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Financial Law Committee of the City of London Law Society response to the Consultation Document of the European Commission on "An EU framework for simple, transparent and standardised securitisation"

The City of London Law Society ("CLLS") represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government Departments, often in relation to complex, multijurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.

This response to the Consultation Document "An EU framework for simple, transparent and standardised securitisation" published by the European Commission on 18 February 2015 (the "Consultation") has been prepared by the CLLS Financial Law Committee.

The CLLS is registered on the European Commission's Transparency Register, and its registration number is 24418535037-82.

We welcome the Commission's efforts to establish a framework for "qualifying" simple, transparent and standardised securitisations and we are grateful for the opportunity to comment on the Consultation.

The Association for Financial Markets in Europe ("AFME") has provided us with a draft of its response to the Consultation (the "AFME Response"), which we have reviewed while considering our response to the Consultation. Many members of the Financial Law Committee of the City of London Law Society are also members of AFME and we generally agree with the comments made in the AFME Response. In our response we will not repeat comments made in the AFME Response; instead we focus on those questions to which we feel we can add the most, as practising lawyers in the area.

We have also considered the response to the Consultation already submitted by the Bank of England and the European Central Bank (the "BoE/ECB Response").

We would be happy to discuss our responses in further detail with the Commission.

Key messages:

1. In general, we support the suggestion of establishing a framework for "qualifying" simple, transparent and standardised securitisation. In our view, to make this initiative successful, it will be important to set out the principles of such a framework clearly but without being overly prescriptive in the Level

1 legislation. To allow the necessary flexibility to cater for future market developments at the same time as providing legal certainty, we suggest that the foundation criteria should comprise clear guiding principles with details of how such principles should be applied set out in technical guidance. Such guidance could be adapted more quickly and easily than Level 1 legislation to address changes in the market. The Level 1 legislation will need to contain provisions which permit delegated powers of sufficient breadth for this to work. We would advocate that the foundation criteria are set out in an EU regulation, rather than a directive, to achieve a consistent application of the criteria across the EU.

2. We agree with comments made in the AFME Response and in the BoE/ECB Response that the regulatory treatment of qualifying securitisations should be adjusted to achieve a more level playing field with competing fixed income products, in particular covered bonds. In our view, it is hard to justify the current differential treatment of covered bonds and securitisations based on empirical evidence from the European market. We note that in the Consultation, the Commission states that "investors in Europe have generally preferred covered bond instruments. This may have been due to the existence of well-developed national frameworks being in place and the higher degree of guarantee offered by their dual recourse nature (where the claim can be made to both the underlying pool of assets and on the issuer). This is in contrast to securitisation which offers recourse only to the underlying assets." Our understanding from clients is that one of the key drivers for the recent preference has been the differential regulatory treatment, rather than differences in the legal frameworks. We would also note that much covered bond legislation is untested and covered bonds are no more proven against legal challenges than securitisations.

3. In order to achieve the Commission's aims of developing a sustainable European securitisation market in the near future, it is important that new rules are quickly put in place: (a) to address existing issues as soon as possible and (b) to avoid an extended period of uncertainty potentially deterring activity in the market.

4. We would welcome transitional relief for existing securitisation transactions, perhaps along the lines of the approach taken for Solvency II Type 1 Securitisations.

Question 1:

A. Do the identification criteria need further refinements to reflect developments taking place at EU and international levels? If so, what adjustments need to be made?

We support the principles-based approach and foundation criteria suggested in the AFME Response and would add the following comments:

1. In our view, this initiative stands the best chance of success if the principles setting out the criteria for qualifying securitisations are general and clear but not overly prescriptive. If the criteria are overly prescriptive, there is a substantial risk that the majority of transactions would be unable to comply due to some element of the criteria. If the majority of securitisations do not qualify, we would not expect this initiative to have a significant impact on the market. Therefore, we would suggest setting out general, principles-based criteria for qualification in the Level 1 legislation, with more detailed guidance about how the criteria will be applied being provided by the European regulatory bodies through Level 2 technical provisions and detailed Level 3 guidance. For this to work, the Level 1 legislation must contain provisions which permit delegated powers of sufficient breadth. This would enable the framework to be more flexible, to adapt to changes in the market and to address any teething issues with the new rules quickly, as and when they arise. We would advocate that the foundation criteria are set out in an EU regulation, rather than a directive, to achieve a consistent application of the criteria across the EU.

2. It will be important to use a clear, and appropriate, definition of "securitisation" so that the market has certainty about what is and is not a securitisation, before deciding whether a securitisation is qualifying or non-qualifying. In our view, the current definition of securitisation from Regulation 575/2013/EU (the "CRR") is too wide and unclear as to its scope. If this definition is used, it would be helpful if the authorities could provide more detailed guidance on its scope. Legal counsel have encountered various situations where it is unclear from the current rules and guidance whether or not certain transactions fall within the scope of the CRR securitisation definition; there are many structures which appear to be a "securitisation" according to a strict reading of the definition, but ought not to be when considering the purpose of the rules and the mischief they were seeking to address.

3. Careful consideration needs to be given to the labelling of qualifying securitisations to avoid sending a potentially misleading signal that qualifying securitisations have a lower credit risk than non-qualifying securitisations, which will not always be the case.

4. We would welcome transitional relief for existing securitisation transactions, perhaps along the lines of the approach taken for Solvency II Type 1 Securitisations.

B. What criteria should apply for all qualifying securitisations ('foundation criteria')?

1. We agree with the general foundation criteria suggested in the AFME Response. We would advocate using those as a starting point rather than the criteria proposed by the EBA in its Discussion Paper published on 14 October 2014.

2. We note that the Consultation refers to “true sale” as a potential element of standardisation criteria. Due to the differences between Member States’ legal systems, we think it would be more helpful to frame the criteria in terms of achieving an effective isolation of assets from an insolvent originator’s estate than attempt to specify the method of transfer required. Whether there has been an effective isolation of assets on the insolvency of an originator can only be judged according to the applicable national law governing the arrangement.

3. Consideration should be given to permitting certain forms of synthetic securitisation to qualify as simple, transparent and standardised securitisation. This is particularly important if the Commission wishes to encourage securitisation of SME loans; our experience to date is that most, if not all, securitisations of SME loans have used synthetic structures. Please see our response to Question 16 for further discussion of this.

Question 2:

A. To what extent should criteria identifying simple, transparent, and standardised short-term securitisation instruments be developed? What criteria would be relevant?

We generally agree with the comments made in the AFME Response and would add the following comments:

1. We are encouraged by the support for short-term securitisations and, in particular, asset-backed commercial paper programmes (“ABCP programmes”). ABCP programmes provide corporates with additional, flexible, stable and potentially cheaper financing against trade receivables originated in the ordinary course of their businesses; it is an additional funding tool that helps companies diversify their treasury platform and reduce over-reliance on bank lending and other capital market financings. The programmes have also helped to increase the overall credit supply to the real economy by financing consumer loan products, such as auto-loans/leases, consumer loans and credit cards. The promotion of ABCP programmes to provide financing to the real economy should be encouraged, in particular, to allow companies to finance each stage of their working capital cycle (including inventory and work-in-progress in addition to trade receivables arising out of the sale of goods/supply of services). The criteria to be developed should take account of the key benefits of ABCP programmes and related and ancillary regulation should complement this approach (in particular, the proposed Money Market

Funds Regulation and Regulation 1060/2009 on credit rating agencies (the "CRA Regulation")).

2. We agree that short-term securitisations have particular characteristics which means that specific criteria identifying simple, transparent, and standardised short-term securitisation instruments should be developed.

3. It is critical that the criteria appropriately distinguish between (a) the ABCP programme and (b) each discrete transaction which it funds. The transactions funded by ABCP programmes typically, although not always, involve the sale or transfer of a static or revolving pool of receivables/assets (the "Transaction Assets") to a special purpose vehicle newly established solely for the purpose of the relevant transaction (the "Transaction SPV") which is not a vehicle forming part of, or operating within, the ABCP programme itself. The Transaction SPV funds its purchase/transfer of assets by issuing a note, other type of debt instrument or trust interest to, or by receiving advances under a loan facility provided by, the ABCP programme and, as a result, the Transaction SPV and the ABCP programme enter into a debtor/creditor relationship. Each debt instrument, trust interest or loan issued or made in connection with a transaction and subscribed for, or provided by, the ABCP programme will be the "asset" acquired by the programme (a "Programme Asset"). A transaction will often, by virtue of the tranching of the debt instruments/loans issued or provided in connection with it, fall within the definition of "securitisation" for the purposes of the CRR and, accordingly, a retention of five per cent. will be made in relation to it by the identified retainer (i.e., the originator or original lender of the Transaction Assets) – this retention will form part of the overall transaction-level credit enhancement.

4. It is assumed in a number of places in current EU legislation and technical guidance that each ABCP programme is directly purchasing pools of receivables or other assets (for example, see sub-paragraphs 3(j) and (k) of Article 259 of the CRR) which, as discussed above, is generally not the case. The use of Transaction SPVs and the form in which ABCP programmes acquire assets should be recognised and accommodated within the criteria as it is in the securitisation retention rules implemented in the United States.

5. The criteria will need to accommodate and recognise the internal structure of ABCP programmes. An ABCP programme is often, although not always, a securitisation "scheme" that may involve more than one special purpose vehicle. If it is a "scheme", there is typically at least one SPV responsible for issuing commercial paper (the "Issuing SPV") that applies the proceeds of each issue of commercial paper towards the financing of one or more SPVs responsible for acquiring Programme Assets (the "Asset Purchase SPVs"). An ABCP programme might also have features to ensure the sponsoring institution's participation in the programme is not in breach of US legislation, in particular, § 619 (12 U.S.C. § 1851) of the Dodd–Frank Wall Street Reform and Consumer Protection Act (the "Volcker Rule"). The criteria should not restrict the sponsoring institution's ability to comply with US legislation or in any way restrict the ability of ABCP programmes to fund themselves in the

US CP market, which is currently the principal source of funding for the majority of market participants.

6. The internal payment waterfalls within an ABCP programme will, in addition to the payment of ordinary expense items and hedging payments, provide for the repayment of ABCP in priority to the repayment of the programme-wide credit enhancement provided by the sponsoring institution. The criteria for simple, transparent, and standardised short-term securitisation instruments, while confirming that there will be no tranching of ABCP which is to be issued to investors as a single class, should not restrict the use of payment waterfalls required for the proper internal operation of ABCP programmes.

7. The criteria, and the benefits of satisfying them, should reflect the true credit exposure of the investors in ABCP. In circumstances where the ABCP programme benefits from full liquidity and credit support from its sponsoring institution (as required under retention option (a) by Article 5 of the Commission Delegated Regulation 625/2014) and that support is available in all circumstances to be drawn to repay any maturing ABCP, any investor need only make reference to the credit quality of the sponsoring institution as the liquidity and credit support provider in determining its credit exposure to the ABCP programme, rather than the credit quality of the underlying Programme Assets – a point which is already recognised in Recital 64 of the CRR.

8. This approach is justifiable because an important distinguishing feature from term bond-based securitisations and the transaction-level credit enhancement provided in relation to any transaction funded by an ABCP programme, is that the programme-wide credit support in any fully supported ABCP programme is provided by way of a commitment given by the sponsoring institution to advance new funding from outside the programme to ensure timely repayment of maturing ABCP and the programme-wide credit support does not rely on the tranching of credit risk to make cashflows from within the ABCP programme available to investors in ABCP on a priority basis. If the criteria identifying simple, transparent, and standardised short-term securitisation requires full liquidity and credit support, there is no reason why the criteria should make reference to the credit profile of the Programme Assets or the underlying transactions as the investors in ABCP should be viewed as holding a corporate exposure to the sponsoring institution.

9. Investors in ABCP will, if the sponsoring institution is unable to meet its obligations under the full supported programme-wide credit support, have additional recourse to the Programme Assets. We believe greater consideration should be given to the benefits of the character of ABCP that provides the economic equivalent of dual recourse and the comparisons which can be made between it and covered bonds.

10. As with other types of securitisation, we would suggest that the best way to provide legal certainty and the flexibility required to allow the rules to quickly react to the market is to set out principles-based rules in the Level 1 legislation and then set out the details of application in Level 2 technical standards and Level 3 detailed guidance.

B. Are there any additional considerations that should be taken into account for short-term securitisations?

1. To encourage the proper functioning of the ABCP market, it is critical that a sponsoring institution's aggregate risk-weighted exposure to its ABCP programme (and, in particular, the relevant Programme Assets), which arises out of its provision of programme-wide credit enhancement, is not determined to be a higher aggregate risk-weighted exposure than if it were to calculate its aggregate exposure to those Programme Assets if held directly on its balance sheet. Transactions are often funded by a club of lenders, a number of which may participate directly "on balance sheet" rather than through a related ABCP programme; any institution that opts to participate by way of its ABCP programme should not be at a disadvantage and subject to more onerous capital requirements because its exposure to the underlying transaction, while identical in terms of risk, arises through its provision of programme-wide credit enhancement rather than as a result of a direct exposure on its balance sheet.

2. If separate criteria are set out for the underlying securitisations, we would stress the importance that such criteria should not exclude transactions where receivables are originated in a number of different countries by different entities within a corporate group. This will be important to allow and encourage short-term securitisation as a funding tool for European businesses. Often, when European businesses securitise their trade receivables, they will include receivables originated by a number of different companies within the corporate group across a number of jurisdictions.

3. A more general point we would like to make is that to the extent the ABCP programmes and transactions funded by ABCP programmes are intended to be subject to a more appropriate set of disclosure obligations (in particular, to ensure that corporates are not required to disclose sensitive loan-level data containing information on their customer base and business strategy), legislation must be harmonised to ensure consistency with respect to those adjusted obligations (in particular, the CRA Regulation and disclosure and due diligence obligations under the CRR, Articles 52 and 53 of Commission Delegated Regulation 231/2013 (the "AIFM Regulation") and Article 256 of Commission Delegated Regulation 2015/35 (the "Solvency II Delegated Act")).

4. We would be happy to discuss our response to Question 2 in further detail with the Commission, if that would be helpful.

Question 3:

A. Are there elements of the current rules on risk retention that should be adjusted for qualifying instruments?

We agree with the comments made in the AFME Response.

B. For qualifying securitisation instruments, should responsibility for verifying risk retention requirements remain with investors (i.e. taking an "indirect approach")? Should the onus only be on originators? If so, how can it be ensured that investors continue to exercise proper due diligence?

We agree with the comments made in the AFME Response.

Question 4:

A. How can proper implementation and enforcement of EU criteria for qualifying instruments be ensured?

1. In order to develop a European capital market as a source of funding for European businesses, it is important the securities can be issued as quickly and efficiently as possible, while allowing for adequate investor protection. Implementation, enforcement and compliance monitoring of criteria for qualifying securitisations needs to be clear, certain and consistent across the Member States, and must not impede a quick and efficient issuance process.

2. Self-attestation by an originator or sponsor of qualification status, through standardised disclosure templates as suggested in the BoE/ECB Response, may offer advantages from a process perspective, provided that investors were content to rely on the originator's or sponsor's certification. However, our understanding from clients is that investors are unlikely to view self-certification as credible. If this is the case, then self-certification is unlikely to achieve the aims of this initiative.

3. One possibility for addressing the credibility issue would be for regulators to play an active role in supervising compliance with the criteria. Alternatively, independent third parties may be able to fill this space by certifying compliant transactions. However, this would raise a number of questions including: (i) whether such certifying bodies would have sufficient capacity to certify transactions in a timely manner; (ii) what processes a certifying body would have to go through to satisfy themselves that a transaction does qualify; (iii) what status such certifying bodies would have (e.g. would they have to be licensed and/or regulated); (iv) ensuring that certifying bodies are free of any conflict of interest; and (v) the consequences of incorrect classification by a certifying body.

4. As we see it, there is a real risk that if the onus is placed on investors to determine whether a transaction meets the criteria for qualifying securitisations, the extra burden and cost that this would place on investors would act as a barrier to the development of the securitisation market in Europe and the broadening of the investor base. If this route is followed (which we recommend against), it will be vital that regulators make available timely, active and authoritative assistance to investors in determining the correct treatment of securitisation instruments, including prior to any purchase of such instruments. In order to invest, investors will be interested not only in the treatment of a given instrument in their own hands, but also the treatment

of that security in the hands of other prospective investors as this will be an important factor in determining the liquidity and market price of their investment. Regardless of the approach taken, a high degree of regulatory reassurance will be needed to give investors confidence to re-enter the market.

B. How could the procedures be defined in terms of scope and process?

Please see our response to Question 4(A).

C. To what extent should risk features be part of this compliance monitoring?

Please see our response to Question 4(A).

Question 5:

A. What impact would further standardisation in the structuring process have on the development of EU securitisation markets?

1. There are limits to the extent structures can be standardised across the different Member States' jurisdictions. Structures have been developed over many years to accommodate particular national contract, property and insolvency laws. It would be an enormous task to achieve harmonisation of Member States' laws across all of these areas.

2. For example, we note that EC Regulation 1346/2000 on insolvency proceedings itself acknowledges the difficulties of widely differing laws across the Member States in Recital 11:

   "This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope throughout the Union. The application without exception of the law of the State of the opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing national laws on security interests to be found in the Member States."

   In the absence of universal insolvency laws, standardised structures are unlikely to be feasible.

3. It should also be noted that there is a limit to what can be achieved without changes being made to the European Treaties. Article 345 of the Treaty on the Functioning of the European Union provides that the Treaties shall in no way prejudice the rules in Member States governing the system of property ownership. This is generally understood to mean that, without the unanimous consent of the Member States, EU legislation cannot change the system of property ownership in any Member State. By way of example, proposals for a common European law on the sale of goods had to exclude from its scope the transfer of title in goods, which had to be left to applicable national law. In endeavouring to produce standard structures for securitisation transactions based on transfers of title to the securitised assets (i.e. excluding synthetic

securitisations), the limitation in Article 345 poses a challenge. It is an essential part of the securitisation process in "traditional" securitisations (as referred to in Article 243 of the CRR) that title in the securitised debts is effectively transferred, but this can only be judged according to the rules of the applicable national law (whether of an EU Member State or a third country) governing the arrangement under which the transfer of title is to be effected. Given the very different approaches of common and civil law systems to this question (and indeed within those two main legal systems as operated at national level), we consider that the most that could realistically be achieved would be the specification of the outcome to be achieved under applicable national law. As synthetic securitisations achieve a transfer of risk through the medium of contract law rather than property law, there may be more scope to achieve a harmonised approach to the transfer of risk, for example using the established ISDA methodology. Even so, we believe further legal analysis would be required.

4. There is a real danger that getting bogged down in a process to standardise structures across Europe would distract from more immediate and efficient ways to revitalise the European securitisation market and could end up paralysing the market. We would query whether any possible benefits from standardising the structuring process across Europe would be worth the likely high costs of the process required to achieve standardisation.

B. Would a harmonised and/or optional EU-wide initiative provide more legal clarity and comparability for investors? What would be the benefits of such an initiative for originators?

We do not think this should be pursued, for the reasons set out in our response to Question 5(A).

C. If pursued, what aspects should be covered by this initiative (e.g. the legal form of securitisation vehicles; the modalities to transfer assets; the rights and subordination rules for noteholders)?

We do not think this should be pursued, for the reasons set out in our response to Question 5(A).

D. If created, should this structure act as a necessary condition within the eligibility criteria for qualifying securitisations?

We do not think this should be pursued, for the reasons set out in our response to Question 5(A).

Question 6:

A. For qualifying securitisations, what is the right balance between investors receiving the optimal amount and quality of information (in terms of comparability, reliability, and timeliness), and streamlining disclosure obligations for issuers/originators?

We agree with the comments made in the AFME Response and would add the following comments:

1. We can see the advantages from a process perspective of greater harmonisation in data reporting. We would note, however, that there will always need to be some flexibility in the requirements to accommodate differences between the characteristics of different asset pools. For example, we understand from clients that loan level data may not be very helpful for highly granular asset classes such as credit card receivables; the vast quantity of data is not easy to analyse and providing such data can cause problems such as crashing websites. Pool level data is likely to be more helpful for these sorts of asset classes. Therefore, it is important that any rules in this area are not overly-prescriptive.

2. In the context of providing loan level data in relation to consumer debts, the addition of a safe harbour for securitisations to Directive 95/46/EC (the "Data Protection Directive") would be helpful. While well-written contracts between originators and customers can generally resolve such issues, as noted by AFME's response to questions 16(C) and 16(D), securitisation is often not the primary consideration when such contracts are drafted. Accordingly, there are still occasions when assets that would otherwise be ideally suited to securitisation cannot comply with the requirement to supply loan level data to investors. An appropriate exemption for such disclosures from the Data Protection Directive would assist in making such assets securitisable.

3. We also agree that where legally possible (subject to relevant data protection laws), investors and potential investors in public securitisation transactions should be given access to transaction documents on a consistent basis.

4. As set out in the AFME Response, we note that there are already comprehensive disclosure requirements for securitisations set out in the CRR, the AIFM Regulation and the Solvency II Delegated Act, and being introduced under Article 8b of the CRA Regulation. We would call for a single standard and mechanism of disclosure to be implemented via the various sets of rules.

5. It is important that private securitisation transactions are treated differently to public transactions when setting requirements for disclosure. As set out in detail in the AFME Response, private transactions are very different in nature to public transactions. The relationship between the originator and the investor tends to be much closer and interactive in a private transaction and investors typically have access to more information than in a public transaction, so it would be unnecessary to set the same disclosure requirements for private transactions as for public transactions. It would also be unsuitable to do so; we understand from clients that use private securitisations for funding that they

would have significant reservations about entering into a transaction which would result in them having to publicly disclose data which may disclose their business strategy or other business-sensitive information to the market.

B. What areas would benefit from further standardisation and transparency, and how can the existing disclosure obligations be improved?

Please see our response to Question 6(A).

C. To what extent should disclosure requirements be adjusted – especially for loan-level data – to reflect differences and specificities across asset classes, while still preserving adequate transparency for investors to be able to make their own credit assessments?

Please see our response to Question 6(A).

Question 7:

A. What alternatives to credit ratings could be used, in order to mitigate the impact of the country ceilings employed in rating methodologies and to allow investors to make their own assessments of creditworthiness?

This is primarily a commercial question for market participants other than legal counsel and accordingly we make no comment.

B. Would the publication by credit rating agencies of uncapped ratings (for securitisation instruments subject to sovereign ceilings) improve clarity for investors?

This is primarily a commercial question for market participants other than legal counsel and accordingly we make no comment.

Question 8:

A. For qualifying securitisations, is there a need to further develop market infrastructure?

We agree with the comments made in the AFME Response.

B. What should be done to support ancillary services? Should the swaps collateralisation requirements be adjusted for securitisation vehicles issuing qualifying securitisation instruments?

We agree with the comments made in the AFME Response.

C. What else could be done to support the functioning of the secondary market?

We agree with the comments made in the AFME Response.

Question 9:

With regard to the capital requirements for banks and investment firms, do you think that the existing provisions in the Capital Requirements Regulation adequately reflect the risks attached to securitised instruments?

This is primarily a commercial question for market participants other than legal counsel and accordingly we make no comment.

Question 10:

If changes to EU bank capital requirements were made, do you think that the recent BCBS recommendations on the review of the securitisation framework constitute a good baseline? What would be the potential impacts on EU securitisation markets?

This is primarily a commercial question for market participants other than legal counsel and accordingly we make no comment.

Question 11:

How should rules on capital requirements for securitisation exposures differentiate between qualifying securitisations and other securitisation instruments?

This is primarily a commercial question for market participants other than legal counsel and accordingly we make no comment.

Question 12:

Given the particular circumstances of the EU markets, could there be merit in advancing work at the EU level alongside international work?

We agree with the comments made in the AFME Response.

Question 13:

Are there wider structural barriers preventing long-term institutional investors from participating in this market? If so, how should these be tackled?

We agree with the comments made in the AFME Response.

Question 14:

A. For insurers investing in qualifying securitised products, how could the regulatory treatment of securitisation be refined to improve risk sensitivity? For example, should capital requirements increase less sharply with duration?

We agree with the comments made in the AFME Response. In particular we understand that the differential capital treatment of covered bonds and securitisations is an important consideration in determining investment in such instruments by insurers.

B. Should there be specific treatment for investments in non-senior tranches of qualifying securitisation transactions versus non-qualifying transactions?

On the assumption that the regulatory treatment should reflect the assessment of risk involved, it should follow that non-senior tranches of qualifying securitisations and all tranches of non-qualifying securitisations should not be subject to a blanket single treatment which may be inappropriate, and that senior tranches of non-qualifying securitisations should not *ipso facto* be incapable of obtaining a more favourable capital treatment than junior tranches of qualifying securitisations.

Question 15:

A. How could the institutional investor base for EU securitisation be expanded?

We agree with the comments made in the AFME Response.

B. To support qualifying securitisations, are adjustments needed to other EU regulatory frameworks (e.g. UCITS, AIFMD)? If yes, please specify.

We agree with the comments made in the AFME Response.

Question 16:

A. What additional steps could be taken to specifically develop SME securitisation?

We agree with the comments made in the AFME Response and also note that if the Commission wishes to encourage securitisation of loans to SMEs in the near future, consideration needs to be given to permitting some forms of synthetic securitisation to qualify as simple, transparent and standardised. In our experience, most, if not all, securitisations of SME loans have used synthetic structures. SME loans are routinely securitised using synthetic techniques because of the difficulties associated with traditional securitisation of such assets such as restrictions on assignment or other reasons why it is preferable for the lender and the borrower to maintain their direct contractual relationship. These reasons should not prevent the lender from releasing capital by transferring the credit risk. In our view, the general foundation criteria for simple, transparent and standardised securitisations should be designed to allow certain types of synthetic securitisation to qualify.

B. Have there been unaddressed market failures surrounding SME securitisation, and how best could these be tackled?

Please see our response to Question 16(A).

C. How can further standardisation of underlying assets/loans and securitisation structures be achieved, in order to reduce the costs of issuance and investment?

Please see our response to Question 16(A).

D. Would more standardisation of loan level information, collection and dissemination of comparable credit information on SMEs promote further investment in these instruments?

Please see our response to Question 16(A).

Question 17:

To what extent would a single EU securitisation instrument applicable to all financial sectors (insurance, asset management, banks) contribute to the development of the EU's securitisation markets? Which issues should be covered in such an instrument?

We agree with the comments made in the AFME Response and would also make the following comments:

1. While changes to the existing rules to make them more consistent would be helpful, we do not think it is necessary to put in place a single EU securitisation regulation. There is a real danger that getting bogged down in the process to develop a new body of rules would distract from more immediate and efficient ways to revitalise the European securitisation market, such as making regulatory capital treatment more appropriate and streamlining regulatory burden, and could create a level of uncertainty that hinders growth in the market in the short-term.

2. It would be helpful to ensure that existing rules are implemented consistently by national competent authorities across the EU. It appears that in some cases where harmonisation has occurred at the European level, “gold plating” still occurs at the national level. A key example of this is the European significant risk transfer regime, where many inconsistencies exist among different member states in its application, despite guidelines already issued by the European authorities.

Question 18

A. For qualifying securitisation, what else could be done to encourage the further development of sustainable EU securitisation markets?

We have no further comments to make in addition to those we have made in response to previous questions.

B. In relation to the table in Annex 2 are there any other changes to securitisation requirements across the various aspects of EU legislation that would increase their effectiveness or consistency?

We have no further comments to make in addition to those we have made in response to previous questions.

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12 May 2015