

Task Force on Securitisation Markets (TFSM) - Survey for Market Participants

Questionnaire to market participants on developments in securitisation markets

Confidentiality

Please indicate if and what information is market and commercially sensitive and therefore confidential.

Respondent ID: 353

None of the information in this response is market or commercially sensitive.

Section A - Respondent details

This section seeks information on details of the respondent.

1. Please provide the following information for your institution:

- Name of respondent institution

Respondent ID: 353

Association for Financial Markets in Europe

- Name of primary contact person

Respondent ID: 353

Richard Hopkin

- Contact number of primary contact person

Respondent ID: 353

+ 44 207 743 9375

- Email address of primary contact person

Respondent ID: 353

richard.hopkin@afme.eu

- Name of secondary contact person

Respondent ID: 353

Anna Bak

- Contact number of secondary contact person

Respondent ID: 353

+ 44 207 743 9314

- Email address of secondary contact person

Respondent ID: 353

anna.bak@afme.eu

2. Please indicate which of the following best describes your participation in securitisation markets. Please indicate all that apply:

Respondent ID: 353

Issuer

Bank/Dealer — Primary

Bank/Dealer — Secondary

Investor — Asset Manager

Investor — Bank

Service Provider (eg Trustee, Asset Management Company)

Rating Agency

Accountant / Lawyer

Other

3. Which of the following best describes your role in your institution:

Respondent ID: 353

Senior management

4. Please indicate the main region area in which your work is mostly focused:

Respondent ID: 353

Europe

5. In which of the following securitisation product markets do you actively participate? Please select all that apply and indicate whether you participate in a primary and/or secondary market(s).

- Residential mortgage backed securities

Respondent ID: 353

Yes

Respondent ID: 353

Both markets

- Commercial mortgage backed securities

Respondent ID: 353

No

Respondent ID: 353

- Non mortgage asset backed securities (please list the specific types of non-mortgage ABS assets involved, eg auto loans and leases, credit cards, student loans, container leases, equipment leases, utility stranded costs, SME loans, consumer loans)

Respondent ID: 353

Yes

Respondent ID: 353

Both markets

- Cash collateralised debt obligations

Respondent ID: 353

No

Respondent ID: 353

- Synthetic collateralised debt obligations

Respondent ID: 353

No

Respondent ID: 353

- Asset backed commercial paper

Respondent ID: 353

Yes

Respondent ID: 353

Both markets

- Other short-term / money market instruments

Respondent ID: 353

No

Respondent ID: 353

- Others (please specify)

Respondent ID: 353

No

Respondent ID: 353

Respondent ID: 353

Section B - Review of Developments in Securitisation Markets since 2009

6. Please describe how your participation in securitisation markets in which you are active has changed since early 2009. Specifically describe changes in the following, quantifying your response where relevant and data is available:

- Reasons for changes in degree of participation;
- Number and size of deals in which your institution has been involved and comparison before the crisis;
- Asset classes in which your institution has been active and those in which you are no longer active and why;
- Structure and complexity of the deals in which your institution has been involved;
- Cross border deals in which your institution has been involved. This may include securitisation transactions marketed/sold/issued into a different jurisdiction or region from the originator/sponsor/issuer or issued in a different currency than the currency of the home jurisdiction;
- Transaction offering type (taking into consideration the criteria of public offering, private placement, with or without listing on a regulated markets or other markets, self-subscription for repo or for central bank refinancing).

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

Reasons for changes in degree of participation

The reasons for changes in the degree of participation by AFME members in

the European securitisation market are well known.

Firstly, the severe credit and market losses incurred in the US sub-prime residential mortgage market beginning in 2007, amplified by excessive leverage throughout the financial system but including in the form of CDOs, CDOs squared, SIVs, etc., resulted in a serious and systemic loss of faith in securitisation as a funding and risk management technique across the globe. This was despite the fact that outside the US sub-prime mortgage sector many other securitisation markets in Europe and the US continued to perform well and within expectations.

Secondly, following this experience the regulatory response was severe and, in many cases outside US sub-prime, unjustified by the evidence of actual performance. This sent a negative signal to issuers and investors regarding the suitability and safety of securitisation, resulting in severe shrinkage of the investor base. After many years, signalling from policymakers has become more positive in recent months, which is helpful and very much appreciated. However, much in the way of restrictive and unjustified regulation remains in place which hinders the recovery of securitisation. See further our answer to Question 10.

Thirdly, as well as the severe regulatory response to the perceived role of securitisation in contributing to the financial crisis, central bank intervention then took place in the form of providing cheap "repo" funding to originating banks. Initially this had a supportive effect by sending a positive signal about securitisation to the market. Ironically, however, now that the severest phase of the crisis is over, this intervention is beginning to have the effect of depressing issuance by competing with private sector investor demand. While the broader macro-economic and financial stability reasons behind programmes such as the LTRO are acknowledged, the availability of such programmes is now making securitisation relatively expensive, discouraging bank originators from using securitisation as a funding tool.

The recently announced (in principle) ECB purchase programme, while well intentioned, also carries with it certain risks. If correctly structured and targeted to support qualifying securitisations, such a programme could provide a cornerstone to support market making by banks, re-building confidence and sending positive signals to the wider non-bank investor base. However, if not targeted properly the purchase programme risks "crowding out" investors from the market in the short term as well as doing potentially permanent damage to private investment demand.

In order to avoid that negative outcome, we would recommend designing the programme with one or more of the following features:

- make public placement of a minimum proportion of the securities an eligibility criterion for the purchase programme; and/or
- target some of the purchases at the mezzanine tranches of ABS transactions therefore limiting the impact of the programme on the availability

of highly-rated ABS in the public markets; and/or

- place strict limits on the amount of ABS collateral that can be purchased so as to ensure continuing availability of ABS in the hands of private investors.

An ABS purchase programme for qualifying securitisations with central banks acting as "purchasers of last resort", could underpin banks' market making activities, sending a powerful message to encourage more active participation in the market. After all, the bulk of losses on European securitisation incurred during 2007-08 were due to mark-to-market requirements rather than actual credit losses.

Cross border deals

Cross border issuance is critical to building strong and sustainable securitisation markets. Cross border flows have been significant for certain markets at certain stages of development of the global securitisation markets, particularly for example in countries with a limited domestic investor base such as Australia. Issuance of UK securitised paper into the US market was also heavy during 2011 and early 2012 - see Annex III of AFME's response to the EBA on risk retention, due diligence and transparency (April 22nd 2014, supplied separately, see Annex C.2). Cross border flows are determined largely by cross currency swap spreads, but can be hindered by mis-aligned regulation. In this context, the issue of most serious concern is the lack of mutual recognition or substituted compliance between the US and European regulatory regimes on risk retention.

Transaction offering type

AFME's members use all the types of offering listed, as well as asset-backed commercial paper.

7. Turning to the securitisation markets in which you have participated since early 2009, please describe the changes you have seen in these markets in each of the following.

- Number and size of deals;
- Issuers and issuer types;
- Investors and investor types;
- Asset classes;
- Structure and complexity of deals;
- Cross border activity.

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

By and large there have been reductions in all of these parameters since 2009. AFME does not maintain statistics on all of them, but we attach charts showing changes in distribution between asset classes in Europe over several years (see Annex B.3). In 2013, the effect of central bank intervention in the form of the Bank of England's Funding for Lending Scheme can be seen clearly in the sharp fall in issuance of UK RMBS, for example. For cross border activity, see Annex III of Annex C.2.

Regarding non-bank investors in particular, we also refer to AFME's "Solvency II insurance company and asset manager survey" (March 2014 - see Annex B.5) which demonstrates that 86% of insurance companies and asset managers surveyed believe that the proposed EIOPA charges for non-senior securitisations will either cause them to cease investment entirely or continue only on a dramatically reduced basis. 78% of them believe that the proposed EIOPA charges for non-AAA-rated senior securitisations will either cause them to cease investment entirely or continue only on a dramatically reduced basis.

Please see also AFME's Quarterly Data Report for Q1 2014 and our Data Snapshot for Q2 2014 included at Annex B.4. Earlier reports in the series are available at www.afme.eu

8. To what extent have the following market factors contributed to the changes you have observed? Have they helped or hindered the development of securitisation markets. Please provide reasons:

Issuers' Perspective

- a. Availability of funding alternatives, such as covered and corporate bonds, and central bank funding

Respondent ID: 353

Hindered

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

It is not so much the availability of funding alternatives such as covered and corporate bonds that has hindered the securitisation market, as the lack of a level regulatory playing field between securitisation and covered bonds, in particular. This creates positive signalling for covered bonds and negative signalling for securitisation.

The issues raised by central bank funding are dealt with above in Question 6. In summary, intervention sends a positive signal in principle but increasingly risks creating a "crowding out" effect if not calibrated to

complement, rather than compete with, private sector demand.

- b. Pricing level of comparable funding alternatives, such as covered and corporate bonds and central bank funding

Respondent ID: 353

Hindered

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

AFME issuer members will be able to comment in more detail.

Anecdotally, members tell us that securitisation funding cannot realistically compete with, say, central bank funding for three years at 25 basis points.

- c. Availability of sufficient volume of assets to be securitised

Respondent ID: 353

Not relevant

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

A sufficient volume of assets is available to support a much larger privately funded securitisation market than exists today. The portion of the market that is issued but retained for central bank repo funding is just one source of assets that could be moved into private hands. At the end of Q1 2014, approximately EUR 1.4 trillion of securitisation was outstanding, of which approximately half was retained and funded through repo. See AFME Quarterly Data Report for Q1 2014, Annex B.4.

Therefore we do not believe that availability of assets is a factor constraining the recovery of the market. The problem is misaligned regulation which encourages funding from other forms of finance - given preference under regulation - such as covered bonds (the effect of capital regimes such as Basel RWA and Solvency II, and liquidity regimes such as the Liquidity Coverage Ratio under the CRR) and direct investment in whole loan pools (the effect of Solvency II), as well as the competing bid from central bank repo.

- d. Suitability of assets to be securitised, in terms of yield, structure, other relevant characteristics

Respondent ID: 353

Not relevant

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

European securitisation markets, while shrunken today, are developed and sophisticated with many asset classes that have shown themselves suitable for securitisation over the years prior to the financial crisis.

However, there are issues with the yield generated by some asset classes, in particular SME loans in certain European countries where the yield does not truly reflect the risk of lending. Securitisation of assets with yields that are "underwater" is possible, and has been achieved in the past (in the SME sector and with promotional auto loans, for example) but does pose additional structuring challenges. Normalisation of such yields truly to reflect supply and demand, and risk, would certainly boost the securitisation market.

Securitisation Structure

- e. The availability of eligible swap providers, and providers of other ancillary services (including based on credit rating)

Respondent ID: 353

Hindered

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

This is a significant issue for many reasons.

Firstly, rating agency criteria for swaps and other ancillary services have tightened considerably since the financial crisis.

Secondly, as bank (and sovereign) ratings have fallen, the number of suitably-rated candidates able to provide such services has shrunk considerably.

Thirdly, the cost of ancillary facilities is very high. These costs arise in part

because of the contingent liquidity outflows arising from minimum required credit ratings for providers of ancillary facilities such as bank accounts and interest rate or currency swaps ("Ratings Triggers"). These Ratings Triggers typically require ancillary service providers to find a replacement provider or collateralise the relevant exposure if they fall below the required rating. In both cases, there is a contingent outflow that drains the provider's liquidity assets.

The cost of Ratings Triggers could be reduced (and thereby the universe of possible ancillary service providers presumably expanded) via adjustments to the Liquidity Coverage Ratio ("LCR") under the European Capital Requirements Regulation ("CRR") (e.g. reducing the factor applied to outflows for qualifying securitisation Rating Triggers to less than 100% or allowing greater amounts of qualifying securitisations as HQLA) or via more direct central bank support (e.g. allowing emergency funding drawing capacity to be allocated to qualifying securitisations or providing bank account and swap capacity directly to bank-sponsored qualifying securitisations).

This is also a significant issue particularly in jurisdictions where the sovereign cap is materially higher than the ratings of providers of ancillary facilities. In such jurisdictions the market expectation is that transactions will be rated at or, if possible, above the sovereign cap and reaching that rating level can therefore be challenging if the providers of ancillary facilities have materially lower ratings.

For certain categories of issuers, particularly large commercial banks with significant bank account business, the risk of losing cash collections can materially increase the operational inefficiencies of securitisation transactions and the cost of credit enhancement for the structure. Moreover, investor concerns around bank issuers (and negative rating agency assumptions) are exacerbated in times of financial stress as a result of such issues, thereby adversely affecting the effectiveness of securitisation as a counter-cyclical tool for bank issuers.

Given the pressure on counterparty ratings, and the small number of counterparties available, consideration should be given to a possible role for a suitably rated public sector entity to provide guarantees of swaps or other ancillary facilities. This is not without risk to the guarantor, but the positive market impact of this type of public sector intervention could be considerable.

- f. Level of standardisation and comparability between securitised products across jurisdictions.

Respondent ID: 353

Not relevant

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

This is not a significant issue holding back the revival of the market. Investors and issuers have over the years found solutions in this context.

Cash securitisations have to be structured around the cash flows of the securitised assets, the needs and capabilities of originators and their systems, and commercial terms. There will therefore always be natural limits to the degree of standardisation that can be achieved.

Commercial pressures have already produced considerable standardisation of transaction structures and documentation - neither issuers nor investors seek inconsistency for its own sake.

Standardisation should not lead to “box-ticking”, or detract from the need for sensible flexibility (the “comply or explain” principle), or unreasonably restrict the freedom of commercial parties to agree suitable terms, or unreasonably restrict the choices of consumers.

Having said that, we agree that further simplifying work could be undertaken regarding prospectuses and investor reports. However, a balance will need to be struck between the need to achieve greater standardisation (and simplicity) on the one hand and the legal obligation to make appropriate disclosure under the terms of applicable legislation on the other.

Provided the cost is proportionate, having prospectuses and investor reports collected in a single repository would be a useful evolution. It seems to us, however, that such a repository is already being considered in the form of the website to be established by ESMA under Article 8b of the Credit Rating Agencies Regulation. To the extent that a single repository is created under that regime, it should be coordinated with the single repository suggested by the Bank of England and the European Central Bank (the "Central Banks") in their joint paper "The case for a better functioning securitisation market in the EU" (May 2014, the "Central Banks' Joint Paper") so as to avoid duplication of efforts.

- g. Changes in the complexity of securitised products (whether there has been increased or decreased complexity)

Respondent ID: 353

Helped

Please provide reasons and supporting detail and information for your

response.

Respondent ID: 353

Encouraging simpler transactions will help to rehabilitate the reputation of securitisation, and a number of market initiatives exist to help achieve this - for example, Prime Collateralised Securities ("PCS"), a labelling initiative which was established by AFME and the European Financial Services Round Table ("EFR") in 2012.

The PCS label is the only Europe-wide securitisation label and resulted from the work undertaken from 2009 to 2012 involving a broad range of European market participants (arrangers, originators, investors and legal experts) led by EFR and AFME. As such, and also because PCS has been designed to be responsive to the needs of issuers and investors in terms of giving certainty around the receipt of the label for marketing purposes (as mentioned above), PCS is an obvious and strong candidate to help the development of simpler securitisation structures. True Sale International (TSI) and the Dutch Securitisation Association (DSA) are other securitisation labels but currently only have a national scope.

h. Macroeconomic factors

Respondent ID: 353

Not relevant

Please provide reasons and supporting detail and information for your response, including identifying specific macroeconomic factors.

Respondent ID: 353

Clearly, securitisation has a bigger role to play when economic growth is strong and bank balance sheets are growing. This has not been the case in Europe in recent years.

Having said that, and apart from monetary policy (see our answer to Question 6), macroeconomic factors have not been the biggest hindrance to the revival of the market: miscalibrated regulation and unusual monetary policy conditions have been much bigger factors.

Transparency

i. The availability and/or quality of multi-year performance history data on the underlying assets (i.e., "static pool" data)

Respondent ID: 353

Not relevant

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

We assume this question is about the availability of "static pool" data to assist investors in their credit assessment prior to investment, rather than ongoing loan-level data ("LLD").

Investors will comment in more detail, but AFME does not believe that the presence or absence of "static pool" data is a significant factor in hindering or encouraging the revival of the European securitisation market.

High quality securitisations have been structured, placed and performed well both with and without the availability of static pool data, over the years. Static pool data is in our view helpful, but not essential.

- j. Valuation certainty, including increased confidence in valuation methodologies and increased confidence in underlying data and valuation assumptions

Respondent ID: 353

Helped

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

Significant improvements have been made in the data available to investors in recent years, through loan level and other data provided pursuant to ECB and Bank of England templates and requirements.

Regarding loan-level data ("LLD"), AFME believes that harmonisation of data templates and formatting would be a positive development. Investors frequently point out to us that while it is useful having loan-level data available from the European DataWarehouse or the Bank of England, the data is not always available in a user-friendly format. The differences (IT, technical and in substantive content) between the two platforms are also not helpful and it is good that this is noted in the Central Banks' Joint Paper.

Clearly, more work needs to be done to resolve these practical and technical issues, and perhaps further discussion is required around the incentives necessary to encourage private-sector solutions to the absence of user-friendly software to assist in the ease of digestion, and proper

understanding, of data.

- k. Price transparency, including transparency around bid/ask spreads and traded prices

Respondent ID: 353

Not relevant

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

Securitisation is captured under the new transaction reporting and pre- and post-trade transparency requirements for fixed income under MiFID II. Following implementation of these requirements, there will be a high-level of European-wide harmonised public trade transparency in the securitisation secondary markets.

Investors' Perspective

- l. Availability of investment alternatives

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

For investors to comment.

- m. Internal capabilities and ability to evaluate, measure and manage risk

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

For investors to comment, although anecdotally we hear that the continued low levels of issuance are making it more difficult for some investors to justify the infrastructure they need to maintain to invest in securitisation: technology, data collection and analysis, human knowledge and skills, etc.

This is an increasingly serious concern.

- n. The perception (whether positive or negative) of securitisation as an investment class

Respondent ID: 353

Hindered

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

As stated in Question 6, until very recently the perception of securitisation since the financial crisis has been almost wholly negative. More recently, and led by yourselves, the European Commission, the Bank of England and the European Central Bank, a more positive tone has emerged in policymaking. However, when the detail of current regulation is analysed it is apparent that significant regulatory hurdles to the revival of the market still exist. See further our answer to Question 10.

- o. Availability of securitised products with the required yield and risk profile

Respondent ID: 353

Not relevant

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

See our answer to Question 8d.

- p. Secondary market liquidity

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

The absence of market liquidity is not necessarily a barrier to a well-functioning securitisation market.

As AFME has argued many times in the context of the LCR under the CRR,

liquidity is not the same as secondary trading. The securitisation market may function perfectly well with relatively little secondary trading and still be liquid in the sense that assets can be converted into cash in a short (say, 30 day) period if this is required.

A number of regulators have disagreed with AFME over this issue in recent years, citing the financial crisis and SIV unwind as evidence of the fact that securitisation is a fundamentally illiquid product. Much can be said in response to this view: selective use and partial interpretation of data, failure to take into account institutional support for secondary trading in certain other fixed income sectors, and so on.

At the end of the day, during the deepest phases of the financial crisis, high quality short-dated ABS not linked to mortgage risk was one of the easiest asset classes to sell. See Annex B.2: "AFME briefing note on market behaviour and securitisation price volatility" dated March 2014 for further comment on this topic. See also, Annex B.6: Perraudin: "Covered Bond versus ABS liquidity" (January 24th 2014) and Annex B.7: Perraudin: "High quality securitisation: an empirical study of the PCS definition (May 2014).

Many investors in European ABS are buy and hold investors, who are not concerned by the need to trade their investments actively. Having said that, even buy and hold investors need access to liquidity to protect them from market volatility during stressed market conditions.

Considerable assistance in the recovery of the market in this regard would be provided by a positive outcome in the treatment of securitisation under the LCR (at the time of writing this remains uncertain). If, as AFME has consistently argued for many months, a broad rather than a narrow range of high quality, or qualifying, securitisations were included as High Quality Liquid Assets ("HQLA") in the LCR, a virtuous circle would be created and more active trading could result.

In a similar vein an ABS purchase programme for qualifying securitisations with the Central Banks acting as "purchasers of last resort", could underpin banks' market making activities, sending a powerful message to encourage more active participation in the market. After all, the bulk of losses on European securitisation incurred during 2007-08 were due to mark-to-market requirements rather than actual credit losses.

q. Other

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

9. Of the factors outlined in question 8, which are the three most important in contributing to the changes you have observed in securitisation markets?

Please provide reasons and supporting detail and information for your response, including from the perspective for non-bank investors if relevant.

Respondent ID: 353

Negative stigma attached to securitisation, arising from its perceived role in the financial crisis (see our answer to Question 6).

Shrinking universe of providers of ancillary facilities including securitisation swaps.

Pricing level of comparable funding alternatives including covered and corporate bonds and (especially) central bank funding.

10. To what extent have the following regulatory factors contributed to the changes you have observed? Have they helped or hindered development of securitisation markets? Please provide reasons:

a. Certainty on the progress and form of relevant regulatory reforms

Respondent ID: 353

Hindered

Please provide reasons and supporting detail and information for your response (including why and how this regulatory factor is impacting the development of sustainable securitisation markets and which reform has had the most impact on securitisation markets, and why).

Respondent ID: 353

By and large there has been much more uncertainty than certainty in the progress and form of regulatory reforms.

For example, in risk retention regulation in Europe a workable (if not perfect) framework came into effect on 1st January 2011. There were significant gaps and uncertainties in the primary legislation (at the time, Article 122a of the Capital Requirements Directive ("CRD")), but these were addressed to largely positive effect in guidance issued by the then Committee of European Banking Supervisors ("CEBS", now the European Banking Authority "EBA", known as the "CEBS Guidance"). This was supplemented and developed, helpfully, in September 2011 by the "EBA Q&A".

The risk retention rules were then incorporated with very little textual change into the Capital Requirements Regulation, whereupon both the CEBS Guidance and EBA Q&A were discarded by regulators and an entirely new regime created in the form of draft Regulatory Technical Standards. Approximately a year of time was spent by the industry and regulators responding to consultations and discussing various technical but important issues arising out of this complete re-casting of a regime that had been put in place only a short while previously. This process is now at last complete, but the position remains unsatisfactory especially for those investors (on whom the burden of compliance lies) who invested in transactions in good faith in compliance under the old regime who now may find themselves, through no fault of their own, non-compliant because the rules have changed.

This uncertainty and constant re-writing of the rules creates uncertainty and disincentives to participate in the market, although AFME continues to welcome the opportunity to discuss possible improvements to the risk retention regime with the EBA - see further Annex C.2.

- b. Current disclosure requirements for securitisation instruments, including: (i) the current level of regulatory disclosure of information on underlying securitised assets; and (ii) the format this information is made available to investors.

Respondent ID: 353

Hindered

Please provide reasons and supporting detail and information for your response (including why and how this regulatory factor is impacting the development of sustainable securitisation markets).

Respondent ID: 353

Standards of disclosure have always been very good in mainstream securitisation.

Problems emerged during the financial crisis in CDOs: drilling down into the underlying data of dozens of different ABS issues was not possible – or practical – encouraging over-reliance on credit ratings. AFME’s members support sensible, useful and practical disclosure in compliance with the Prospectus Directive, the CRR and other applicable legislation.

However, over-emphasis on “transparency” as the single answer to the industry’s problems – especially repeated new transparency regulation of areas already regulated for transparency - can risk diverting attention from other issues holding back the market.

Information disclosure has also increased markedly in recent years: ECB and Bank of England loan-level data requirements; investor reports, cashflow models and transaction summaries; underlying legal documentation (suitably redacted to protect reasonable commercial confidentiality); CRR requirements supported by EBA “principles-based” guidance.

Yet regulations continue to be proposed, such as Article 8b of the CRA Regulation, which are unnecessary and create duplication, confusion and intrusion into the free choices of issuers and investors in this field, further hindering the revival of the market.

Rather than repeated new regulation from different sources, we believe future attention in this area should be focused on improving compliance with and consistency of existing requirements; improving the quality of data, not just the quantity; making the data already available more “user-friendly” for investors; and facilitating, rather than hindering, cross-border flows between regions, through mutual recognition or substituted compliance of loan-level data templates and other requirements.

c. Risk retention requirements

Respondent ID: 353

Hindered

Please provide reasons and supporting detail and information for your response (including why and how this regulatory factor is impacting the development of sustainable securitisation markets).

Respondent ID: 353

The introduction in Europe during 2010 of a legal requirement for risk retention has both helped and hindered the market.

In the context of traditional securitisations of real economy assets, the EU retention rules are functioning in an appropriate manner and, as such, are not restricting the revival of the EU securitisation market. Indeed, in the context of these transactions, there is a sense that the requirements have assisted with re-building confidence levels in the market and, as such, have contributed to the return of the market on some level. That said, some compliance questions remain.

In other contexts, however, the EU retention rules – particularly the placing of the burden and risk of compliance on investors – present significant challenges and such challenges operate to restrict the revival and development of the market. In particular key compliance issues remain outstanding in the context of certain transactions which do not fit neatly within the traditional template assumed by the provisions, such as

arrangements lacking an involved originator, sponsor or original lender. In the absence of sufficient flexibility being provided for these arrangements, we are concerned that relevant funding arrangements (which include transactions related to bank deleveraging initiatives) may be effectively restricted.

The compliance issues under the current retention rules are caused in part by the ongoing lack of clarity with respect to the CRR “securitisation” definition. The definition potentially extends to a wide range of credit risk tranching arrangements, including certain private bank lending transactions not traditionally considered to be a securitisation and which give rise to a number of challenges under the risk retention requirements.

We also consider that the “indirect” approach to risk retention should be reassessed and consideration should be given to whether a different approach is more appropriate on balance.

In particular, the investor members of AFME’s Securitisation Division have previously highlighted the potential investment disincentives which come with a retention regime which imposes obligations on investors. While we appreciate that the “indirect” approach was originally adopted to achieve a level playing field between EU and non-EU market participants, it also results in the allocation of compliance risk to such investors. This means that any areas of uncertainty under the regime (which are most prevalent in the context of transactions that do not neatly fit the retention template) may discourage new and existing investor from participating in the market if they are unable to assure themselves that the requirements are satisfied.

It also means that, to the extent that any amendments are made to the regime which result in changes to the compliance position of existing arrangements, investors are the market participants most likely to be affected (unless protected), including as a result of any decrease in the liquidity of existing securitisation positions. The lack of full protection provided to investors in the context of the CRR recasting process and the corresponding changes made to the EU rules – notwithstanding that such investors would have sought to originally comply in good faith on the basis of all available information at the relevant time – demonstrates that this is not a purely theoretical concern. Such results are damaging, particularly in light of recent calls to restore a sustainable, high quality securitisation market in Europe. Policy incentives should encourage existing investors to stay, and new investors to participate, yet the existing regime would seem to have the potential opposite effect.

It is also worth noting that IOSCO itself concluded in its final report on Global Developments in Securitisation Regulation in November 2012 that “the indirect approach creates additional layers of complexity”.

Lastly, but no less importantly, the implementation of risk retention

requirements across jurisdictions remains inconsistent.

In addition, impediments also exist within the EU but across different types of investors, for example between the CRR rules for bank investors, the AIFMD rules for AIFMs and the Solvency II rules (still relatively nascent) for insurers.

There is no sensible reason why these could not be made entirely consistent save for adjustments necessary to reflect the unique characteristics of the different types of investors involved. Please refer to Annex C.2 for more detail on this point.

- d. Regulatory requirements (for example, from accounting, tax and prudential requirements) on institutional investors

Respondent ID: 353

Hindered

Please provide reasons and supporting detail and information for your response (including why and how this regulatory factor is impacting the development of sustainable securitisation markets).

Respondent ID: 353

AFME is not aware of any purely accounting or tax issues which are materially impacting the development of sustainable securitisation markets.

However, there are many prudential requirements which have this effect.

Basel 269 proposals for revised risk-weighted assets for securitisation

While the December 2013 re-proposal by the Basel Committee for Banking Supervision (BCBS) of its new rules for risk-weighted assets for bank investors in securitisation is a significant improvement on the original proposal, the capital requirements set out in the re-proposal remain much higher than justified by either historic losses in most asset classes, or by comparison with other methods of finance or in relation to the capital requirements of the underlying asset pools. This is especially so for higher quality exposures and for medium-term and longer maturity transactions.

Excessive capital requirements will discourage banks from investing in securitisation transactions. Banks are key investors, because without their participation other types of investors, such as asset managers, insurers and pension funds, will not return. AFME therefore urges a recalibration of the proposals better to reflect historic performance, and to bring securitisation into line with the capital requirements for other fixed income securities and underlying asset pools.

See further the response of the Global Financial Markets Association ("GFMA") and others to the Second Consultative Document on Revisions to the Basel Securitisation Framework (March 2014, see Annex B.8).

Basel 245 proposals for recognising the cost of credit protection purchased

While capturing a small number of transactions deemed abusive, these proposals will have a disproportionate effect and make it more difficult for banks to manage credit risk on their balance sheets in the context of securitisation and generally. This should be addressed by regulatory supervision and changes to accounting standards, without amendments to Pillar 1 rules.

See further the response of the GFMA and ISDA to the Second Consultative Document on Recognising Cost of Credit Protection Purchased (June 2013, see Annex B.9).

Basel proposals for a Fundamental Review of the Trading Book

It is difficult to engage meaningfully with this proposal while the Basel 269 RWA proposals remain under discussion.

Basel proposals for a Net Stable Funding Ratio

We refer to GFMA's response submitted to the BCBS in April 2014. We believe the treatment of securitisation under the Basel Final Rules for the LCR is inappropriate and not supported by the evidence of strong performance of European securitisation, and have many similar concerns with the NSFR proposals.

EU proposals for measuring and controlling large exposures

The preservation of the "granularity threshold" in the form of an "immateriality condition" is helpful, although concerns remain regarding the refusal to take into account credit enhancement.

Basel proposals for a leverage ratio

Including securitisations which achieve significant risk transfer is overly conservative and will make it harder for banks to de-lever.

EU Solvency II proposals

In December 2013, the European Insurance and Occupational Pensions Authority (EIOPA) issued its report outlining capital requirements for insurance companies seeking to invest in ABS. Again, there were positive

aspects to the proposals: for example, they recognised - for the first time in European regulation - the concept of “high-quality securitisation”.

In the December 2013 Report, EIOPA also reduced its original calibration for AAA securitisations; from 7% per year of duration to 4.3%. Since then, a further reduction to 2.1% has been reported.

These reductions may look dramatic, but insurers themselves report that they are still too high to encourage those who have left to return, or those who remain to stay. Even at 2.1%, a five-year AAA prime European RMBS would still require €10.50 of capital for every €100 invested, compared with €0.12 defaults over the last seven years (across the capital structure, not just at AAA) and the possible zero capital if an insurer invested in the same assets by buying them directly as a whole loan portfolio.

AFME therefore urges still lower capital charges to create at the very least a comparable playing field with other fixed income securities such as corporate and covered bonds, and direct investment in the same assets.

EU regulation for money market funds

This proposed regulation limits the scope of securitisation eligible for MMFs to securitisations of underlying corporate debts (which fulfil certain requirements). This will discourage MMF investors and consequently funding of SME securitisations.

European derivatives legislation under EMIR which hinders the execution of securitisation swaps

The key concern here is the lack of special provisions exempting a securitisation issuer from the requirement to post collateral similar to those which apply for covered bond swaps, and the lack of recognition of the existing structural features which are already a standard feature of securitisation transactions (including collateral posting requirements imposed on swap counterparties) and which provide effective risk mitigation for both Issuers and swap counterparties. If no equivalent exemption for securitisation swaps is created it will make undertaking them more difficult and expensive, if not impossible.

See further the response of AFME to the Joint ESAs consultation on draft RTS on risk-mitigation techniques for non-CCP OTC-derivatives under Article 11(15) of Regulation (EU) No 648/2012 (“EMIR”) (July 2014, see Annex B.10) and, on clearing, the ESMA Consultation Paper on clearing obligations under EMIR (July 2014, currently undergoing consultation).

- e. ‘Level playing fields’ regulatory treatment for other investment alternatives (e.g. covered, corporate bonds, credit funds)

Respondent ID: 353

Hindered

Please provide reasons and supporting detail and information for your response (including why and how this regulatory factor is impacting the development of sustainable securitisation markets).

Respondent ID: 353

Examples of the lack of a level playing field

Joint ESAs consultation on draft RTS on risk-mitigation techniques for non-CCP OTC-derivatives under Article 11(15) of Regulation (EU) No 648/2012 (“EMIR”)

The key concern here is the lack of special provisions exempting a securitisation issuer from the requirement to post collateral similar to those which apply for covered bond swaps, and the lack of recognition of the existing structural features which are already a standard feature of securitisation transactions (including collateral posting requirements imposed on swap counterparties) and which provide effective risk mitigation for both Issuers and swap counterparties. If no equivalent exemption for securitisation swaps is created it will make undertaking them more difficult and expensive, if not impossible.

See further Annex B.10.

EU Solvency II proposals

An insurer who decides to invest directly in a portfolio of five-year residential mortgage loans where he is exposed to the first pound of loss, can (in some circumstances) hold 0% capital against his risk. Whereas if the same investor invests in the same pool in the form of a AAA-tranche of RMBS, he has to hold 10.5% of capital against that.

Due diligence requirements

When one contrasts the due diligence requirements for securitisation with those applied to other comparable investment products, there seem to be no specific regulatory due diligence requirements which apply in respect of other comparable investment products such as covered bonds and whole loan portfolios. Therefore the due diligence requirements which apply to securitisations exceed considerably what is required for other comparable investment products, creating a significantly unlevel playing field, higher compliance burdens and disincentives for investors.

- f. Regulatory measures to restore market confidence in credit rating agencies and their process in assigning ratings for securitisation instruments

Respondent ID: 353

Hindered

Please provide reasons and supporting detail and information for your response (including why and how this regulatory factor is impacting the development of sustainable securitisation markets).

Respondent ID: 353

In Europe, the regulation of CRAs has at times in recent years posed a significant threat to the revival of the European securitisation market. In particular, the implementation of the rules on "endorsement" was highly problematic, and the proposals for mandatory rotation of CRAs was highly controversial. Fortunately, these two issues have now been resolved or are no longer proposed (at least for now).

Article 8b of Regulation 1060/2009 ("CRA 3") remains troublesome and worrying. Article 8b imposes parallel reporting requirements for certain information regarding securitisation on issuers, sponsors and originators. It does not impose any obligations on CRAs. Article 8b is unnecessary and creates duplication, confusion and intrusion into the free choices of issuers and investors in this field, further hindering the revival of the market.

Rule 17g-5 in the US sets forth requirements for CRAs that are hired by issuers, underwriters or sponsors ("Arrangers") to provide credit ratings for ABS/MBS transactions. In addition, the rules require the Arranger to post information provided to hired NRSROs on a password-protected website and make it available to non-hired NRSROs. While the SEC has helpfully provided a temporary exemption from the extraterritorial application of the rule for a number of years, there is no guarantee that the exemption will continue to be renewed.

There is a risk that further regulation of CRAs which could be problematic for issuers, sponsors and originators, as well as investors and other users of credit ratings, could be introduced at any time.

- g. Regulatory measures to improve investors' enhance due diligence and reducing reliance on credit rating in investment decisions.

Respondent ID: 353

Hindered

Please provide reasons and supporting detail and information for your response (including why and how this regulatory factor is impacting the development of sustainable securitisation markets).

Respondent ID: 353

At this juncture, in Europe only the CRR rules for EU regulated banks and investment firms and the rules under the Alternative Investment Fund Managers Directive (AIFMD) for alternative investment fund managers (AIFMs) have been finalised. Unfortunately, there are significant differences between these two sets of rules and, in particular, additional due diligence requirements apply to AIFMs.

These regulatory measures therefore pose particular problems for non-bank investors.

For AIFMS

The additional requirements broadly seek to require AIFMs to assess certain qualitative matters with respect to originators and sponsors and their credit granting, asset servicing and risk mitigation policies and systems (essentially requiring AIFMs to ascertain and monitor compliance with requirements that already directly apply to EU regulated bank originators and sponsors under the CRR). The rationale for these additional obligations is uncertain and a number of questions have been raised with respect to what should be considered sufficient for compliance.

Concerns have been raised that the requirements may have a chilling effect on the market if AIFMs consider their compliance position to be insufficiently clear. AFME members have worked hard to assist AIFMs with understanding the new requirements but the lack of clarity under the provisions continues to present challenges and these may increase now that transitional period for full compliance with the AIFMD has expired.

For insurers

While the implementing measures under Solvency II and the UCITS Directive have not yet been published and/or finalised, unofficial texts of the Solvency II measures and provisions included in EIOPA's guidelines on the system of governance have raised concerns that the rules for EU regulated insurers may differ from both the CRR rules and from the AIFM rules, potentially leading to three different sets of retention and due diligence requirements applying across the EU. In particular, alarmingly, the EIOPA guidelines document suggests that relevant investors may be required to assess the originator's or sponsor's purpose and interests in connection with a securitisation. A number of key terms used in the provisions are not defined. Once again, the rationale for this (different) approach is not clear.

We consider cross-sectoral consistency (in the rules which apply and in the application of the same corresponding technical standards) to be essential to ensure that market participants are able to comply with parallel retention regimes, and to ensure that such compliance may be achieved in a commercially sensible and economically efficient manner. Moreover, consistency is necessary in order to maintain a level playing field among market participants.

In principle, differences in the EU regimes should only exist if and to the extent necessary to reflect the unique nature of the relevant type of EU regulated investor subject to the requirements (e.g. it is accepted that the penalties for non-compliance should be different as between the CRR rules and the AIFM rules given the different nature of the regulated entities involved).

h. Regulatory capital and/or liquidity treatment of securitisation instruments

Respondent ID: 353

Hindered

Please provide reasons and supporting detail and information for your response (including why and how this regulatory factor is impacting the development of sustainable securitisation markets).

Respondent ID: 353

Capital requirements for bank investors.

While the December 2013 re-proposal by the Basel Committee for Banking Supervision (BCBS) of its new rules for risk-weighted assets for bank investors in securitisation is a significant improvement on the original proposal, the capital requirements set out in the re-proposal remain much higher than justified by either historic losses in most asset classes, or by comparison with other methods of finance or in relation to the capital requirements of the underlying asset pools. This is especially so for higher quality exposures and for medium-term and longer maturity transactions.

Excessive capital requirements will discourage banks from investing in securitisation transactions. Banks are key investors, because without their participation other types of investors, such as asset managers, insurers and pension funds, will not return. AFME therefore urges a recalibration of the proposals better to reflect historic performance, and to bring securitisation into line with the capital requirements for other fixed income securities and underlying asset pools. See further Annex B.8.

Capital requirements for insurers.

In December 2013, the European Insurance and Occupational Pensions Authority (EIOPA) issued its report outlining capital requirements for insurance companies seeking to invest in ABS. Again, there were positive aspects to the proposals: for example, they recognised - for the first time in European regulation - the concept of “high-quality securitisation”.

In the December 2013 Report, EIOPA also reduced its original calibration for AAA securitisations; from 7% per year of duration to 4.3%. Since then, the Financial Times has reported a further reduction to 2.1%. These reductions may look dramatic, but insurers themselves report that they are still too high to encourage those who have left to return, or those who remain to stay. Even at 2.1%, a five-year AAA prime European RMBS would still require €10.50 of capital for every €100 invested, compared with €0.12 defaults over the last seven years (across the capital structure, not just at AAA) and the possible zero capital if an insurer invested in the same assets by buying them directly as a whole loan portfolio.

AFME therefore urges still lower capital charges to create at the very least a comparable playing field with other fixed income securities such as corporate and covered bonds, and direct investment in the same assets.

Liquidity coverage ratio.

The European Banking Authority’s (EBA) December 2013 report on the liquidity coverage ratio generally treats ABS poorly: only RMBS, subject to certain conditions, is suggested for inclusion as a high-quality liquid asset (HQLA). Much discussion has taken place since then, to which AFME contributed by commissioning an independent academic study which shows that certain other forms of high quality securitisation – for example auto loan ABS – can also be very liquid, and in some cases more liquid than many covered bonds. We continue to argue for the inclusion of a wider, rather than a narrower, range of assets as HQLA. Unconfirmed reports exist that greater flexibility on the definition is being considered. If so, we welcome this, but await official confirmation. As with everything in securitisation, much depends on the details.

See further Annexes B.6 and B.7.

i. Accounting treatment of securitisation instruments

Respondent ID: 353

Not relevant

Please provide reasons and supporting detail and information for your response (including why and how this regulatory factor is impacting the development of sustainable securitisation markets).

Respondent ID: 353

AFME is not aware of any specific accounting issues in Europe that are hindering the revival of the securitisation market, although there are uncertainties surrounding the definition of "group" in the context of EMIR that are creating considerable uncertainty in this field and hindering the execution of securitisation swaps.

- j. Regulatory or other government support for securitisation of small and medium enterprises primary loans

Respondent ID: 353

Helped

Please provide reasons and supporting detail and information for your response (including why and how this regulatory factor is impacting the development of sustainable securitisation markets).

Respondent ID: 353

Policymakers have widely acknowledged the need in Europe for SMEs to be more easily able to access finance, in particular capital markets finance. AFME has undertaken specific work in this regard, for example for the UK government in our report "ABLE - an Agency for Business Lending" ("the ABLe Report", October 2012, see Annex B.10). Government and quasi-governmental entities such as the UK Business Bank, the European Investment Fund and the European Investment Bank have striven to support securitisation, both by urging policymakers of the positive role securitisation can play and of the need to revive the market, and undertaking direct market interventions for example through various kinds of guarantee schemes especially at the level of mezzanine risk.

Having said that there is still much more that could be done to address the specific challenges facing securitisation of SME loans in particular.

The ABLe Report recognised a lack of appetite to build in-house expertise in SME risk assessment, scarcity of resource against specific objectives, lack of historical trends in SME success factors and a perceived lack of a secondary market for SME risk as issues preventing better long term access by SMEs to capital markets (whether through securitisation or other instruments). There was also a need for detailed, historical and consistent information on the performance of loans taken out by UK businesses and SMEs in particular which meant that investors struggled to compare SME risk with other investments.

- k. Other

Respondent ID: 353

Please provide reasons and supporting detail and information for your response (including why and how this regulatory factor is impacting the development of sustainable securitisation markets).

Respondent ID: 353**11. Of the factors outlined in question 10, which are the three most important in contributing to the changes you have observed in securitisation markets?**

Please provide reasons and supporting detail and information for your response, including from the perspective for non-bank investors if relevant.

Respondent ID: 353

The three most important factors in AFME's view are as follows.

Better co-ordination of regulatory reforms

AFME welcomes sensible regulation which helps build stable, competitive and sustainable European financial markets that support economic growth and benefit society. However, improvements need to be made in the design and implementation of securitisation regulation. Too much regulation is created out of a silo, with little regard to what regulation may already exist or cross-border implications and with little or no acknowledgment of the value of securitisation in helping to restore growth in Europe.

For regulation that is specifically targeted at securitisation (for example, risk retention and transparency / disclosure rules), these should be based on evidence, on investor demand and carefully co-ordinated between different sponsoring regulators / policymakers / central banks, as well as across and within jurisdictions, so as to avoid overlap and uncertainty in scope and the creation of hurdles to compliance. A good example is Article 8b of CRA3 which is a regulation which is both unnecessary and creates duplication with the existing provisions of Article 409 of the CRR as well as the existing European DataWarehouse. It risks creating confusion for investors who will not know where to go to seek the data they need. Another is a recent US SEC proposal for amendments to regulation AB requiring publication of loan-level disclosures - these templates took no account of the possibility of non-US issuers accessing the US capital markets, and absent suitable adjustment for non-US assets and / or substituted compliance will make it much more difficult for non-US issuers to access US investors. Risk retention is another example of an area where cross border issues are key.

Even within the BCBS we believe co-ordination could be improved. For example, the Basel proposals for Fundamental Review of the Trading Book have been produced under a separate workstream from the Basel 269 RWA proposals for the banking book. There is considerable time pressure on the industry to finalise the former, while the latter are still under careful consideration. While we very much appreciate the opportunity we have had to engage with the BCBS on Basel 269, we do feel that it would be more sensible to take the time to finalise the Basel 269 RWA proposals first and then proceed to discuss the treatment of securitisation under the Basel FRTB proposals.

For regulation that does not specifically target securitisation yet has a significant impact on securitisation markets, for example EMIR, it has quite often been the case that securitisation has not even been considered when the regulation is first crafted. Yet other fixed income products, for example covered bonds, are often granted special treatment and exemptions. This often causes considerable difficulties and in the case of EMIR, if not adjusted, could severely hinder any market recovery by making securitisation swaps more difficult (if not impossible) and expensive.

Prudential requirements for capital and liquidity

It is essential for revival of the market for sensible outcomes to be reached on the Basel 269 RWA proposals for bank investors and - especially for non-bank investors - the European Solvency II proposals for insurance companies. No less essential is for the European LCR rules to include a wide range of securitisations, rather than just a narrowly defined sub-category of RMBS. Both these issues are dealt with in more detail elsewhere in this response and in the Annexes.

We would also ask the BCBS to revisit its Final Rules on the LCR published in January 2013: we are not aware of these rules ever being put out for consultation, and are not aware of what evidence they are based on. They also strike us as having been drawn up in a very different environment from that prevailing today. We appreciate the progress that has been made in the Basel 269 RWA proposals to recognise the strong credit performance of securitisation, and ask for a similar, more balanced recognition of the strong liquidity performance of securitisation in the form of a revision to these rules. See Annexes B.6 and B.7 for an independent academic study of the liquidity performance of European ABS.

The lack of a level playing field

It is essential that the regulatory treatment of securitisation does not unreasonably penalise it compared with other forms of fixed income such as corporate and covered bonds as well as direct investment in the same assets or the holding of the same assets on the balance sheet. Some adjustment for different characteristics and risks may be justified, but the scale of discrimination under current regulation is out of all proportion to the risk: in

capital (Solvency II), liquidity (the LCR), transparency and disclosure (Article 8b of CRA 3 and Article 409 of the CRR) and derivatives (EMIR).

Section C - Increasing Future Participation in Securitisation Markets

12. What three non-regulation based actions/solutions/initiatives do you think could be undertaken to resolve market factor impediments?

Please provide reasons and supporting detail and information for your response, including from the perspective for non-bank investors if relevant.

Respondent ID: 353

Three non-regulation-based actions which could be undertaken would be as follows.

A suitably calibrated purchase programme for securitisation by the ECB

If correctly structured and targeted to support qualifying securitisations, such a programme could provide a cornerstone to support market making by banks, re-building confidence and sending positive signals to the wider non-bank investor base. However, if not targeted properly the purchase programme risks "crowding out" investors from the market in the short term as well as doing potentially permanent damage to private investment demand.

In order to avoid that negative outcome, we would recommend designing the programme with one or more of the following features:

- make public placement of a minimum proportion of the securities an eligibility criterion for the purchase programme; and/or
- target some of the purchases at the mezzanine tranches of ABS transactions therefore limiting the impact of the programme on the availability of highly-rated ABS in the public markets; and/or
- place strict limits on the amount of ABS collateral that can be purchased so as to ensure continuing availability of ABS in the hands of private investors.

Supporting liquidity

An ABS purchase programme for qualifying securitisations with central banks acting as "purchasers of last resort", could underpin banks' market making activities, sending a powerful message to encourage more active participation in the market. After all, the bulk of losses on European securitisation incurred during 2007-08 were due to mark-to-market requirements rather than actual credit losses.

A role for government entities in supporting securitisation swaps and other ancillary facilities

Given the pressure on counterparty ratings, and the small number of

counterparties available, consideration should be given to a possible role for a suitably rated public sector entity to provide guarantees of swaps or other ancillary facilities. This is not without risk to the guarantor, but the positive market impact of this type of public sector intervention could be considerable.

13. What three actions/solutions/initiatives in relation to relevant regulation do you think could be undertaken to resolve regulatory factor impediments?

Please provide reasons and supporting detail and information for your response, including from the perspective for non-bank investors if relevant.

Respondent ID: 353

Implement sensible capital requirements for bank investors.

Basel 269 RWA re-proposals: the capital requirements set out in the re-proposals remain much higher than justified by either historic losses in most asset classes, or by comparison with other methods of finance or in relation to the capital requirements of the underlying asset pools. This is especially so for higher quality exposures and for medium-term and longer maturity transactions.

Excessive capital requirements will discourage banks from investing in securitisation transactions. Banks are key investors, because without their participation other types of investors, such as asset managers, insurers and pension funds, will not return. AFME therefore urges a recalibration of the proposals better to reflect historic performance, and to bring securitisation into line with the capital requirements for other fixed income securities and underlying asset pools.

Implement sensible capital requirements for insurers.

In December 2013, the European Insurance and Occupational Pensions Authority (EIOPA) issued its report outlining capital requirements for insurance companies seeking to invest in ABS. Again, there were positive aspects to the proposals: for example, they recognised - for the first time in European regulation - the concept of "high-quality securitisation".

In the December 2013 Report, EIOPA also reduced its original calibration for AAA securitisations; from 7% per year of duration to 4.3%. Since then, the Financial Times has reported a further reduction to 2.1%. These reductions may look dramatic, but insurers themselves report that they are still too high to encourage those who have left to return, or those who remain to stay. Even at 2.1%, a five-year AAA prime European RMBS would still require €10.50 of capital for every €100 invested, compared with €0.12 defaults over the last seven years (across the capital structure, not just at AAA) and the possible zero capital if an insurer invested in the same assets by buying them directly as a whole loan portfolio.

AFME therefore urges still lower capital charges to create at the very least a comparable playing field with other fixed income securities such as corporate and covered bonds, and direct investment in the same assets. Corporates carry a requirement of only 0.9% per year of duration, and covered bonds 0.7% - one-third the amount required for securitisations. Even worse, direct lending to "whole loan" pools can sometimes incur a zero capital requirement.

Include a wide range of securitisation assets as HQLA under the LCR, and revisit the Basel Final Rules on the LCR of January 2014

We continue to argue for the inclusion of a wider, rather than a narrower, range of assets as HQLA. Unconfirmed reports exist that greater flexibility on the definition is being considered. If so, we welcome this, but await official confirmation. As with everything in securitisation, much depends on the details.

We would also ask the BCBS to revisit its Final Rules on the LCR published in January 2013: we are not aware of these rules ever being put out for consultation, and are not aware of what evidence they are based on. They also strike us as having been drawn up in a very different environment from that prevailing today. We appreciate the progress that has been made in the Basel 269 RWA proposals to recognise the strong credit performance of securitisation, and ask for a similar, more balanced recognition of the strong liquidity performance of securitisation in the form of a revision to these rules. See Annexes B.6 and B.7 for an independent academic study of the liquidity performance of European ABS.

14. Looking forward, for each of the following, please indicate how important, in your opinion, each is to increasing issuer participation in securitisation markets:

a. Improved macroeconomic factors

Respondent ID: 353

Extremely important

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

We comment on the monetary policy aspect of macro economic factors.

The main users of securitisation in Europe are banks. Clearly, the more assets that are generated on bank balance sheets as a result of economic activity and growth, then the greater the need to fund those assets (through securitisation) or manage and transfer the risk of those assets, including to

non-bank investors (through securitisation).

Central bank intervention in the form of providing cheap "repo" funding to issuers has had a supportive effect in principle by sending a positive signal about participation, while ironically depressing issuance by competing with private sector investor demand. While the broader macro-economic and financial stability reasons behind programmes such as the LTRO are acknowledged, such programmes have had the effect of making securitisation placed with private investors relatively expensive, discouraging issuance.

The recently announced (in principle) ECB purchase programme, while well intentioned, also carries with it certain risks. If correctly structured and targeted to support qualifying securitisations, such a programme could provide a cornerstone to support market making by banks, re-building confidence and sending positive signals to the wider non-bank investor base. However, if not targeted properly the purchase programme risks "crowding out" investors from the market in the short term as well as doing potentially permanent damage to private investment demand.

- b. Availability of funding alternatives, such as central bank funding, covered and corporate bonds

Respondent ID: 353

Extremely important

Please provide reasons and supporting detail and information for your response in respect of each source(s) of funding alternative(s) relevant for your response.

Respondent ID: 353

A level playing field for securitisation when compared with covered bonds, corporate bonds and central bank funding is critical to the recovery of the market. Adding heavy regulatory and compliance burdens to securitisation, whether through direct capital requirements on investors in securitisation (banks and non-banks) or through requiring such investors to undertake disproportionately heavier due diligence, disclosure and other requirements before investing, will serve only to hinder the recovery of the market.

- c. General improvement in investor perception of securitisation as an investment class

Respondent ID: 353

Extremely important

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

It is critical that the negative stigma which is still associated with securitisation following the US sub-prime mortgage crisis is dissipated. Apart from US sub-prime, the history of the credit and price performance of most securitisation market sectors, in both the US and Europe, since the crisis is a strong one and this fact, rather than historical prejudice, should guide future regulation and perceptions of the market by investors.

In this regard, a purchase programme by the ECB, carefully calibrated so as not to crown out private sector demand, would be helpful.

d. Increased availability of assets to be securitised

Respondent ID: 353

Somewhat important

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

AFME is not aware of any shortage of assets available to be securitised that acts as a material constraint on the European securitisation market. See our answer to Question 8c.

e. Revisions to accounting rules, capital, liquidity, collateral (etc) treatment for securitisation instruments and comparable investment assets (such as highly rated corporate bonds) including:

- i. Changes to mark-to-market accounting rules (e.g. principles-based guidance on valuation in highly volatile or illiquid markets)
- ii. Revisions to regulatory capital requirements for securitised products, to the treatment of securitisations in liquidity buffers, as collateral, etc
- iii. Revisions to rules for off-balance sheet treatment of securitisation vehicles (e.g. de-recognition and consolidation of SIVs)

Respondent ID: 353

Extremely important (i, ii and/or iii)

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

AFME is not aware of any accounting issues which currently act as a material constraint on the European securitisation market.

There are capital and liquidity regulations which do act as a material constraint and these have been listed in our answers to Questions 10d and 10h.

- f. Regulatory treatment of swaps for swap providers (for issuers using ABS to fund their balance sheets) and of other third party providers of ancillary services such as issuer and GIC accounts that would facilitate insulating the performance of securitisations from the performance of the service provider

Respondent ID: 353

Extremely important

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

See our answer to Question 8e.

This is a significant issue for many reasons.

Firstly, rating agency criteria for swaps and other ancillary services have tightened considerably since the financial crisis.

Secondly, as bank (and sovereign) ratings have fallen, the number of suitably-rated candidates to provide such services has shrunk considerably.

Thirdly, the cost of ancillary facilities is very high. These costs arise in part because of the contingent liquidity outflows arising from minimum required credit ratings for providers of ancillary facilities such as bank accounts and interest rate or currency swaps ("Ratings Triggers"). These Ratings Triggers typically require ancillary service providers to find a replacement provider or collateralise the relevant exposure if they fall below the required rating. In both cases, there is a contingent outflow that drains the provider's liquidity assets.

The cost of Ratings Triggers could be reduced (and thereby the universe of possible ancillary service providers presumably expanded) via adjustments to the Liquidity Coverage Ratio ("LCR") under the European Capital Requirements Regulation ("CRR") (e.g. reducing the factor applied to outflows for qualifying securitisation Rating Triggers to less than 100% or

allowing greater amounts of qualifying securitisations as HQLA) or via more direct central bank support (e.g. allowing emergency funding drawing capacity to be allocated to qualifying securitisations or providing bank account and swap capacity directly to bank-sponsored qualifying securitisations).

This is also a significant issue particularly in jurisdictions where the sovereign cap is materially higher than the ratings of providers of ancillary facilities. In such jurisdictions the market expectation is that transactions will be rated at or, if possible, above the sovereign cap and reaching that rating level can therefore be challenging if the providers of ancillary facilities have materially lower ratings.

For certain categories of issuers, particularly large commercial banks with significant bank account business, the risk of losing cash collections can materially increase the operational inefficiencies of securitisation transactions and the cost of credit enhancement for the structure. Moreover, investor concerns around bank issuers (and negative rating agency assumptions) are exacerbated in times of financial stress as a result of such issues, thereby adversely affecting the effectiveness of securitisation as a counter-cyclical tool for bank issuers.

Given the pressure on counterparty ratings, and the small number of counterparties available, consideration should be given to a possible role for a suitably rated public sector entity to provide guarantees of swaps or other ancillary facilities. This is not without risk to the guarantor, but the positive market impact of this type of public sector intervention could be considerable.

- g. Increased rating transparency for those securitisations subject to sovereign and/or ancillary facilities rating caps

Respondent ID: 353

Somewhat important

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

Overall, AFME members who are users of credit ratings believe that the publication of "uncapped" ratings would be a useful innovation because it provides useful information to investors about the quality of the underlying assets and the credit enhancement applied thereto.

This is clearly an issue for both the originator and the investor sides of the market. Some rating agencies impose ceilings on securitisation ratings that

are derived from their rating on the relevant sovereign. These rating ceilings are intended to reflect certain “tail risks” associated with a potential sovereign default, and that cannot be mitigated e.g. by additional credit enhancement, in the agencies’ view. Many market participants, however, disagree with the agencies’ assessment of the scale of these risks and therefore with the calibration of these rating ceilings. This could be remedied in part by requiring credit rating agencies to publish “uncapped” ratings, which would allow investors to overlay their own view of such sovereign-related risks. This would, however, only be of limited usefulness because investors would presumably still be required to use the lower, capped rating e.g. for purposes of capital allocation.

It is also worth noting that pursuing this avenue would be a complex endeavour for credit rating agencies because it would require them to analyse every input of sovereign risk into the ultimate rating of the securitisation, e.g. in the rating of the counterparties. Harmonising this approach across rating agencies may be difficult, but would be necessary if the “uncapped” ratings are to be meaningful in the market.

That said, it would be an obvious benefit to allow investors to readily distinguish between deals are structured to the relevant sovereign cap rating (which is commonly done because it is known that it will not be possible to achieve a higher rating in any case) from those structured to AAA level but rated lower because of a sovereign cap.

- h. Clearer regulatory distinction and different regulatory treatment of plain vanilla securitisations from more complex transactions (and if so, in which regulatory areas such as capital, liquidity, collateral, other, should such different regulatory treatment be given)?

Respondent ID: 353

Extremely important

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

AFME and its members agree in broad terms that defining a sub-category of securitisations for differential treatment on the basis of transparency and predictability (which, for the sake of simplicity, we will call “qualifying securitisations” or “QS”) would be a helpful development.

Indeed, the objectives and the achievement of the joint work undertaken from 2009 to 2012 by the European Financial Services Round Table (“EFR”) and AFME to develop and launch the European Prime Collateralised Securities (“PCS”) label were based on and consistent with this principle.

In our view, an effective regime for QS should have the following characteristics:

Firstly, the language used to describe qualifying securitisations should be as neutral as possible.

Secondly, a transaction-based (rather than tranche-based) approach should be used (at least as a starting point).

Thirdly, account should be taken of forms of "securitisation" such as asset-backed commercial paper for which the criteria for QS should need to be adjusted to recognise positively the special structural considerations associated with the ABCP market.

Fourthly, there should be certainty surrounding the categorisation of each transaction. It is crucial that investors know early in the investment decision process whether they are reviewing a qualifying securitisation or not and that they should be able to rely on that categorisation absent a subsequent change in the transaction itself.

Fifthly, a key aspect of an effective regime for qualifying securitisations is that determinations should be timely. The categorisation process should not unduly delay the overall issuance process and it should be clear at the beginning of the marketing process for any securities whether a securitisation will be a qualifying securitisation or not.

Regulatory areas for recognition of QS

Capital and liquidity are the key areas for recognition, although any differentiation needs to be proportionate and evidence-based, and avoid cliff effects. Also, differentiation needs to be appropriate for the intended purpose: for example, differentiation in the liquidity regime may need to be different from the capital regime. See further our answers to questions 26 to 29 of Annex C.2 and also (regarding the Basel 269 RWA re-proposal) Annex B.8.

Due diligence, risk retention, disclosure and reporting should be treated in the same way for all types of public securitisations, high quality or not. Sensible exemptions should be made regarding reporting for privately placed transactions.

Central Banks should focus their repo facilities on QS senior tranches, with only additional currency criteria.

We agree with the need to differentiate high quality securitisation, although there is much detail still to be worked through. While we prefer a principles-based approach to an asset-class approach, this is not to say that

any QS framework should not recognise asset classes at all. In Europe the majority of the assets that have low risk are the ones that are used to finance the real economy and consumers, such as SMEs, auto and consumer loans and prime residential mortgages. The benefits of a better prudential treatment on these asset classes will be passed on to SMEs and consumers which will promote economic growth and employment.

ABS is a very diverse market and a “one size fits all” approach, particularly if calibrated on the experience of the crisis in US sub-prime mortgage lending and its associated products, will not allow the market as a whole to revive and play its part of one funding source among several in helping economic recovery.

We repeat however that any differentiation needs to be proportionate and evidence-based, and avoid cliff effects.

Also, differentiation needs to be appropriate for the intended purpose: different objectives may require different market characteristics. AFME is in favour of a “modular” approach to the definition of “qualifying securitisations”, namely a “core” definition comprising key principles, to which could be added additional requirements or “filters” intended to address specific requirements for specific regulators. For example, for a regulator concerned with market liquidity an entire transaction might qualify as QS but only the senior tranche would qualify as being High Quality Liquid Assets under the LCR.

We provide important further detail on the issues of QS in AFME's detailed response to the EBA's questionnaire on the potential development of a “high quality” securitisation market in the EU and in our response to the Central Banks' Joint Paper - see Annex D.1 and Annex D.2.

i. Risk retention requirements

Respondent ID: 353

Extremely important

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

In the context of traditional securitisations of real economy assets, the EU rules operate in general to achieve the intended objective of interest alignment and function in an appropriate manner. In this regard, the rules entrench practices which have been in place for many years in the securitisation market in Europe as originators have traditionally retained some net economic interest in the assets underlying their securitisations.

In other contexts, however, the EU rules present significant challenges. In particular, key compliance issues remain outstanding in the context of certain transactions which do not fit neatly within the traditional template assumed by the provisions, such as arrangements lacking an involved originator, sponsor or original lender.

These arrangements include certain funding and disposal transactions related to bank deleveraging initiatives. Recent changes in the guidelines have created new compliance uncertainty for these transactions and risk effectively restricting relevant regulated investors from investing in them. This is an area of key concern given the relatively substantial amount of bank deleveraging activity still to come.

Compliance issues also arise for certain transactions which adopt securitisation features (e.g. credit tranching) but operate for an entirely different purpose to traditional securitisations, such as managed CLOs. The CLO market is a portfolio management market rather than a traditional securitisation funding tool and, as a result, the risk retention framework does not sit well with the purpose and dynamics of these transactions.

The compliance issues highlighted above are caused in part by the ongoing lack of clarity with respect to the CRR “securitisation” definition, which definition pre-dates the retention rules but determines the scope of application of such rules. The securitisation definition potentially extends to a wide range of arrangements, notwithstanding that the goal of interest alignment is closely connected to concerns related to the “originate to distribute” model and associated transaction features (such as a link between asset origination and a corresponding securitisation). It should also be noted that other key definitions under the EU rules are unclear, including aspects of the “originator” definition.

For those sectors of the market in respect of which the EU risk retention and due diligence rules are functioning to achieve interest alignment without significant issues, we consider that this is due in large part to their consistency with pre-existing market practice, as noted above, and also to the detailed guidance provided by the corresponding regulatory technical standards, which standards have only very recently been finalised.

Lastly, it should also be noted that certain portions of the securitisation market remain largely subject to the grandfathering provisions and, as a result, have not yet been fully tested under the EU retention rules (e.g. ABCP conduits and UK mortgage master trusts).

As noted above, in general, in the context of traditional securitisations of real economy assets, the EU retention rules are functioning in an appropriate manner and, as such, are not restricting the revival of the EU securitisation market. Indeed, in the context of these transactions, there is a sense that the

requirements have assisted with re-building confidence levels in the market and, as such, have contributed to the return of the market on some level. That said, as noted above, some compliance questions remain, such as those relating to retention on a consolidated basis.

In other contexts, however, the EU retention rules – particularly the placing of the burden and risk of compliance on investors – present significant challenges and such challenges operate to restrict the revival and development of the market. In particular, as noted above, key compliance issues remain outstanding in the context of certain transactions which do not fit neatly within the traditional template assumed by the provisions, such as arrangements lacking an involved originator, sponsor or original lender. In the absence of sufficient flexibility being provided for these arrangements, we are concerned that relevant funding arrangements (which include transactions related to bank deleveraging initiatives) may be effectively restricted.

We wish to reiterate that the compliance issues under the current retention rules are caused in part by the ongoing lack of clarity with respect to the CRR “securitisation” definition. The definition potentially extends to a wide range of credit risk tranching arrangements, including certain private bank lending transactions not traditionally considered to be a securitisation and which give rise to a number of challenges under the risk retention requirements.

Please see our responses to Q1, Q6, Q7 and Q14 of Annex C.2 for further details of those aspects of the current risk retention regime that we consider should be clarified and/or amended.

Cross border aspects of risk retention rules

We note that the U.S. risk retention proposals provide for a number of exemptions that do not form part of the EU regime. These exemptions are described to be appropriate by the U.S. agencies on the basis that the primary purpose of risk retention is to promote sound underwriting, from which it is considered that other matters (including interest alignment) follow. In particular, the exemptions include carve-outs for transactions backed by certain types of qualifying assets (the criteria for which will not work for EU originated assets in general given certain U.S.-centric requirements) or seasoned loans. In addition, in the same vein, the proposals include a sunset provision with respect to the hedging and transfer restrictions.

In this regard, the U.S. proposals are very different from the EU regime which provides for few exemptions. For the most part, this difference in approach reflects the appropriate outcome identified by the relevant authority for its domestic market. In Europe, where the risk retention rules entrench practices that have been in place for many years, relief for transactions backed by high quality assets is not considered necessary in

general (for transactions which fit the retention template) and a number of market participants take the view that risk retention is a defining feature of high quality securitisation.

Notwithstanding the foregoing, it should be noted that the different approaches taken between the U.S. and EU authorities may give rise to odd outcomes from a cross-border perspective. In particular, in the absence of mutual recognition between the EU and U.S. authorities, relevant EU regulated investors will be restricted from investing in U.S. originated transactions backed by qualifying assets which benefit from the U.S. exemptions, which transactions are intended to represent the highest quality transactions. In addition, given certain U.S.-centric concepts referred to in the qualified asset criteria included in the U.S. proposals, EU transactions involving an offer into the U.S. will be unable to benefit from the exemptions under the U.S. regime regardless of the quality of the underlying assets. IOSCO previously considered the exemption mismatch between the EU regime and the U.S. proposals in its final report on Global Developments in Securitisation Regulation and concluded that “differences in the scope of the risk retention exemptions between different jurisdictions could have unintended consequences ... [which] could undermine interoperability and impede cross-border securitisation transactions and should not be underestimated”. We agree with IOSCO’s conclusion - the absence of mutual recognition and the resulting unlevel playing field creates a competitive disadvantage for European issuers compared with their US counterparts, as well as an obstacle to liquidity flows between Europe and the US, constraining any re-emergence of a global securitisation market.

In particular, given the way in which the EU regime and the proposed U.S. regime are framed, it will be necessary for market participants to comply with both the EU and the U.S. requirements if they wish to place deals on a cross-border basis. The liquidity implications of this, as well as the critical importance of preserving securitisation as a global funding tool for real economy assets, mean that the ability to comply with both regimes in a manner which does not compromise the economic efficiency of relevant cross-border transactions is an area of key concern.

Although it is difficult to provide precise figures as to the level of reliance on U.S. offering regimes (such as Rule 144A, Regulation D or Section 4(2) of the US Securities Act of 1933) by European market participants given the private nature of the market, industry estimates (calculations by AFME, based on Dealogic data) suggest that up to 25% of total issuance of European originated securitisations was offered in reliance on Rule 144A prior to the financial crisis.

In addition, the Rule 144A regime has played an important role in recent years in the success of UK originated RMBS issues and certain other transactions. AFME has polled several members who have issued RMBS into the U.S. market in reliance on Rule 144A and it appears that the

proportion of bonds placed with U.S. investors varies considerably (being in part driven by wider funding and market conditions) but has been at times in recent years well above pre-crisis levels. Please refer to Annex III of Annex C.2 for more detailed information on the importance of access to USD liquidity for European issuers in the context of certain recent transactions.

In general, in the absence of mutual recognition, in order to comply with both regimes (which, as noted above, will be necessary for cross-border market access), market participants would need to identify the common points between the two regimes and the more onerous compliance standard in each instance.

Being limited to compliance via only those options and methods which work under both regimes rather than just one regime, market participants will effectively be unable to rely on large portions of each regime – unless two separate interests are retained, which will create significant inefficiencies in many transactions, including from a regulatory capital relief perspective, increasing costs for issuers. In general, the portions of the regimes which will be unavailable will be those providing flexibility: for example, under the U.S. proposals, this would include certain provisions intended to provide a more flexible holding option for a particular type of transaction and/or to provide an exemption for certain qualifying assets.

j. Regulatory support for small and medium enterprises securitisations

Respondent ID: 353

Extremely important

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

See our answer to Question 10j.

k. Other (please provide relevant details and reasoning for your response)

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

15. Of the factors outlined in question 14, which are the three most important

to increasing issuer participation in securitisation markets?

Please provide reasons and supporting detail and information for your response, including from the perspective for non-bank investors if relevant.

Respondent ID: 353

Sensible, evidence-based outcomes to current regulatory proposals for regulatory capital for banks, insurance and other non-bank investors.

Sensible, evidence-based outcomes to current regulatory proposals for the liquidity regime for banks, so that a wide rather than a narrow range of securitisation asset classes (cards, autos, consumer and SME loans as well as residential mortgages) can be included as HQLA in the LCR.

The facilitation of easier and more cost-effective securitisation swaps.

16. Looking forward, for each of the following, please indicate how important, in your opinion, each is to increasing investor participation (particularly non-bank investor participation) in securitisation markets:

a. Improved macroeconomic factors

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

b. Availability of investment alternatives, such as covered and corporate bonds

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

c. Improved perception (whether positive or negative) of securitisation as an investment class

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

d. Decreased / increased complexity of securitised products

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

e. Availability of securitised products with the required yield and risk profile

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

f. Relative return compared with other comparable credit products

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

g. Enhanced disclosure and standardisation of product information, including:

- i. Improved disclosure of information/data on underlying assets (e.g. type of data, level of detail, degree of reliability, accessibility)
- ii. Improved disclosure of collateral underwriting and origination practices
- iii. Increased standardisation (e.g. of definitions, of investor reports) and simplification of documentation
- iv. Improved disclosure for exposure to securitised/structured product risks, both 'on' and 'off' balance sheet

Respondent ID: 353

Please provide reasons and supporting detail and information for your

response.

Respondent ID: 353

- h. Increased rating transparency for those securitisations subject to sovereign and ancillary facilities rating caps

Respondent ID: 353

Please provide reasons and supporting detail and information for your response, including from the perspective for non-bank investors if relevant.

Respondent ID: 353

- i. Greater price transparency, including:

- i. Public dissemination of actual exchange and OTC trade prices for individual securities
- ii. Greater transparency with regard to bid and ask spreads for reported trades

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

- j. Confidence in collateral underwriting and origination practices.

Respondent ID: 353

Please provide reasons and supporting detail and information for your response, including from the perspective for non-bank investors if relevant.

Respondent ID: 353

- k. Greater valuation certainty, coming from:

- i. Increased availability and reliability of models and tools
- ii. Increased availability and reliability of underlying data
- iii. Increased confidence in the robustness of securitisation structures and their behaviour in all market conditions (operational robustness, legal

certainty, predictability of cash waterfalls)

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

I. Increased confidence in credit rating agencies

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

m. Risk retention requirements between stakeholders across the securitisation value chain, including at the following points along the securitisation value chain:

- i. Originators
- ii. Dealers / Arrangers
- iii. Investors
- iv. Credit rating agencies
- v. Individuals at any of the above

Respondent ID: 353

Extremely important

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

We consider that the “indirect” approach to risk retention should be reassessed and consideration should be given to whether a different approach is more appropriate on balance.

In particular, the investor members of AFME’s Securitisation Division have previously highlighted the potential investment disincentives which come with a retention regime which imposes obligations on investors. While we

appreciate that the “indirect” approach was originally adopted to achieve a level playing field between EU and non-EU market participants, it also results in the allocation of compliance risk to such investors. This means that any areas of uncertainty under the regime (which are most prevalent in the context of transactions that do not neatly fit the retention template) may discourage new and existing investor from participating in the market if they are unable to assure themselves that the requirements are satisfied.

It also means that, to the extent that any amendments are made to the regime which result in changes to the compliance position of existing arrangements, investors are the market participants most likely to be affected (unless protected), including as a result of any decrease in the liquidity of existing securitisation positions. The lack of full protection provided to investors in the context of the CRR recasting process and the corresponding changes made to the EU rules – notwithstanding that such investors would have sought to originally comply in good faith on the basis of all available information at the relevant time – demonstrates that this is not a purely theoretical concern but has actually taken place.

Such results are damaging, particularly in light of the well-publicised recent calls by the European Commission, the ECB, the Bank of England and others to restore a sustainable, high quality securitisation market in Europe. Policy incentives should encourage existing investors to stay, and new investors to participate, yet the existing regime would seem to have the potential opposite effect.

It is also worth noting that IOSCO concluded in its final report on Global Developments in Securitisation Regulation in November 2012 that “the indirect approach creates additional layers of complexity”.

That said, it is extremely difficult to assess the relative pros and cons of a “direct” approach in the absence of any information with respect to how such a regime would be framed, including how its jurisdictional scope would be determined. We consider that the relative merits of such an approach would depend in large part on the details.

n. Other alignment of incentives mechanisms

Respondent ID: 353

Extremely important

Please provide reasons and supporting detail and information for your response, including what other mechanisms, both regulatory and contractual, could be envisaged to better align investors and issuers’ interests.

Respondent ID: 353

Other mechanisms may operate to achieve alignment of interests and/or to counteract factors which have been identified as contributing to possible interest misalignment, such as information asymmetry as between investors and originators (or other key parties involved in the transaction) and poor asset underwriting and/or servicing standards.

The available mechanisms may include certain “natural incentives” and certain more formal requirements, and will vary depending on the transaction structure and the nature of the underlying assets.

As identified by the Committee of European Banking Supervisors (CEBS) in its advice to the Commission in October 2009, there are a number of common natural incentives in the European securitisation market for originators and other relevant market participants to effectively screen, monitor and service underlying assets and debtors, thereby improving interest alignment.

In particular, the natural incentives identified by CEBS include:

- Client relationships – the desire to maintain client relationships between originators/sponsors and underlying debtors/clients;
- Remuneration – the desire to achieve long-term sustainable profitability (as opposed to undue focus on high short-term gains);
- Reputation – the desire of a firm to position itself (and to maintain that position or to improve it) in a market over the longer-term; and
- Funding – the desire to protect ongoing funding needs.

Various regulatory measures have been put forward in the EU (including via CRD4) which (indirectly or directly) operate to strengthen a number of these natural incentives for EU firms.

Other more formal mechanisms include requirements with respect to asset underwriting standards, transaction underwriting standards, buy-side due diligence requirements and disclosure requirements. These mechanisms are reflected in the other (non-retention-related) provisions included in Part Five of the CRR and in other EU initiatives (such as the Mortgage Credit Directive, which imposes new underwriting standards for certain assets) and may assist by reducing factors which may otherwise contribute to interest misalignment as identified above.

In particular, we note that disclosure requirements may operate to reduce information asymmetry issues in securitisations by ensuring that investors may undertake their own credit risk assessment with respect to a securitisation position. While information availability has always been relatively good in the European securitisation market, a number of initiatives have been introduced in recent years which effectively operate to further improve the standards in this regard.

These incentives include the requirements under Part Five of the CRR for institutions acting as originator or sponsor to disclose all “materially relevant data” and certain comprehensive central bank and market-led disclosure initiatives, such as those established by the European Central Bank (ECB) and the Bank of England, and the Prime Collateralised Securities (PCS) labelling initiative. The latter initiatives are of course permissive rather than mandatory, but nevertheless establish strong incentives for issuers to comply. We note that securitisation disclosure requirements will also be introduced under article 8b of the Credit Rating Agency Regulation later this year (notwithstanding the coverage of this area by the initiatives listed above). As an aside, significant concerns have been raised by AFME members with respect to the draft technical standards proposals recently consulted on by ESMA in respect of article 8b and its implementation.

Lastly, we note that other mechanisms may be available in the context of certain structures to enhance interest alignment, such as the performance-based fee arrangements commonly used in managed CLOs. By linking the fees to be paid to the collateral manager to distributions to investors, the interests of the manager are more closely aligned with those of the investors. We are conscious that these points have been previously highlighted to the EBA.

- o. Presence of any particular product features (please also specify what product features you consider to be important) and whether you expect identified desired product features to originate from market, rating agencies or regulatory expectations

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

- p. Clearer regulatory distinction (capital, liquidity, other) and appropriate treatment of plain vanilla securitisations from more complex transactions

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

- q. Less regulatory restrictions such as capital disincentives on investing in securitisation assets

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

r. Availability of better liquidity in relevant asset classes

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

s. Availability of a vibrant and active bank investor base in ABS who may act as market makers and thus ensure a more liquid market

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

t. Assistance for the private sector in developing initiatives to enhance the market liquidity of securitisations

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

u. Better internal capabilities and ability to evaluate, measure and manage risk

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

v. Other (please provide relevant details and reasoning for your response)

Respondent ID: 353

Please provide reasons and supporting detail and information for your response.

Respondent ID: 353

17. Of the factors outlined in question 16, which are the three most important to increasing investor participation (especially non-bank investor participation) in securitisation markets?

Please provide reasons and supporting detail and information for your response, including from the perspective for non-bank investors if relevant.

Respondent ID: 353

We refer to our answers to Question 16m and 16n above.

Section D - Supporting the Development of Simple and Transparent Securitisation Structures

18. What are the most important characteristics of simple and transparent securitisation structures which might address the negative perceptions about securitisation stemming from the crisis?

Please provide detailed criteria and reasons for why your suggested criteria would address the negative perceptions about securitisation stemming from the crisis.

Respondent ID: 353

Considerable work has been done by AFME and the European Financial Services Roundtable in establishing PCS, and subsequently by PCS and AFME, in this regard, both upon the establishment of PCS and more recently in discussions with EIOPA prior to the publication of the EIOPA Report.

There is a view that “High Quality” is perhaps not the most appropriate term to use in this context, as it implies that anything which does not so qualify is therefore “low quality”. This is not necessarily the case. An alternative description might be “Type 1” and “Type 2” (as per the EIOPA Report”) or “Qualifying”. This will need further discussion but is an important issue.

In any event, “high quality” should be identified by reference to a number of

factors which need to be looked at together, not just one in isolation. Key factors will include:

- predictability of cash flows;
- a sensible structure (legal analysis and documentation, triggers, servicing and back-up servicing, etc.);
- a prudent amount of credit enhancement (set according to credit risk and higher where credit losses are expected to be higher).

The EIOPA Report provides a good starting point in this regard, although we believe it requires some adjustment, for example with regard to the seniority restriction (which in our opinion should be removed) and the listing by asset classes (where we believe a principles-based approach would be preferable).

One drawback of an approach that specifies limits on asset characteristics for sets of securitisations, rather than broad principles, is that those specific rules of this kind allow opportunities for compliance with the letter but not with the spirit of the regulation. More importantly such criteria may not be applicable for future product developments (new asset classes).

AFME believes that the principles set out in Box 3 to the Central Banks' Joint Paper are broadly sensible given the objectives set out therein. The principles are a good starting point but are, in many cases, very general and will need further refinement and specification in order to allow for predictability in the assignment of a QS certification.

We have the following specific comments on the principles (referred to by paragraphs) as set out Box 3 of the Joint Paper.

Paragraph 128: This is broadly sensible, though we would note that derivatives should be acceptable in a qualifying securitisation to the extent they are present for hedging purposes. We would note further that many of our members see no reason why synthetic securitisations should necessarily be excluded from the qualifying securitisation category. They are important risk and capital management tools for AFME's bank members and, provided they meet the requirements of simplicity, structural robustness and transparency requirements imposed, a number of our members believe they should be eligible for QS. We note, however, that certain of our investor members have concerns relating to the control investors have over the underlying assets in synthetic securitisations.

Paragraph 129: This will be difficult to provide as proposed. In particular, consistent and comparable data will not necessarily be available because underwriting standards change over time. Requiring data over a long period of time means that assets with substantially different underwriting criteria would be compared without a practical way of reflecting the underlying differences in assets.

Paragraph 130: This is broadly sensible, although note our comments in

respect of synthetic securitisations on paragraph 128. Also, some flexibility will be required in this criterion as concerns structures such as master trusts and originator trusts where the issuer will not necessarily have direct recourse to the underlying obligors.

Paragraph 131: Further guidance will be required on the meaning of "homogenous", but this criterion is sensible provided it is intended to refer to relatively high-level homogeneity (e.g. residential mortgages, rather than something as specific as, say, buy-to-let mortgages in the London market). Also, we wonder how an obligor's "volition" to make timely payments can be assessed beyond checking their having entered into a contract to do so (the asset sold into the securitisation). Is this meant to ensure that affordability has been checked?

Paragraph 132: This is again a broadly sensible criterion but needs to be addressed more specifically to exclude excessive reliance on market-based refinancing risk. For example, an RMBS is highly unlikely to have a life longer than seven years, but the underlying assets will likely have a WAL of 25-30 years. This is nonetheless acceptable because refinancing of residential mortgages is a normal feature in the life of the product and is highly unlikely to be problematic at a level that would impact the cashflows on the transaction in a material way.

Paragraph 135: See our comments on synthetic securitisations in respect of Paragraph 128. This is broadly sensible, but it should be noted that any legal opinion will be subject to customary assumptions and qualifications in respect of these items appropriate for the relevant market. These should not be a barrier to the transaction being a qualifying securitisation.

Paragraph 144: While we understand the reason for including this criterion, we question its appropriateness in all circumstances. Firstly, the direction of travel in financial services regulation generally (not just in securitisation) is to reduce undue mechanistic reliance by investors on external credit ratings through transparency - a principle we support. Secondly, a "one-size-fits-all" approach here may not be appropriate: in private transactions (for example) the transaction parties may wish to make their own arrangements for ongoing credit assessment: this may be "independent" or not, and may involve an ECAI or not. It is important to note that recent legislation in the form of Article 8c of the Credit Rating Agency Regulation does not mandate the involvement of at least two ECAIs for all issues of structured finance instruments; it simply requires two ECAIs if the transaction is rated at all. To require two ECAIs in order to qualify as QS seems to us to widen this legislative requirement "by the back door" – at least at the "core" level of any QS definition. Of course it may be sensible at a "modular" level (for example, additional requirements for central bank repo eligibility) for a dual ECAI requirement to apply. There is detail and subtlety here which requires further discussion.

Paragraph 146: We are not clear as to the intended meaning of this

requirement. If it is a requirement for an audit of the reports from the transaction, we are unsure whether auditing firms would be willing to provide this or what value this would add.

19. Are there simple and transparent securitisation structures with these characteristics available in the jurisdiction(s) in which you are active?

Respondent ID: 353

Yes

Please provide supporting details and information for your response, including where relevant, a hyperlink to any publicly available documents for any such securitisation products (for example, disclosure material).

Respondent ID: 353

We refer in the first instance to the eligibility criteria developed, and continuing to be developed, by the PCS label which is the only Europe-wide securitisation label and resulted from the work undertaken from 2009 to 2012 involving a broad range of European market participants (arrangers, originators, investors and legal experts) led by EFR and AFME. PCS is an obvious and strong candidate to work with the industry and regulators to develop relevant criteria. This task is work in progress and discussions continue between and among us. True Sale International (TSI) and the Dutch Securitisation Association (DSA) are other securitisation labels but currently only have a national scope.

See: <http://pcsmarket.org/the-label/pcs-eligibility/>

20. (If no to Q19) What factors, in your view, have inhibited the development of transparent and simple securitisation structures in the jurisdiction(s) in which you are active?

Please provide reasons and supporting details for your response.

Respondent ID: 353

21. What investor base would you envisage for the simple and transparent structures with the characteristics you have nominated as the most important?

Please provide reasons and supporting details for your response.

Respondent ID: 353

AFME would welcome the development of a broad range of different types of investors in simple and transparent structures comprising not just banks but also insurers, AIFMs and UCITS, pension funds and others. We believe the

overall aim should be to diversify the investor base away from banks so as to reduce historic reliance on the banking system and help further develop Europe's capital markets.

In AFME's view, a particular lesson learned from the financial crisis was that risk was not sufficiently distributed outside the banking system; therefore policy going forward should encourage, not hinder, this.

There are many different types of ABS products enabling different types of exposures and risk appetite, therefore ABS is appropriate for a broad array for investors.

22. What applications/uses would you envisage for simple and transparent securitisation structures? Do you envisage regulatory and/or contractual (i.e. market driven) applications? Should the transparency and simplicity change with the intended use of such structures or could a minimum set of common features be determined?

Please provide reasons and supporting details for your response.

Respondent ID: 353

We agree that different objectives or intended uses may require different characteristics.

AFME is in favour of a "modular" approach to the definition, namely a "core" or "minimum" definition comprising key principles and common features, to which could be added additional requirements or "filters" intended to address specific requirements. For example, an entire transaction might qualify for the overall definition of QS but only the senior tranche would qualify as being HQLA under the LCR.

We envisage both regulatory (capital, liquidity, central bank eligibility) and contractual (investor-driven, as required) applications.

23. Should regulators and/or regulation assist industry to (further) develop simple and transparent securitisation structures? If yes, why is regulatory intervention needed?

Respondent ID: 353

Yes

Please provide reasons for your response.

Respondent ID: 353

Regulatory intervention is needed to send a positive signal to investors and other market participants that securitisation is a technique which can play a

positive and significant role in funding, risk management and restoring growth in Europe. Intervention by the authorities is essential to dispelling any remaining stigma surrounding securitisation.

AFME very much welcomes the interest of the authorities in developing a framework based on defined principles of QS. It is crucial for industry and policymaker discussions of the concept of QS to converge in a single forum, where we can all work together constructively in a co-ordinated way. The objective will be to reach an agreed standard that can be applied widely, usefully, easily and clearly to help revive the market.

We have suggested to the Bank of England and the ECB in our response to the Central Banks' Joint Paper that in Europe the authorities first appoint a single regulator or supervisor to lead and co-ordinate the work (for example, the EBA – who have already begun this work).

Secondly, such lead authority should engage widely and extensively with issuers, originators and sponsors as well as investors, underwriters and important third party advisers such as law and accounting firms. If it would be helpful for AFME to establish a small technical working group selected from its members and reflecting the diversity of our membership to assist in these discussions we would be delighted to do so. This need not, of course, rule out selected bilateral discussions that the lead authority might wish to initiate.

Thirdly, we suggested that a timetable should be established with a target date for conclusions to be reached, and regular meetings scheduled to achieve this. Discussions should use as a good starting point the criteria developed by EIOPA in its December 2013 report.

24. (If yes to Q23) Please describe the role, if any, regulators and/or regulation could and/or should play in the process of defining simple and transparent securitisation structures. Your answer should also consider the following options:

- Regulators setting out criteria for simple and transparent securitisation structures;
- Encouraging the market to set out criteria for simple, transparent and structurally robust securitisation structures
- The benefits and drawbacks of the two approaches above and other approaches you have suggested.

Please provide supporting details and information for your response.

Respondent ID: 353

In terms of a role for the authorities, it is suggested that the authorities should play a supervisory role in determining the criteria for a QS, and then appointing and regulating one or more independent, credible bodies to issue certifications.

A number of bodies already exist to assign similar labels in the debt capital markets. To the extent that they are willing and able to administer the criteria for qualifying securitisations eventually decided upon, they are natural candidates to act as certifying bodies.

Of these bodies, the PCS label is the only Europe-wide securitisation label and resulted from the work undertaken from 2009 to 2012 involving a broad range of European market participants (arrangers, originators, investors and legal experts) led by EFR and AFME. As such, and also because PCS has been designed to be responsive to the needs of issuers and investors in terms of giving certainty around the receipt of the label for marketing purposes (as mentioned above), PCS is an obvious and strong candidate to act as a certifying body.

True Sale International (TSI) and the Dutch Securitisation Association (DSA) are other securitisation labels but currently only have a national scope. The lead regulator should also play a supervisory role, reviewing the criteria regularly to adapt to market evolutions, ensuring that standards are applied uniformly and regulating the conduct of the certifying bodies generally.

25. Please describe the role, if any, regulators and/or regulation could and/or should play in market's adoption of simple, transparent and structurally robust securitisation structures. Your answer should also consider the following options:

- Encouraging the market to issue and invest in such structures through specific capital, liquidity, collateral, other treatment;
- Supporting the market to use such structures contractually by encouraging an informed debate about the benefits of such structures;
- The benefits and drawbacks of the two approaches above and other approaches you have suggested.

Please provide supporting details and information for your response.

Respondent ID: 353

The market will adopt such structures provided they are regulated such that:

- the Basel 269 re-proposal for risk-weighted assets is better calibrated to reflect historic performance, and to bring securitisation into line with the capital requirements for other fixed income securities and underlying asset pools; and
- Solvency II proposals for insurer investors prescribes still lower capital charges (below 2.1% per year of duration) to create at the very least a comparable playing field with other fixed income securities such as corporate and covered bonds, and direct investment in the same assets; and
- the LCR under the CRR is finalised so as to include a wider, rather than a narrower, range of assets as HQLA.

Further hindrances to the market's revival should also be removed such as, for example, Article 8b of the CRA Regulation, which is unnecessary and creates duplication, confusion and intrusion into the free choices of issuers and investors in the field of disclosure; and the proposed restrictions on investment in securitisation by money market funds. Risk retention requirements between bank and non-bank investors (insurers, AIFMs) should be harmonised at a sensible level.

Better co-ordination between regulators within Europe and internationally would help prevent the “layering” effect of overlapping regulations, and bring us a step closer to mutual recognition of equivalent standards where they exist, facilitating cross-border flows between regions, and restoring international comity.

Non-bank investors should be particularly encourage to enter or re-enter the market.

Regarding possible drawbacks: much detailed work remains to be done, and there remain difficult challenges to resolve – for example, how to avoid cliff effects; how to address the different motives and requirements of different stakeholders; and how to strike the right balance between meeting the needs of the real economy while maintaining high quality. There will also be a need to avoid political interference: the history of the growth of the sub-prime mortgage market in the US is instructive in this regard. It needs to be very clear that the definition of such structures is not a “badge of regulatory approval” or a rating, and that it should not be used as a substitute for proper due diligence and credit analysis.

Section E - Any other comments

26. Do you have any other suggestions or comments that you would like the IOSCO-BCBS Task Force on Securitisation Markets to consider in formulating its Final Report?

Respondent ID: 353

We refer BCBS and IOSCO to our June 2014 Report: " High quality securitisation for Europe - the market at a crossroads" (Annex C.1).

Securitisation is a key funding tool in Europe and a channel for borrowers to access capital markets. Traditionally, it has contributed to funding real economy assets such as residential mortgages, auto loans and SME lending. At a time when businesses and households across the EU are experiencing difficulties in accessing finance, securitisation can improve the availability of credit, both directly by providing new sources of cash to finance growth and investment, and indirectly by allowing banks to recycle and reallocate capital for further lending.

With key investors unsure about remaining in the market, serious doubts are being raised about which part of the investor community will be capable of filling the void. In general, the new regulatory regime risks imperilling the region's already struggling securitisation market, further constricting credit supply to Europe's economy.

A recovery in the securitisation market should play an important role in unlocking credit markets and supporting a wider economic recovery across Europe. In the light of this, it is important for policymakers to support the sector through sensibly calibrated regulatory measures. At the same time, the industry has learned the lessons of the past and will continue – as it has done for several years – to work constructively with regulators in the future.

2014 is a pivotal year for European securitisation. Sensible outcomes on capital, liquidity and transparency are within reach. The right regulatory choices will enable securitisation to play its full role in funding Europe's real economy, strengthening our capital markets and broadening the investor base to support our banking system.

In closing, AFME wishes to emphasise that the engagement of the BCBS and IOSCO with market participants on the revival of the securitisation market is greatly appreciated. We hope this response is helpful. We are grateful for the opportunity to take part and would be happy to answer any further questions that you may have or develop further issues of interest to you.

Annexes will be sent under separate cover.