STS Verification International

STS Verification International GmbH („SVI“) RESPONSE TO THE CONSULTATION REGARDING THE EBA GUIDELINES ON THE STS CRITERIA FOR ON-BALANCE-SHEET SECURITISATIONS

Authors: Michael Osswald, Peter Grijsen, Marco Pause, Salah Maklada

FINAL VERSION dated 6 July 2023

Article	Topic	#	Consultation question	Reply SVI
26b (1)	Requirements on the originator	**Q1**	Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. For example, should additional interpretations of the term ‘no less stringent policies’ or ‘comparable exposures’ be provided and if yes, how are these terms understood in securitisation practice?	We agree that it is not necessary to further specify the criterion in Article 26b (1), 1st Subparagraph of the Securitisation Regulation. In our view, the following additional aspect should be clarified: It should be clarified that the requirement described in Article 26b (1) 2nd Subparagraph of the Securitisation Regulation („*An originator that purchases a third party’s exposures on its own account and then securitises them shall apply policies with regard to credit, collection, debt workout and servicing applied to those exposures that are no less stringent than those that the originator applies to comparable exposures that have not been purchased.*“) does not apply to situations where the originator has taken over, in the context of M&A transactions involving the entiry company or parts thereof, other originators rather than purchasing discrete portfolios from a third party, and has thereby inherited portfolios that, at a later stage, can be combined with other portfolios from the same originator for a securitisation. <u>Reasoning</u>: It

				would be, from an administrative perspective, unduly burdensome if not impossible for the originator to come up with the relevant underwriting, servicing and workout policies of the purchased companies in respect of the inherited portfolios in case they become part of the securitised portfolio, let alone prove that these policies are not less stringent than its own policies. In practice this is further mitigated by the fact that the originator would apply its own servicing and workout policies to such inherited portfolios in the course of the normal credit review process.
26b (2)	Origination as part of the core business activity of the originator	**Q2**	Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.	We agree that it is not necessary to further specify the criterion.
26b (3)	Exposures held on the balance sheet	**Q3**	Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning	We agree that it is not necessary to further specify the criterion.
26b (4)	No double hedging	**Q4**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with most of the interpretation provided. In our view, the following additional aspects should be clarified: Firstly, it should be clarified that any guarantees or other security that forms part of the security package for a given underlying exposure (such as guarantees from an export credit agency to cover certain commercial and political risk elements of a project or export finance loan or other asset-based finance loan, guarantees from a national or international development bank for corporate loan or similar) are not to be viewed as double hedges. Reasoning: It would clearly be illogical to

				interpret such guarantees as hedging the credit risk of the underlying exposures. Rather, such arrangements should be considered to form part of the security package for the underlying exposure and therefore part of the underlying exposure itself. Given that any amounts received by the originator under such guarantee schemes would be treated as recoveries under the securitisation transactions, there is no concern that the originator would be entitled to double-recovery of its losses, and thus the transactions should not be considered as arbitrage transactions which is one of the objectives pursued with this STS criterion. Secondly, the definition of "underlying exposures" or "hedge" should be further specified to clarify that the double hedging restriction only applies to hedges which hedge exactly the underlying exposure which is part of the reference portfolio of the synthetic securitisation. As a consequence of this clarification standard hedging contracts on the obligor (such as a CDS – whether single name or portfolio) should fall outside the scope of the double hedging restriction. Reasoning: The risk position is substantially different: the "Credit Events" triggering a CDS are different from those of the synthetic securitisation and the recovery will also likely deviate from the recovery / loss of a loan being part if a synthetic securitisation (as the CDS settlement payment is based on an auction process comprising various debt obligations of the obligor), ensuring that this exemption / clarification is also in line with the spirit of Article 26b (4) of the Securitisation Regulation.
26b (5)	Credit risk mitigation rules	**Q5**	Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning	We agree that it is not necessary to further specify the criterion. As an observation only, in SVI's verification experience compliance with this requirement is quite tricky to analyse as (i) in many transactions, it is not fully clear which credit risk mitigation rules in Chapters 4 and 5 of Title II of Part 3 of the CRR need to be met in detail in order to comply with the requirements of Article 249 of the CRR and (ii) these credit risk mititgation rules are different depending on what type of credit risk mitigation is used (funded vs. unfunded vs. direct CLN issuance). Hence,

				in practice, the compliance with the requirement of Article 26b (5) of the Securitisation Regulation requires in many cases a dedicated „CRR memo“ to be prepared by external legal counsel and extensive analysis by the third-party verifier.
26b (6)	Representations and warranties	**Q6**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We have the following comment in relation to this criterion: It should be clarified that the fact that underlying exposures that have been posted by originators as collateral with central banks, as part of the cover pool for covered bonds or otherwise used by the originator as collateral (with resulting temporary renunciation of full legal title to these exposures during this posting) does not prevent those underlying exposures to be included in the reference portfolio of a synthetic on-balance sheet securitisation and is compliant with the requirement of Article 26b (6) (a) of the Securitisation Regulation („*the originator or an entity of the group to which the originator belongs has full legal and valid title to the underlying exposures and their associated ancillary rights;*“*).* Reasoning: Despite the posting as collateral, the originator retains the full credit risk of the underlying exposures in the synthetic securitisation and, following the end of the posting as collateral, regains full legal title to these exposures.
26b (7)	Eligibility criteria, active portfolio management	**Q7**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with most of the interpretation provided for Items 122. - 126. We do, however, have the following comments: Firstly, for Item 123., the removal of underlying exposures from the synthetic securitisation in the context of the exercise of a clean-up call should be added to the list of techniques of portfolio management that should not be considered active portfolio management. Secondly, we believe that the wording in the level 1 text in Article 26b (7) (c) („*An underlying exposure may be removed from the transaction where that underlying exposure […](c) is subject to an amendment that is not credit driven, such as refinancing or restructuring of debt, and which occurs during the ordinary servicing of that underlying exposure;*“

				[underlines by SVI]) is somewhat ambiguous. It should be clarified that „refinancings“ where the existing financing that is part of the reference portfolio of the synthetic securitisation is replaced by a similar financing with amended commercial terms (such as tenor, loan margin, other lenders etc.) and where the amendments have nothing to do with the credit quality of the borrower fall into this category and hence the underlying exposure can be removed from the transaction. For a „restructuring of debt“ our understanding is that this term usually refers to a distressed financial situation of the relevant obligor and can involve methods such as debt for equity swaps, amended payment terms (including payment holidays) and the forgiveness or postponement of principal, interest or fees in relation to the financing. Usually some of these elements (and certainly any haircut resulting from any forgiveness) form part of the definition of „Restructuring“ as part of the credit events of a synthetic securitisation. It should be clarified which of the described methods that could form part of a restructuring of debt are not detrimental for the underlying exposure to fall into the category of „not credit driven“ and hence where the underlying exposure can be removed from the transaction.
26b (8)	Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities	**Q8**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with most of the interpretation provided. We do, however, have the following comments: Firstly, we do not understand why Item 26. in the ‚Background and Rationale‘ section stipulates that specialised lending exposures (which we understand includes e.g. aircraft, shipping, project finance or infrastructure finance loans) „should generally fall under the asset category of “credit facilities, including loans and leases, provided to any type of enterprise or corporation” specified in Article 1 (a) (iv) of the RTS on Homogeneity.“ This stipulation appears to be a repetition of EBA’s „expectation“ mentioned in section 4.2 „Feedback on the public consultation“ of EBA’s Final Report regarding the draft RTS on Homogeneity dated 14 Feb 2023 (p. 25) whereby „For specialised lending exposures it is expected that they would fall under the asset

				category of „credit facilities, including loans and leases, provided to any type of enterprise or corporation". which in our view does not make such allocation more correct. In our view, it would be much more appropriate to allocate specialised lending exposures under the asset category of „other underlying exposures that are considered by the originator or sponsor to constitute a distinct asset type on the basis of internal methodologies and parameters" specified in Article 1 (a) (viii) of the RTS on Homogeneity. This would result in a different set of homogeneity factors applied to such specialised lending exposures according to Article 2, Paragraph (6) of the RTS on Homogeneity which are more in line with the specifics of such specialised lending exposures such as type of obligor (e.g. a special purpose entity or project company that has been set up specifically for the project for a project finance loan) and „ranking of security rights" (e.g. a first-ranking ship mortgage for a ship financing). Reasoning: Specialised lending exposures represent a „distinct asset type on the basis of internal methodologies and parameters" as institutions typically use a distinct internal rating approach for specialised lending exposures and apply parameters for the assessment of the collateral securing such specialised lending exposures and for the (rental or other) cash flows deriving from the underlying assets to repay the exposures. In addition, should specialised lending exposures be deemed to fall into the "credit facilities, including loans and leases, provided to any type of enterprise or corporation" asset type, we wonder what asset class would remain that could fall into the „other underlying exposures" category. Secondly, for Item 27., 4th sentence in the ‚Background and Rational' section, it should be clarified that the situation described relates to the combination of specialised lending exposures (as described in Item 27., 1st – 3rd sentences in the ‚Background and Rational' section, i.e. a project finance loan for which the project finance lender relies on the project income to repay the project finance loan, or a ship or aircraft finance loans for which the lender relies on the charter or lease payments from the object to repay the ship or aircraft finance loan)

				with other corporate loan exposures (e.g. full recourse loans to an energy company, a shipping company or airline where the lender relies on the corporate's debt repayment capacity rather than any payments from any financed objects).
26b (9)	No resecuritsation	**Q9**	Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.	We agree that it is not necessary to further specify the criterion.
26b (10)	Underwriting standards, originator's expertise	**Q10**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning	We agree with most of the interpretation provided. We do, however, have the following comments: Firstly, for Item 129., we find the additional distinction between Sub-Items a., b. (additional requirement regarding the homogeneity factor ‚type of obligor') and c. (additional requirement regarding any of the homogeneity factors) to be unnecessarily complex and not providing any benefit and would find it more consistent to have the same wording in the EBA guidelines for synthetic securitisations and the corresponding Item 22. of the EBA Guidelines for Non-ABCP securitisations. Secondly, for Items 130. and 131., we wonder if these Items are necessary given that the level 1 text in Article 26b (10) does not, unlike the corresponding STS criterion for Non-ABCP securitisations (see Article 20 (10) 1st Subparagraph of the Securitisation Regulation) make the comparison with the underwriting standards for similar exposures that are not securitised and therefore does not refer to the term „*No less stringent underwriting criteria*". Thirdly, for Item 140. and Item 33. in the ‚Background and Rational' section, it should be clarified if indeed this criterion covers only exposures originated by EU originators to borrowers in non-EU

				countries. The wording of Article 26b (10) 3rd Subparagraph („The assessment of the borrower's creditworthiness shall meet the requirements set out in Article 8 of Directive 2008/48/EC or Article 18(1) to (4), point (a) of Article 18(5) and Article 18(6), of Di-rective 2014/17/EU, […]") would rather suggest that this criterion covers also exposures originated by EU originators to borrowers in EU countries (which is standard for EU securitisations). Likewise, and given that the above mentioned Directives relate to consumer lending and residential mortgage lending, respectively, it should be clarifed if this STS criterion must only be fulfilled for securitisations involving loans to consumer or residential mortgages or if the requirements to the basic principles described in these Directives for the assessment of the borrower's creditworthiness (e.g. making sure that the conclusion of a credit agreement takes place on the basis of sufficient information, on which a thorough assessment of borrowers' creditworthiness is made, which is documented and maintained, and any significant increase in exposure will lead to a reassessment of creditworthiness) should be met also for all other asset classes such as lease receivables, corporate loans or trade receivables. Finally, regarding the sentence „*The underlying exposures shall be underwritten with full recourse to an obligor that is not an SSPE.*" in Article 26b (10) first Subparagraph, the wording is in our view slightly ambiguous because one could get the impression that any underlying exposures where an SSPE acts as obligor (like in many object- and project finance loans) falls outside this requirement and therefore the related synthetic securitisation cannot reach STS compliance. In our view, it should instead be clarified that the requirement is that the originator has full recourse to all obligors that are not SSPEs (e.g. normal corporate borrowers) and that only loans to SSPEs are allowed to be of no full recouse nature. In this context, and assuming our reasoning in the previous sentence is correct, we note that the term „SSPE" is not appropriate as those borrowers are not securitisation SPEs

				but other SPEs as typically used in non-recourse financings such as aircraft, shipping, project finance or infrastructure finance loans.
26b (11)	No exposures in default and to credit-impaired debtors/guarantors	**Q11**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with the interpretation provided for Items 144. - 155.
26b (12)	At least one payment made	**Q12**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with most of the interpretation provided. We do, however, have the following comments: For Item 154., we believe there are good reasons to argue that where, e.g. in many equipment leases, obligors/lessees already have one or more existing loan/lease contracts with the originator and are then entering into an additional loan/lease with the same originator, such additional loan/lease should not again trigger the "one payment made" requirement for this additional loan/lease and instead the exception referred to in Item 153. should also apply in the described situation. Reasoning: The fact that a debtor has already fulfilled the "one payment made" requirement in one loan or lease contract is a very strong mitigant against fraud and operational risk also for additional loan or lease contracts with the same debtor. For Item 155., it should be clarified if the wording „*any other kind of ordinary payment specified in the contractual agreement related to the economic substance of the exposure*" in the proposed Item 155. relates to the type of such „other kind of ordinary payment" (e.g. a one-off administration fee charged by the bank to its client would in our view fully qualify while a payment in order to check if the payment details provided by the obligor are correct might not qualify) and/or to the economic substance of the amount involved (i.e. is there a minimum amount of such payment such as 1 EUR or other?).

26c (1)	Compliance with the risk retention requirements	Q13	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with the interpretation provided for Item 156.
26c (2)	Appropriate mitigation of interest and currency risks	**Q14**	Do you agree with the interpretation provided? Should additional aspects be clarified? More specifically, is there a need to further clarify the term 'appropriate mitigation' of interest-rate and currency risks and further specify any mitigation measures? Please elaborate.	We agree with the interpretation provided for Item 158. Regarding Item 157., it is in our view not fully clear which practical circumstances the proposed wording is intended to cover. We do not think that the term ‚appropriate mitigation' and any mitigation measures need to be further clarified. In our experience in many synthetic securitisations any interest rate or currency risks are not hedged or otherwise mitigated, but are allocated to either the protection buyer or the protection seller and this is contracually agreed in the legal documentation.
26c (3)	Referenced interest payments	**Q15**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning	We agree with the interpretation provided for Items 159. and 160.
		Q16	On reference rates: Is the interpretation on this term deemed helpful for the interpretation of this requirement? Please provide more information on the referenced interest payments used in relation to the transaction in your entity's practice.	In our view the interpretation provided on the reference rates is helpful.
		Q17	On complex formulae or derivatives: Is the guidance provided sufficient to clarify	In our view the guidance provided is sufficient.

			the requirement or should the guidance be extended? In case of the latter, please provide suggestions on how to define complex formulae and derivatives.	
26c (4)	Requirements after enforcement notice	**Q18**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with the interpretation provided for Items 161. and 162.
26c (5)	Allocation of losses and amortisation of tranches	**Q19**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with the interpretation provided for Items 163. - 167.
26c (6)	Early amortisation provisions/triggers for termination of the revolving period	**Q20**	Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.	We agree that it is not necessary to further specify this criterion.
26c (7)	Transaction documentation	**Q21**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with the interpretation provided for in Items 168. - 170.
26c (8)	Servicer's expertise and servicing requirements	**Q22**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate you reasoning.	We agree with the interpretation provided for in Items 171. - 175.

26c (9)	Reference register	Q23	Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning	We agree that it is not necessary to further specify the criterion.
26c (10)	Timely resolution of conflicts between investors	**Q24**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with the interpretation provided for in Items 176. and 177.
26d (1)	Data on historical default and loss performance	**Q25**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with the interpretation provided for Items 178. and 179. We do, however, have the following comments: Firstly, for Item 180., we presume that this refers to exposures that represent the underlying for previous securitisations by the originator – this should be clarified. Secondly, and as more general comment, it is common market practice for synthetic on-balance-sheet securitisations, in particular those involving corporate loan portfolios, that investors do not ask for data on static and/or dynamic historical default and loss performance, but instead obtain from originators rating migration matrices (showing the internal rating migration of the underlying debtors in the portfolio of the originator over a sufficiently long period of time). It should be clarified that rating migration data can be provided instead of, or in addition to, static or dynamic default and loss performance data. Generally, and given that the level 1 text in Article 26d (1) is neither very specific nor very conclusive in terms of the type of performance data to be provided, it should be clarified that originators can, as long as the information provided is considered as meeting the relevant market standards (in the sense that investors‘ expectations are met),

				choose at least one (but optionally also more) from the various formats of performance data such as - rating migration matrices (for corporate loan portfolios) - static loss data (tracking the loss performance of a particular vintage of exposures over their tenor) (for highly granular auto loan/lease or consumer loan portfolios) - ageing data (showing 1-30 days past due, 31-60 days past due, etc. and more than 90 days past if the latter is used as loss proxy for the transaction) (for short-term trade receivables or credit card receivables) - Dynamic loss data (dividing losses during a certain monthly/quarterly/annual period by the outstanding amount of receivables at the end of the month/quarter/year) (for all types of asset classes) Also, it should be clarified that loss data can be provided by the originator on a gross loss or net loss basis (i.e. after any recoveries) but that it should be clearly stated what type of losses are shown.
26d (2)	Verification of a sample of the underlying exposures	**Q26**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning	We agree with most of the interpretation provided for Items 181. – 187. We do, however, have the following comments: Firstly, for Item 185., 2nd sentence („*The verification should include a check of the originator's database or IT systems against the transaction documentation and the credit protection agreement in order to confirm that the occurrence of a credit event would trigger a credit protection payment by the investor with respect to the exposures which are subject to the verification.*"), it is completely unclear to us and also to audit firms that we have spoken with how such verification should be performed in practice, also given that at the time of the performance of the verification (which typically occurs some weeks before signing/closing), the transaction documentation and the credit protection agreement are only available in draft form and in particular the definitions of „credit event" and „eligibility criteria" are still subject

				to change. Given that we do not see any benefit of the proposed verification, we propose to delete the 2nd sentence mentioned above. Secondly, for Item 185., it should be clarified that the proviso of „[…] eligibility criteria […] that are able to be tested […]“ (underline by SVI) means that those eligility criteria that relate e.g. to certain legal (e.g. exposures are legally valid and binding) or factual requirements (e.g. exposures have been underwitten in the ordinary course of business) or where a verification of compliance with a given eligibility criteria would be extremely burdensome for the originator and the audit firm involved, do not fall into the scope of the required verification.
		Q27	In particular, do you agree with the interpretation of the scope of the verification, in particular with the specification on how the size of the representative sample should be determined? Should additional aspects /parameters for determining the sample be clarified? Please substantiate your reasoning.	We have the following comments, in particular in relation to the specification of the size of the sampl: Firstly, for Item 183., the fixed confidence level of 95% should be replaced by a confidence level of at least 95% (in line with the EBA Guidelines for Non-ABCP securitisation), thereby allowing originators to choose also a higher confidence level of e.g. 99%, resulting in a larger sample, in order to better meet investors‘ expectations. Secondly, for Item 184. and similar as above, it should be allowed to originators to apply a type II error of less than 5% (e.g. 1%), again resulting in a larger sample, in order to better meet investors‘ expectations. In that respect it should also be clarified how the „type II error“ is exactly defined.
26d (3)	Liability cash flow model	**Q28**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning	We agree with the interpretation provided for Items 188. and 189. and do not believe that additional aspects need to be clarified.
26d (4)	Environmental performance and sustainability	**Q29**	Do you agree with the interpretation provided? Should additional aspects be	We agree with the interpretation provided for Item 190. and do not believe that additional aspects need to be clarified.

	disclosures of the assets		clarified? Please substantiate your reasoning	
26d (5)	Compliance with disclosure requirements under Article 7	**Q30**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning	We agree with most of the interpretation provided for Item 191. In our view, the following additional aspects should be clarified: Firstly, it should be clarified that, given the private nature of virtually all synthetic on-balance-sheet securitisations which only allow for the sale of a particular securitisation position by an investor to another investor with the consent of the originator, the request by potential investors to obtain the information specified under Article 7 of the Securitisation Regulation only needs to be fulfilled by the originator if the originator considers such potential investor as suitable investor in the transaction at hand. Secondly, and as a more general comment and observation, in our STS verification practice, we frequently receive questions from originators about when to submit the information required under Article 7 of the Securitisation Regulation and to whome (investors, potential investors, competent authorities) and by which means (in the absence of the requirement to use a data repository as for public deals and given the private nature of virtually all synthetic on-balance-sheet securitisations, this can also be fulfilled by a private data room, website with limited access or by email). Any clarifications in that respect would therefore in our view be very helpful.
26e (1)	Credit events covered under the credit protection agreement	**Q31**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with the interpretation provided for Item 192. and do not believe that additional aspects need to be clarified.
26e (2)	Credit protection payments	**Q32**	Do you agree with the interpretation provided? Should additional aspects be	We agree with the interpretation provided for Items 193.-195. and do not believe that additional aspects need to be clarified.

			clarified? Please substantiate your reasoning.	
		Q33	Do you agree with the interpretation of the determination of interim credit protection payments? Do you agree with the interpretation of the criterion with respect to the 'higher of' condition? Should the interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.	We agree with the interpretation provided for the specific topics referred to and do not believe that additional aspects need to be clarified.
26e (3)	Debt workout and credit protection premiums	**Q34**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with most of the interpretation provided for Item 196. In our view, the following additional aspects should be clarified: It should be clarified that the requirement under Article 26e (3) 3rd Subparagraph of the Securitisation Regulation („*The credit protection premiums to be paid under the credit protection agreement shall be structured as contingent on the outstanding nominal amount of the performing securitised exposures at the time of the payment and reflect the risk of the protected tranche.*“) is fulfilled if the credit protection premium is calculated as a fixed percentage on the protected tranche outstanding amount (which is reduced by losses that occur in the securitised reference portfolio). In our experience, this is the most commonly used calculation basis for the credit protection premium. At the same time, any more complicated formulae to calculate the credit protection premium, e.g. using the performing reference portfolio amount only as calculation basis, should also be possible.
26e (4)	Third-party verification agent	**Q35**	Do you agree with the interpretation provided? Should additional aspects be	We agree with most of the interpretation provided for Items 197-199. We do, however, have the following comment:

			clarified? Please substantiate your reasoning.	For Item 198., reference to „*prior to the issuance*“ and „*before issuance*“ do not make sense in our view given that the verification work performed by the third-party verification agent according to Article 26e (4) 1st Subparagraph, items (a) to (f) of the Securitisation Regulation is performed during the life of the securitisation transaction and should not be confused with the sample to be verified prior to closing according to Article 26d (2) of the Securitisation Regulation, although in practice for most synthetic transactions both works are carried out by the same (audit) firm.
26e (5)	Early termination events by originator	**Q36**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with the interpretation provided for Items 193.-195. and do not believe that additional aspects need to be clarified.
		Q37	Do you consider necessary to provide interpretation of the term 'breach by the investor of any material obligation'? Please provide information on such material breaches applied in securitisation practice.	We do not consider it necessary to provide interpretation of the term ‚breach by the investor of any material obligation‘.
26e (6)	Early termination events exercisable by the investor	**Q38**	Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. For example, do you consider it necessary to provide interpretation of the term 'material breach' of contractual obligations by	We agree that is not necessary to further specify this criterion.

			the originator? Please substantiate your reasoning.	
26e (7)	Synthetic excess spread	**Q39**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning	We agree with most of the interpretation provided for Items 202.-204. and do not believe that additional aspects need to be clarified. For Item 203., we do not quite understand what the added value of this Item is given that the wording is the same as in Article 26e (7) (c) of the Securitisation Regulation.
26e (8)	Types of credit protection agreements	**Q40**	Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.	We agree that is not necessary to further specify this criterion.
26e (9)	Specific type of the credit protection agreement	**Q41**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.	We agree with the interpretation provided for Items 205.-and 206. and do not believe that additional aspects need to be clarified.
26e (10)	Requirements for recourse to high-quality collateral	**Q42**	Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning	We agree with most of the interpretation provided for Items 207.-209. In our view, the following additional aspects should be clarified: Firstly, for Item 209., the wording used relates to „Article 26e (10) 1st Subparagraph, point (b)“ and „collateral in the form of cash“, thereby being slightly narrower than the wording used for the corresponding level 1 requirement in Article 26e (10) 5th Subparagraph which relates to the collateral requirements „set out in this paragraph“ (i.e. both Article 26e (10) 1st Subparagraph, points (a) and (b), i.e. including the possibility to provide collateral in the form of 0% risk-weighted debt securities). We presume this a drafting inconsistency but would suggest to amend the wording in Item 209. accordingly to make it consistent

				with the level 1 text. Alternatively, Item 209. could also be deleted entirely in this case. Secondly, it should be clarified how the credit quality steps („CQS“) referred to in Article 26 (10) 1st Subparagraph, (b) and Article 26 (10) 2nd Subparagraph should be derived. The Securitisation Regulation refers, in the Subparagraphs mentioned, only to „the mapping set out in Article 136 of Regulation (EU) No 575/2013“ which in turn specifies that the ESAs shall develop implementing technical standards in relation to the mapping between the external rating by the ECAIs and the credit quality steps. In our view it would be helpful if the Guidelines could directly refer to the appropriate regulation which in our view should be Commission Implementing Regulation (EU) 2022/2365 of 2 Dec 2022. Also, it should be clarified how to deal with split ratings (i.e. situations where ratings by two ECAI fall under to different credit quality steps. Thirdly, it should be clarified that Article 26e (10) (b) of the Securitisation Regulation allows cash collateral to be provided also in the form of a guarantee or letter of credit given by a qualifying third-party credit institution. Reasoning: In our understanding of the term ‚cash on deposit‘, the reference to collateral in the form of "cash held with" a third-party credit institution in Article 26e (10) (b) of the Securitisation Regulation must be read as collateral in the form of an undertaking to pay cash by a third-party credit institution. It should not make a difference if the undertaking of the third-party credit institution which meets the rating requirements to pay cash is established as a result of a cash deposit or otherwise (e.g. under a bank guarantee or letter of credit), provided that the terms of the undertaking and its treatment in an insolvency or resolution scenario are equivalent.
	STS criteria not specified above	**Q43**	Do you agree that no other requirements are necessary to be specified further? If not, please provide reference to the relevant provisions of	In our view, the following other requirement should be specified further: It should be clarified that the EBA Guidelines on the STS criteria for on-balance sheet securitisation should become effective on the date of

			the STS requirements and their aspects that require such further specification. Please substantiate your reasoning.	their publication, thereby ensuring that synthetic on-balance sheet securitisations that have been notified as STS before this date do not risk loosing their STS status because they do not comply in full. Reasoning: While in our view the synthetic on-balance sheet securitisations that have been notified as STS (and certainly the ones that we have been involved for the purpose of verifying STS compliance) have been carefully structured with the level 1, level 2 and even level 3 requirements (for the latter, analogies have been drawn to the EBA Guidelines for Non-ABCP securitisation) in mind, it cannot be ruled out that they fall short in minor technical or formal aspects of the finalised EBA Guidelines for synthetic on-balance sheet securitisation once these are finalised and published (grandfathering).
	Amendments to EBA Guidelines for Non-ABCP securitisation	**Q44**	Do you agree with the proposed amendments to the Guidelines EBA/GL/2018/09? Should additional aspects be clarified? Please substantiate your reasoning.	We have the following comments on the proposed amendments to the EBA Guidelines for Non-ABCP securitisation: Regarding Item b. (additional paragraph 46a following paragraph 46), we refer to our comment on **Q12** above and believe that there are good reasons to argue that where, e.g. in many equipment leases, obligors/lessees already have one or more existing loan/lease contracts with the originator and are then entering into an additional loan/lease with the same originator, such additional loan/lease should not again trigger the "one payment made" requirement for this additional loan/lease and instead the exception referred to in Paragraph 46. should also apply in the described situation. Reasoning: The fact that a debtor has already fulfilled the "one payment made" requirement in one loan or lease contract is a very strong mitigant against fraud and operational risk also for additional loan or lease contracts with the same debtor. Regarding Item c. (replacement of paragraph 47), we refer to our comment on **Q12** above, i.e. it should be clarified if the wording „*any other kind of ordinary payment specified in the contractual agreement related to the economic substance of the exposure*" in the proposed new Paragraph 47. relates to the type of such „other kind of ordinary

				payment" (e.g. a one-off administration fee charged by the bank to its client would in our view fully qualify while a payment in order to check if the payment details provided by the obligor are correct might not qualify) and/or to the economic substance of the amount involved (i.e. is there a minimum amount of such payment such as 1 EUR or other?). In our experience, the above-mentioned aspects in relation to the ‚at least one payment made' requirement are particularly relevant for Non-ABCP securitisations that are structured as warehousings to accumulate the securitised portfolio in preparation for a following term take-out. Regarding Item h. (replacement of paragraph 80 with, among other, the new paragraph 80), we wonder if it is really intended that the requirement that was included in the previous Paragraph 80, (b) *(„[…] the verification to be carried out […] should include both of the following: […] (b) verification of the fact that the data disclosed to investors in any formal offering document in respect of the underlying exposures is accurate."*) should fall away. In our perception it is market standard for investors in public securitisation transactions to ask for such verification (which typically relates to the stratification tables and other info, e.g. the information provided on the weighted average lives of the securitisation positions issued) to be performed. Regarding Item h (replacement of Paragraph 80 with, among other, the new paragraph 80b.), and similar to our reasoning in our other comment on **Q26** above, it should be clarified that the proviso of „[…] eligibility criteria […] that are able to be tested […]" (underline by SVI) means that those eligility criteria that relate e.g. to certain legal (e.g. exposures are legally valid and binding) or factual requirements (e.g. exposures have been underwitten in the ordinary course of business) or where a verification of compliance with a given eligibility criteria would be extremely burdensome for the originator and the audit firm involved, do not fall into the scope of the required verification. Also, please note that the wording „under the credit protection agreement" in the new paragraph 80b. should be deleted (presumably it has been

				taken over from the draft EBA Guidelines on the synthetic securitisations but does not make sense for traditional securitisations). Regarding additional aspects that should be clarified, in relation to the requirements in Article 22 (1) of the Securitisation Regulation regarding data on historical default and loss performance and similar to our reasoning in our other comment on **Q25** above, in our view the level 1 text is neither very specific nor very conclusive in terms of the type of performance data to be provided, it should be clarified that originators can, as long as the information provided is considered as meeting the relevant market standards (in the sense that investors' expectations are met), choose at least one (but optionally also more) from the various formats of performance data such as - rating migration matrices (for corporate loan portfolios) - static loss data (tracking the loss performance of a particular vintage of exposures over their tenor) (for highly granular auto loan/lease or consumer loan portfolios) - ageing data (showing 1-30 days past due, 31-60 days past due, etc. and more than 90 days past if the latter is used as loss proxy for the transaction) (for short-term trade receivables or credit card receivables) - Dynamic loss data (dividing losses during a certain monthly/quarterly/annual period by the outstanding amount of receivables at the end of the month/quarter/year) (for all types of asset classes) Also, it should be clarified that loss data can be provided by the originator on a gross loss or net loss basis (i.e. after any recoveries) but that it should be clearly stated what type of losses are shown.
	Amendments to EBA Guidelines for ABCP securitisation	**Q45**	Do you agree with the proposed amendments to the Guidelines EBA/GL/2018/08? Should additional aspects be	We have the following comments on the proposed amendments to the EBA Guidelines for ABCP securitisation: Regarding Item b. (additional paragraph 36a following paragraph 36), we refer to our comment on **Q12** above and believe that there are good

			clarified? Please substantiate your reasoning.	reasons to argue that where, e.g. in many equipment leases, obligors/lessees already have one or more existing loan/lease contracts with the originator and are then entering into an additional loan/lease with the same originator, such additional loan/lease should not again trigger the "one payment made" requirement for this additional loan/lease and instead the exception referred to in Paragraph 46. should also apply in the described situation. Reasoning: The fact that a debtor has already fulfilled the "one payment made" requirement in one loan or lease contract is a very strong mitigant against fraud and operational risk also for additional loan or lease contracts with the same debtor. Regarding Item c. (replacement of paragraph 37), we refer to our comment on **Q12** above, i.e. it should be clarified if the wording „*any other kind of ordinary payment specified in the contractual agreement related to the economic substance of the exposure*" in the proposed new Paragraph 47. relates to the type of such „other kind of ordinary payment" (e.g. a one-off administration fee charged by the bank to its client would in our view fully qualify while a payment in order to check if the payment details provided by the obligor are correct might not qualify) and/or to the economic substance of the amount involved (i.e. is there a minimum amount of such payment such as 1 EUR or other?). In our experience, the above-mentioned aspects in relation to the ‚at least one payment made' requirement are particularly relevant for ABCP securitisations. Regarding additional aspects that should be clarified, in relation to the requirements in Article 24 (14) of the Securitisation Regulation regarding data on historical default and loss performance and similar to our reasoning in our other comment on **Q25** above, in our view the level 1 text is neither very specific nor very conclusive in terms of the type of performance data to be provided, it should be clarified that originators can, as long as the information provided is considered as meeting the relevant market standards (in the sense that investors'

				expectations are met), choose at least one (but optionally also more) from the various formats of performance data such as - rating migration matrices (for corporate loan portfolios) - static loss data (tracking the loss performance of a particular vintage of exposures over their tenor) (for highly granular auto loan/lease or consumer loan portfolios) - ageing data (showing 1-30 days past due, 31-60 days past due, etc. and more than 90 days past if the latter is used as loss proxy for the transaction) (for short-term trade receivables or credit card receivables) - Dynamic loss data (dividing losses during a certain monthly/quarterly/annual period by the outstanding amount of receivables at the end of the month/quarter/year) (for all types of asset classes) Also, it should be clarified that loss data can be provided by the originator on a gross loss or net loss basis (i.e. after any recoveries) but that it should be clearly stated what type of losses are shown.