it is reasonably practical to do so. Conversely, if compliance is determined in the aggregate, a bank that has one noncompliant transaction will have no motivation to meet any of the STC criteria going forward in any transaction.

The risk to a facility arises solely from the quality of the individual transactions that comprise the ABCP program, regardless of whether the facility is conduit-wide or transaction-specific. Accordingly, the risk to the facility should be assessed solely by reference to each discrete transaction taken on its own terms. There are several ways in which this analysis might proceed, depending on the scope of the facility and the number of banks providing facilities.

- **Approach Based on the Scope of the Facility:** Where each transaction is supported by a discrete facility, compliance should be assessed on a transaction-by-transaction basis. For example, assume that there are two facilities, one of 100 and one of 50. If the one of 100 complies while the one of 50 does not, the facility of 100 would receive preferential capital treatment and the facility of 50 would not. Alternatively, if there were a single facility for the whole conduit capital would be calculated on a proportional basis. In that case, where again there were two transactions in the conduit, one of 100 that complied and one of 50 that did not, 100 of the overall facility would receive preferential capital treatment and 50 of the overall facility would not.
- **Approach Based on the Number of Providers:** If there were only one bank provider, then the rule on how to calculate capital for preferential treatment would be the same as provided in the preceding paragraph. If there were two or more bank providers of facilities to the conduit, each bank first would calculate its proportionate share of the dollar amount of the applicable facility or facilities, and then would have its share of the single or multiple facilities for RBC calculated with regard to such dollar share(s) exactly the same as for a single bank as explained above.

Another way of explaining our proposed approach is that the risk should be based on the quality of the underlying transactions and not on the funding source. Take, for example, a bank portfolio of transactions. Under the transaction-level criteria provided in the Capital CD, RBC treatment is

a function of the quality of each underlying transaction, not how the bank chooses to fund each transaction. Accordingly, there should be no difference when the funding source is the ABCP conduit.

We believe that it is good policy to award favorable RBC treatment on a proportionate basis to facilities that comply with the transaction-level criteria because this approach is the most likely to maximize compliance. It will be extraordinarily difficult for every transaction and related facility within an ABCP program to comply with the proposed STC standards. It also will be difficult for sponsors to develop distinct ABCP vehicles comprised solely of compliant transactions and facilities along with other sister ABCP vehicles comprised of non-compliant transactions and facilities. For example, there is a need for volume in order to better execute and price transactions and the costs involved in restructuring all of a program's transactions to become compliant are substantial. Therefore, unless compliance at the transaction level is measured on a transaction-by-transaction basis, and favorable RBC treatment is similarly awarded, it is unlikely that facility providers will attempt to conform any of their transactions to the STC criteria.

The STC criteria proposed by the Committee are clearly intended to make the ABCP market safer generally by minimizing risk associated with bank-provided facilities. As a policy matter, this goal is more likely to be achieved by developing a system of compliance where a bank's motivation to comply is materially stronger for the overwhelming majority of facilities, as we believe will be the case if compliance is assessed on a transaction-by-transaction basis. Developing a system that rewards providers only for 100% compliance—as would the baseline approach proposed in the Capital CD—would have a “cliff” effect—*i.e.*, 100% compliance or nothing—which would be inconsistent with providing appropriate incentives for utilization of, and compliance with, the framework.

What is more, greater uptake will encourage economic growth because lower capital costs for banks in turn will reduce overall financing costs for issuers in this market. ABCP and bank financing have been an essential source of inexpensive working capital for businesses around the world for decades, funding myriad consumer and commercial assets such as auto loans, commercial loans, trade receivables, credit card receivables, and student loans. By adopting Alternative Approach 2, the guidelines will encourage the creation of more STC-compliant transactions, which in turn lowers securitization costs and facilitates increased lending to these and other important segments of the economy.

III. The Consultative Documents Should Facilitate Preferential RBC Treatment For Direct Bank-Funded Privately-Negotiated Short-Term Securitizations Similar To ABCP Conduit Financings.

The Capital CD limits itself to proposing STC criteria that would enable exposures to ABCP structures to qualify for preferential RBC treatment. However, there are short-term securitization transactions carried on bank balance sheets that are similar to ABCP conduit deals but that cannot comply with the regular short-term securitization and STC criteria for non-ABCP programs. We believe that the means of funding a transaction should not determine the capital treatment that the transaction deserves. Rather, the terms of the transaction should govern whether a deal is entitled to preferential RBC treatment. Accordingly, we believe that the proposed criteria should be

modified or expanded to facilitate preferential RBC treatment for direct-funded privately-negotiated securitizations that are extended to customers that are not affiliates of the offering bank and the terms of which are analogous (with appropriate adjustments) to those that qualify for such preferential treatment in conduit transactions.

The need for such securitizations to be included within the scope of the CDs arises from the fact that they cannot satisfy the regular non-ABCP criteria for short-term securitizations and STC. For example, the following criteria from the Committee's July 2016 Revisions to the Securitization Framework (BCBS d374) cannot be met by short-term privately-negotiated transactions, whether they are funded through conduits or on bank balance sheets:

- **Criterion A3 (Payment Status):** The additional requirements established in this criterion seem problematic, especially for trade receivables. We suggest requiring banks to take them into consideration when making their evaluations, but not requiring specific compliance with each one.
- **Criterion A5 (Asset Selection and Transfer):** Compliance with eligibility criteria needs to be part of the borrowing base and not a requirement for transfer to the conduit, as set out below in Section IV discussing our concerns regarding Criterion A5 of the Capital CD.
- **Criterion B11 (Documentation Disclosure and Legal Review):** No offering documents should be required if the securitization is privately negotiated. This is because ABCP conduits and banks extending credit or purchasing interests in assets in this market have the right under the legal documents governing these transactions to obtain extensive information about the securitized asset pools, asset originating entities, and servicers without the need to rely on disclosure requirements mandated by regulation.
- **Criterion D16 (Granularity of the Pool):** The requirement that the aggregated value of all exposures to a single obligor must not exceed 1% would exclude most wholesale exposures. A requirement as to minimum credit enhancement seems more appropriate. See comments on Criterion D18 below on page 9.

In order to correct these deficiencies, we believe that non-ABCP short-term bank-funded and privately-negotiated securitizations should have the same STC eligibility criteria as ABCP deals.

IV. Changes Should Be Made To The Transaction-Level Criteria In Order To Maximize Compliance With Them.

Having explained our view that compliance with the STC criteria is most likely to be maximized if compliance is assessed on a transaction-by-transaction basis, we next address our concerns with specific transaction-level criteria proposed in the Capital CD. We suggest that a number of changes are required in order to ensure that providers will be both motivated to comply and able to do so on a wide-scale basis.

- **Criterion A1:** While some may say, “I know it when I see it,” it is difficult to define “homogeneous.” There is no rational point at which to draw the line as to what is homogeneous and what is not.

Even if a satisfactory definition could be found, we are concerned that this criterion could exclude certain common deal structures from the STC framework by requiring that the assets underlying a transaction be “homogeneous.” For example, many short-term securitizations finance trade receivables that are payable in different currencies, but are covered by foreign currency hedges that would meet the requirements of the STC framework and are originated in different jurisdictions, under different governing laws, by affiliated companies. So they are homogeneous in the sense that they are all trade receivables but not when homogeneity is measured by other factors. Other securitizations fund auto loans and leases or equipment loans and leases in the same transaction. In each case, the sponsor or funding bank has access to sufficient information to structure these transactions properly. We urge the Committee to take a more practical approach to this issue rather than risk precluding these technically heterogeneous transactions from STC treatment.

In this regard, we note that the homogeneity requirement in the European Union’s proposed criteria for “simple transparent and standardised securitisation” for ABCP (the “EU ABCP STS Criteria”)² (which is not without its own definitional challenges) refers to “underlying exposures that are homogeneous in terms of asset type, taking into account the specific characteristics relating to the cash flows of different asset types including their contractual, credit risk and prepayment characteristics.” While the European Banking Authority is mandated to further specify the standards for exposures deemed to be “homogeneous,” there is no general requirement for exposures to be denominated in the same currency or originated in the same jurisdiction under the same governing law.

Thus, we request that “homogeneous” assets under this criterion include (i) receivables of the same type originated by a single affiliated group of asset originators that are payable in multiple currencies, provided that any resulting currency risk is appropriately mitigated as required by Criterion A9, and (ii) equipment loans and leases or auto loans and leases financed in a single transaction originated by a single affiliated group of asset originators.

We also believe that the description of credit claims and receivables in this criterion unnecessarily excludes certain standard asset classes that warrant STC treatment. Specifically, the additional guidance for capital purposes under Criterion A1 provides in pertinent part:

Repayment of the securitisation exposure should mainly rely on the principal and interest proceeds from the securitized assets. Partial reliance on refinancing or resale of the assets supporting the exposure may occur provided that refinancing is sufficiently distributed within the pool and the residual values on which the

² At the date of submission these proposals are technically in draft form, but political agreement has been reached and they are expected to pass into law by publication in the EU Official Journal before the end of 2017.

transaction relies are sufficiently low and that the reliance on refinancing is thus not substantial.³

We believe that this criterion is too restrictive and ignores the fact that the experience of ABCP Conduits over the past four decades is that the transaction should qualify so long as the bank has adequate data to justify its projections for repayment. Drawing the line with words like “substantial” makes the test for STC compliance subjective and leaves banks without useful guidance on what qualifies and what does not.

- **Criterion A2:** The requirements of five and seven years of performance data for retail and non-retail exposures, respectively, is excessive. These requirements far exceed what market participants view as necessary. A more reasonable standard would be three and five years, respectively, which is the current test applied to short-term securitizations and would make this criterion consistent with the proposed EU ABCP STS Criteria.

Moreover, the due diligence practices of ABCP conduits, sponsors, and banks providing direct securitization financing are required to be very thorough and employ rigorous credit approval procedures. *See, e.g., BCBS, Basel III Document, Revisions To The Securitisation Framework Part I.D. (BCBS 374 rev. July 2016), available at <https://www.bis.org/bcbs/publ/d374.pdf>.* Also, in order to be able to calculate regulatory capital, banks must have extensive performance data. *See id.* Accordingly, banks that satisfy these requirements should be deemed to have satisfied the asset performance history criteria. Indeed, because banks providing liquidity or credit enhancement to these transactions essentially take default credit risk, they should be highly motivated to obtain adequate data.

- **Criterion A3:** We propose that this criterion should be revised to properly accommodate revolving asset pool securitizations. To that end, we suggest that the proposed criteria be revised to permit lower credit quality credit claims or receivables to be included as part of a securitized asset pool in revolving asset securitization transactions, provided that these assets are assigned a zero value in any advance rate calculation for the transaction.
- **Criterion A4:** This criterion requires the sponsor to ensure that sellers in transactions with the conduit demonstrate that “the obligors have been assessed as having the ability and volition to make timely payments on obligations.” It is unclear to us how a seller would be able to assess “volition” and how a sponsor could satisfy itself that this subjective state has been demonstrated.
- **Criterion A5:** We believe that originators should be allowed to transfer whole pools to the conduit, including ineligible receivables, so long as the advance formula does not give credit for such receivables. There are several reasons why we believe this approach is appropriate. First, there is no economic difference between this approach and the one proposed in the Capital CD, which would permit the transfer of eligible pools only. Second, this is frankly how the industry works now. For example, when trade receivables are securitized one or more asset originators transfer all of their trade receivables to a sponsored SPE, which then obtains financing for the receivables from one

³ See Capital CD, page 9, linked [here](#).

or more ABCP conduits or banks. The financing documents establish eligibility requirements for the financed trade receivables that exclude those assets having low credit quality. The advance rate calculations in such transactions include only eligible receivables. It would be much more complicated, administratively burdensome, and expensive to construct transfers in the manner proposed, and doing so would not improve the safety of the facilities. In fact, it would be safer for a facility if it had a right to cash flows from the ineligible as well as the eligible receivables because ineligible receivables often generate cash, despite being ineligible. This is especially the case for trade receivables because it is administratively difficult to separate their discrete cash flows operationally. However, our concern applies not only to trade receivables, but also to credit card pools of receivables and any other types of receivables that turn over quickly, because this makes it too burdensome to include only eligible receivables in the pool.

We seek clarification regarding the requirement that the sponsor should ensure that pools are not actively managed. Specifically, we request that the Committee confirm that this prohibition would not be violated by (i) managing a pool or pools to avoid losses from excessive defaults or other credit or quality problems; and (ii) managing warehouse facilities to prepare all or part of them to be sold into term securitizations. In this regard, we observe that Note 15 in the Criteria CD and Note 19 in the Capital CD state that “the addition of credit claims or receivables during the revolving periods or their substitution or repurchasing due to the breach of representations and warranties do not represent active portfolio management.”

Finally, this criterion requires that the sponsor must ensure that it receives from the sellers representations and warranties that the underlying receivables “are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due.” By comparison, a similar requirement in the proposed EU ABCP STS Criteria relates only to the enforceability of the true sale. Sponsors and bank purchasers in trade receivables transactions typically require ample reserves against both obligor credit risk and “dilution” risk (including any lack of enforceability of the receivables) and do not rely on enforcing receivables against obligors directly.

- **Criterion B10:** We propose that extension options at the hand of the investors—*i.e.*, exercisable by the investors—should be authorized.
- **Criterion B11:** The requirement that the sponsor must ensure that “all voting and enforcement rights related to the credit claims or receivables are, if applicable: [i] transferred to the conduit; and [ii] clearly defined under all circumstances” would be difficult to achieve in practice. We believe that this requirement should at a minimum be adjusted to reflect that (i) a trustee or administrative agent may act on behalf of different parties who will have taken an interest in the same underlying assets, and (ii) rights in relation to underlying assets may be transferred to intermediate asset purchasing companies rather than the ABCP issuing entity. When a default under the financing occurs in a transaction structured in this manner, the financing entities or their agents are permitted to foreclose on the receivables and exercise any rights of the asset originator with respect to such receivables.

- **Criterion C16:** As written, this criterion appears to establish an experience requirement for the *institutions* that serve as sponsors of ABCP conduits and as originators of the underlying asset pools. Such requirements are not practical, however, because it is the *staff* of those institutions who actually perform the analysis and reach the conclusions that guide the program. Thus, the criterion should make it clear that the requirements as to experience of the conduit sponsor and the originators will be satisfied if the *staff* employed by these entities have the appropriate experience, as opposed to the institution itself. This requirement can be policed through Pillar 2 as well.

Moreover, existing practices of sponsors provide an extra layer of protection here. Specifically, ABCP conduits, sponsors, and banks that provide direct securitization financing already are required to employ very thorough due diligence practices and rigorous credit approval procedures. *See, e.g., BCBS, Basel III Document, Revisions To The Securitisation Framework Part I.D. (BCBS 374 rev. July 2016), available at <https://www.bis.org/bcbs/publ/d374.pdf>.* Also, in order to be able to calculate regulatory capital, banks must have extensive performance data. *See id.*⁴

- **Criterion D18:** This criterion requires that all of the assets transferred into a qualifying securitization transaction must comply with certain maximum risk weights under the standardized approach. This criterion is problematic for revolving asset transactions that require an asset originator to sell all credit claims or receivables of a specific type into a transaction structure regardless of their credit quality. It also may be challenging for transactions that include a small percentage of these receivables in the financed pool, because the ABCP conduit or bank providing funding protects itself from the credit risk of any sub-standard receivables by either excluding such receivables from the advance rate calculation for the transaction or by ensuring that transaction credit enhancement adequately covers the risk of these exposures. Accordingly, we request that where the amount of any receivables not meeting additional criterion D18 are covered by credit enhancement that is at least equal to the highest rating agency requirement for trade receivables of this general category, these receivables should be exempt from this criterion. Additionally, we recommend that the risk weight applicable to residential and commercial mortgages should be 100% because some jurisdictions require use of a 50% risk weight while others mandate a 100% requirement, and it does not further the objectives of STC to have these standards vary jurisdiction by jurisdiction.
- **Criteria A4, A6, B10, and C17:** We have several concerns regarding these criteria. First, we question whether there is a need for the proposed criteria regarding the disclosures and the representations and warranties that should be made to or from sponsors. When investors benefit from full credit and liquidity support from the sponsor bank (liquidity lines that cover 100% of issued and outstanding ABCP), we believe that such extensive disclosure is not the focus of, and not required by, investors, and is adequately addressed through current market practice.

⁴ Criterion C16 purports to address fiduciary responsibilities, but does not actually discuss any such responsibilities among its transaction-level requirements. We request that the Committee confirm that this criterion does not create any new fiduciary duties at the transaction level, but merely requires parties that have fiduciary duties to fulfill them. The criterion also implies that conduit sponsors have or should have fiduciary obligations to ABCP investors. This is inconsistent with market structures and practice and would exclude existing programs generally.

Second, such requirements go materially beyond both market practice and the ability of sponsors to supply them. The industry has decades of experience with sponsors, dealers, and investors working together on ABCP transactions, and over that time the market has developed warranties and disclosures that all participants find to be generally acceptable. In fully supported programs, to which the proposed STC regime is restricted, investors rely predominantly on financial information regarding the sponsor supported by disclosures regarding the underlying assets in an ABCP conduit. Investors are free to ask for more information whenever they deem it necessary, and the market has settled on the information that is exchanged now without any widespread concern on the part of investors.

Third, such requirements would significantly increase the potential due diligence burden and legal liability for sponsors under securities laws, all for no useful reason, creating a strong disincentive to undertake STC short-term securitizations at all. For example, there is a list of credit events (*e.g.*, payment holidays) that the sponsor would have to identify and disclose to investors, which banks may not retrieve automatically from their systems. Such a requirement might be difficult to implement in practice.

Fourth, if the Committee accepts our proposal in Section III above that the proposed STC criteria should be modified or expanded to facilitate RBC treatment for direct bank-funded privately-negotiated securitizations, such transactions would not require the proposed warranties and disclosures because there is no party in those transactions to whom such disclosures can be made.

V. The Conduit-Level Criteria Raise Numerous Concerns.

While we believe that the Committee’s goals set forth in the Capital CD are best served by assessing compliance with the STC criteria solely on a transaction-by-transaction basis, we understand that the Committee is considering other options and thus seeks comments on its proposed conduit-level criteria. Suffice it to say that we have major concerns that the conduit-level requirements are so onerous, unrealistic, beyond market practice, and impractical that few, if any, ABCP sponsors will attempt to comply with them.

As the Regulators will be aware, the proposed EU ABCP STS Criteria, like those in the CDs, include criteria for short-term securitization qualification of ABCP programs as well as for ABCP transactions “within” ABCP programs. While there are differences between the ABCP program criteria in the proposed EU ABCP STS Criteria and those in the CDs, they are similar in important respects. In addition to requiring full credit and liquidity support from the sponsor bank, the proposed EU ABCP STS Criteria—like those in the CDs—also require that each of the underlying transactions funded by the program meets all of the applicable transaction-level criteria (with a limited exception for up to 5% of exposure value in transactions temporarily not meeting certain criteria); impose disclosure standards inconsistent with market practice and investor requirements; and, for bank capital purposes, add maximum risk weights and granularity requirements.⁵ Because of many concerns regarding the proposed EU ABCP STS Criteria, as well as the layering of transaction-level and program-level requirements and the compliance certification process, our

⁵ The EU’s criteria do not go so far as to require extensive representations and warranties by the sponsor to ABCP investors as do the CDs.

European members generally believe that no existing ABCP program as currently structured and operated would qualify as STS, and, given the compliance burdens involved, it is likely that few if any programs will ever qualify, or even seek to qualify. In order for banks, investors, and originators to achieve any significant benefits from the STC regime proposed in the CDs, the Regulators should consider taking a different and much simpler approach to program-level STC qualification.

What remains critical is that the final guidelines should promote the structuring of as many deals as STC compliant short-term securitizations as possible, an outcome that we believe is best achieved by establishing sound, practical, and independent transaction-level criteria. Accordingly, while we will not comment exhaustively on the proposed conduit-level criteria, we will identify and explain the major categories of problems that we discern in order to aid the Committee's process.

One general observation is that the bank sponsor typically provides full liquidity support. Thus, it is the sponsor rather than the ABCP investors that is primarily exposed to liquidity risks and other risks of the underlying assets and transactions. Accordingly, the conduit-level criteria should be focused on features of the ABCP conduit (including liquidity support) and the sponsor requirements, rather than mirroring the STC criteria for the underlying transactions and requiring that each transaction funded by the ABCP conduit must be an STC transaction.

- **Criterion A1:** Transactions financed by ABCP programs may include not only securitizations but also receivables purchased and financing transactions that would not be securitizations. The conduit-level requirement that underlying transactions comply with STC criteria should apply only to securitization transactions.

Consideration also should be given to exempting some proportion of underlying transactions (in addition to non-securitization transactions) from the requirement that each underlying transaction comply with STC transaction criteria.

- **Criteria A1-A6, C16-C17:** The proposed criteria regarding the disclosures and representations and warranties that should be made to investors go materially beyond market practice, investor desire or needs, and the ability of sponsors to supply them due to the preponderance of revolving transactions and deals that regularly go into and out of the conduit. Indeed, under the existing structures of these programs, the sponsor bank has no direct contractual obligations to investors, but provides protection to investors indirectly by providing liquidity or credit enhancement facilities to the conduit.

Other notable ways in which these proposed criteria are inconsistent with existing structures and market practice include:

1. The nature and frequency of checks on the enforceability of the underlying assets. Among other things, although a pool audit may be requested on a more regular basis, opinions on enforceability of the underlying assets generally are not refreshed on a regular basis;

2. Disclosure of the timing and purpose of changes in sellers' underwriting standards; and
 3. Confirming that underlying credit claims or receivables are not, at the time of acquisition, in default or delinquent "or subject to a material increase in expected losses or enforcement actions."
- **Criterion A2:** We refer to our comments above under Criteria A4, A6, B10 and C17 regarding these generally unconstructive disclosure requirements. Further, the requirement for the sponsor to make available sufficient loss performance data with substantially similar risk characteristics to the investor is particularly problematic. Disclosure of key statistics regarding underlying assets and asset types already takes place, and seems satisfactory for investors. We do not agree with requiring the disclosure of proxy data. Moreover, requiring disclosure of comparable transaction data for facilities could introduce risk to the sponsor if the comparability diminishes in the future and the facility deteriorates. Sponsors regularly receive calls from investors inquiring into the specifics of transactions as part of the investor's due diligence process. If investors are aware of the type of underlying asset, they should be able to identify comparable data independently.
 - **Criterion A4:** The requirement that the sponsor inform investors of the material selection criteria applied when selecting sellers of the underlying transactions (including where the sellers are not financial institutions) is problematic because many ABCP programs have no specified seller selection criteria. Notably, the proposed EU ABCP STS Criteria do not include such a requirement.
 - **Criterion B13:** There is no specification with regard to the necessary amplitude of the retained interest in the structure. We suggest that, so long as a bank complies with the applicable credit risk retention requirements, it should be deemed to have complied with any requirement that interests be aligned.
 - **Criterion B14:** We suggest that the "weighted average maturity" test at the conduit level in Criterion B14 should be three years. For several decades now, conduits have financed a large variety of assets—many of them with weighted average maturities in excess of three years—without serious loss. We do not think that limiting such maturity to less than three years is justified by the historical record. Again, conduit sponsors must perform robust due diligence based on extensive data before being able to place such a transaction in the conduit.
 - **Criterion C16:** The proposed sponsor representations and warranties regarding steps taken to ensure compliance with transaction-level criteria, as well as the qualities of the seller's policies, procedures, and regulatory compliance (Criterion 16 conduit level), also raise concerns, particularly where the underlying transaction criteria are vague and relate to matters usually outside the sponsor's responsibility, for example:
 1. in case of a seller's delegation of servicing tasks, ensuring appropriate oversight of the outsourced arrangements (Criterion 6 transaction level); and

2. ensuring that the seller and other relevant parties responsible for originating and servicing the underlying assets of the transactions within the ABCP program “have thorough legal and collateral knowledge” (Criterion 16 transaction level).

Additionally, when investors benefit from full credit and liquidity support from the sponsor bank (fully supported liquidity lines), we believe that the constraints regarding contractual obligations should be loosened. For example, we do not understand the rationale for requiring the sponsor to provide investors with a summary of the waterfall for each transaction funded in the conduit. This requirement would be very burdensome because some multi-seller conduits fund more than 100 transactions for bank clients. ABCP conduits already are providing monthly reports to investors, which provide investors with enough data on the underlying assets.

- **Criterion D19:** We recommend that this criterion establishing requirements for granularity in the asset pools and maximum overall obligor concentrations should be removed. These requirements will not work for trade receivables and are very difficult to calculate on a monthly basis for dynamic pools. It is important to weigh the existing regulatory regimes that apply lending limits, large exposure limits, and the like which appropriately regulate such exposures. See BCBS, *Supervisory Framework For Measuring And Controlling Large Exposures* Part IV.D. (BCBS 283 April 2014), available at <http://www.bis.org/publ/bcbs283.htm>; Regulation (EU) No 575/2013 Part IV (June 26, 2013), available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013R0575R\(02\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013R0575R(02)).⁶

We would be happy to meet with the Regulators to discuss these and any other concerns regarding the conduit-level criteria if that would be helpful.

VI. The Definitions Of “Seller” And “Sponsor” Should Be Revised.

Annex 1 of the Capital CD sets forth the definitions of a number of terms used in the STC criteria for short-term securitizations. We think that the definitions of two of these terms—seller and sponsor—should be revised.

The Capital CD defines a “seller” as a party who, among other things, transferred “obligations or potential obligations (under a credit claim or a receivable) of an obligor ... through a transaction to the ABCP conduit.” We are uncertain whether this definition encompasses types of transactions that do not involve a sale of the assets to the ABCP conduit (or bank in a direct-funded transaction). For example, there are transactions in which assets are sold to a SPE sponsored by the bank’s customer and then either (1) a security interest in the assets is granted to the ABCP conduit or bank to secure a loan made by the ABCP conduit or bank to the sponsored SPE, or (ii) an undivided interest (but not the whole asset) is sold to the ABCP conduit or bank. Additionally, it is also common for the seller in an ABCP conduit or bank-customer securitization transaction to purchase

⁶ We note that the EU short-term securitization criteria for bank capital purposes include a program-level obligor concentration limit of 2% of aggregate exposure value. However, this requirement is mitigated by allowing banks to take into account receivables purchase price discounts as well as certain eligible third-party credit protection and by excluding lease residual values supported by a repurchase or refinancing commitment from an eligible guarantor.

rather than directly originate the underlying assets. We therefore suggest revising the definition of “Seller” to clarify that

“Seller” means a party that (i) concluded (in its capacity as original lender *or through the purchase of the assets from the original lender*) the original agreement that created the obligations or potential obligations (under a credit claim or receivable) of an obligor, and (ii) transferred those assets *or an interest therein or granted a security interest in those assets* through a transaction to the ABCP conduit or, if the transaction is directly financed by a bank, to the bank.

As for the definition of the term “sponsor,” we believe that it should be revised to reflect the fact that entities affiliated with the bank that provides primary credit and liquidity support to an ABCP conduit often provide all or a portion of the administrative services to that ABCP conduit. Thus, we suggest that the first sentence of the definition of “sponsor” should state: “The sponsor of an ABCP conduit, *including any affiliate providing administrative services or credit or liquidity support to the ABCP conduit.*”

VII. Responses To The Numbered Questions Posed In The Capital CD.

The Capital CD seeks input from respondents on five specific questions related to its proposal for establishing short-term STC criteria for exposures to ABCP structures. Our response to each follows:

1. Question 1 asks if the respondents agree with the proposed STC criteria for short-term securitizations and the related guidance for satisfying each proposed criterion. Sections I through VI above set forth our views on how the criteria should be modified to most effectively achieve the goals of the Capital CD and grow the short-term securitization market.

2. Question 2 asks respondents for their views on the proposed baseline and alternative approaches for satisfying the short-term STC capital criteria that are proposed in the Capital CD. In Section II above we explain that we believe that the Committee’s goals in applying STC criteria to ABCP structures can be best achieved by adopting Alternative Approach 2, which requires compliance with STC criteria solely on a transaction-by-transaction basis.

3. Question 3 asks for respondents’ views regarding the requirement that the liquidity facility (or facilities) and credit protection support required by criterion B7 must be provided by a single provider. We believe that neither the safety nor the soundness of an ABCP program would be harmed to any meaningful degree by allowing two or more banks or other regulated financial institutions to provide these protections. As long as the contractual obligations of the entities providing the support are clear, there is no reason to require that all support be provided by only one entity. Indeed, in our view, additional assurance may be provided by having two banks analyze the deal rather than just one.

4. Question 4 asks for respondents’ views concerning which participants in an ABCP program should be responsible for determining compliance with the proposed STC criteria. We propose the following:

- For notes issued by the ABCP conduit, only the investor should be responsible for determining compliance with the STC criteria for its investment.
- Only the sponsor should be responsible for compliance with the STC criteria at the transaction level.

5. Question 5 asks if respondents have any comments regarding the appropriateness of an RBC benefit for compliance with STC criteria. We agree with the concept of preferential RBC treatment if the ABCP conduits satisfy applicable criteria, provided they are suitably calibrated (as we have commented).⁷

VIII. Conclusions

The Associations’ guiding principle in making the proposals set forth in this letter is captured by architect Frank Lloyd Wright’s admonition to “[t]hink simple’ as my old master used to say—meaning reduce the whole of [the subject’s] parts into the simplest terms, getting back to first principles.” Although the Associations support the Committee’s goal of “assisting the financial industry in its development of STC securitisation structures,” we believe that the mechanisms proposed by the Committee to achieve that goal go too far, risk making the process for obtaining preferential RBC treatment overly complicated, and ignore the strong credit performance over several decades of ABCP conduits (distinct from SIVs and “arbitrage conduits”) backed by “real economy” assets such as trade receivables, auto loans and leases, etc..

Previous submissions to the Committee during the STC discussions⁸ have included extensive data that demonstrates that ABCP conduits:

- have a 30-year operating history
- have exhibited strong liquidity performance even during times of stress
- fund the real economy (*e.g.*, 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.

We respectfully suggest that our proposals, if adopted, would achieve the Committee’s goal of ensuring that ABCP transactions are structured prudently, justifying less capital, without creating unnecessary and impractical complication that would discourage compliance with the STC criteria and disrupt the operation of the ABCP market.

The Associations welcome opportunities to work with the Regulators to modify the proposed STC criteria and related guidance in order to maximize compliance with the criteria and best serve the

⁷ We wish to draw the Regulators’ attention to an inaccuracy in the schematic on page 3 of the Criteria CD, which shows “Sellers” transferring assets directly to “ABCP Conduit[s].” In the vast majority of cases, sellers render their transactions bankruptcy remote by transferring pools of financial assets through one or more SPEs in so-called “true sales” or other similar transactions that serve to render the structure as a whole bankruptcy remote. The ABCP conduits then finance these SPEs in some form.

⁸ See Annex II of the response dated 5th February 2016 of GFMA and IACPM to the Committee’s Consultative Document of November 2015 on capital treatment for “simple transparent and standardized securitizations,” linked [here](#).

goals of the Capital and Criteria CDs. If you have any questions regarding this comment letter please contact in the first instance Richard Hopkin of AFME (Richard.Hopkin@afme.eu), Richard Gray of IIF (rgray@iif.com) or Chris Killian of SIFMA (ckillian@sifma.org).

Respectfully submitted,



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Description of the Associations

The Australian Securitisation Forum (“AuSF”) was formed in 1989 to promote the development of securitisation in Australia. As the peak industry body representing the Australian securitisation market, the AuSF performs a pivotal role in the education of government, regulators, the public, investors and others who have an interest or potential interest both in Australia and overseas, regarding the benefits of securitisation in Australia and aspects of the Australian securitisation industry.

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 membership of over 525 firms are located in 62 countries, including all the world’s main financial centres. ICMA’s market conventions and standards have been the pillars of the international debt capital market for almost 50 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 (“IIF”) is a global association for the financial industry, with close to 500 members from 70 countries. Its mission is to support the financial industry in the prudent management of risks, to develop sound industry practices, and to advocate for regulatory, financial and economic policies that are in the broad interests of its members and that foster global financial stability and sustainable economic growth. Within its membership IIF counts leading global banks, insurers, pension funds, asset managers, and sovereign wealth funds, as well as leading law firms and consultancies. For more information visit www.iif.com.