Finance for Europe

TARGETED CONSULTATION ON THE FUNCTIONING OF THE EU SECURITISATION FRAMEWORK

30 September 2021

Firm name: ASSOCIATION FOR FINANCIAL MARKETS IN EUROPE

1. Effects of the regulation						
1.1. Has the Securitisation Regulation (SECR) been successful in achievingthe following objectives:						
	Fully agree	Somewhat agree	Neutral	Somewhat disagree	Fully disagree	No opinion
Improving access to credit for the real economy, in particular for SMEs					X	
Widening the investor base for securitisation products in the EU					X	
Widening the issuer base for securitisation products					X	
Providing a clear legal framework for the EU securitisation market			X			
Facilitating the monitoring of possible risks		X				

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Providing a high level of investor protection	X					
Emergence of an integrated EU securitisation market				X		

1.2. If you answered 'somewhat disagree' or 'fully disagree' to any of the objectives listed in the previous question, please specify the main obstacles you see to the achievement of that objective.

In this response we will make some general comments and then address each question posed in the consultation specifically. We also attach as Appendix 1 a presentation prepared by AFME entitled "Securitisation as an essential tool for Europe's economy" to which we will refer, and which contains further detail and data which support our answers. Please see the link to Appendix 1 here.

General comments

The SECR and simple transparent and standardised securitisation ("**STS**" and "**STS Securitisation**") have not been transformative

The SECR has been in place only since 1 January 2019, and even then significant secondary legislation was missing (some still is) such that the first STS securitisation did not take place until April of that year. Just under a year later the COVID-19 pandemic began to meaningfully affect global markets and central bank interventions increased (although not so much for securitisation), which interrupted the development of the market.

While it is difficult to untangle these different factors, the consensus of market participants is that the impact of the SECR and lack of growth of STS Securitisation has been disappointing – though not entirely surprising.

The SECR has provided a very detailed and prescriptive regulatory framework for securitisation which we note is much more detailed and prescriptive than for other fixed income sectors in the EU, including those that are highly comparable to securitisation (e.g. covered bonds and secured lending), or indeed other major securitisation markets in the western world such as the United States or Australia.

The historical context for this is that the SECR was formulated in the aftermath of the global financial crisis, in which securitisation was seen to have played a part, which damaged the reputation of the product. However, disproportionate and, in our view, unnecessarily onerous and conservative aspects of the European regulatory framework for securitisation have in general acted as a brake on the growth of the market by increasing compliance costs and complexity for sell-side and buy-side alike. This, in turn, creates broader problems because a minimum critical mass of deals and market participants is needed to stay competitive and retain expertise in Europe.

While there has been frequent use of the STS label, much of it has been applying the label to existing transactions. The STS label has so far not been conducive to an expansion in issuance levels or in the securitisation investor base. For issuers, the STS requirements remain burdensome. For investors (other than banks and insurers) the STS label does not appear to have been transformative; investors in fact show a preference towards deploying the very heavy due diligence and credit work towards higher-yielding non-STS transactions. The landscape is similar for bank and insurer investors, but they also face capital and liquidity disincentives compared with other fixed income products, even after the lower charges for STS (as compared to non-STS securitisations) are taken into account.

For banks, it is also difficult to unpick this from the effects of very cheap ECB liquidity schemes, with which securitisations cannot realistically compete on ease of execution and cost of funding. It is also worth noting that the eligibility criteria and haircuts for securitisations as ECB collateral are much more onerous than for other fixed income products.

Further, and despite ongoing requests of the banking industry and inclusion of ABCP in the scope of SECR, these ECB liquidity schemes have not yet included ABCP on the lists of eligible collateral. This has been a source of tension for ABCP sponsor banks during the COVID-19 pandemic as they have had to support their ABCP programmes in order to assure continuous funding of their European real economy clients. This, in turn, has resulted in additional funding costs for clients. Unlike the ECB, the US Federal Reserve made the Commercial Paper Funding Facility available for ABCP during the pandemic and other central banks (in Canada for instance) took similar measures.

Currently, many of the regular issuers into the public securitisation market are non-bank lenders who are not able to access the ECB support schemes (in particular, the CLO market has seen record post-global financial crisis issuance levels in 2020 and 2021 to date).

For further detail on the market, including a comparison of STS versus non-STS issuance, see Section 3 of Appendix 1.

<u>The Basel context</u>

The Basel framework for securitisation (the "**Basel Securitisation Framework**") was finalised in December 2014, in very different circumstances from those which prevail today. The Basel Securitisation Framework was, understandably, heavily influenced by the experience of the Global Financial Crisis ("**GFC**") and in particular the role played by US sub-prime mortgage securitisations. It establishes a highly conservative approach to securitisation. Yet securitisation in the EU (and the UK) has always performed strongly, both through and since the GFC (see Section 3 of Appendix 1 and Fitch Ratings: "Global Structured Finance Losses: 2000-2020 Issuance", March 2021 (the "**Fitch Report**")). Credit losses have been minimal. Where they have occurred they have been confined to defined asset classes such as commercial mortgage-backed securities ("**CMBS**") and collateralised debt obligations ("**CDOs**"), both of which typically have features which preclude them from qualifying as STS securitisations. So arguably the Basel Framework was always too conservative an approach for the needs of the EU.

The Basel Securitisation Framework was implemented in the EU through amendments to the CRR implemented at the same time as the SECR. It has not been implemented in the United States and their securitisation market has expanded significantly in recent years.

Since the implementation of the Basel Securitisation Framework, further rules from Basel have created further regulatory hurdles which make securitisation more expensive for originators, including most recently the "output floor" for EU banks using securitisation as a risk transfer instrument (which is key in the context of the CMU). Due to the layering of conservative parameters embedded in the calculation formula under the Standardised Approach, the output floor will have a disproportionate effect on the treatment of securitisation by a bank originator, by significantly increasing the capital required to be held against any retained exposures after securitisation. For a detailed analysis of this see Section 5 of Appendix 1.

This is problematic because, to be cost-effective, the *capital-adjusted* cost of funding securitisation for a bank originator must be cheaper than for funding the assets on the balance sheet. Securitisation will always be a more complex and (in terms of the "headline" weighted average cost of funding) more expensive than other fixed income instruments; as we explain in Appendix 1 (pages 9-16), the unique feature of securitisation is that *it enables banks to transfer risk while still continuing to lend*. Therefore, the very harsh treatment which the output floor imposes on retained exposures post-securitisation will create a very high hurdle, and make it very difficult for a bank originator to achieve an attractive *capital-adjusted* cost of funds for securitisation. This is likely to depress issuance by larger banks, lead to market shrinkage and reduce the opportunities available for banks to manage and disperse their risks.

We understand that when the output floor was being discussed at Basel there was no consideration of its effect on securitisation. The cumulative effect described above therefore needs now to be considered, in order to ensure that all banks that are engaged in EU securitisation markets can expand their capacity to serve the EU market, its consumers, businesses and homeowners.

<u>Market access</u>

Another broad thematic challenge that needs to be addressed in the context of the Article 46 Review is that of market access. Consideration will need to be given to the fact that most publicly-placed EU securitisations will require access to investors in third countries such as the UK, US or those in the APAC region. The result is that public securitisations, even where the sell-side entities are entirely based in the EU, will often need to consider and (to some degree) comply with the requirements of those third countries.

That is not to say that the EU should necessarily seek alignment in all areas with the rules in those jurisdictions, but considerable weight should be attached to the interoperability of the regimes such that EU entities seeking access to investors in other markets will not have unnecessary burdens imposed on them by having to comply with multiple regulatory regimes.

Likewise, EU investors seeking to invest in third country securitisations need mirroring flexibility of their own.

The broader point is that consideration of EU rules cannot be done in a vacuum, because the reality of operating in a global capital market is that EU market participants will frequently have to consider third countries' regulations (mainly those of the UK and US) even where those regulations do not directly apply to them.

Public and private transactions

Because of the wide definition of "securitisation" in the SECR, it applies to a diverse set of financial arrangements which tranche underlying credit risk in an ongoing way. Bilateral trade receivables arrangements, syndicated loans, private bonds and a number of other instruments are therefore frequently caught by the definition and subject to the SECR accordingly (even though some of these structures may not conventionally be considered to be securitisations by market participants). A number of these instruments are used where issuers are not ready for public markets issuance, for example, because they are too small, they have not had sufficient time in business to collect sufficient data or assets, the asset class is otherwise not suitable for the public markets or the issuer has legitimate privacy or commercial confidentiality concerns.

That said, prudently undertaken private securitisations have substantial societal and economic benefits and should be encouraged, rather than being burdened by the need to comply with a level and type of regulation that is not always appropriate to the risks involved or the sophistication of the parties taking those risks. Private securitisations play important roles, like providing funding to non-bank financial institutions ("**NBFI**") – who in turn finance the real economy – and enabling bank de-leveraging by funding buyers of loan portfolios, thereby delivering capital into the real economy.

Therefore, as part of the Article 46 Review, we would urge the Commission to do what it can to responsibly facilitate these transactions so that they are available as a funding tool for issuers who do not have access to public markets. By increasing the number of originators who have access to securitisation as a tool, we believe that it will be possible to ultimately increase the pipeline to the public securitisation markets and thereby increase the number of investors attracted to the market, in turn increasing liquidity and reducing volatility. Some suggestions for how to facilitate this are set out below in the answer to questions 2.1 – 2.6, but the overarching point is a broad one, and is one of the main reasons flexibility and proportionality in the SECR are so badly needed going forward.

Specific comments

Improving access to credit for the real economy, in particular for SMEs

We hope that the very recent implementation of the STS framework for on-balance sheet securitisations under the Capital Markets Recovery Package for securitisation (the "**Securitisation CMRP**") will (despite restrictions on its effectiveness imposed during the legislative process) assist the ability of banks to transfer SME risk and thereby free up their balance sheets for more lending to SMEs and the real economy. However, it is as yet too early to tell.

Apart from that, a preponderance of AFME members fully disagree that the SECR has improved access to credit for the real economy, in particular for SMEs. The impact of the recently adopted Level 1 framework for on-balance securitisation, which is intended to support SMEs, remains to be seen. While we welcome the recent adoption of the framework, the benefits of the original Commission proposals were constrained by too high a risk-weight for senior tranches, risk weighting of synthetic excess spread and the requirement for recourse to excessively high-quality collateral.

Improving access to credit for the real economy depends on greater use of the securitisation markets, either by increasing the number of participants or increasing the extent to which those participants make use of the securitisation markets. The regulatory framework has discouraged both, while encouraging the development of credit funds, which are significantly less onerously regulated, as well as the use of other less onerous funding alternatives (e.g. whole loan sales). See answers below about widening the investor base and issuer base in respect of encouraging the number of market participants.

The regulatory framework has also discouraged the use of securitisation by existing market participants, mainly via non-SECR levers, such as capital charges for banks (see sections 9 and 10) and insurers (see section 15) and poor LCR treatment of securitisation exposures for banks (see section 11). Of particular relevance for SMEs is the difficult, costly, uncertain and time-consuming nature of the SRT process (see sections 13 and 14) – although there have been improvements in recent years.

Although the STS standard is being used in the market, its introduction has not resulted in an increase in issuance levels or attracted new participants due to the excessive complexity of STS securitisation and the excessive burdens placed on originators, and the issuance of new STS securitisations in the cash securitisation markets for certain asset classes (in particular SME loans) remains limited.

<u>Widening the investor base for securitisation products in the EU</u>

The main effect of the SECR on investors in securitisation is to implement wide-ranging, detailed, and onerous due diligence requirements that require investors to verify a number of matters, some of which they would not otherwise be concerned with. These detailed diligence requirements, which are unique to securitisation (and for which there is no equivalent in respect of much riskier investments such as, for example, equity investment in emerging markets) represent significant barriers to entry. This partially explains the reduction in investor base for securitisation products over the years since the introduction of the SECR. Consequently, a preponderance of AFME members fully disagree that this objective has been met.

Not only are new investors discouraged from entering the market, but also some existing investors have exited the market or reduced their allocation to securitisation partly in response to both (i) the substantive outcomes of these new regulations; and (ii) the prudential regulatory incentives mentioned above. We would also stress that the complexity of the regime has discouraged investors – and in particular small and mid-size investors – from entering the market, even where their sophistication would otherwise make securitisation investments appropriate. This concentrates the investor base even further.

The differences in attitudes of investors to, for example, ABCP between the EU and the US is remarkable and instructive on this point. AFME members report that this is linked to the relative attractiveness of the products in the two jurisdictions, which derives largely from their regulatory treatment in each jurisdiction – including the eligibility of ABCP for central bank liquidity operations, where unfortunately the treatment of ABCP under the ECB collateral framework is considerably less generous. This is despite the widening of such schemes recently to much more risky investments such as Additional Credit Claims.

Widening the issuer base for securitisation products

A preponderance of AFME members fully disagree this objective has been met. As with the investor base, the issuer base for securitisation markets has also shrunk materially since the financial crisis of 2008. As commentary from European Stability Mechanism staff points out, "In 2008, the size of the EU securitisation market including the United Kingdom, was 75% that of the US. In 2020, it was just 6%.".

Further, the actual amount of deals being sold to real third party investors, rather than being retained by originators and used for cheap funding via central bank repo and other operations, is in fact much less. According to AFME's Securitisation Data Report, in 2020 out of €196bn of total issuance only €82bn was placed into the market, the rest being retained by the originators. In 2019 out of €203bn total issuance only €108bn was placed. These figures have been broadly similar for several years, such that true market issuance is approximately 50% of the reported number.

See further AFME's Quarterly Securitisation Data Report available here and Section 3 of Appendix 1.

On the supply side, this phenomenon is partly explained by the issues identified above (bank capital, insurance capital, LCR treatment), partly explained by the plentiful supply of alternative cheap sources of funding (e.g. ECB TLTROs and Asset Purchase Plans) and partly explained by the very onerous regulatory environment created by the SECR and its subsidiary legislation. Of particular relevance to the sell-side are the highly prescriptive disclosure obligations, including the requirement for templated disclosure – even on private transactions. These requirements impose enormous demands on the data gathering, management and reporting systems of potential originators in order to provide data that is often of questionable relevance to investors. While there may be a greater case for a regulatory requirement for templates of some description in respect of public transactions and more mainstream asset classes, we are of the view that they should be reconsidered in respect of private transactions. Private transactions are more bespoke in nature, investors are fewer in number and clearly have the sophistication and experience to discuss with the issuers, demand (and receive) what data they require in order to conduct a meaningful risk and credit analysis and ensure they get that information on an ongoing basis. This is especially relevant for for less mainstream asset classes.

An additional important category to mention is NPE securitisation. The amendments in the Securitisation CMRP that came into effect in April of this year do not go far enough in incentivising originators to securitise their distressed portfolios, nor do they sufficiently enhance market capacity to absorb large volumes of NPE portfolios. In addition, the Securitisation CMRP amendments penalise the securitisation of "unlikely to perform" portfolios where the non-refundable purchase price discount tends to be lower than the 50% threshold required to be a "qualifying NPE securitisation" benefitting from certain of the capital provisions in the CRR amendments. A further revision of the framework along the lines of the EBA's 2019 Opinion on the regulatory treatment of non-performing exposure securitisations is therefore warranted.

<u>Providing a clear legal framework for the EU securitisation market</u>

In this respect the SECR has been a partial success. Accordingly, AFME is neutral on whether this objective has been met. The harmonisation of rules among different classes of market participants (previously provided for separately and slightly differently in the CRD, Solvency II and AIFMD regimes) is helpful in that it creates consistency and more of a level playing field. Many of the requirements are relatively clear, including the broad thrust of the disclosure, risk retention and due diligence requirements, and the STS framework. The devil, however, appears in the details. Significant legal questions remain unresolved and unclear or in a state of uncertainty even now. By way of example, these include:

- The due diligence requirements on institutional investors under Article 5(1)(e) when investing in non-EU securitisations.

- Whether non-MiFID-regulated investment firms are permitted to act as sponsors.

- Article 9 in general is difficult to apply (despite recent useful amendments as part of the Capital Markets Recovery Package) and comply with, especially in relation to acquired portfolios, future-flow transactions and transactions with a sponsor.

- Over two years after the SECR began to apply we still do not have final risk retention RTS, and the transitional rule in Article 43(6) does not provide grandfathering for any transactions done or updated on or after 1 January 2019.

- Various technical standards and guidance that fully implement the on-balance sheet STS framework introduced in April 2021 remain outstanding.

<u>Facilitating the monitoring of possible risks</u>

Supervisors will be best placed to comment on this, but a preponderance of AFME members somewhat agree that this objective has been achieved. To the extent it has been achieved, it is not clear that the methods implemented by the SECR were necessary or proportionate to any benefits or improvements in this respect. The history of credit losses and defaults in European securitisation through and since the

2008 financial crisis is excellent, suggesting that risks were well identified, monitored and controlled even before the various iterations of securitisation-specific regulation implemented in the EU since then.

It is possible that the introduction of templated reporting and securitisation repositories will help supervisors keep better track of transactions and monitor risks in that way, but given that the first securitisation repositories were authorised only a few months ago, there is not yet any evidence for this.

AFME members believe that this objective could be better achieved through existing prudential reporting mechanisms such as COREP, which are used to monitor risks on an institutional level and cover all types of transactions (which is surely more useful than narrowly monitoring one source of possible risk in a disconnected way). We note, in this respect, that COREP includes detailed, deal-by-deal information for each securitisation exposure at table C14. Contrary to the assertions of the Joint Committee Report on the Implementation and Functioning of the Securitisation Regulation (Article 44), it does not seem likely that securitisation repositories would significantly facilitate this function. We would suggest instead that enhanced systems for prudential supervisors and markets supervisors to share information (and, in particular, COREP reporting) among themselves should be put in place to facilitate the monitoring of possible risks in a more efficient way using information already available rather than creating further reporting burdens and costs for market participants.

Providing a high level of investor protection

Undoubtedly the SECR regime provides a high level of investor protection for retail clients, because Article 3 SECR imposes significant limitations on the ability to sell securitisations to this investor base. AFME members support the restrictions in Article 3 and are not aware of any securitisations being sold to retail clients in the EU in recent years.

The 5% risk retention requirement is a core aspect of the investor protection framework which AFME supports.

The SECR regime also provides a high level of investor protection for institutional investors, but AFME members consider that in some cases this level of protection is not appropriately calibrated in that it imposes costs that are disproportionate to the benefits of the protections conferred once account is taken of institutional investors' significantly greater potential to protect themselves via due diligence and independent credit analysis.

The requirements for extensive disclosure under Article 7, for risk retention under Article 6, relating to the choice of underlying assets (adverse selection rules in Article 6(2) and rules relating to credit granting criteria in Article 9) and the ban on re-securitisation under Article 8 all provide protection which as a whole reduces risk. The same is true with the detailed diligence requirements under Article 5.

As with the monitoring of risks, however, AFME members believe that these reductions in risk are not achieved in a proportionate manner. The purpose of financial markets is to allocate risk efficiently by appropriately remunerating those

	willing and able to take risks. The purpose of financial legislation should be to ensure an efficient market with appropriate incentives for good behaviour so that market participants can make well-informed decisions, not to eliminate risk entirely. So while AFME members agree that a high level of transparency and effective diligence are very important, they question the need for the highly prescriptive approach taken to achieve those outcomes. A principles-based, proportionate approach to such protections focussed on the following outcomes is preferable: - Ensuring investing in securitisation markets is limited to professional investors capable of understanding securitisation investments and absorbing credit losses to the extent that risks are realised. This is largely already achieved by the restrictions in Article 3 SECR. - Ensuring EU sell-side entities supply appropriate information on the securitisation structure and underlying exposures (including asset selection criteria) to permit investors to undertake a well-informed analysis of their prospective investment at a level of granularity appropriate to the transaction and the underlying assets. - Ensuring investors are required to undertake a level of diligence appropriate to the size, risk and tenor of their exposure, and document their due diligence process accordingly. Even if these changes were implemented, they would still leave securitisation more tightly regulated than any other EU fixed income sector. <u>Emergence of an integrated EU securitisation market</u> AFME members view the SECR as creating a solid foundation on which an integrated EU securitisation market might be built, but this has largely failed to emerge as yet because the various brakes on growth of the market overall (including the SECR regime itself, but also the prudential treatment and the availability of plentiful cheap central bank funding) have not created the environment necessary for the market to grow at all. As a result, a preponderance of AFME members somewhat disagree this objective has been achieved. See further our General Comments.
1.3.	What has been the impact of the SECR on the cost of issuing / investing in securitisation products (both STS and non-STS)? Can you identify the biggest drivers of the cost change? Please be specific. The cost of issuing and investing in both STS and non-STS securitisations has gone up directly as a result of the SECR requirements, which affected STS and non-ECB eligible securitisations most dramatically – and we think for limited benefit. STS securitisations have been disproportionately affected because of the detailed and complex set of STS criteria which need to be carefully checked on both sell and buy sides. Pool audits (internal and external), liability cash flow models, additional legal work, STS verification (including so-called "STS+" analysis aimed at verifying that STS-designated securitisation also meets additional criteria applicable under relevant

	regulatory frameworks such as CRR, LCR and Solvency II) and additional data collection all contribute to these increased costs. Non-ECB eligible securitisations have been disproportionately affected because they were not previously subject to externally-imposed templated reporting requirements. Such securitisations include, by way of example, most private securitisations, as well as synthetic securitisations, securitisations of NPEs, CMBS and managed CLOs. Producing the required information has both significant upfront costs (which acts as a continuing barrier to entry for the market) and ongoing costs. The costs related to these highly detailed requirements exist on the buy side as well. Just as Article 7 (and its subsidiary legislation) requires the sell-side to produce a large volume of sometimes irrelevant information, Article 5 requires investors to check and analyse it – even where they do not believe it is relevant to their credit analysis. For example, why should an IORP be required by Article 5(3)(c) to verify the STS status of a securitisation when that status will make little or no difference to it (especially if it intends to hold the investment to maturity)? Similarly, why should any institutional investor verify the STS status of an on-balance sheet securitisation designated as STS given that only the originator receives any regulatory capital benefit from such status? Such a requirement is not an effective use of an investor's time and resources and simply creates an additional administrative burden and cost. Finally, some jurisdictions have taken a strict interpretation of the ability to delegate due diligence – even within the same group structure – which creates additional costly compliance burdens.
2.	**Private securitisation** The legal framework acknowledges the bilateral and bespoke nature of so-called private securitisations and does not require them to disclose detailed information about the transaction to potential investors in the same way that it does for public securitisations. However, this needs to be balanced against the need to ensure adequate supervision of private transactions, which requires access to sufficient information on the part of supervisors. As a result, the current legal framework requires private securitisations to fillin the same data templates as public securitisations.
2.1.	Are you issuing more private securitisations since the entering into application of the EU securitisation framework? Yes, significantly Yes, slightly No change No, it has decreased
2.2.	What are the reasons for this development (please explain your answer)? Regulation generally has a limited impact on the choice of a public vs. a private securitisation. Sell-side entities would generally prefer to do their deals on the public markets rather than the private markets because the former will offer a lower cost, and the cost of complying with the relevant regulations is very similar. Private

transactions are used where the public markets will not support the transaction (or will not yet support it – as in the case of warehousing or – often – trade receivables) or where there are overriding confidentiality concerns (e.g. many synthetic securitisations). The main effect of the relatively high level of regulation of private securitisations is to limit the supply of credit to the real economy, since it removes private securitisation as a funding tool for corporates that may not have access to other sources of funding (e.g. corporate loans).

In any case, we believe that it is important to bear in mind two additional elements of context when considering this question:

The number of private transactions is artificially inflated due to the way these transactions are reported to ESMA

Many ABCP transactions that were already in place before STS have been amended to become STS compliant transactions in 2019 and 2020. There is an incentive for banks to do this in order to get the capital benefit of an STS exposure via the liquidity lines provided to the ABCP transactions on the portion that they finance through their ABCP conduit. These transactions are typically large syndicated deals with a few participating banks.

As part of that process, *each* ABCP bank is *required* to post an STS ABCP notification to ESMA for the portion that it finances through its conduit. As a result, the same transaction will frequently generate 3 or 4 separate STS notifications. There is no such duplication for term/public deals where only one notification per transaction is required.

When market data is published, no correction is performed to take this duplication into account. What is typically done by market data analysts, is simply to count the number of STS notifications on the ESMA website. For instance, the latest market data published by PCS (https://pcsmarket.org/newsletter-jun2021/#market) shows the following figures: 172 ABCP v. 86 Term. (2020 full – Total); 29 ABCP v. 27 Term. (2021 YTD – Total).

It would be natural to assume when looking at these figures that the majority of STS transactions were private ABCP ones in 2020 and that in H1 2021, the market has become more balanced between ABCP and public transactions.

However, such conclusions are far from the truth. We estimate that the number of STS ABCP transactions posted in 2020 needs to be divided by at least 2.5 to adjust for multiple notifications for the same transaction as explained above. With this correction, the estimated number of ABCP STS transactions in 2020 would be less than or equal to 172/2.5 = 69, lower than the 86 notifications for term/public deals.

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

In certain other sectors, including CLOs and CMBS transactions, it is true that the majority of deals are either unlisted or listed on MTFs, but this practice predates the SECR regime by a number of years.

Private financing can act as the first step to facilitate future public issuance

As alluded to above, private financings are often undertaken in situations where financing through the public ABS market is not initially feasible, but this nonetheless constitutes a pipeline of transactions that will eventually become public securitisations. Two examples of when this might happen include:

- Emerging companies such as innovative fintechs or growing specialised lenders originating mortgages, or engaging in consumer lending, who have not yet accumulated a sufficient track record and volume of assets to do a public ABS issuance. In such cases, banks are taking the risk of funding the asset growth through private warehouse lines. Once the balance of originated assets is large enough, sufficient data have been accumulated and the company is ready, a public market issuance is arranged which refinances the private bank financing. There is a real incentive for such companies to go for a public issuance as it usually means diversification of funding sources at a point where its balance sheet becomes significant, more efficient financing and cheaper cost of funding than in the private market.

- Acquisitions of asset portfolios or origination companies typically by private equity groups. Such acquisitions require private funding given both the confidentiality involved and the time sensitive nature of the acquisitions. Once the acquisition is completed, there is often a refinancing in the public market again because of the incentive for the acquirer to benefit from a cheaper cost of funding in the term ABS market.

Private financings can thus act as the first step to facilitate a future public issuance. Most of the new originators that have entered the public ABS market in recent years were first privately financed through banks. Once they have access to the public market, and have become more established with public market investors, the cheaper cost of funds is a powerful incentive for them to continue to use the public market rather than returning to the private securitisation markets. In this sense, the existence of a vibrant private securitisation market is both a precursor to a vibrant and diverse public securitisation market and an insurance policy against times when public market conditions may not be hospitable. This is why the High Level Forum report, included among its priorities:

- to recalibrate capital charges applied to senior tranches, in line with their risk profile, for originating and sponsor banks.

- to review and better target ESMA disclosure requirements for private transactions.

Finally, we would refer to our answer to question 2.6 in respect of disclosure for private securitisations and our answer to question 4.4 in respect of unlevel playing field issues. There is a potentially catastrophic and business-terminating competitive disadvantage that would be created for EU bank branches and subsidiaries with third

	country securitisation exposures arising out of their private asset-backed lending businesses in third countries by a strict reading of Article 5(1)(e) (i.e. a reading that would require them to receive information in the precise form of the Article 7 templates in all cases).
2.3.	Do the current rules enable supervisors to get the necessary information to carry out their supervisory duties for the private securitisation market? Yes No No opinion Please explain your answer. We believe much information is already available to supervisors, including: - via COREP (and equivalent for other regulated entities), JST packs and *ad hoc* regulator requests - Independent research produced by investment banks active in the European securitisation market - Independent research produced by credit ratings agencies - Consolidated research produced by trade associations including AFME and others - Deal-specific information produced under the legal obligation of Article 7 SECR and for which there is no equivalent in respect of other financing tools, (including corporate loans, project finance, covered bonds, or corporate bonds) - In some jurisdictions, SPV audits provided by recognised auditing firms and confirming the functioning of the transaction We wish to stress that our members do not object to providing sensibly calibrated, useful and practical information in a flexible and cost-effective way. Indeed, to assuage supervisor concerns, AFME together with TSI and the European DataWarehouse have for some months been working together with their members to gather high level information on the private cash securitisation market (ABCP and ABCP-like transactions, not synthetics) with a view to publishing such data on a regular (quarterly) basis in the near future. We hope in due course this will be a helpful contribution to the discussion. Considering all the above, we believe this provides sufficient information for supervisors to adequately address both market and prudential risks. If regulators needed even the information available to them now under Article 7 SECR then surely more of them would have made clear a mechanism for market participants to deliver their Article 7 reporting for private securitisation – something almost none of them have actually done.

As far as we are aware, the UK authorities (prior to the end of the Brexit transition period) were the first to have provided a mechanism for this. Since then, we are aware of the Irish authorities putting formal notification requirements in place, and the authorities in Luxembourg and the Netherlands doing so on an apparently informal basis, but nothing that would indicate a systematic framework for collection of information that would presumably be in place by now if supervisors thought that information was important.

We recommend that the most effective way for supervisors to gather adequate information to carry out their supervisory duties for the private securitisation market would be to ensure more efficient sharing between them of existing information reported under prudential and other supervisory frameworks (e.g. COREP) - rather than creating further overlapping onerous reporting obligations and costs for issuers and investors.

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

Yes
No
No opinion

Please explain your answer.

Investors in private securitisations almost invariably obtain sufficient information to fulfil their due diligence requirements (both regulatory due diligence and – we would argue more importantly – their own internal credit due diligence requirements). Any exceptions to this are usually where there are insufficient historical performance data to meet SECR standards, particularly on legacy assets predating the existence of those standards. We would note that the SECR requirements are little to do with ensuring investors get the information they need according to their own internal standards. Indeed, a significant number of AFME members (including investor members) report that investors on private and public securitisations often still require investor reports in the forms they received prior to the SECR and largely ignore the reports provided on the Art. 7 SECR templates except to the extent required to fulfil their regulatory duties.

Key to understanding this phenomenon is the idea that different investments in different securitisations have different risks and therefore different information is required to assess them. This is not because whole categories (synthetic vs. true sale, private vs. public, etc.) are inherently more or less risky but because each investor and each deal is unique. Investors will each have their own view as to the most useful indicators of risk and future performance – for example, financial ratios, reports on progress against a business plan, etc.

In terms of exposures, factors including the nature of the underlying assets (secured vs. unsecured, maturity, prime vs. near-prime vs. non-performing or reperforming, level of granularity, etc.), historic loss rates, jurisdiction, attachment point of the particular investment, and tenor and liquidity of the investment – to name but a few –

are important in determining the type and level of diligence appropriate to each investor.

By way of example, a mature economy credit card securitisation where (external) investors are taking only senior risk might want monthly reporting (to match the short maturity of the underlying assets) and (reasonably) be satisfied by relatively high-level pool data reporting. On the other hand, an investor in an emerging market CMBS with two underlying loans might (again, reasonably) accept quarterly reporting but would almost certainly require a much higher depth of loan-level detail, because of the non-granular, long-term, non-revolving nature of the pool.

Another important element to understand is that (excluding purely intragroup arrangements, where it is not appropriate to have legislated reporting requirements at all – see answer to question 2.6) the vast majority of private securitisation "investors" are in fact banks engaging in asset-backed lending for their existing clients in the context of a wider banking relationship (investors in ABCP are the exception to this). Treating them in the same way you would treat an investor on the public markets who has no ongoing access to the management of the originator on, e.g. a publicly-listed RMBS, is simply not appropriate. Banks playing this sort of "investor" role have close contact with the originators, regular dialogue with management, access to detailed information and often have a wealth of historical information built up over years of providing the same client with a variety of financial products and services. Requiring detailed (and often irrelevant) templated information is therefore mainly just a barrier to allowing the bank(s) in question to provide cheaper, asset-backed financing to their clients than might otherwise be available on the client's own credit. See our response to question 2.6 for more detail.

2.5. Do you find useful to have information provided in standard templates, as it is currently necessary according to the transparency requirements of Article 7 and the associated regulatory and implementing technical standards?

Yes
No
No opinion

Please explain your answer.

See our answer to question 2.6.

Overall, AFME members do not believe it is helpful to prescribe standard templates as currently implemented under the SECR, especially in respect of private securitisations. This is consistent with the recommendations contained in the Final Report of the High Level Forum on Capital Markets Union dated 10 June 2020. They recommended differentiating disclosure requirements for public and private securitisations and establishing the principle of proportionality in the application of disclosure and due diligence requirements. There are undoubtedly benefits to a level of standardisation, including facilitating data analysis and making comparisons between transactions easier. However, these benefits are considerably outweighed by the increased compliance costs and the exclusion from the private securitisation markets that results from smaller originators being unable to produce all of the required information in a way that makes economic sense – especially when that

	would frequently be possible in the absence of templates prescribed by law by agreeing a bespoke format with investors on a deal-by-deal basis. This is made abundantly clear, as set out above, by the fact that investors in private securitisations often largely ignore the Art. 7 SECR template reports in favour of the reports they design with their originator clients to assess, detect and monitor the risk they are taking on their private securitisation exposure. Common templates in principle are not necessarily a bad idea (for e.g. public EU deals) but they would need to be developed with a high degree of industry input and implemented with a much greater degree of flexibility than they currently are in order to appropriately balance the costs with the benefits. There also need to be appropriate procedures in place for changes to templates so as to avoid disruption to markets when these happen. Such procedures would need to include appropriate publicity and notice periods to enable deals to adjust, or issue before the change comes into effect; grandfathering for deals already completed is also key.
2.6.	Does the definition of private securitisation need adjustments? Yes No No opinion If you answered 'yes' to question 2.6, please explain why and how should the definitionof private securitisations be adjusted. AFME members agree with the ESAs that the currently articulated boundary between public and private securitisations could sensibly be re-examined. Although the current definition has the notable benefit of being a clear "bright line" test, we understand supervisors' concerns that it may not accord especially well with market and economic realities. The question of where to draw the boundary between public and private securitisations has been a vexed question for the market for many years, largely driven by – and inextricably intertwined with – concerns around disclosure. Based on our involvement in the legislative process back in 2015-2017, we believe that the intention of the co-legislators of the SECR was that templated disclosure should be limited to public transactions. ESMA undertook a detailed consultation with the industry on this basis that concluded in March 2018. Subsequent to that consultation, ESMA changed course and required templated disclosure for all securitisation transactions, whether public or private. See answer to question 2.5. This has created considerable difficulty, cost and administrative burdens for the market, especially for originators, and is a significant obstacle to undertaking a securitisation for smaller originators in particular. Further, the implementation of the requirement has been problematic, and while there has been engagement with ESMA there has been no formal, comprehensive consultation with the industry. The consultation that closed in March 2018 was framed and responded to on the basis that private securitisations would not be subject to templated disclosure. We continue to feel strongly that this was a major shortcoming in due process and has caused considerable and unnecessary damage to the market.

Further, the content of the templates in question has been driven not by investor demand or requirements but is rather based on the templates used by the European Central Bank in its liquidity operations.

We believe the time is ripe, if not considerably overdue, for a full and proper consultation to be undertaken with the industry, including issuers, originators and investors, to ascertain what disclosure is possible, sensible, proportionate, flexible and above all practical and useful for all parties, especially investors.

AFME and its members would be pleased to engage in detail on this topic at the earliest convenience. For now, we set out the broad themes of a more sensible disclosure regime for the securitisation markets.

Following the recommendation of the ESAs in the Article 44 review report, it seems clear to us that intragroup securitisation transactions should not be subject to regulatory disclosure requirements. Where there is no investor independent of the originator (or other economic sponsor) the mischief sought to be addressed by the disclosure requirements simply cannot arise. These are by their nature internal arrangements of a corporate group.

For bilateral securitisations (i.e. those where there is one borrower – or one corporate group borrowing – and one investor), it is also clear that the current disclosure requirements in relation to private transactions are overly prescriptive, to the point of requiring disclosure that is frequently excessive and not useful to investors, while simultaneously being difficult and/or costly for the sell-side (particularly for less sophisticated, smaller and/or first time originators/sponsors) to produce. These requirements are often particularly onerous for less sophisticated originators/sponsors and investors. This is not to say that less, or less useful, information is provided to investors on private securitisations – quite the opposite. The private securitisation disclosure process typically takes place over many months and involves investors working closely with originators to understand their business in great detail in order to ascertain the originators' risk drivers so that the investor can determine the best way to underwrite the risk of the securitisation. See example timeline on page 76 of Appendix 1 of a typical disclosure process on a private securitisation to provide additional context.

In those situations, investors will necessarily be sophisticated entities involved in meaningful negotiations with the sell side and be able to ensure they are receiving precisely the information they require in order to make an informed initial investment decision and monitor their investment on an ongoing basis. Those negotiations are the best, most efficient way to ensure that investors are receiving all the information they need without placing undue burdens on the sell side to produce unnecessary or irrelevant information prescribed by law and – given the systemic balance of power between sell and buy sides on such transactions – we believe the parties should be free to decide on the content of disclosures on bilateral securitisation with relatively little regulatory intervention. At most, the regulatory framework should provide general principles for the types of disclosures to be provided (e.g. those currently in primary legislation) but leave the details to individual negotiations.

A good example of this would be asset-backed balance sheet lending by banks, that should very clearly be excluded from the more prescriptive disclosure obligations set out for public securitisations. Failure to do this would just serve to leave a barrier in place to borrowers accessing the loan market in the most efficient way available and, for branches and subsidiaries of EU banks in third countries, it would serve to create a significant competitive disadvantage compared to non-EU banks.

That leaves the question of private securitisation transactions other than intragroup or bilateral transactions. This is perhaps the most difficult category, because it begs the question of where to draw the line between "public" and "private" securitisations – a complex and difficult question that AFME members believe should be subject to a further, dedicated consultation process with appropriate time allowed for full consideration. For the moment, however, we would offer the following guiding principles:

- The line between what should be considered a public vs private securitisation is not clear, and the appropriate level of regulatory intervention in the disclosure process will often be matched to the extent to which the transaction is public.

- There are a number of indicia of a transaction being public, most of which are indicative but not determinative. For example:

    - A transaction with an approved prospectus for the purposes of the Prospectus Regulation is almost certainly most appropriately treated as public. Conversely, a transaction with no offering document of any kind (for example, an ABCP programme) is almost certainly most appropriately treated as private. But a transaction with an offering document that is not an approved prospectus for the purposes of the Prospectus Regulation could easily fall into either camp.
    - A transaction with a listing/admission to trading should normally be treated as public, but this may not always be true, particularly where the listing is a "technical listing" on an offshore stock exchange that requires limited transaction information in order to grant a listing and is obtained mainly for the purposes of e.g. ensuring bond-style withholding tax treatment.
    - Transactions where an announcement is made through a formal channel to a wide audience for the purpose of soliciting investor interest (leading to a "public bookbuild") will normally be public, but this is not strictly required for a public transaction.
    - The presence of a syndicate of banks underwriting the transaction and selling it on to end investors is a feature indicative of a public deal.
    - Transactions where there are a small number of investors all of whom have meaningful contact with and access to the originator will normally be private.

- The appropriate policy outcome for small, club deals with a small number of outside investors (including, but not limited to, trade receivables deals, securitisation lending transactions with a syndicate of lenders and ABCP conduits, including those which fund transactions on balance sheet) will often be to treat them the same as bilateral transactions, with only broad, principles-based disclosure requirements imposed by regulation.

- Larger transactions with more investors and listings on markets such as the Irish Stock Exchange's GEM (not a full, regulated market listing, and no prospectus, but it does have an offering document and the listing does provide a meaningful and potentially liquid market), on the other hand, should probably be treated more like public transactions, though perhaps with a "comply or explain" approach to the disclosure templates rather than requiring strict compliance in all cases.

We recognise that the above feedback does not set out a single, clear, bright line and requires further detailed discussion (as we suggest) before being converted into policy. Nonetheless, we hope it sets out more clearly some of the underlying economic realities onto which any policy choices should be superimposed and helps to progress an ongoing conversation about the appropriate policy outcomes in this difficult area.

3. Due diligence

The transparency regime in the SECR requires that the originator, sponsor and SSPE of a securitisation make a range of information available to the holders of the position, to competent authorities and, upon request, to potential investors. The information is provided via templates and is intended to enhance the transparency of the securitisation market as well as to facilitate investors' due diligence and the supervision of the market. The following questions aim to find out whether the information that is currently provided to investors is appropriate, sufficient and proportionate for their due diligence purposes and whether any improvements can be made.

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

Yes
No
No opinion

Please explain your answer.

There are some benefits, but for the reasons set out above, we do not believe that the regimes are proportionate. The disproportionality is much more acute for private securitisations than for public securitisations, but it exists in both cases. See above for detail on private securitisations. If Article 5(1)(e) were to be interpreted restrictively to require full EU-style disclosure from non-EU sell-side entities then that would be especially disproportionate. See our answer to 4.4 below.

On public securitisations, the disproportionality comes mainly in four forms:

- Due diligence obligations in relation to third country securitisations: This is especially problematic with respect to Article 5(1)(e) and could be resolved by a more flexible and proportionate application of the requirement to conduct regulatory due diligence. This would ensure EU investors can invest on a level playing field with third country investors, and help them to optimise their risk:return ratio by diversifying geographically while ensuring they take appropriate measures to understand the investments they are making.

- Loan-level data: This data is not required in order to make a well-informed investment decision in respect of securitisations of highly granular asset classes.

    - By way of example, for credit card securitisations pool-level characteristics, trends and statistics are far more useful than any information about the (very small) individual receivables making up the pool, as the former will help an investor understand the key parameters affecting their investment over time (e.g. excess spread and payment rate). The latter, on the other hand, will necessarily be out of date by the time data can be reported (due to the short-term and revolving nature of the underlying receivables) and in any case data on any individual receivable does not materially affect the credit performance of the overall pool.

    - Similar arguments apply to trade receivables. They do not bear interest and their maturities are normally 45 days or less. The originators are not in the business of creating and managing credit risk. The originators make products or provide services and the credit risk associated with the trade receivables is ancillary to their core activity and ordinary course of business. Hence there is no bank-like credit analysis or credit process or credit rating by the originator for these receivables (which is not to say that there is no analysis at all). They are often insured by a trade credit insurer. The obligors are often SMEs and therefore, particularly in Europe, lack a public rating.

    - In summary, AFME members would suggest eliminating the requirement for loan-level data for securitisations featuring short-term, highly granular or revolving assets. As set out above, this will almost always include securitisations of credit card and trade receivables, but may well also apply to other asset classes depending on the specifics of the deal. On the other hand, loan-level data requirements should be kept in place for securitisations of larger, less granular assets classes where loan-by-loan information is required to assess the risks of the asset pool.

- Inappropriate templated data requirements: These are not only a problem for public securitisations, but the content of the disclosure templates is often not appropriate to the economics of the transactions.

    - The most egregious example of this is perhaps trade receivables, where the template designated for use (Annex IX) is so poorly adapted that the Joint Committee of the ESAs has already acknowledged in its Article 44 review report that a whole new reporting template may be required. AFME members support the elimination of loan-level data requirements for trade receivables in any case, but if the loan-level requirement is to be retained then we would support the implementation of this recommendation for a new, simplified trade receivables template.

    - There are other instances where templates may simply not be sufficiently flexible to be meaningfully completed. For example, certain mortgage loans can be connected to both commercial and residential properties (e.g. a

	shopkeeper who lives above their shop). In this case, the originator would have to choose between the RMBS and CMBS template, but both are likely to include irrelevant information the originator would not otherwise collect (and where the fields may require information that may not make sense in the circumstances) and which would have limited availability of ND options to provide the required flexibility. - Other disclosure regimes: There does not seem to be any meaningful coordination between the disclosures required under the SECR and other regimes applicable to public transactions, such as the Prospectus Regulation (the "**PR**") or the Transparency Directive. A particularly egregious example of this arises in the context of the PR requirement to disclose certain transaction documents referred to in the prospectus (Annex 9, para 9.1), which is remarkably similar to the SECR requirement to disclose transaction documents under Article 7(1)(b). The SECR requirement is to report those documents to a securitisation repository, whereas the PR requirement is (at least as interpreted by some national competent authorities) to report to a website with immediate and unrestricted access – criteria not met by securitisation repositories. This leads to unnecessarily duplicative disclosure of transaction documents, resulting in more cost and complexity for no investor protection benefit. The benefits of current market practices (which are due only in part to the SECR regime) include ensuring that a broader range of investors conduct proper diligence both before investing and in an ongoing manner. In this sense it may have contributed to a more professional and robust securitisation market that is better able to price and manage credit risk. The first real test of this has been the COVID-19 pandemic, which has so far caused no widespread forced selling in the securitisation market and credit spreads have moved largely in line with other fixed income markets. However, these benefits have, we believe, been achieved at the cost of creating barriers to entry so high that the volume of transactions (and therefore the volume of finance provided to the real economy via securitisation) has been much lower than it otherwise could have been. It may thereby have pushed more funds into less regulated forms of financing such as direct lending from funds.
3.2.	What information do investors need? How do investors carry out due diligence before taking up a securitisation position? See response to question 2.4. Investors' information requirements are not and should not be standardised. The information required for any investment, but particularly securitisation, varies enormously based on a range of factors. For securitisation this includes the transaction structure, underlying assets, attachment (and detachment) point of the investment, and the investor's own business model and regulatory considerations. That said, the information investors need usually includes information on historical defaults and recoveries (vintage or dynamic data), dynamic delinquency data and, where relevant, prepayment data, particularly for granular portfolios. If the transaction is exposed to residual value risk then residual value performance data may also be useful (failing which investors can make very conservative assumptions). The historical performance data should ideally cover one full economic cycle, failing which several years are needed so that investors have a solid

	basis for modelling past and future performance. For certain asset classes like financing receivables, detailed information on the portfolio, including pool stratifications is also required to understand the pool composition (for example, loan/lease sizes, loan/lease purpose, loan-to-value ratios, interest type and rate, and interest rate reversion dates (if there are teaser rates), seasoning, geographical distribution). Investors use this information to establish their expected base case default, recovery, delinquency and prepayment rates. Investors then run stress tests on their base cases and analyse the transaction cash flows in different stress scenarios – this helps determine the investor's credit opinion and their pricing expectation for each tranche being sold. At a transaction level, investors analyse the structure by reviewing the prospectus or other offering document (and any term sheet or investor presentation) and sometimes (depending on the transaction, the amount of the investment and the presence of an offering document) the underlying transaction documents. An understanding of the transaction structure is of course necessary to run appropriate stress tests. ABCP investors investing in fully supported ABCP undertake credit analysis of and rely on the sponsor bank providing the liquidity line and while they have interest in the broad types of underlying assets funded via the ABCP programme they have little interest in them beyond that. This is a similar approach to the credit analysis of a covered bond.
3.3.	Is loan-by-loan information disclosure useful for all asset classes? Yes – please specify (multiple choice accepted) Auto-loans/leases Trade receivables Residential mortgages (RMBS) SME loans Corporate loans Leases Consumer loans Credit-card receivables Other – please specify: No No opinion Please explain your answer. See answer to question 3.1.
3.4.	Is loan-by-loan information disclosure useful for all maturities? Yes No No opinion Please explain your answer.

	See answer to question 3.1. For very short-dated assets (e.g. credit cards, trade receivables), loan-by-loan information is not useful because it will be out of date before it can be reported. It is much more useful to have pool-level data that will provide more meaningful trends and statistics to analyse and understand the characteristics of the underlying assets.
3.5.	Does the level of due diligence and, consequently, the type of information needed depend on the tranche the investor is investing in? Yes No No opinion Please explain your answer. Broadly, yes. It is fundamental that the type of information needed by investors derives logically from the quantum of risk they take. See our answer to question 2.4. By definition, investors in senior tranches do not wish to take on much risk. If loans are adequately structured and if investors know their clients well, the risk is extremely limited. For this type of investor (assuming a granular pool), loan-by-loan information is often not useful or relevant. Up to a certain level, defaults on the underlying assets are expected and the issue is not to know which specific loans have defaulted, but rather whether aggregate losses are in line with expectations or threaten the senior tranche. On the contrary, loan-by-loan information is more likely to be useful to investors in junior tranches as fewer defaults in the underlying portfolio of assets may affect the investment. Even then, junior tranches often have protections available (such as excess spread or (in an ABCP programme) a letter of credit) to protect them from the first Euro of loss. And for junior investors in very granular pools such as credit cards and trade receivables, statistical pool-level information may be perfectly sufficient. The same rationale applies to investors in mezzanine tranches, who take a position between senior and junior tranches. To conclude, the level of due diligence and, consequently, the type of information needed often depends on the tranche the investor is investing in. However, there will be variations in approach within the investor base depending on a range of factors including overall investment strategy, the purpose of the particular securitisation investment, whether the same investor is investing in multiple tranches of the same deal, and the (contractual or regulatory) duties the investment manager has to its stakeholders. Depending on these factors, it is possible that investors might, e.g., use the same model for investing regardless of the tranche, but just adjust the levels at which stress tests are considered to have been passed.

	A principles-based proportionate due diligence standard would therefore reflect this distinction appropriately.
3.6.	Does the level of due diligence and, consequently, the type of information needed depend on whether the securitisation is a synthetic or a true-sale one? Yes No No opinion Please explain your answer. Simply put, the answer to this is no. The level of due diligence and information disclosure is dependent upon the risk of the particular investment (underlying assets, credit enhancement, etc.), not the mechanism for transferring risk from originator to investors. To the extent there are differences, they will be the obvious ones – a need to understand the guarantee or derivative used to transfer the risk, rather than understanding the asset sale agreement – but the underlying principles are the same. Likewise, external investors in synthetic securitisation will almost always be junior or mezzanine investors, which will drive the information they need, but those specialist needs derive from the credit risk they are taking (please recall that in synthetic securitisation the originator retains the senior risk), not the synthetic nature of the risk transfer. To put it another way, an investor in the junior or mezzanine tranches of a traditional securitisation would be expected to have similar information requirements as in a synthetic securitisation of the same type of exposures.
3.7.	Are disclosures under Article 7 sufficient for investors? Yes No No opinion Please explain your answer. AFME members believe that Article 7 disclosures are overly prescriptive and not fit for purpose in most cases – which is not to say that there is universally "too much" or "too little" disclosure; rather it is simply not the correct disclosure relevant to the particular investor in the particular case. Sometimes different information is required and sometimes it is required in a different format. Investors will have their own credit models and internal risk/approval processes and they will want to ensure they are receiving the information required by those models/processes in order to conduct their initial and ongoing diligence (similar to rating agencies). If they do not receive the correct information they simply will not invest. This is the reason for the market practice of continuing to provide pre-SECR style reporting in many cases (alongside the SECR-mandated templated reporting) – including on public deals – referred to above in questions 2.4, 2.5 and 3.2.

3.8.	Do you find that there are any unnecessary elements in the information that is disclosed? Yes No No opinion Please explain your answer. See above responses to questions 2.6, 3.1 and 3.4.
3.9.	Can you identify data fields in the current disclosure templates that are not useful? Please explain your answer. While AFME disagrees with the view that SECR requires templated disclosure for private transactions, AFME has nevertheless engaged in detail with ESMA on the data fields in the templates. Please see: Appendix 2: AFME's Response to ESMA Consultation on Data Completeness, dated March 2020 (here) ; Appendix 3: AFME's Q&A submission to ESMA, dated April 2019 (here); and Appendix 4: AFME's comments on ABCP template, dated July 2019 (here). While AFME appreciates the efforts of ESMA to grant some flexibility during the implementation process, detailed discussion of the data fields while helpful does not solve the fundamental unsuitability of templated disclosure for private transactions.
3.10.	Can the disclosure regime be simplified without endangering the objective of protecting EU institutional investors and of facilitating supervision of the market in the public interest? Yes No No opinion Please explain your answer. As set out above, the information required by investors is highly specific to their particular approach to credit analysis, to the particular transaction and to the seniority of the position they are taking. There is also an important distinction to be made between private and public deals. As previously stated, we strongly believe it was never intended that private deals should be subject to templated disclosure. The information made available should therefore be simplified in the manner set out in our responses above, especially questions 2.3, 2.4, 2.6, 3.1, 3.2, 3.5 and 3.7.
4.	**Jurisdictional scope** The Joint Committee of the ESAs issued an opinion to the Commission on the jurisdictional scope of the Securitisation Regulation, identifying some elements of

the legal text that require clarification. This section of the questionnaire seek feedback on theissues identified by the Joint Committee.

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

Yes
No
No opinion

Please explain your answer.

An important initial problem with the SECR as to jurisdictional scope was determining what entities were in- and out-of-scope. The market has since settled on an interpretation that broadly consists of an approach whereby an entity is in-scope if it has a supervisor appointed under Article 29 SECR and otherwise out-of-scope. It would, however, be useful for this to be confirmed by authorities.

Another key problem has been the lack of clarity around the interpretation of Article 5(1)(e) as it applies to investments in third country securitisations. Please see our response to question 4.4.

Two other significant outstanding issues are the question of how the SECR applies to third country AIFMs (as to which see the response to question 4.5) and the question of whether third country investment firms can be sponsors for SECR purposes.

On the sponsor question, this has been outstanding since the SECR was introduced and is particularly unfortunate because – as we understand it – the SECR was meant to clarify this question. Previously the definition of a "sponsor" in the CRR referred to the definition of an "institution" which in turn referred to the definition of an "investment firm". That definition referred to

“a person as defined in point (1) of Article 4(1) of Directive 2004/39/EC, **which is subject to the requirements imposed by that Directive**, excluding the following…" (emphasis added).

The definition of "sponsor" in the SECR drops the reference to being "subject to the requirements" of MiFID, leaving only the reference to Article 4(1) of that directive, which quite deliberately refers to investment firms in all jurisdictions, not just MiFID firms. It defines an investment firm (in relevant part) as follows:

"any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis"

The lack of clarity is caused because the definition of "sponsor" in the SECR refers to credit institutions "whether located in the Union or not" without making that same clarification in respect of investment firm sponsors. Clarification has been requested multiple times from the ESAs since early 2018, but has not so far been forthcoming. AFME members would be grateful if the authorities could clarify that third country investment firms can indeed act as sponsors of securitisations.

4.2. Where non-EU entities are involved, should additional requirements (such as EU establishment/presence) for those entities be introduced to facilitate the supervision of the transaction?

Yes
No
No opinion

Please explain your answer.

We feel strongly that additional requirements would be unnecessary and create additional costly and onerous barriers to participation in the market that are not justified by improvements to market functioning or safety. They would tend to reduce the number of non-EU securitisations sold to EU investors thereby increasing geographic concentration risk, reducing liquidity and market depth and creating conditions for increased volatility. EU investors in any case report all of their investments to their own supervisors, so the supervision of EU investors is already assured, regardless of the origin of the transaction.

4.3. In transactions where at least one, but not all sell-side entities (original lender, originator, sponsor or SSPE), is established in the EU:

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

Yes
No
No opinion

Please explain your answer.

The risk retention provisions of the SECR broadly work well and are now, some 10 years or so after their introduction, well embedded in market practice. This is a good thing; AFME and its members have always supported the key principle of risk retention or "skin in the game" as a key protection against the abuse of the originate-to-distribute business model.

The purpose of risk retention is to align the interests of the sell-side commercial parties (i.e. excluding the SSPE) with those of investors. This is achieved via a legislative mandate to create commercial alignment of interests via risk retention. Within that framework, there are often a number of parties who could potentially hold the risk retention. The EU has a large number of detailed rules (see the risk retention RTS) and the market also imposes substantive and commercial pressures to ensure that the person who is actually holding the risk retention is someone who is a commercially sensible risk retainer, not just someone who would formally be eligible. Imposing strict jurisdictional rules would cut across a number of existing rules carefully designed to ensure retainers are meaningful entities with sufficient control over and interest in the portfolio simply to meet a legalistic and formal requirement of having an entity in the EU. Such an approach is actively counterproductive from the point of view of the policy goal.

- Take the example of a portfolio disposed of as to 100% by its EU original lender. The US buyer finances its acquisition by way of a securitisation. There is no sponsor. Currently, there is little question that the buyer (as a “limb (b) originator”) would hold the risk retention. This is also the correct policy outcome. The original lender has disposed of the portfolio entirely and may even no longer exist. Even if it does still exist, it has no current interest in, or control over, the portfolio performance going forward. The buyer, on the other hand, has both interest in and control over the portfolio. It will also have done a detailed due diligence exercise on the portfolio as part of the acquisition process and will be better placed than anyone to take the junior risk. Under the suggestion at 4.3A, however, the original lender would have to hold the risk retention because it is the only EU sell-side party eligible – despite not having any involvement in the deal and being a commercially inappropriate retainer. Indeed, if the original lender was required to hold the retention in this circumstance, the deal would likely not be done.

- Alternatively, take the example of a securitisation of the trade receivables from a multinational auto business. There are multiple originators, all in different countries (including one EU country that contributes 15% of receivables to the deal), and a Japanese parent company that sets underwriting policy for all of its operating company subsidiaries. Currently the rules are designed such that the most likely entity to hold the risk retention would be the Japanese parent company (as a "limb (a) originator" of all of the assets). This is permitted by the current rules and is the most sensible commercial outcome because the Japanese parent is the entity with the greatest overall control over and interest in the portfolio. It is likely to be able to influence the servicing of the portfolio and optimise outcomes for all parties to the transaction. Requiring one of the EU operating companies to hold retention on behalf of the entire group would not currently be permitted and changing the rules to require it to hold the retention would be counterproductive for investors because it would exchange an entity with meaningful “skin in the game” and power to affect the success of the transaction with a weaker entity less able to do so. It would also put a disproportionate and unreasonable burden on the EU operating company, because it would have to take back 5% of the entire deal when it had only contributed 15% of the assets and could raise legal issues as the EU operating company may not have corporate capacity to hold retention for the whole group (at all or in a manner which is economically and practically achievable).

- Finally, consider the example of an ABCP programme where the sponsor is a Canadian bank but a number of the originators are EU SMEs. In this situation, the sponsor would currently hold the risk retention at the level of the conduit, normally in the form of a liquidity facility that provides full support for the ABCP issued by the conduit. Again, this is clearly the correct policy outcome and EU investors are appropriately protected by

Article 5(1)(d). If an EU-established entity were required to hold the retention then presumably the EU SME originators whose receivables were being financed by the ABCP would be expected to hold the risk retention for the entire conduit – a completely disproportionate burden that would not currently be permitted. We cannot imagine that this would be the intended outcome, but is the logical result of the policy suggestion in this question (see the ESAs' Opinion on Jurisdictional Scope of Application dated 25 March 2021 (the "**JSA Opinion**").

These are just three very common situations in which the suggestion to require that the EU sell-side entity hold the retention would create very significant difficulties and inappropriate commercial results. If this suggestion from the JSA Opinion became law, therefore, it is clear that the above types of transactions and many more besides would either need to be redeemed early (because there are restrictions on the ability to change the identity of the risk retention holder), completely restructured or simply would not be done (or would be done excluding any EU parties). If they were not done – or done excluding EU parties, the result in each case would be less finance being made available to the EU economy; an EU bank unable to dispose of a portfolio it no longer wants, an EU auto company unable to take advantage of global finance options via its parent, EU SMEs unable to finance their receivables cheaply using the credit provided by a Canadian bank and potential volatility in the market if a number of early redemptions are triggered by the implementation of this approach. If, contrary to our suggestions, some restriction of this type is to be implemented, it would be essential to provide appropriate grandfathering so as to ensure that transactions done in reliance on the current iteration (and all previous iterations) of the risk retention rules would not be made immediately illegal where they do not comply with the new rules.

B. Should the main obligation of making disclosures under Article 7 be carried out by one of the sell-side parties in the EU? In this case, should the sell-side party(ies) located in a third country be subject to explicit obligations under the securitisation contractual arrangements to provide the necessary information and documents to the party responsible for making disclosures?

Yes
No
No opinion

Please explain your answer.

The JSA Opinion states at paragraph 23 that "where one or more of the securitisation's originator, sponsor or SSPE are located in a third country, they should designate either party among those that is located in the EU as the "entity responsible for reporting the information". It is unclear to us what the purpose of this would be, given that Article 7(1) SECR already makes abundantly clear that the transparency requirements fall on all three of the originator, sponsor and SSPE, and the appointment of a reporting entity under Article 7(2) SECR is generally understood as mechanical only – it does not relieve the other two of responsibility for complying. All that would be achieved, then, by taking the approach suggested in in the JSA Opinion would be to constrain the choice of reporting entity to one who may be inappropriate from a practical or commercial point of view. For example, if the (e.g. New Zealand) originator is also the servicer of a portfolio, they will likely be preparing the Article 7 reports in any case. Forcing the parties to appoint the (EU) SSPE as reporting entity would be counterproductive and simply add inefficiency and cost to the transaction because of the need for the originator to pass the reports to the SSPE who then (presumably following some governance processes designed to protect the directors of the SSPE) passes them on to the repository. In either case, the SSPE is directly subject to liability for any breaches of Article 7. As above, if – contrary to our suggestions – the rules are changed here, grandfathering would be essential to avoid disrupting transactions done on the basis of existing rules in place at the time.

As a further point, we query the need to provide Article 7 information at all in the situation where there are no EU investors. Non-EU investors are not required to obtain this information and will often not even review it when it is provided.

C. Should the party or parties located in the EU be solely responsible for ensuring that the "exposures to be securitised" apply the same credit-granting criteria and are subject to the same processes for approving and renewing credits as non-securitised exposures in accordance with Article 9?

Yes
No
No opinion

Please explain your answer.

Similar to the above explanations for other parts of SECR, removing the responsibilities from the commercially appropriate entity and assigning them to an entity located in the EU (who may not be commercially appropriate) will not help strengthen the legislative framework and will likely add compliance uncertainty and complexity.

Also, as a general observation, a requirement for a "sponsor" to meet credit granting standards as if it were an asset creator is not appropriate. Sponsors establish and manage securitisations that purchase third party assets and as such they are more akin to "limb (b) originators". In this regard, we would note that a lack of coherence already exists between provisions of Article 9 and Article 5:

- paragraph (1) of Article 9 refers to "sponsors" but paragraph (3) which adjusts application of Article 9 for "limb (b) originators" does not refer to "sponsors";
- in turn, Article 5(1)(a) which requires investors to verify compliance with Article 9(1) does not refer to sponsors;

- this approach is then followed in Article 5(1)(b) which requires verification of credit standards by third country original lenders or originators (without any reference to sponsors).

The suggestion that the concept of "sponsor" should be added to Article 5(1)(b) to align it with Article 9(1) without acknowledging the lack of coherence in Article 9 itself and Article 5(1)(a) is in our view misconceived.

We ask the Commission to reconsider the appropriateness of the application of credit granting standards to sponsors more generally under Article 9 EUSR, before making any further changes to Article 5(1).

D. Should a reference to sponsors located in a third country be included in the due diligence requirements Article 5(1)(b) of the SECR? How could their adequate supervision be ensured?

Yes
No
No opinion

Please explain your answer.

Please see answer above to section C of this question.

4.4. Should the current verification duty for institutional investors laid out in Article 5(1)(e) of the SECR be revised to add more flexibility the framework?

Yes
No
No opinion

Please explain your answer.

Regarding section 1.2.2 of the JSA Opinion on Article 5(1)(e), we agree that either interpretative guidance or further legislation would be helpful here as this has caused some issues for the market. However, we have significant concerns about the impact of the conclusions reached in this section. The articulation of the law as it currently stands in the JSA Opinion is at variance with the understanding of many market participants and it is unclear how the ESAs have come to the conclusion they appear to have reached. It is disappointing that the JSA Opinion does not take account of the difficulty in interpreting and applying Article 5(1)(e) or the market practice developed over the more than two years since market participants first requested guidance on this point. Nor do they appear to have taken account of the considerable difficulties EU institutional investors have had obtaining Article 7 information when investing in third country securitisations. The JSA Opinion is also at odds with the recommendations of the High Level Forum on CMU that Article 5(1)(e) should not apply to third country transactions and that a "proportionate" approach should be considered instead.

This is necessary in particular for EU banks acting through their third country branches or subsidiaries as investors, originators or sponsors of securitisations (including sponsors of ABCP conduits) in connection with third country securitisations with, for example, non-EU originators and/or SSPEs to avoid creating an unlevel playing field when offering asset-backed lending solutions to their clients. If EU banks are required to obtain SECR-style templated information from their clients, this will put them at a significant competitive disadvantage as compared to their non-EU competitors for those same clients' business.

EU banks and members of their corporate groups investing in third country securitisation lending transactions typically perform a prudent, risk-based assessment of the transactions they are entering into, and already typically receive asset-level data which is sufficient for determining whether their lending criteria have been satisfied before entering into a transaction and on an ongoing basis post-closing. However, this information may be in a format different from the templates prescribed under Art. 7 SECR, e.g. in the form of a loan tape. Providing the information specifically in the form of the Art. 7 SECR templates, or providing additional information or data fields which are not produced or used by that originator in its business (including due to the region specifics – e.g. lack of LEI or NACE codes for which such codes exist but are not typically used or required for non-EU entities/industries), would represent a considerable additional administrative and reporting burden for such originators. Non-EU originators are unlikely to make the significant investment in their information technology systems that would be required solely to satisfy an EU bank or its group member where funding is available from other investors, such as non-EU banks. If Art. 5(1)(e) were to be clarified to require receipt of reporting specifically in the form of the Art. 7 SECR templates, or to require receipt of information corresponding to all the data fields in those templates, this would clearly put EU banks and their group members at a significant competitive disadvantage and greatly diminish their ability to compete in and participate in this market.

It is also important to note that investors in these transactions are typically closely involved in structuring the transactions and would typically review and actively negotiate their terms. Each initial and subsequent investor may have the ability to carry out due diligence before investing in the transaction, receive requested information, both initially and on an ongoing basis, and ask questions from the originator's and/or the servicer's management, in each case either directly or through participation in a syndicate of investors via an agent. This is in contrast to a transaction where the initial information in relation to the transaction is limited to a "take it or leave it" form of offering memorandum or other disclosure document. The lenders generally have the opportunity to carry out due diligence, liaising directly with the originator or through an agent for the lenders, and to consider asset-level data. These transactions are typically structured to extremely high credit standards and monitored diligently.

While AFME is generally supportive of the availability and use of the equivalence mechanism in EU financial services legislation, we do not believe that a third country equivalence regime with the requirements suggested by the ESAs would provide meaningful flexibility; indeed it would almost certainly put EU institutional investors at a disadvantage by needlessly limiting their investment options. Even the most advanced securitisation markets outside the EU (other than possibly the UK) lack reporting requirements imposed by law that are comparable to those in the EU.

	They would therefore likely fail to qualify as "equivalent" under the framework suggested by the ESAs – functionally eliminating the ability of EU investors to make appropriate, measured judgments designed to maximise and diversify their returns and those of their stakeholders. It would be much more sensible to apply the concept of proportionality of due diligence (in line with the recommendation made in the Final Report of the High Level Forum on the Capital Markets Union of 10 June 2020) to permit EU investors to judge whether they had received sufficient information (including information contractually promised to be provided on an ongoing basis) to make an informed judgment about the risks of taking an investment decision, as they do with virtually every other asset class other than securitisation. This would permit EU investors to make a reasoned judgment in cases e.g. where it is simply not practically possible to provide the exact same information as required under the EU regime, due to jurisdiction-specific features of the assets, jurisdictional differences in legislation or terminology. Needless to say, we also do not believe that it is sensible or proportionate to require any disclosure in respect of third country securitisations to be reported via a securitisation repository, not least because this will often breach contractual obligations or local laws on confidentiality of information, and would therefore risk leading to exclusion of EU investors from transactions in order to avoid these outcomes. This policy position is already recognised by EU law, in the form of recital (13) and Article 7(2) of SECR. Given the strong misgivings we have expressed above regarding the conclusions reached in the JSA Opinion we urge the Commission and the ESAs to reconsider. AFME and its members stand ready to engage constructively with the Commission and the ESAs to assist with this process, and to help resolve any underlying concerns. However, if the Commission and ESAs decide to proceed as outlined in the JSA Opinion (which we strongly oppose), then given the potentially significant implications for existing investments in third country securitisations, we stress that in advance of publication of any further commentary, interpretative guidance or legislative proposals, the ESAs should consider the implications and put in place any grandfathering required for EU investors with existing third country securitisation positions. If you answered 'Yes' to question 4.4, how can it be ensured that the ultimate objective of protecting EU institutional investors remains intact? Even with our proposed revisions, we believe that the objective of protecting EU institutional investors would remain intact. We continue to support the policy objectives underlying the Article 5 legal obligation for institutional investors to undertake due diligence – an obligation which is unique to securitisation. It should also be noted that the overall framework also provides other safeguards which address lessons learned from the GFC such as avoiding over-reliance on credit ratings. Lastly it should be noted that, like life, all investment carries risk and the policy objective should not be to seek to exclude it altogether. The question is where the balance should be struck which is why we believe a more proportionate approach is appropriate.
4.5.	Should the SECR and the Alternative Investment Fund Managers Directive (AIFMD) be amended to clarify that non-EU AIFMs should comply with the due

	diligence obligations set out in Article 17 of the AIFMD and Article 5 of the SECR with respect to those AIFs that they manage and/or market in the Union? Yes No No opinion Please explain your answer. In general, AFME is supportive of an approach to AIFMs that strikes an appropriate balance between mitigating risks to EU stakeholders with the economic benefits of permitting private actors to make appropriate, informed judgments as to their own investment goals and risk appetites. However, the members believe there are two key issues which should be addressed in an appropriate manner. First, the members do not think that non-EU AIFMs which market funds to EU investors should be subject to AIFMD or SECR obligations. Our view is that as a matter of territorial jurisdiction, it is not appropriate for the EU to seek to regulate the internal functioning and due diligence processes of a non-EU AIFM simply because the funds of such non-EU AIFM are marketed to EU investors. This is not something that would occur with any other product. For example the EU would not seek to take general regulatory jurisdiction over the a US bank simply because it was offering bonds or equities marketed to EU investors. EU Regulation in that case would be limited to the specific offering process (e.g. the content and form of disclosure as regulated under the Prospectus Regulation) with general prudential regulation left to the issuer's home jurisdiction. The same should be true of funds. Likewise, a non-EU AIFM would be governed by the investment rules of their own jurisdiction as well as the investment parameters and restrictions set out in the relevant non-EU AIFM offering document. Secondly, for the same reason, we also think it should be made clear that non-EU AIFMs which manage funds for EU investors should also not be subject to AIFMD or SECR.
4.6.	Should the SECR be amended to clarify that sub-thresholds AIFMs[1] fall within the definition of institutional investor thereby requiring them to comply with the due diligence requirements under Article 5 of the SECR? Yes No No opinion Please explain your answer. AFME agrees that there is uncertainty around the way the Securitisation Regulation applies to sub-threshold AIFMs but considers that the best way to address this would be via the AIFMD review, which is looking more generally at which requirements should apply to sub-threshold AIMFs. We note, however, that should the AIFMD review conclude that sub-threshold AIFMs should be out of scope of the

	Securitisation Regulation, then Article 2(12) of the Securitisation Regulation would require amendment in order to reflect that conclusion. With respect to the argument in the JSA Opinion about sub-threshold AIFMs not being eligible for "top-up" permissions, this is a question where different Member States take different approaches as to whether an AIFM can carry on delegated portfolio management under its core AIFM authorisation/registration or whether MiFID portfolio management top-up permission is needed. Therefore, the ESAs and Commission should be mindful of the impact of any "clarification" in this area on Member States' existing implementation of AIFMD.
5.	**Equivalence** The SECR does not include an equivalence regime and Article 18 of SECR requires that originators, sponsors and SSPE of an STS securitisations are established in the EU. The Commission is tasked to investigate whether an equivalence regime for STS securitisations should be introduced.
5.1.	Has the lack of recognition of non-EU STS securitisation impacted your company? Yes No No opinion If you answered yes, please provide a brief explanation how was your company affected. AFME members report that they have been affected by transactions which formerly had STS status ceasing to have that status as a result of Brexit. A number of EU banks have exposures to such transactions and have consequently suffered increased capital charges since 1 January 2021. See also our answer for question 5.2.
5.2.	Should non-EU entities be allowed to issue an STS securitisation? Yes No No opinion Please explain your answer. If you answered yes, how should the second sub-paragraph of Article 18, that requires that the originator, sponsor and SSPE involved in a securitisation considered STS shall be established in the Union, be revised? We note that the original proposal made by the Commission for the SECR in 2015 did not impose the requirement that STS could only be issued by EU entities. However, the institutional negotiations resulted in the exclusion of non-EU countries from the STS framework. Therefore, we would be supportive of revisiting the jurisdictional requirements contained in Article 18(2). It is unclear if they are really required or if the EU might take an approach more akin to the approach it takes with the admission to trading of securities on EEA regulated markets, where issuers from any jurisdiction may be

listed provided they comply with the relevant EU rules (Prospectus Regulation regime, Transparency Directive, Market Abuse Directive regime, etc.). This would have the notable advantage of permitting issuers and originators from any jurisdiction to qualify as STS regardless of whether their home jurisdiction had an equivalent regime. Indeed, it might even obviate the need for equivalence assessments by the EU authorities entirely.

As a matter of principle, it makes sense to allow EU investors to be subject to the same prudential treatment whether they invest in STS securitisations where the sell-side entities are EU-based or based in third countries. This reduces concentration risk and gives EU investors greater choice. It would also help grow use of the label and lead to increased liquidity.

In addition to removing the jurisdictional barriers (allowing entities from any country to qualify by complying with EU STS criteria), an equivalence regime could be established for transactions originated in third countries that have STS-type regimes. Such an equivalence approach could help identify securitisations where the slightly better prudential treatment of STS would be appropriate but which may not strictly meet all the STS criteria. This is a significant issue because of the EU-specific nature of some of the STS criteria.

Our understanding is that the following jurisdictions currently have or are considering legislating for Basel STC-aligned regimes and might therefore benefit from an STS equivalence regime in the foreseeable future:

- the UK
- Singapore
- India
- Japan
- Canada
- Switzerland

It is important that any equivalence regime the EU puts in place should ensure that other jurisdictions are granted equivalence on a principles basis (e.g. are a reasonable implementation of the Basel STC principles) rather than a strict, overly legalistic and literal assessment of whether the other jurisdiction has exactly the same requirements as the EU. Obviously, any equivalence regime would have to provide the slightly better prudential treatment of EU STS transactions for it to have any benefit for EU investors and issuers.

5.3. Should securitisations issued by non-EU entities be able to acquire theSTS label under EU law?

Yes, if the securitisation is issued in a jurisdiction that has a regime declaredto be equivalent to the EU STS regime;

Yes, in another way, for example by other mechanisms used in financial services legislation like recognition or endorsement;

	No No opinion Please explain your answer. See answer to question 5.2.
5.4.	Which considerations could be relevant to introducing any of the above mechanisms (e.g. equivalence/recognition/endorsement/other) and which could be the conditions attached to such mechanisms? See answer to question 5.2.
6.	**Sustainability disclosure** SECR requires that where the underlying loans are residential mortgages or auto loans/leases the available information related to the environmental performance" of the underlying assets is published for STS securitisation. This obligation was amended with the capital markets recovery package by including a derogation, whereby originators may, instead, choose to publish "the available information related to the principal adverseimpacts of the assets financed by underlying exposures on sustainability factors". The Commission is asked to investigate whether the requirements in Articles 22(4) [term STS] and 26d(4) [on-balance-sheet STS] about publishing the available information related to the environmental performance of the assets should be extended to securitisation where the underlying exposures are not residential loans or auto loans or leases, with a view to mainstreaming environmental, social and governance disclosure.
6.1.	Are there sufficiently clear parameters to assess the environmental performance of assets other than auto loans or mortgages? Yes, for all asset classes Yes, but only for some asset classes (please specify) No No opinion As a general observation, AFME members are supportive of the environmental and sustainability agenda but would caution against creation of an overly regulated landscape mandating the use of prescribed disclosures for all types of assets, structures and investors without allowing for a possibility to opt out of the regime. Such information may not be relevant for every asset class, for example. Availability of information (particularly for some types of assets such as broadly syndicated loans), particularly in the short- to near-term, may also present issues for the market participants unless the relevant disclosure requirements are carefully calibrated and allow to opt out of the disclosure regime. On this specific question, there are already industry specific standards which have been developed at the national (not international) level and are used by the specific industries. The preferred approach to developing further disclosure standards would

	be to avoid over-centralised regulation and to take account of the industry standards already in place which have been developed specifically for that particular industry (for example, the Energy Efficient Mortgage which has been developed for covered bonds could be used for RMBS or CMBS; for auto loans or leases, there are already existing industry standards for OEMs which could be utilised when available). Introducing additional mandatory securitisation standards overlapping or overriding the industry standards could add to confusion, potentially conflicting requirements and an increased cost of compliance. In addition, standards would not be straightforward to apply for many asset classes such as trade receivables, consumer loans or credit cards.
6.2.	Should publishing information on the environmental performance of the assets financed by residential loans and auto loans and leases be mandatory? Yes, the information is currently available Yes, but with a transitional period to ensure the availability of information Yes, with a grandfathering arrangement for existing deals No No opinion The industry participants strongly feel that unless the securitisation is marketing itself as an ESG bond/securitisation, mandatory requirements on publication of such information (including as to format or taxonomy) should not be required as it will not be relevant to the securitisation or to investors (and additionally, grandfathering for legacy assets in respect of which the information is not available should apply as the ability of the issuers to provide information is dependent on its availability). The market participants would also appreciate clarity on the application of the SFDR requirements to securitisation transactions.
6.3.	As an investor, do you find the information on environmental performance of assets valuable? Yes No No opinion Describe the use you have made of it. Where available, energy efficiency certificates should be disclosed along with CO_2 emissions information, however, this is not a matter that should be regulated as part of the securitisation framework.
6.4.	Do you think it is more useful to publish information on environmental performance or on adverse impact and why? AFME members believe that it would be more useful to publish information on environmental performance: where such information is available and relevant, it is valuable to investors to understand the strategic business management and increase the credibility of the originator. As a general matter, companies with good environmental credentials tend to have better and more comprehensive disclosure as

	that sends a strong signal on their position and performance to the market. Having said that, such initiatives should apply on an elective basis and should not be mandatory for all participants and asset classes across the board.
6.5.	a) Do you agree that these asset specific disclosures should become part of a general sustainability disclosures regime as EBA is developing? Yes No No opinion Asset specific disclosures should only apply to securitisations which are marketed as ESG bonds/securitisations. Applying the same standard to all transactions regardless of how they are marketed creates additional costs and barriers to issuance and should be avoided. Please also see the responses to questions 6.1 and 6.2 above. b) Should ESG disclosures be mandatory for (multiple choice accepted): Securitisation that complies with the EU green bond standard; RMBS; Auto loans/leases ABS; Please see the responses at a) above.
6.6.	Have you issued or invested in a green or sustainable securitisation? If yes, how was the green/sustainability dimension reflected in the securitisation? (multiple choice accepted) Green or sustainable underlying assets **X** Use of proceeds for green/sustainable projects. If so, please describe how the use of proceeds principle is applied **X** Green/sustainable collateral AND use of proceeds for green/sustainable projects. If so, please describe how the use of proceeds principle is applied **X** Other (please describe) Examples of how the green/sustainability dimension is reflected in securitisations include availability of coupon step-downs if defined future new green / social lending targets are met.
6.7.	According to the Commission proposal for a European green bond standard, a securitisation bond may qualify as EU green bond if the proceeds of the securitisation are used by the issuing special purpose vehicle to purchase the underlying portfolio of Taxonomy-aligned assets. Is there a need to adjust this EuGB approach to better accommodate sustainable securitisations or is there a need for a separate sustainable securitisation standard? Yes No No opinion

	If so, what should be the requirements for a securitisation standard? Please explain your answer. AFME members do not feel that a separate sustainable securitisation standard should be required, the regulation should focus on refining and clarifying the existing standards based on the feedback from their application (the EU Taxonomy, for example, has already been designed to align with the EU environmental objectives and net zero carbon commitments). The use of transitional periods during which less than 100% of green assets would be accepted in a green / ESG structure, as well as exceptions to accommodate less than 100% green assets in a transaction to allow for a build up of green assets on lenders' balance sheets, should also be considered with safeguards to prevent the use of these transitional measures for greenwashing. Drawing on the example of the development of the regulatory framework for green bonds, there needs to be an initial period during which the market develops "bottom up" structuring and disclosure solutions before effective and well-functioning mandatory rules can be put into place. This is also true of standards based on use of proceeds rather than underlying assets.
7.	**A system of limited-licensed banks to perform the functions of SSPEs** SECR text has tasked the Commission to investigate if there is there a need to complement the framework on securitisation by establishing a system of limited licensed banks, performing the functions of SSPEs and having the exclusive right to purchase exposures from originators and sell claims backed by the purchased exposures to investors.
7.1.	Would developing a system of limited-licensed banks to perform the functions of SSPEs bring added value to the securitisation framework? Yes No No opinion
7.2.	If you answered ‘yes’ to question 7.1, please specify what elements should such a system include? AFME members cannot imagine what benefits this might bring and are firmly opposed to the introduction of this measure. The current framework of insolvency-remote SSPEs has been shown to work well. Introducing a system of limited licensed banks in unnecessary. We believe such a move would introduce complexity and cost and could lead to the concentration of risks in the financial system.
8.	**Supervision** The Joint Committee of the ESAs’ report on the implementation and functioning of the securitisation framework noted some possible shortcomings in the supervision of the market. This section seeks to gather additional feedback in the areas identified by the Joint Committee.
8.1.	Are emerging supervisory practices for securitisation adequate?

	Yes No No opinion No. We refer to our answers to questions 2.2 and 2.3 (misunderstandings in the JSA Opinion regarding the development of the market for private securitisations and failure by supervisory authorities to share among themselves the considerable information that is already available to them from COREP and other sources).
8.2.	Have you observed any divergences in supervisory practices for securitisation? Yes No No opinion
8.3.	If you answered 'yes' to question 8.2, please explain your answer. We refer to our previous discussions with the ECB / SSM and EBA regarding varying practices among different JSTs in the context of seeking approval for SRT. While processes have now improved, there remain issues of concern. See Section 5 page 71 of Appendix 1 for more detail.
8.4.	Should the Joint Committee develop detailed guidance (guidelines or regulatory technical standards) for competent authorities on the supervision of any of the following areas. A. the due diligence requirements for institutional investors (Art 5) Yes No No opinion Please explain your answer. B. risk retention requirements (Art 6) Yes No No opinion Please explain your answer. C. transparency requirements (Art 7) Yes No No opinion

	Please explain your answer. D. credit granting standards (Art 9) Yes No No opinion Please explain your answer. E. private securitisations Yes No No opinion Please explain your answer. F. STS requirements (Articles 18 – 26e) Yes No No opinion Please explain your answer.
8.5.	Are any additional measures necessary to make sure that competentauthorities are sufficiently equipped to supervise the market? Yes No No opinion Please explain your answer. We do not believe so. See our answer to question 2.3.
8.6.	Do supervisors consider the disclosure requirements (both the content andformat) for public securitisations sufficiently useful? Yes No No opinion Please explain your answer. In particular, if you answered 'no', how could they be improved?

	This seems to be a question directed more at supervisors rather than us but as you ask we say yes, we believe they should. COREP and the newly authorised securitisation repositories (for public deals) and other sources, provide plenty of information. See also answer to question 2.3.
8.7.	Do supervisors consider the disclosure requirements (both the content and format) for private securitisations sufficiently useful? If not, how could they be improved? Yes No No opinion Please explain your answer. In particular, if you answered 'no', how could they be improved? We leave this question for supervisors to answer. We have made clear our views on disclosure for private securitisations in our answer to question 2.3. We believe a comprehensive consultation is required to resolve this complex topic and remove the unnecessary burdens on the market.
9.	**Assessment of non-neutrality correction factors impact** The current regulatory capital framework for securitisations is built on non-neutrality correction factors to capture the agency and model risks prevalent in securitisations. These include i. the (p) factor, a capital surcharge on the tranches relative to the underlying pool's capital set at a minimum of 0.3 (30% capital surcharge) for SEC-IRBA (Article 259(1) of the CRR) and at 1 for SEC-SA (Article 261(1) of the CRR) (100% capital surcharge) ii. the capital floors, whereby the lowest risk weight that may be assigned to the senior securitisation tranche may not be less than 15% (10% in the case of a simple, transparent and standardised -"STS"- securitisation)
9.1.	a) In your view, is the capital impact of the current levels of the (p) factor proportionate, having regard to the relative riskiness of each of the tranches in thewaterfall, and adequate to capture securitisations' agency and modelling risks? Yes No No opinion b) If you would favour reassessing the current (p) factor levels, please explain why and what alternative levels for (p) you would suggest instead. We do not believe the current levels of the (p) factor are proportionate. They are much higher than the (p) factor in the US, creating a competitive edge for the US over Europe. For a detailed analysis see Appendix 1, pages 65-70.

	Impact studies on the finalisation of Basel III have not properly addressed the introduction of the new securitisation framework and the unintended effects of the application of an IRB output floor based on Standard RWA. A reduction of the p factor is urgent, as it could partially offset the future additional negative impact of the output floor on securitised exposures. When simulating the impact on own-account securitisation structures covering IRB portfolios, one can observe that, though they are efficiently structured to release RWA under the SEC-IRBA, they are inefficient or even worsen the effects of the output floor. This is due to the conservative calibration of the SEC-SA, which was designed before the introduction of the output floor by the finalisation of Basel III. It is important that RWA inflation due to the introduction of IRB input floors and the SA output floors on securitised pools is not magnified further by the non-neutrality of the securitisation risk weight functions, and hence a re-calibration of the SEC-IRBA and SEC-SA formulae should be undertaken. For example, adjustment of the p-factor for SEC-SA to 0.5 for non-STS and to 0.25 for STS (this would align to the US SSFA formula) and an appropriate adjustment to the p-factor for SEC-IRBA. Our concrete recommendations are as follows: • recalibrate the fixed parameters that are components of the p factor for SEC-IRBA with a floor of 0.1 and maximum of 0.3 for STS securitisations, and a lowered floor of 0.25 and maximum of 0.75 for non-STS securitisations. • introduce a p factor of 0.25 for SEC-SA for STS securitisations and 0.5 for non-STS securitisations, the latter achieving a level playing field with US regulations • re-introduce a 7% RW floor in all approaches, considering also SEC-ERBA, for STS securitisations (cash and synthetic) for originator or sponsor banks
9.2.	Are current capital floor levels for the most senior tranches of STS and non-STS securitisations proportionate and adequate, taking into account the capital requirements of comparable capital instruments? Yes No No opinion Please explain your answer. No. See Section 5 of Appendix 1, especially page 64 for a comparative analysis with other capital instruments.
9.3.	Are there any alternative methods to the (p) factors and the capital floors to capture agency and modelling risk of securitisations that could be regarded as more proportionate? Please provide evidence to support your responses to the above questions.

	See our proposals for reviewing the calibration of the CRR while considering the recommendations of the High Level Forum on CMU for Articles 259-264 thereof, as set out in Appendix 1 page 69.
10.	**Maturity** With reference to question 9, the level of the maturity of the tranche has an important impact on the calculation of the (p) factor in SEC-IRBA, the look-up table of SEC-ERBA, and indirectly in the calibration of the (p) factor in SEC-SA in order to keep the relative capital charges under the hierarchy of approaches. EBA Guidelines on the determination of the weighted average maturity of the contractual payments due underthe tranche have provided a methodology to calculate the maturity of a tranche in a more accurate way, helping to mitigate that impact.
10.1.	Do you think that the impact of the maturity of the tranche is adequate under the current framework? Yes No No opinion Please explain your answer. AFME Members disagree with the different treatment of prepayments when calculating the WAM for a tranche in a traditional securitisation compared with a synthetic securitisation. More particularly, we disagree with the prohibition in the current EBA Guidelines on taking prepayments into account in synthetic securitisations. This approach is not consistent with market practice and results in the regulatory tranche maturity for synthetic securitisation tranches being much longer than its actual maturity. We understand from previous discussions with the EBA that this different treatment stems from the EBA's interpretation of the Level 1 text of Article 252(1), which it considers does not permit prepayments to be taken into account in synthetic securitisations. While we disagree with this interpretation, if that is the basis for the different treatment, we request that the Level 1 text be amended so as to permit prepayments to be taken into account. As an illustration of how the current rules produce an illogical outcome, the industry expects an increase in the issuance of synthetic securitisations linked to residential mortgages going forwards, particularly following the introduction of Basel IV. Residential mortgages are an asset class with a clear and well-understood prepayment behaviour, with significant historical data to back up any assumptions. Where such historical data exists, there is simply no reason for disallowing prepayments to be taken into account simply because the transaction is a synthetic securitisation rather than a traditional securitisation. Further, the treatment of revolving periods prescribed by the WAM guidelines is unnecessarily complex, introducing modelling difficulties whilst making the final WAM numbers harder to interpret, resulting in a potential misunderstanding of the true risk of a tranche. We are therefore supportive of reverting this treatment to the logic included in the original WAM consultation paper.

	Finally, the impact of tranche maturity is not the same for both investors and originators. This is particularly the case in the case of SRT transactions. While a longer tranche maturity does equate to more risk for an investor, from the originator's perspective it also equates to more risk being transferred to the investors, and thus less risk retained by the originator. Accordingly, all other things being equal, a SRT transaction with a longer maturity should be viewed more positively. However, the current rules would penalise this greater maturity. Other equivalent hedging tools (e.g. CDS) are already treated more favourably by the CRR when being executed for longer periods. For a more detailed discussion of these issues, we refer to Appendix 5: AFME's response to the EBA consultation on draft Guidelines on the determination of the WAM dated October 2019 (here). For traditional cash securitisation, the EBA Maturity guidelines have already provided clarity. However the EBA mandate for the guidelines was limited to Article 257(1). This means that Article 257(3) has not been clarified by the EBA. This causes significant problem for private funding transactions, either through balance sheet or ABCP. Indeed, in these transactions, the banks provide client funding in the form of contractual commitment instead of a purchase of notes. As such, these transactions fall under article 257(3) for the maturity estimation. Article 257(3) is unclear on how the longest maturity of underlying exposures is taken into account after the revolving period. It would be helpful for the EBA to clarify that the same rules developed for Article 257(1) can be applied. Specifically the maturity would be either based on legal final maturity or revolving period + WAL for amortisation assuming conservatively longest maturity for underlying exposures at the end of the revolving period.
10.2.	Is there an alternative way of considering the maturity of the tranche within the securitisation framework? Yes No No opinion Please explain your answer. AFME Members consider that the regulations should apply the same approach as is commonly used by market parties. We would welcome the opportunity to discuss this approach with you further. In addition, a significant reduction of the p factor as recommended in answers to the questions of section 9 would also mechanically address the issues resulting from the way the maturity is considered in the current securitisation framework.
11.	**Treatment of STS securitisations and asset-backed commercial papers(ABCPs) for the liquidity coverage ratio (LCR)** STS securitisations currently qualify as level 2B assets under the LCR delegated act, subject to certain additional requirements laid out therein. If STS securitisations were

	reclassified as level 2A, up to 40% of a credit institution's liquidity buffer could be made up of STS securitisations. ABCPs may qualify as STS securitisations but do not meet the necessary requirements to qualify as liquid assets for LCR-purposes.
11.1.	a) Should STS securitisations be upgraded to level 2A for LCR purposes? Yes No No opinion Please explain your answer. Yes. See Section 5 of Appendix 1 specifically page 63 which summarises previous and extensive advocacy by AFME over many years on this point. Not only has STS securitisation not been adequately recognised in the LCR rules but in some ways the transposition of the STS framework into the LCR rules actually made things worse by failing to carry over previous references to the Standardised Approach limiting LCR eligibility to AAA ratings when previously CQS 1 allowed ratings from AAA to AA, as well as by excluding non-STS securitisations completely. See also Appendix 6: AFME's Response to LCR Revision, dated February 2018 (here); Appendix 7: AFME's Position Paper on LCR Revision, dated September 2018 (here) and Appendix 8: AFME's Letter to Vice-President Dombrovskis, dated 11 October 2018 (here). b) If you answered 'yes' to question 11.1(a), should specific conditions apply to STS securitisations as Level 2A assets to mitigate a potential concentration risk of this type of assets in the liquidity buffer. Please support your arguments with evidence on the liquidity performance of STS securitisations or parts of the market thereof, providing in particular evidence of the liquidity of the asset in crisis times such as March 2020. For the 40% liquidity buffer of a credit institution to be made up exclusively of securitisations, the market in the EU would have to grow very considerably. Also, the existing LCR rules already make provision to mitigate concentration risk by limiting shares and haircuts. These are already set very conservatively for STS securitisations (non-STS securitisations do not quality for LCR at all). Should the Commission be willing to contemplate changes to the LCR rules then further detailed discussion will be required to set appropriate parameters for both STS and non-STS securitisations. With regard to evidence of liquidity performance, this shows that securitisations have a strong track record of liquidity, in many cases as good as covered bonds. Indeed, AFME has consistently argued that many types of securitisations have demonstrated good levels of liquidity through and since the crisis.

In January 2014, Professor William Perraudin of Risk Control Limited published Covered Bond versus ABS liquidity: A comment on the EBA's proposed HQLA Definition (link included in Appendix 7 but also here

http://www.riskcontrollimited.com/insights/covered-bond-versus-abs-liquidity/

which showed that securitisations and covered bonds did not exhibit radically different levels of liquidity. Indeed, based on bid-ask spreads some securitisations have been more liquid than covered bonds.

In summary its conclusions were that when bid-ask spreads were examined:

- while on average covered bond bid-ask spreads were narrower than those of securitisations generally speaking, spreads for the more liquid securitisations were narrower than those of covered bonds, especially during the sovereign debt crisis of 2011-2012;
- some short maturity securitisations such as auto-loan backed securitisations demonstrated liquidity which was comparable to covered bonds and indeed markedly superior to nonPfandbriefe covered bonds; and
- there was a danger in relying on a single dataset (as the EBA did in its conclusions regarding the treatment of securitisation under the LCR), and on methods which relied heavily on frequency of trading and turnover - rather than using trading cost measures such as spreads. For example, during the global financial crisis, when investors in auto ABS wished to dispose of their paper they were able to do so.

AFME is working with Professor Perraudin to update this analysis and hopes to be able to provide its findings shortly.

11.2. a) Should ABCPs qualify as level 2B assets for LCR purposes?

Yes
No
No opinion

Please explain your answer.

ABCPs are high quality short-term instruments which liquidate into cash over a short timeframe, usually 1-3 months. Therefore in principle we believe they should qualify for the LCR and if they are STS ABCP they should qualify as Level 2A assets not Level 2B.

ABCP programmes in Europe are structured with fully supported liquidity lines which makes them very much like 'short term covered bonds'. Covered bonds are qualifying for LCR purpose so the rule should also apply to ABCP.

The main goal pursued by all sponsors of ABCP programs in Europe is to expand the investors base. This is quite easy to achieve in US: US investors are well educated about ABCP and find multi-seller fully supported ABCP attractive. Therefore, the

US investor base for ABCP programmes issuing USCP is quite broad and can easily be tapped into. Investors who would typically invest in such ABCP programmes are money market funds, separate managed accounts, banks, corporate, municipalities, and they are typically confident with investing in ABCP issued by ABCP programmes sponsored by European banks.

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

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

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

b) Should specific conditions apply to ABCPs as level 2B assets for LCR purposes.

Please support your arguments with evidence on the liquidity performance of ABCPs, providing in particular evidence of the liquidity of the asset in crisis times such as March 2020.

Yes, such ABCP should be issued by ABCP programmes with fully supported liquidity lines provided by their sponsor banks.

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

See further Appendix 9: AFME's letter to the ECB dated 9 April 2020 (here); Appendix 10: AFME presentation to the ECB and EBA on "ABCP Structures in the

	context of eligibility under the ABS Purchase Programme, August 2020 (here); and Appendix 11: AFME DSA and TSI letter to the EBA dated 31 March 2021 (here).
12.	**SRT tests** The recent EBA report on significant risk transfer (SRT) recommended improving the current SRT tests, the specification of the test on the commensurate transfer of risk (CRT test) and the implementation of a new principle-based approach test (PBA test). The allocation of the lifetime expected losses (LTEL) and the unexpected losses (UL) of the underlying portfolio plays a fundamental role in those tests. In synthetic securitisations in particular, the consideration of optional calls and the application of Article 252 of the CRR on maturity mismatches affect the outcome of the tests. Optional calls shorten the expected life of the deal, reduce the LTEL as a result, and favour the allocation of the UL to the tranches that provide credit enhancement, while, at the same time, such calls may trigger the application of Art. 252 on maturity mismatches, thus increasing the capital charge on the tranches retained by the originator.
12.1.	Do you agree with the allocation of the LTEL and UL to the tranches for the purposes of the SRT, CRT and PBA tests, as recommended in the EBA report? Yes No No opinion Please explain your answer. AFME Members have a number of significant concerns with the proposed allocation of LTEL and UL to the tranches of a securitisation for the purposes of the SRT, CRT and PBA tests set out in the EBA report. First, our view is that the tests are fundamentally flawed by treating any amounts of LTEL and UL which are absorbed by synthetic excess spread or a retained first loss tranche as not having been transferred to investors. While obviously that risk has not been transferred, AFME Members consider that where such risk attracts either a 1250% risk weight or is treated as a deduction from capital, the effect for the purpose of determining whether or not the CRT and PBA tests or, in the case of synthetic excess spread, the first loss test, are satisfied should be essentially the same. Any concern that this could affect all transactions where the bank retains most of the risk to pass the CRT test should be allayed by the fact that a transaction would be unlikely to satisfy the mechanistic SRT tests in those circumstances, as well as by the reality that the resulting capital charge on those retained tranches would render such a transaction economically unviable. Further, we note that this would be consistent with the treatment of a full deduction transaction, where the originator is not required to satisfy either the mechanistic SRT tests or the CRT test precisely because it is applying a 1250% risk-weight to, or fully deducting, the retained tranches. Requiring the originator to hold capital against synthetic excess spread and any retained first loss on that basis, while also treating that risk as retained for the purposes of the CRT and PBA tests is effectively a form of double-counting, and

makes it almost impossible to pass the CRT test for most securitisations where they do make use of synthetic excess spread. In this regard we also note that, since the EBA report was published, the CRR has been amended to include the requirement for the originator to hold capital against synthetic excess spread (although the industry is still awaiting the draft regulatory technical standards required to implement this), which only reinforces this effect of double-counting.

Secondly, as we understand from informal discussions with the authorities, the allocation mechanic has been based on the assumptions that the originator will exercise a time call at the first available opportunity, and that the securitised portfolio is comprised of bullet loans. Neither of these assumptions are a reasonable basis for a mechanism which is to have general application. In the first place, it is common for originators *not* to exercise time calls at the first opportunity. Secondly, most portfolios tend to be comprised of a mix of exposures, many of which will be amortising rather than bullet.

Since the EBA report was published, AFME Members have been analysing the impact of the allocation mechanic and the proposed PBA and CRT tests on real life transactions, and the reality is that many existing transactions which have been approved would fail the tests under the proposed approach. Please see the examples attached at Appendix 12 (here) for an illustration of how this is the case.

In particular, the back-loading of UL in a stressed scenario makes it very difficult for transactions which involve pro-rata amortisation to satisfy the test, as by the time the UL are deemed to occur, significant amortisation of the protected tranche(s) would have already occurred. This is not reflective of the reality of transactions where defaults (and therefore losses) tend to be spread more evenly over the life of the transaction. Thus, in a stressed scenario, those losses would cause there to be less amortisation (or trigger the switch to sequential amortisation), therefore ensuring sufficient protection remains to cover those losses as they materialise.

Although our view is that the existing proposals need significant rethinking, if the existing proposals are retained, one potential amendment to the tests which AFME members would support would be to amend the UL event, distributing the UL across the life of the transaction using the same back-loaded vector proposed by the EBA for the distribution of expected losses (i.e., 33.3% of UL allocated to first 2/3 of transaction, and 66.6% allocated to final 1/3, as determined by the timing of the clean-up call). We believe this would meet the EBA's objective of providing a significant stressed loss scenario to SRT structures on a consistent basis across banks, which is also relatively simple to model and monitor. Analysis from AFME members shows that this amendment would continue to provide a significant stress to test the efficacy of structures, whilst (a) not relying on the use of a time call and (b) allowing existing transactions that have already been approved as transferring significant risk to investors to pass the new tests.

We also question the merits of the PBA test. If its purpose is to ensure that the thickness of the mezzanine tranche(s) placed with investors is large enough, that purpose is already achieved through the operation of the securitisation framework. That is, if the mezzanine tranches are too thin, the effect will be either a thick retained first loss tranche (attracting a 1250% risk-weight) or a higher risk-weight for the retained senior tranche. In both cases, even though the transaction may pass the

	mezzanine mechanistic test, it would not be economically viable as it the capital savings generated would not be sufficient to justify the cost of the protection. Thus, while we see merit in replacing the mechanistic tests in general with the PBA test (see our response to Question 14.1, below), we do not see any benefit from including the PBA test within the existing framework. Given the low loss rates for SRT securitisations across the EU throughout the credit cycle (indeed, there have been no cases of losses being borne by retained senior tranches), this is not the time to be raising the bar to achieving SRT even higher than it already is. On the contrary, given that originators have been using SRT securitisations very successfully to transfer risk out of the banking sector, we would argue that there is in fact no need at all to introduce such highly formulaic and prescriptive tests which almost inevitably will prevent many prudent transactions from achieving SRT, while also allowing some riskier transactions to achieve SRT. While we appreciate the EBA's goal of achieving harmonisation, given that the proposed asset process for SRT still leaves significant discretion to competent authorities in any case (as to which see our responses in section 13), it is difficult to see what real benefit is achieved by the CRT test. If, nevertheless, such prescriptive tests are to apply. it is therefore important that whatever mechanisms are applied for assessing commensurate risk transfer, and therefore the allocation of losses to tranches, is assessed against the many existing transactions which are performing well in the market, and is not based on theoretical approaches that do not reflect the real world experience. We therefore strongly urge the regulators to give further consideration to the impact which these proposed requirements will have, and calibrate them by reference to real world examples, before proceeding with unnecessarily burdensome changes.
12.2.	What are your views on the application of Art. 252 of the CRR on maturity mismatches when a time call, or similar optional feature, is expected to happen during the life of the transaction? AFME Members consider that the position in Article 248 of the CRR (which applies by cross-reference in Article 252(1)(a)) is clear on this point. A call option which can be exercised only at the discretion of the originator should only be considered to affect the maturity of the credit protection where "the terms of the arrangement at origination of the protection contain a positive incentive for the [originator] to call the transaction before contractual maturity". The reference here to the "terms of the arrangement" refers to the contractual terms between the originator and the investors, and not to extra-contractual factors which may or may not be relevant for the parties. For example, a step-up in the fee payable, a change in eligibility criteria or a change in the amortisation mechanics which only applies if the call is not exercised are all examples of terms of the arrangement which could constitute a positive incentive for the originator to exercise the call, although we note that such features are extremely rare in SRT transactions and would likely receive significant scrutiny from competent authorities as part of the SRT assessment process anyway. However, a change in the economic benefit of the transaction as a result of factors such as changing market conditions, the performance of the securitised portfolio or a change in the amount of capital relief generated by the transactions are <u>not</u> examples of the terms of the arrangement, and thus do not affect the maturity. It must be remembered

that the purpose of the maturity mismatch provisions is to avoid risk which appears to have been transferred coming back onto the originator's balance sheet for reasons outside of its control. Thus, absent any contractual penalty for not exercising the call, it is indeed appropriate that the originator is able to take into consideration non-contractual factors in deciding whether or not to exercise a call. Further, in many cases, when an originator exercises a call it does so alongside the execution of a new, and more efficient, transaction, and so rarely does the exercise of the call actually involve a meaningful increase in the bank's capital requirements viewed as a whole. It is also the case that while an originator may go into a transaction expecting to exercise a call, that will be on the assumption that the portfolio performs as expected, in which case both existing and expected future losses will be very low anyway. However, if circumstances have changed and the portfolio is not performing as well as expected, the originator can simply decide not to exercise the call (and it is likely that any non-contractual incentives it may have originally had for expecting to do so are no longer applicable).

For these reasons, we strongly disagree with any suggestion that the existence of an originator time call should be considered to create a maturity mismatch for the purposes of Article 252 unless the contractual terms themselves impose a penalty on the originator if it chooses not to exercise the call.

13. SRT assessment process

Section 5 of the EBA report on SRT laid out a series of recommendations on a suggested process for assessing SRT and standard documentation to be submitted to the originator'scompetent authority.

13.1. What are your views on the EBA-recommended process for theassessment of SRT as fully set out in Section 5 of the EBA report on SRT?

Given the implications of recognising that a securitisation achieves significant risk transfer (ie, the ability for the originator to derecognise the securitised exposures for capital purposes), AFME Members appreciate that the SRT assessment process plays an important role in ensuring that SRT transactions do in fact achieve effective risk transfer, in both form and substance.

We also appreciate that the assessment of SRT is not intended to be merely a "box-ticking exercise" or a replacement for the exercise of proper supervisory judgment by competent authorities. At the same time, however, the purpose of the rules should be to provide greater certainty, along with standardisation and simplification for all stakeholders, and to ensure that the requirements of the CRR are being applied consistently across the EU. It is therefore important that the exercise of supervisory discretion is limited to circumstances which are not expressly contemplated in the regulations, and that where a transaction *does* comply with the requirements set out in the regulations, originators are entitled to expect that they will be permitted to recognise SRT.

It is also important that the SRT assessment process takes into account the realities associated with bringing a transaction to market. Securitisations are not executed unilaterally by originators independently of market conditions. Rather, they are the product of negotiations and analysis on the part of all stakeholders, including the capital and portfolio management team with in the originator and the investor community, and the terms of the transaction will often be subject to change right up until pricing. This is particularly the case for SRT securitisations, which often (though not exclusively) involve only a small number of dedicated investors who spend considerable time on due diligence and working with the originator to agree terms that are mutually beneficial for all parties. An assessment process that is too lengthy, which involves too much uncertainty as to the eventual outcome, or which effectively requires the terms of the transaction to be fixed many months prior to closing does not reflect this reality.

Against this backdrop, AFME Members welcome the EBA’s proposals to provide a prescribed assessment process for SRT transactions. In particular, the proposal to provide for a dual-track assessment framework based on an initial determination by the CA as to whether a "structural features review" is required is a positive development. Nevertheless, we do have a number of concerns with the detail of the proposed process.

First, AFME members feel that three months is simply too long a time for the initial assessment by the CA as to whether or not a structural features review is required. Given the extensive information to be provided by the originator as part of the initial notification, we consider that one month would be a more appropriate time period for this initial assessment. This should then be followed by a period of no more than two months for a structural review if that is determined to be necessary.

Secondly, and particularly given the length of the initial assessment period, where no structural features review is required, there should be no need for an additional post-execution assessment period. Such additional assessment period creates significant uncertainty for both originators and investors as it means there is a risk that a regulatory call may need to be exercised shortly after closing. While we accept that the CA will need to confirm that the final transaction does in fact accord with what had been notified to it during the assessment process, this should be a quick process and the CA should only be able to re-open the assessment in these circumstances where it determines that the final documentation is not consistent with what had been presented during the assessment process.

Thirdly, the assessment process should also provide for an expedited assessment process for repeat transactions. Many originators have now established what are effectively "platforms" for SRT transactions, where the key transaction terms are largely unchanged from deal to deal. For those transactions, all that should be required is an assessment of the modelling underpinning the SRT and CRT tests, and not a full document review in the way that may be appropriate for a new transaction.

Fourthly, the assessment process needs to recognise that transaction documentation evolves during the course of negotiations between the originator and investors and cannot be effectively frozen many months before the proposed closing date. It is not practical to require full documentation to be submitted at the outset of the assessment process, particularly where the initial assessment period is three months. Indicative drafts of the key documentation can be provided, but there should be recognition that it will undergo amendment before closing, and ancillary documentation should not be required until closer to the closing date.

	Further, the regulations should state that there is a presumption *against* the need for a structural features review. The experience of many AFME members to date has been that there is a tendency for CAs to adopt an overly conservative approach to SRT assessments, and there is a significant risk that, in the absence of a stated presumption to the contrary, some CAs are likely to assume that a structural features review is required in almost all cases. This is particularly the case when faced with a transaction involving features which they have not previously encountered, even where those features fall within the scope of the safe harbours identified in the rules. This often leads to an inconsistent approach being taken by different CAs (and even different JSTs), which creates an uneven playing field for originators across the EU. Indeed, members have identified numerous examples where transaction features which have been approved by one CA or JST have been either rejected or referred for further consideration by another CA or JST. In this regard, AFME members welcome the EBA's work in identifying approaches to various structural features commonly seen in SRT securitisations should not be considered to hinder the recognition of SRT and would be pleased to see those reflected the regulations, although we have some reservations with the detail of some of those proposals. However, if implemented, they should significantly reduce the uncertainty around what is and what is not permitted in a SRT securitisation, and thus avoid the need for a structural features review in most cases. We also recommend that the introduction of the following mechanisms to assist CAs in the SRT assessment process. First, the EBA should facilitate a rapid "question and answer" process which can be used by a CA when it considers that it requires additional guidance in relation to a particular feature or transaction. The results of any such Q&A process should be made available to all CAs, which would help to ensure further consistency of approach across different CAs. Secondly, a register or database should be established containing details of transactions and features which have been considered and approved (or rejected) previously by CAs. The purpose of these mechanisms is not to prevent CAs from continuing to exercise their supervisory judgment, but rather to assist CAs in approaching issues which they may not previously have had to consider. This is particularly the case for CAs in smaller jurisdictions where there has obviously been much less experience with SRT securitisation to date.
13.2.	Do you agree with the standardised list of documents that the EBA report on SRT recommended for submission to the competent authority for SRT assessment purposes? In principle, AFME Members welcome the inclusion of a standardised notification template, and the list of documents proposed by the EBA in Recommendation 20 of the SRT Report is broadly sensible. However, we urge that a proper industry consultation is undertaken should this list be adopted in formal regulations.

13.3.	Once it has been established that the regulatory quantitative and qualitative criteria are met and transactions are in line with standard market practices, should a systematic ex-ante review be necessary? Yes No No opinion Please explain your answer. This depends on what a systemic ex-ante review would involve. As noted above, AFME Members recognise the importance of the SRT assessment process, and welcome the opportunity to engage with their CAs in relation to proposed transactions. However, where the transaction does satisfy the regulatory requirements, and does not exhibit any of the structural features which the EBA has identified should trigger a structural features review, any ex-ante review should in any case be a relatively straightforward process and, as set out in our response above, we consider that a one month assessment period should be sufficient for this.
13.4.	Should the ex-ante assessment by the Competent Authority be limited to complex transactions? Yes No No opinion Please explain your answer. See response to Question 13.3.
14.	**Amendments to CRR** Section 6 of the EBA report on SRT recommended a set of amendments of the CRR to simplify and improve the current SRT tests.
14.1.	Do you agree with the recommendations on amendments of the CRR as fully laid out in Section 6 of the EBA report on SRT? Yes No No opinion Please explain your answer. One change which is proposed (see Paragraph 211 of the EBA report) is to replace the existing first loss and mezzanine mechanistic tests with the PBA test. We would generally be in favour of this change, although only where, as indicated above, for the purpose of calculating the PBA test, the exposure value of any synthetic excess spread and retained first loss tranche which is assigned a 1250% risk-weight or is deducted from capital is treated as having been transferred. We do not, however, agree with the suggestion in Paragraph 212 of the EBA report that the tranches be weighted for this purpose in a similar manner to how the mezzanine mechanistic test

currently works. In our view this would add complexity and raise the risk of anomalies arising in the outcome the test. Further, given that this recommendation recognises that the existing mechanistic tests can lead to certain anomalies, if the mechanistic tests are retained, it should be clarified that where the mechanistic tests are not satisfied, but the PBA is are satisfied, this is a basis on which a CA could exercise its discretion under Articles 244(3) and 245(3) to recognise SRT.

In a similar vein, and as also noted in Section 4.4, we support the proposal set out in the High Level Forum report on Capital Markets Union that the commensurate risk transfer requirements should be disapplied in the case of a securitisation which satisfies one of the mechanistic tests in Articles 244(2) and 245(2).

In relation to the proposal in Paragraph 215 of the EBA report for securitisations positions which attach below $K_{IRB/SA}$ and detach above $K_{IRB/SA}$ to be treated as two separate tranches for the purposes of the SRT assessment, we agree that there may be circumstances in which this would be useful for an originator. However, at the same time, we do not think that such an approach should be mandatory, as given the non-neutrality of the SEC-IRBA and SEC-SA formulae, there will also be circumstances where this would produce a less efficient outcome for the originator. We would therefore support allowing originators the option to elect to divide the tranche, but without that being a mandatory requirement.

As noted above, the proposal in Paragraph 216 of the EBA report for synthetic excess spread to be considered a retained position in the case of synthetic securitisations has already been included in the CRR, although the industry is still awaiting the regulatory technical standards setting out how to calculate the exposure value of that retained position. AFME Members remain of the view that synthetic excess spread should be treated the same way as excess spread in traditional securitisations, and thus not attract a capital charge. Excess spread represents unrealised income expected to be generated by the underlying exposures, which has not yet been earned or reflected in the originator's profit and loss accounts, and against which it is not required to hold any capital if those exposures are not securitised. Unless the amount of synthetic excess spread is greater than the income expected to be generated by the portfolio, it is therefore both inappropriate and inconsistent for there to be any requirement for the originator to hold capital against this excess spread. Synthetic excess spread is not a widely-used feature in most synthetic SRT securitisations at present, with the notable but systemically important exception of transactions where the European Investment Fund acts as the protection provider. However, in those transactions where it is used, it is essential in order to make the transaction economically viable. We remain of the view that the benefits for the originator (and, therefore indirectly, the financial system more broadly) of de-risking through synthetic securitisation involving the use of synthetic excess spread, significantly outweighs any concerns about the commitment of synthetic excess spread weighing on the future profit and loss account of the originator. If the new text in Article 248(1)(e) of the CRR is applied literally, and the exposure value of the synthetic excess spread is calculated as being equal to maximum remaining future amount of synthetic excess spread that will be available, that will render the use of synthetic excess spread economically unviable in virtually all cases. If that is the regulatory intent (which we do not think is the case), then a prohibition on the use of synthetic excess spread would be more straightforward. However, on the basis that the rules do not prohibit the use of synthetic excess spread, it should also not be the intention for that to be the de facto outcome of the requirement to hold capital against synthetic excess spread. We therefore urge the regulators to approach the calculation of the exposure value for synthetic excess spread in the regulatory technical standards in a way which does not have this effect.

In this regard, we note that, although the drafting of paragraphs (e)(ii)-(iv) of Article 248(1) of the CRR is not clear, if interpreted in a way which is consistent paragraph (e)(i) of that article, it does leave open the possibility that, if synthetic excess spread is structured to absorb losses only when and if the underlying assets have actually generated sufficient excess spread for the purpose (i.e., it is akin to "actual excess spread" as employed in traditional securitisations), and is hence not a commitment of the originator, this amount will not be subject to capital requirements (as is the case for traditional excess spread) until it has been recognised by the originator in its income statement. However, this approach is closed off by the EBA SRT report which recommends that synthetic excess spread should only be permitted in a synthetic SRT securitisation where it takes the form of a fixed nominal commitment, thus rendering paragraph (e)(i) of Article 248(1) redundant. (The same is the case for a synthetic STS securitisation, where Article 26(e)(7) also requires synthetic excess spread to take the form of a fixed nominal commitment.) In this, the EBA SRT report also proposes the creation of an un-level playing field between traditional and synthetic securitisations, without providing any justification for this discrimination.

Paragraph 217 of the EBA report notes the current inconsistency in the fact that transactions where the originator applies a 1250% risk weight to, or fully deducts, all the retained positions do not technically constitute SRT transactions, and are thus not subject to the supervisory assessment process set out in the report. This also means that the structural features discussed in the report are not technically applicable for full deduct transactions. This is despite the fact that full deduct transactions do need to comply with the basic requirements in Article 245(4) of the CRR which form the backdrop against which the structural features discussed in the EBA report are deployed in SRT transactions, and will also need to comply with the new requirement to hold capital against synthetic excess spread under Article 248(1)(e) of the CRR. Against this backdrop, the EBA recommended that full deduct transactions should be subject to the same requirements in relation to the structural features discussed in the EBA report, as well as the notification requirements in order to enable CAs to assess compliance with the requirements. AFME Members agree that the structural features should apply to full deduct transactions in the same way as to SRT transactions. However, any assessment process that applies for full deduct transactions should be limited to showing compliance with those features and should be more straightforward than is the case for SRT transactions. For example, because the originator is holding capital against the maximum loss it could suffer in respect of the securitisation, there should be no need for any detailed modelling showing the impact of amortisation provisions.

Although not mentioned in the EBA report, one additional change could be very beneficial for securitisation markets. The impact of guarantees (both portfolio and individual loan guarantees) provided by Member States to EU banks to support the post-Covid 19 economic recovery is significantly reduced where guaranteed loans are securitised, due to the inability (in general) of securitisation investors to recognise the guarantees as direct credit risk mitigation against their securitisation positions (even

	where the guarantee maps, economically, to the securitisation position held). This is due to eligibility issues, under the CRR credit risk mitigation rules, relating to "directness" and mismatch between the guaranteed exposure and the exposure in respect of which protection is sought. Such eligibility issues arise unless (as in the GACs and HAPs schemes) a guarantee has been expressly drafted to facilitate recognition as direct credit risk mitigation in the hands of a securitisation investor. Action to address this issue would significantly enhance the efficacy of support provided by Member States to support the post-Covid 19 economic recovery. It would enable EU banks to transfer the risk of guaranteed loans to market investors, and reduce their exposure to the sovereign guarantors of the loans, freeing the banks to lend further. It is our understanding that the CRR already facilitates recognition via $K_{IRB/SA}$ of credit protection (including Member States' loan guarantees) provided to originators and or SSPEs. However, where recognised via $K_{IRB/SA}$, the risk weight floors applicable to securitisation positions, and the non-neutrality of securitisation risk weighting in general, greatly reduce the benefit that can be recognised. A 15% (non STS) or 10% (STS) risk weight floor is clearly disproportionate in the context of a portion of a pool that benefits from a guarantee from an EU Member State. Further, it is not currently clear how state or IFI guarantees which are themselves tranched can or should be taken into account for this purpose, and further clarity is required on that in order to ensure that the full public benefit of those guarantees can be realised.
15.	**Solvency II** Insurance companies allocate only a small portion of their investments to securitisation positions. The Commission would like to know whether Solvency II standard formula capital requirements or other factors cause limited demand by insurance companies.
15.1.	Is there an appetite from insurers to increase their investments in securitisation (whether a senior tranche, mezzanine tranche, or a junior tranche)? Yes No No opinion We believe that Solvency II firms can play a far greater role on the buy-side in the European securitisation markets than they currently do, but any appetite to invest remains limited for now and well below its potential driven by harsh and distorted calibrations prescribed by the standard approach under Solvency II rather than because of any fundamental failings in the quality and appropriateness of securitisation as an investable proposition for insurers. We believe that if the miscalibrations of Solvency II are corrected, there would be greater investment by insurers. Essentially, investment in securitisation by insurers has never recovered from the stigma of securitisation following the GFC which has been reinforced by the Solvency II standard approach.
15.2.	Is there anything preventing an increase in investments in securitisation byinsurance companies?

	Yes No No opinion Please explain your answer. Yes, see our answer to question 15.1.
15.3.	Is the current calculation for standard formula capital requirements for spread risk on securitisation positions in Solvency II for the senior tranches of STS securitisations proportionate and commensurate with their risk, taking into account the capital requirements for assets with similar risk characteristics? Yes No No opinion Please be specific in your reply and, where relevant, provide a comparison, including where appropriate with internal models and their relative impact on the share of securitisation investments. The standard approach under Solvency II for senior tranches has improved somewhat and is not the most critical issue in this context. However, this is of limited impact as insurers rarely invest at the senior level as the spreads available are too tight for their return objectives. See Appendix 13 (here) which lists extensive AFME advocacy on this issue over many years. See also Section 5 of Appendix 1, pages 64 and 72-73. AFME's members are banks rather than insurance companies so we regret we are unable to provide a comparison with internal models.
15.4.	Is the current calculation for standard formula capital requirements for spread risk on securitisation positions in Solvency II for the non-senior tranches of STS securitisations proportionate and commensurate with their risk, taking into account the capital requirements for assets with similar risk characteristics? Yes No No opinion Please be specific in your reply and, where relevant, provide a comparison, including where appropriate with internal models and their relative impact on the share of securitisation investments. The standard approach under Solvency II is most definitely not proportionate for non-senior tranches. See extensive AFME advocacy on this issue over many years, including AFME's Response to the EC Consultation on Solvency II, dated October 2020 and linked as Appendix 13. See also Section 5 of Appendix 1, pages 64 and 72-73.

	AFME's members are banks rather than insurance companies so we regret we are unable to provide a comparison with internal models.
15.5.	Is the current calculation for standard formula capital requirements for spread risk on securitisation positions in Solvency II for non-STS securitisations proportionate and commensurate with their risk, taking into account the capital requirements for assets with similar risk characteristics? Yes No No opinion Please be specific in your reply and, where relevant, provide a comparison, including where appropriate with internal models and their relative impact on the share of securitisation investments. The standard approach under Solvency II is most definitely not proportionate for non-STS tranches. See extensive AFME advocacy on this issue over many years, included in Appendix 13 (here). See also Section 5 of Appendix 1, pages 64 and 72-73. AFME's members are banks rather than insurance companies so we regret we are unable to provide a comparison with internal models.
15.6.	Should Solvency II standard formula capital requirements for spread risk differentiate between mezzanine and junior tranches of STS securitisations? Yes No No opinion Please explain your answer. Yes but with a more balanced and proportionate calibration and avoiding cliff effects. See the analysis referred to in our answer to questions 15.4 and 15.5.
15.7.	Should Solvency II standard formula capital requirements for spread risk differentiate between senior and non-senior tranches of non-STS securitisations? Yes No No opinion Please explain your answer. Yes but with a more balanced and proportionate calibration and avoiding cliff effects. See the analysis referred to in our answer to questions 15.4 and 15.5.

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