**EBA CONSULTATION ON SIMPLE, STANDARD AND TRANSPARENT SECURITISATIONS (EBA/DP/ 2014/02)**

**Pillar I: simple securitisations**

Criterion 1

*Traditional securitisation*

In certain legal systems (e.g. Italy), securitisation vehicles are now allowed to advance loans directly to the underlying borrowers under the direction of what would otherwise be the originating bank. Therefore, in this scheme there is no outright transfer of the underlying exposures. We believe that securitisations carried out in accordance with such scheme, to the extent they satisfy the robustness of typical securitisations, should also be considered and included.

*Synthetic securitisation*

The reasons outlined for denial of eligibility to synthetic securitisations seem to have little to do with the concepts of simplicity and transparency. Our understanding is that the purpose of the exercise undertaken by the European Banking Authority should have been to determine under what conditions a securitisation - being what it is - can be defined as simple and transparent. Under the current regulatory framework securitisations can be either traditional or synthetic. Synthetic securitisations are transactions (by definition) without an outright transfer of assets aimed at achieving assets isolation. The assumption that synthetic securitisations, being what they are, can never be simple and transparent because they lack assets isolation is, in our view, an arbitrary conclusion based on a non persuasive reasoning. More importantly, this way an important opportunity might be missed to improve and standardize the market behaviour with regard to this specific instrument. We strongly believe that the Paper should consider synthetic securitisation for what it is and give market participants a strong indication as to a best practice for this type of transactions for the purpose of achieving simplicity and transparency.

Criterion 3

The reference to claw back provisions should be better qualified. The existence and abstract applicability of claw back provisions (including those defined as “severe”) should not, per se, prevent the achievement of eligibility. The legal robustness of the structure and the strength of the assets isolation are factors which are already taken into account in the rating analysis and, therefore, we question the need to duplicate this analysis in the form of an eligibility criterion, especially in relation to matters that require a complex legal analysis and hardly lend themselves to the type of simplification that a rigid “one definition fits all” criterion inevitably imposes.

Criterion 4, point (iii)

The criterion that the obligor’s obligation should be “enforceable in accordance with its terms” should be subject to standard qualifications.

Criterion 4, point (iv), letter (a)

We believe that a reference to investment funds (which are neither individuals nor corporates) as eligible underwriters should be added.

Criterion 5

“*The original lender should provide representations and warranties that assets being included in the securitisation are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due*”: the exact scope of this representations is not clear. It would be useful to have more background and some exemplifications in order to understand what circumstances these representations are aimed at capturing. Also, the representations should be made on the basis of the “actual knowledge” of the original lender.

**Pillar II: standard securitisations**

Criterion 13

This criterion refers to “ *[...] timely resolution of conflicts between different classes of note holders by the “identified person*”, where (typically) the identified person is expected to be the trustee of the securitisation.

In our experience, it is not possible to be sure that the identified person will always be willing to assume such an almost arbitrary role to such an extent. In fact, we note that the above will require the exercise by the trustee of an arbitrary function and this function conflicts with the nature and the activities typically performed by the trustee.

Actually, in the conflict situation described in the criterion, any trustee’s determination on the matter will indeed prejudice the interest of certain class or classes of noteholders: as a consequence, often such determination may not be taken by the trustee without the consent of the relative class or classes of noteholders.

We suggest to remove the reference to the identified person. To facilitate the resolution of the conflict under consideration, the proposal is to have the transaction documentation providing clear rules on how the above mentioned conflict of interests shall be resolved, limiting as much as possible (ideally entirely) any discretion or arbitration by the relevant identified person, but also bearing in mind that a complete sterilisation of the voting rights of the most junior classes of noteholders should be avoided, as it could discourage investors in non-senior tranches.

In addition “to making more effective the decision-making process”, the transaction documentation should be improved to facilitate the procedures required (both in terms of timing, means (e.g. videoconference) of participation, etc.) for noteholders’ meetings to be held.

Question 5

The distribution of voting rights is typically more articulated and provides for the necessity of a concurrent decisions of more junior noteholders to the extent that their rights are affected by the decision (e.g. a change in the priority of payment). It would be preferable to make reference to the attribution of voting rights to senior noteholders in accordance and within the limits of prevailing practice in the domestic market.

**Pillar III: transparent securitisations**

General

All disclosure requirements envisaged in Pillar III should take into account and be subject to privacy law limitations, bank secrecy and other applicable legal limitations.

Criterion 18

Changes to the debt recovery mechanisms and procedures are typically allowed, for instance to align them with the changes in the debt recovery policy of the originator/servicer. This should be reflected in the criterion.