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To Members of the European Banking Authority

The International Association of Credit Portfolio Managers<sup>1</sup> (the “**IACPM**”) appreciates the opportunity to comment on the EBA’s discussion paper on “STS Framework for Synthetic Securitisation Under Art. 45 of Regulation (EU) 2017/2402” (the “**discussion paper**”).

The IACPM’s institutional member firms comprise some of the world’s largest financial institutions, and as such overlap the membership of several other financial industry associations. Our perspective is different, however, in that the IACPM represents the teams within those institutions who have responsibility for managing credit portfolios, including actively controlling concentrations and managing the return of the portfolio relative to the risk and capital.

In carrying out these responsibilities successfully, credit portfolio managers contribute to maintaining the safety and soundness of their respective financial institutions. Effective credit portfolio management is critically important to our prudential supervisors and to policy makers more broadly because of its role in supporting financial institutions ability to lend.

In addition, our members also include several investors (including insurers and reinsurers) which participate in credit risk transfer transactions as credit protection sellers.

*Question 1: Do you have any comments on this introductory section of the Discussion Paper?*

No.

*Question 2: Do you agree with the analysis on the market developments? Please provide any additional relevant information to complement the analysis.*

Yes. The IACPM agrees with the different benefits of balance sheet synthetic securitisations noted by the EBA in the discussion paper. It cannot be re-emphasised enough that there are several benefits that are attributable to the “balance sheet” nature of such synthetic transactions and, therefore, it is correct (and crucial) to distinguish such balance sheet synthetic transactions from arbitrage synthetic securitisations.

In addition to the EBA’s observations, there have been two recent market developments we believe to be relevant to this discussion. Firstly, and in response to the revision of the CRR securitisation framework,

<sup>1</sup> The IACPM is a non-profit industry association established to further the practice of credit exposure management by providing an active forum for its member institutions to exchange ideas on topics of common interest. Membership in the IACPM is open to financial institutions that manage portfolios of corporate loans, bonds or similar credit-sensitive financial instruments. The IACPM represents its members before regulatory and administrative bodies around the world, holds conferences and regional meetings, conducts research on the credit portfolio management field, and works with other organizations on issues of mutual interest relating to the measurement and management of portfolio risk. Currently there are 113 financial institutions worldwide that are members of the IACPM. These institutions are based in 22 countries and include many of the world’s largest commercial banks, insurance companies, asset management firms, as well as two recently added categories, credit insurance brokers and law firms. More information about the IACPM may be found on our website: [www.iacpm.org](http://www.iacpm.org).

originators are beginning to seek to place thicker tranches. Secondly, insurers and reinsurers have become increasingly active participants in balance sheet synthetic securitisations. This expansion of the investor base for balance sheet synthetic securitisations is welcomed by the IACPM, particularly so in light of the first point, as insurers and reinsurers have been willing to take on the whole of the thicker tranche or a more senior part of the junior or mezzanine tranche, allowing the originator to place a thicker portion of risk overall.

In relation to paragraph 29 of the discussion paper, it is the expectation of IACPM members that originators will continue to retain the senior tranches of balance sheet synthetic securitisations (except where it is placed with a 0% risk-weighted entity on a non-funded basis), as the driver for these transactions is the transfer of credit risk, not funding, and so there is little benefit to be obtained from placing the senior tranche.

*Question 3: Do you agree with the analysis of the historical performance? Please provide any additional relevant information to complement the analysis.*

The IACPM agrees with the analysis of the historical performance data, including that provided by its members. Those IACPM members who were unable to contribute performance data themselves agree that the published data is broadly consistent with their own observations.

It stands to reason that balance sheet synthetic transactions should perform better than true sale transactions (cf. paragraph 50 of the discussion paper), given that these transactions tend to be entered into for risk management purposes and the originator continues to hold each asset and retains the senior tranche (in addition to the risk retention in relation to any placed tranches). The assets remain on the balance sheet of the originator and continue to be monitored and managed like other (unhedged) credit exposures.

Similarly, on average, default and loss rates should be lower than those for ‘comparable portfolios’ held on the balance sheet (cf. paragraph 57), since the portfolio for the risk transfer transaction will be subject to ‘eligibility criteria’ to create a sub-set of the overall balance sheet (for example, excluding any exposures which are below a certain credit rating at the time the portfolio is composed).

*Question 4: Do you agree with the analysis of the rationale for the creation of the STS synthetic instrument? How useful and necessary is synthetic securitisation for the originator and the investor? What are the possible hurdles for further development of the market?*

#### *Pros*

The IACPM agrees with the “pros” set out in the discussion paper.

The synthetic instrument, in addition to providing capital relief, is also an effective risk management tool (indeed, the transfer of risk out of the bank is the rationale for the capital relief).

Synthetic securitisations are already simple and, to quite a high degree, standardised. In fact, balance sheet synthetic securitisations are in many ways far simpler than cash securitisations. For example, cash securitisations often involve complex cash waterfalls or complexity in transferring legal ownership. Balance sheet synthetic securitisations purely transfer credit risk (not currency or interest rate risk).

An STS label would, by prescribing a harmonised approach, encourage best practice in the market and, thereby, benefit all market players and regulators.

### *Cons*

Although STS for synthetic securitisations has not yet been developed within the global regulatory framework, balance sheet synthetic transactions are far more prevalent in Europe and we hope that developing an STS framework for balance sheet synthetic securitisations under the EU framework would not only strengthen the argument for there being a similar framework at a global level but also be a good opportunity for Europe to lead the way.

Regarding the risk that less sophisticated market players perceive the STS framework as a “high quality label”, we do not think that this risk should be any different (or of greater concern) than the existing STS framework for traditional true sale securitisations. Whilst IACPM members do want to see new investors enter the market, the nature of the product is such that they expect investors to be sophisticated.

The IACPM does not believe that the introduction of a differentiated capital treatment for balance sheet synthetic transactions will lead to less issuance of traditional STS securitisations. Whilst it would level the playing field between traditional STS securitisations and balance sheet synthetic STS securitisations, the choice between the two types of transaction is usually governed by other drivers. In particular, traditional (true sale) transactions provide funding benefits and Eurosystem eligibility. As such, balance sheet synthetic transactions and traditional securitisations are largely complementary (and not competing) products.

In relation to NPLs (see paragraph 87 of the discussion paper), IACPM members see little demand developing for synthetic securitisation of NPLs, let alone STS for NPLs.

### *How useful and necessary is synthetic securitisation for the originator and the investor?*

From an originator’s perspective, balance sheet synthetic securitisations (which are significantly different from arbitrage synthetics) are a very important risk management tool that allow for economic interest to be transferred precisely when a true sale transfer is extremely difficult or impossible to execute. These transactions use a financial guarantee or credit derivative to transfer the credit risk of a pool of assets held on a bank’s balance sheet to an investor.

Credit portfolio managers execute balance sheet synthetic transactions to allow the bank to mitigate risk by including a sizeable number of loans in a structure that provides material benefit to the portfolio, whilst partnering with an investor to share both the risk and return of a bank’s core lending business in a way that aligns interests, transfers risk and increases lending capacity.

Further, although there is existing STS treatment for SME underlying exposures, appropriate regulatory capital relief in respect of all types of exposures mitigates significant credit risk and helps to allow lending to the real economy, including SME borrowers.

Synthetic securitisations can be used to transfer credit risk in circumstances where traditional true sale securitisations may not be appropriate, such as (a) managing credit risk on different areas of the balance sheet; (b) permitting simple hedging of portfolios with multicurrency exposures or hedging of off-balance sheet

exposures; (c) permitting transfer of underlying exposures without funding of breakage costs (which may not be typically permitted in middle market, SME and emerging market loan documentation, or underlying exposures that contain non-assignability clauses or confidentiality restrictions or have very low liquidity); (d) operational ease in implementation and maintenance; and (e) fewer requirements in terms of investment in automation and infrastructure.

From an investor's perspective, the main benefits of a balance sheet synthetic securitisation are portfolio diversification and, through access to credit risks not available in the public market, attractive risk-return profiles when compared to other asset classes (such as sovereigns, corporates or covered bonds). Through the tranching of credit risk in the portfolio, different investors can select a risk-return profile that suits their individual investment objectives.

Balance sheet synthetic securitisations are an efficient way for institutional investors to gain exposure to real economy consumer and corporate assets, especially since access to many such assets cannot be found elsewhere. Investors may gain this exposure without having to develop in-house origination and servicing capabilities. They benefit from the servicing expertise of originators, which maximises the value of the portfolio. In a balance sheet synthetic securitisation, since the underlying exposures are held on the balance sheet of the bank, investors are able to invest in a portfolio where the exposures are a reflection of the core activity of the bank

Risk retention requirements also reinforce the policy of investors to share risk with the originating banks in order to assure alignment of interest.

*What are the possible hurdles for further development of the market?*

Firstly, the risk weights specified in respect of senior tranches have increased under the new securitisation framework and do not sufficiently reflect the protection obtained under a balance sheet securitisation (i.e. the risk transferred out of the bank). The high-risk weights prevent banks from executing balance sheet synthetic securitisations (and therefore obtaining credit protection) in respect of some assets, including certain credits with a good credit rating.

Secondly, as noted by the EBA in the discussion paper, the balance sheet synthetic securitisation market has been affected by the stigma attached to arbitrage synthetic transactions. An STS label could help to differentiate balance sheet synthetic securitisations, which are valuable tools for risk management, and arbitrage synthetics.

*Question 5: Do you agree with the assessment of the reasons that could eventually support a preferential capital treatment?*

Yes. The IACPM strongly agrees with the "pros" set out in the discussion paper.

A differentiated capital treatment will encourage uptake of the label and we believe that advantageous capital treatment is justified in the context of balance sheet synthetic securitisation, by the transfer of credit risk in respect of core assets.

For the reasons described in the discussion paper and set out above, we believe that balance sheet synthetic securitisations reduce systemic risk and contribute to a more sustainable financial system. In our view, the risk

weights for the retained senior tranche(s) do not accurately reflect the risk transferred out of the bank and therefore, a differentiated regulatory capital regime would help to allow banks to continue to use this tool, while at the same time promoting additional protections for investors.

It would also align the treatment of balance sheet synthetic securitisations more closely with that of true sale securitisations.

Whilst STS for synthetic securitisations has not developed at global level, please see our response to question 15 below

In relation to paragraph 94 of the discussion paper, IACPM members do not anticipate banks investing in balance sheet synthetic securitisations issued by other banks. Rather, the regulatory capital treatment impacts them in relation to their retention of the senior tranche, which is not placed. Please see our response to question 13 below.

*Question 6: Please provide any additional relevant information on potential impact of the creation of the STS synthetic securitisation on (STS) traditional securitisation, and any other information to complement the analysis.*

Although we hope that an STS label, and a differentiated capital treatment, will be introduced for balance sheet synthetic transactions outside the scope of the existing regime contained in of Article 270 of the CRR, it would be helpful if the EBA could recommend that transactions that have already been structured and issued to fall under Article 270 of the CRR will continue to receive capital relief under that regime (i.e. be grandfathered), as the new criteria will not be the same.

*Question 7: Do you agree with the criteria on simplicity? Please provide comments on their technical applicability and relevance for synthetic securitisation.*

**See Schedule.**

*Question 8: Do you agree with the criteria on standardisation? Please provide comments on their technical applicability and relevance for synthetic securitisation.*

**See Schedule.**

*Question 9: Do you agree with the criteria on transparency? Please provide comments on their technical applicability and relevance for synthetic securitisation.*

**See Schedule.**

*Question 10: Do you agree with the specific criteria for synthetic securitisation?*

**See Schedule.**

*Question 11: Do you agree with the criterion 36 on eligible credit protection agreement, counterparties and collateral? Please provide any relevant information on the type of credit protection and different collateral arrangements used in market practice and their pros and cons for the protection of the originator and investor.*

We would like to provide comments in three areas:

(i) *Unfunded protection*

Criterion 36 currently limits unfunded credit risk transfers to those where the protection provider qualifies for 0% risk weighting. As mentioned in our response to Question 2, insurance and reinsurance companies are an increasingly important provider of credit protection in respect of first loss and mezzanine tranches. Typically, this protection will be provided under credit protection agreements (including financial guarantees or CDS, not necessarily limited to insurance contracts) directly between the (re)insurance company and the originator. These transactions are unfunded (i.e. the (re)insurance company is required to pay only when the protected tranche suffers losses and does not pay upfront as an investor in notes would do).

It would be unfortunate to jeopardise this source of credit protection by excluding such transactions from the STS regime, particularly where the insurance/reinsurance companies providing protection are prudentially regulated.

The unfunded nature of such a transaction does not present a risk to investors (in fact, investors are in a better position than those in a funded transaction, who are exposed to credit risk in respect of the amount of the funding) and they tend to be simpler than a typical funded transaction (since there is usually only one document). Although there is a counterparty credit risk for the bank accepting the unfunded credit protection, this is addressed in CRR by requiring adequate regulatory capital to be retained against the counterparty credit risk.

In addition, the insurance/reinsurance companies providing protection are multi-line entities, rather than monoline credit insurers/reinsurers. As such, the credit risk assumed is small in comparison to the rest of the books of business written by insurers/reinsurers, which tend to be uncorrelated.

(ii) *Cash Collateral*

Criterion 36 permits funded credit protection if cash collateral is held with a third-party credit institution with a sufficient credit quality standing. Whilst some investors require cash to be held with a third party, it is common in practice for the cash collateral (or funding) to be held with the originating bank. From an investor's perspective, this is a question of one institution's credit risk over another (and will be factored into an investment decision and pricing).

(iii) *Securities Collateral*

Where the credit protection (and the investor's investment) is collateralised with securities, criterion 36 proposes haircuts for such securities. However, in the classic SPV notes structure, this would be difficult in practice, since the investor would need to fund more than the maximum amount of the protection to fund the haircut. In a typical SPV-issued balance sheet synthetic securitisation collateralised with securities, those securities mature (and are replaced) every quarter to match the payment dates under the

credit protection agreement; accordingly, there is no need to liquidate those securities, with the attendant market risk, to fund credit protection payments.

Please also note that similar effects can be achieved using reverse repo transactions and so it would be helpful if the final criterion is drafted so as to permit these or other structures achieving a similar effect.

*Question 12: Please provide suggestions for any other specific criteria that should be introduced as part of the STS framework for simple, transparent and standardised securitisation.*

None.

*Question 13: Do you see a justification for possible introduction of a differentiated regulatory treatment of STS synthetic securitisation? If yes, what should be the scope of such treatment and how should it be structured - for example only for senior tranche retained by the originator bank, or more limited/wider?*

Yes. The IACPM firmly believes that a differentiated regulatory treatment for STS synthetic securitisations, which would be demonstrably balance sheet synthetic securitisations only and have to comply with the other STS criteria, is justified. Please see our response to question 5 above.

As noted in our response to question 5 above, we agree that lower capital requirements for STS balance sheet synthetic securitisations should not be to facilitate the transfer of risk between banks. Accordingly, the IACPM would have no issue if any such preferential regulatory capital treatment is limited to tranches retained by originators or their affiliates only.

*Question 14: What would be the impact if no differentiated regulatory treatment is introduced? In that case, is the introduction of the STS product without preferential treatment relevant for the market?*

We are concerned that, without preferential treatment for the STS product, uptake of the standards will likely be slower and ultimately more limited. Without such differentiated regulatory treatment, banks may even be worse off issuing STS compliant balance sheet synthetic securitisations than non-STS balance sheet synthetic securitisations, due to the costs of complying with the STS requirements.

Further, given the increased cost of synthetic securitisations generally under the new securitisation framework, we may actually see a decline in the use of balance sheet synthetic transactions without an STS regime and the accompanying regulatory capital benefit.

From an investor perspective, since most junior and mezzanine tranches are not subject to regulatory capital constraints, investors are likely to judge each deal on their own merits. To that extent, differentiated capital treatment is not relevant for them, but it is extremely relevant for the originator in respect of their senior retained tranches. The STS framework is not a guarantee against loss but is a label that helps investors accurately judge the risk of loss and, regardless of whether the STS label applies, an investor in first loss tranches will still be exposed to the same level of loss. Accordingly, the availability of an STS label by itself is not going to incentivise investors to agree to a lower coupon, and originators will not obtain pricing benefits from STS balance sheet synthetics to offset a lack of preferential regulatory capital treatment.

*Question 15: What would be the impact of potential differentiated regulatory treatment from level playing perspective with regard to third countries where STS framework has not been introduced?*

We note that balance sheet synthetic securitisation is a tool predominantly used in the EU and we doubt, therefore, that the introduction of a differentiated in the EU would have a material impact with regard to third countries. However, we would hope that a sound STS framework with differentiated capital relief for balance sheet synthetic securitisations may motivate non-EU issuers and regulators to follow the EU's example and work together to create a new global market.

We would also note that there is an existing deviation in place already since other global regulators have deviated from Basel in assessing regulatory capital relief. The lack of balance sheet synthetics in other countries may, at times, be explained by the presence of alternative mechanisms for banks to offload risk, such as the GSEs in the U.S. That said, a recent balance sheet synthetic deal in the U.S. which structurally (to a large extent) followed a typical European structure, reinforces the argument above that Europe can be a leader in the balance sheet synthetic securitisation market.

*Question 16: Should a separate explicit recommendation be included in the Recommendations section on whether or not such treatment should be introduced?*

Yes (for the reasons cited above).

The IACPM appreciates your attention to our thoughts and concerns. We would be pleased to discuss any aspect of our response in further detail should it be of interest to EBA.

Sincerely,



Som-lok Leung  
Executive Director  
International Association of Credit Portfolio Managers

## Schedule

### Criteria on Simplicity

No.	Criterion	Comment
1	Balance sheet synthetic securitisation, credit risk mitigation	<p>We agree that the STS label should only apply to balance sheet synthetic securitisations. In addition, we suggest:</p> <ul style="list-style-type: none"> <li>• The scope of point (5) should be widened to permit the underlying exposures to be held by the affiliates of the credit protection buyer (and not just the protection buyer). This can help to reduce the risk of recharacterisation of the credit derivative element as insurance.</li> <li>• It would be helpful to clarify that the restriction on double-hedging does not restrict transactions where, for example, a single name CDS in respect of the borrower is entered into by other areas of the bank, provided that these are not portfolio management hedges on the relevant borrower.</li> <li>• On point (6), the EBA should clarify if a grace period (similar to that under the STS regime for traditional synthetics) will be available to “cure” any non-compliance where a credit protection buyer has accidentally double-hedged the same credit risk.</li> </ul>
2	Representations and warranties	<p>The references to and definition of “securitisation documentation” should not be overly prescriptive and should be wide enough to cover documents where protection is provided via insurance.</p> <p>Bullet point (1) should be widened to cover situations where title to the underlying exposure is held by an affiliate of the credit protection buyer. As discussed in criterion 1 above, this is helpful to mitigate the risk of insurance recharacterisation.</p> <p>Since portfolio selection is done on a “best effort” basis, an originator may practically be able to</p>

		<p>provide the representations at bullet points 2 (i.e. on the entire portfolio meeting the eligibility criteria) and 5 (i.e. no untrue information) only to the best of its knowledge. In any event, investor risk is mitigated since the verification agent typically confirms whether the exposure was in compliance with the eligibility criteria before the protection buyer can make any claims for credit protection payment.</p>
<p><b>3</b></p>	<p>Eligibility criteria, no active portfolio management</p>	<p>The sale of underlying exposures should be permitted on the basis that:</p> <ul style="list-style-type: none"> <li>• the ability to sell the underlying exposure is an important balance sheet risk management tool and is a common feature of the existing balance sheet synthetic securitisation market;</li> <li>• the SRT framework already provides potential implicit support in relation to the removal of existing exposures from the portfolio;</li> <li>• in any event, the insurance recharacterisation risk may make it impossible for credit protection buyers to represent that they will not sell any underlying exposures during the life of a balance sheet synthetic securitisation; and</li> <li>• from the investors’ perspective, they would want and expect the banks to continue to manage the credit risk of its portfolio as a whole and as if no hedges are in place. In fact, an investor would take into consideration, among other things, good credit portfolio management practices when making an investment decision.</li> </ul> <p>To mitigate any risk, we suggest that such sale should be permitted where it is in accordance with the credit protection buyer’s usual standards and policies and should not be considered to be within the ambit of “active portfolio management”.</p> <p>Separately, it would be helpful if the EBA could clarify the scope of “active portfolio management”.</p>

4	Homogeneity, enforceable obligations, full recourse to obligors, period payment streams	<p>The IACPM members believe that in the context of a balance sheet synthetic securitisation, an underlying portfolio of trade finance exposures, CIB loans, home loans, auto loans, SME loans, consumer loans should each be considered to be a homogeneous category. For example, the homogeneous criterion should not restrict exposures to a single geographical area or industry sector. In practice, balance sheet synthetic securitisations often have a diverse portfolio to increase portfolio granularity and reduce concentration risk for the relevant investor(s).</p> <p>Further, only taking into account underlying exposures that have defined payment streams may result in excluding certain esoteric exposures (for example, revolving credit facilities, letters of credit, etc.). This would result in a distinctive disadvantage compared to traditional securitisations.</p> <p>Separately, we note that the discussion paper states that "...additional homogeneity criteria should be developed...". We suggest that the EBA publishes new regulatory technical standards on the homogeneity criteria for balance sheet synthetic securitisations since the current regulatory technical standards will not provide enough flexibility.</p>
7	Underwriting standards and material changes thereto	<p>This criterion would result in certain project finance exposures or other structured loans being excluded from the STS framework (for example, where a sovereign or a local authority is the obligor), thereby reducing the pool of exposures that may be referenced in a balance sheet synthetic securitisation.</p>
12	At least one payment made	<p>This criterion is not relevant for balance sheet synthetic securitisations and, for simplicity, we would suggest deleting it. It would also have the effect of excluding certain off-balance exposures (such as revolving credit facilities, letters of credit and roll over mortgages) for which balance sheet synthetic securitisation is a viable form of risk transfer.</p>

13	No embedded maturity transformation	This criterion does not account for certain underlying exposures (such as corporate debt and rollover mortgages with a one-year maturity that are typically renewed on an annual basis) which are, in practice, largely underwritten to be refinanced.
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**Criteria on Standardisation**

No.	Criterion	Comment
15	Appropriate mitigation of interest rate and currency risks	<p>We do not think that this criterion is appropriate in the context of a balance sheet synthetic securitisation. Given that the risk transfer is synthetic, and the amount of credit protection is generally capped at an amount in the currency of the transaction, the investor has no currency risk. On the originator side, the capital relief calculation takes the currency mismatch into account.</p> <p>Additionally, some IACPM members have noted that this criterion could penalise originators that have assets that are not denominated in the most widely traded currencies (in addition to the existing currency mismatch leading to additional capital requirements), and retaining this criterion would result in balance sheet synthetic transactions becoming costlier for originators, while limiting their ability to optimise hedging.</p> <p>One of the key benefits of a balance sheet synthetic transaction is the ability to have a diverse portfolio, and the ability to hedge multicurrency exposure in a single transaction. In fact, even a single exposure may have multi-currency borrowing options (such as a corporate revolving facility where draws can be in multiple currencies). Given that multicurrency risk is a typical feature in the market, there are existing mitigants within a typical structure that deal with such risk. For example:</p> <ul style="list-style-type: none"> <li>• the FX rate is usually fixed on the day on which the credit event occurred and the same FX rate is</li> </ul>

		<p>then applies to all recoveries, ensuring that parties do not benefit or lose out, as the case may be, from the fluctuation in FX rate in the period between the determination of loss amounts and recoveries; and</p> <ul style="list-style-type: none"> <li>• the replenishment mechanism would also cater for dynamic adjustment of underlying exposures with changing FX rates (subject to compliance with the replenishment criteria).</li> </ul> <p>In relation to interest rate risk, in balance sheet synthetic transactions the interest payments to investors are always equal to the premium from the credit protection buyer plus (where applicable) any income from collateral arrangements. As such, the interest payments are not linked to the interest on the underlying exposures and investors are not exposed to interest rate risk in relation to cashflows in respect of the underlying exposures.</p>
<b>17</b>	Requirements after enforcement/acceleration notice	In a synthetic securitisation, upon an acceleration or enforcement (which can only occur in a narrow set of circumstances), the credit protection ceases (no new credit events may occur, although protection payments will still be made in respect of credit events that occurred before the acceleration date). As the investor is no longer exposed to the underlying portfolio, amortisation is not relevant.
<b>18</b>	Allocation of losses and amortisation of tranches	Please consider other types of hybrid amortisations (e.g. structures which contemplate a switch from sequential amortisation to <i>pro rata</i> amortisation or where <i>pro rata</i> amortisation only applies to certain tranches).
<b>19</b>	Early amortisation provisions/triggers for termination of the revolving period	Please note that it would be unhelpful if the replenishment period terminates early if the originator does not have sufficient new underlying exposures that meet the predetermined credit quality available (cf. the third bullet point in this criterion), since an originator may wish to add an exposure later, when a suitable exposure becomes available.

		Unlike a true sale securitisation, assets in the portfolio do not generate cashflows for the transaction, so it is often the case that the transaction does not immediately amortise if it is not replenished to the maximum, and the originator may replenish at a later date when it has an exposure that meets the eligibility criteria.
22	Reference register	Please could you clarify that the reference obligations/obligors may be specified via an anonymised identifier, and not by name or other information that would reveal their identity. The portfolios referenced by balance sheet synthetic securitisations may be “blind” (i.e. undisclosed) or “disclosed”. Where blind portfolios are relevant, a requirement to identify reference obligors (or any information that could allow their identification) to investors is not necessary and could potentially result in breach of confidentiality obligations and/or market abuse issues.

### Criteria on Transparency

No.	Criterion	Comment
24	Data on historical default and loss performance	We suggest that the EBA should clarify the meaning of the terms “static” and “dynamic” and the context in which each apply and need to be provided. Typically, an originator may provide static or dynamic data, as appropriate in the relevant context (but not necessarily both) and, accordingly, the criterion shouldn’t require static data to be provided, where, for example, it is appropriate for only dynamic data to be provided and <i>vice versa</i> .
25	External verification of the sample	We suggest amending this criterion to permit the portfolio eligibility verification exercise to be undertaken following the occurrence of a credit event (instead of at or prior to closing). This is in line with market practice and is primarily on account of verification costs.

26	Liability cash flow model	We suggest deleting this criterion in its entirety since it is not relevant for a balance sheet synthetic securitisation. This is relevant for a traditional securitisation since the underlying exposures actually generate cashflows for the transaction, but in balance sheet synthetic securitisations, the cash flows of the exposures are not passed through to the investors.
28	Compliance with transparency requirements	Please note that there may be some difficulties in complying with the ESMA templates, which appear to have been designed with true sale securitisations in mind.

**Criteria specific to synthetic securitisation**

No.	Criterion	Comment
30	Credit protection payments	In addition to calculating interim credit protection payments using Loss Given Defaults, we suggest retaining flexibility to calculate interim credit protection payments using loss provisions.
31	Credit protection payments following the close out/final settlement at the final legal maturity	<p>It is important that this criterion builds in general flexibility to cover different scenarios.</p> <p>Restricting the credit protection payment to actual loss, in circumstances where the work-out period has not been completed, could result in an inadequate credit protection payment. Typically, a balance sheet synthetic securitisation would allow for projected losses to be included (e.g. by reference to loss provisions).</p> <p>In addition, credit protection payments are typically based on the amount of principal that is not recovered. In some jurisdictions, any loss in respect of interest payments should be disregarded for the purpose of calculating “actual loss” (except in jurisdictions where the local regulator requires the originator to claim for accrued and unpaid interest in addition to principal losses).</p>
32	Credit protection premiums	The requirement to provide precise information about the pricing mechanism for a balance sheet synthetic

		<p>securitisation in the transaction documentation should be deleted. This requirement is not practical since the pricing of synthetics is driven by market demand, volatility and other factors that may not be quantifiable.</p>
<b>33</b>	Verification agent	<p>We agree with the requirement for a verification agent to be appointed but propose that there should be some flexibility for parties to determine the scope of verification on a deal-by-deal basis. The scope of verification is generally wider in a balance sheet synthetic securitisation which references a blind (or undisclosed) portfolio rather than a disclosed pool. Where a disclosed portfolio is referenced, the investor has already been provided with certain data (in addition to the investor's independent obligation to conduct due diligence) and, accordingly, the scope of matters to be independently verified is generally limited to matters such as credit events, eligibility criteria, replenishment conditions and loss/recovery amounts.</p>
<b>34</b>	Early termination events	<p>We believe that the originator's bankruptcy should only be excluded from early termination events if the funding (if any) is collateralised, the estate continues to pay the protection premium and the estate allows the business to continue to be run on a going concern until a successor has been found. However, if the originator (or an agent on its behalf) is not servicing the assets and no other back-up arrangements are in place to provide servicing, the bankruptcy of an originator should be allowed to bring down the balance sheet synthetic transaction.</p> <p>Alternatively, it may be helpful to provide a limited definition of bankruptcy (i.e. if there is an actual winding up such that the bank cannot continue to run the business) which would be a permissible early termination event. It should be noted that during a resolution under the Bank Recovery and Resolution Directive, this could not be triggered anyway.</p>

35	Synthetic excess spread	We suggest deletion of this criterion on the basis that the standard options available for calculating synthetic excess spread (i.e. fixed percentage or prescribed formula) are simple, well understood methodologies and can be easily and simply included in transaction documentation. Further, a prohibition on having excess spread in balance sheet synthetic securitisations would be inconsistent with the approach adopted in traditional true sale synthetic securitisations. If, however, the EBA ultimately wishes to cap the use of synthetic excess spread, IACPM members would not be averse to limits related to regulatory expected loss.
36	Eligible credit protection agreement, counterparties and collateral	Please see our response to Question 11.