## European Commission Draft Consultation Document "An EU framework for simple, transparent and standardised securitisation"

This document provides the responses of the Dutch Securitisation Association ("DSA") on the EC Consultation dated 8 February 2015.
We welcome the opportunity to respond on this Consultation Document.
This response has been drafted in coordination and agreement with securitisation representatives of the NVB Dutch Bankers Association.

## DSA Background

The Dutch Securitisation Association was established in 2012 as representative body of the Dutch securitisation industry. Our membership includes issuers of securitisations both from the insurance and banking industry, and we are operating in close cooperation with the Dutch investor community.
Our purpose is to create a healthy and well-functioning Dutch securitisation market.
We try to achieve this i.a. by providing a standard for documentation and reporting of Dutch RMBS transactions, promoting (in close cooperation with PCS) further standardisation and improvements in transparency, and active involvement in consultations about future regulation of the securitisation market.
Against this background, we would like to comment, on behalf of all Dutch issuers joined in the DSA, on the Consultation Document.

## Our comments

In our view, the Consultation Document is another step forward in the efforts to establish a properly regulated, but also sustainable, European securitisation market.
Below we provide our comments first per Question, and at the end of this document we summarize our main conclusions.

**Question 1:**

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

Overall, the initiatives of the ECB/BofE, EBA, BCBS/IOSCO and now the EC, all focus on the basic idea of identifying a number of categories describing the structural integrity of a transaction in terms of Simple, Transparent and Standardised/Comparable (together the "foundation criteria"), depending on the application to be potentially supplemented by a set of (Credit) Risk factors.
We generally subscribe to this approach, but do note that in some proposals the level of detail and the sheer number of criteria is such, that we wonder how the application can be made operational.
Looking at the initiatives of the EC to differentiate qualifying/non-qualifying securitisations in the context of the LCR and Solvency II, we see that the criteria used to determine Level 2B resp. Type 1 indeed can be ascribed to the foundation criteria or credit risk criteria.
Contrary to the more recent consultations, the LCR and Solvency II criteria exclude positions other than the most senior position. In our view, seniority is neither a structural nor a credit risk factor (at least not at the level of the underlying assets), so we welcome the more theoretically sound approach to apply the criteria to transactions rather than tranches.
Also, we see in the consultations different approaches to select the eligible securitisation categories. Excluding certain asset classes or summing up a limited list of eligible asset classes just because they performed well from a credit risk point of view, does not seem to be in line with the intention to define structural criteria.

We do understand that certain categories, like re-securitisations or transactions with a serious maturity mismatch are excluded for structural reasons. We also support an approach where the aim is to create quick wins by focusing on “low hanging fruit” like Dutch/UK RMBS or European auto ABS, but we certainly do not want to exclude for instance synthetic structures or ABCP from future elevation to the qualifying status, just because the technique of these structures is different from true sale RMBS/ABS.

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

The list of criteria as used for the LCR and Solvency II regulations, is in our view too detailed. We would prefer a more principles based approach, as used by BCBS/IOSCO in their recent consultation. In practice we see many problems arising in the application of the detailed Solvency II / LCR criteria; many criteria are not black-or-white, but need interpretation and judgement; also the exact legal wording has been drafted with obviously good intentions, but without involvement of industry specialists, leading sometimes to unworkable definitions.
A high level list of criteria in our view would include:
<u>Simple:</u> (initially true sale) securitisations of assets, randomly picked from homogenous eligible (incl. consistently originated in the ordinary course of the lender’s business) granular pools (of initially residential mortgages, auto/consumer loans, leases, credit cards, SME loans).
<u>Transparent:</u> meeting (to be harmonised) disclosure requirements (incl. min. 3-5 years of historic data, loan-level data, investor reports, a (third party provided) cash flow model and relevant and material documentation), subject to the Prospectus Directive.
<u>Standardised/Comparable:</u> meeting retention requirements, protected against currency and interest rate risk, containing a defined set of early amortization triggers, with usual payment priorities, sequential amortization in case of an acceleration event, and a balanced distribution of voting rights.
In addition we would encourage industry driven initiatives, like our own, to standardise per asset class and jurisdiction, the investor reports and certain elements of the Prospectus (and bring these standards in line with the per asset class and jurisdiction specific loan-level data).

We also would like to point to the concerns expressed by us in earlier comments on some criteria as proposed since the discussion on qualifying securititions started:

- True sale: true sale opinions are not always clean or standardised and not available to investors. So true sale (and no-material-clawback risk) will be hard to prove by originators.
- Consistency in underwriting: consistency does not imply ever tightening underwriting criteria. Underwriting rules should be able to change with the economic cycle and the business model of the originator, but should be transparent and fully disclosed, like the Dutch Code of Conduct, which is embedded in Law.
- Cash flow model: cash flow models are typically provided by third parties; a requirement for the originator to also provide a model would be costly, burdensome and unnecessary but most of all confusing for investors.
- Documentation: in principle the Prospectus should be sufficient and no disclosure of documentation would be needed. Any documentation disclosure should be limited to material and relevant documentation, excluding confidential information and to be disclosed some time after the closing (earlier is impossible, both from an operational and legal point of view).
  The Prospectus Directive requires that a prospectus contains all information that is necessary for investors to make an informed assessment of, amongst others, the assets and liabilities, prospects of the Issuer and rights attached to the securities. A documentation disclosure requirement implies that this legislation and/or its implementation falls short in this key principle. We note that issuers and lead managers see it as a key point that the Prospectus Directive is implemented and that ABS prospectuses contain extensive disclosure of relevant underlying documents.
- Retention: please see our comments on Question 3A.
- Hedging: in order to become less dependent on ratings (of support providers) we would encourage to earmark transactions mitigating interest /currency risk through structural protection also as standardised/comparable.

-Voting rights: the allocation of all voting rights to the most senior tranches would have a very negative impact on the distribution of any lower ranking note tranches and may create perverse incentives (junior note holders will be more inclined to be risk averse, since they will be really exposed to risk).
-Asset selection: no cherry picking, but random selection out of a pool of eligible assets; replenishment and substitution to be allowed (provided it does not result in material portfolio deterioration).
-Pool review: apart from review of the pool, for frequent issuers also the alternative of an annual review of the entire eligible pool of the originator should be allowed.

**Question 2:**

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

While we recognise the importance of the short term securitisation market, we also note that ABCP conduits are so much different from term securitisation bonds, that the content of criteria would not often overlap, so much additional work would be needed to develop criteria for ABCP.
However, time is running out for securitisation, so we would like to urge regulators to focus on a fast development of criteria and the associated regulatory treatment for granular, true sale term securitisations rather than getting distracted by work on other asset classes.
This does not imply that other asset classes should not be carefully be looked into in the near future as many asset classes do not pose materially increased risk or lack of transparency, but have e.g. less availability of historical public data points and/or a less immediate importance as key funding source of the real economy.

So while we propose to defer work on ABCP criteria for now, in a next round attention should certainly be paid to ABCP, since this product is also heavily penalised under proposed regulations (not only through the capital charge imposed on banks that provide liquidity back-up facilities, but also through a ban on many short term investor categories to invest in the product at all) and securitisation of trade receivables, an asset class where ABCP is more suitable than ABS, is an essential part of the funding of the so-called “real economy”.
Criteria that would be relevant for ABCP include:
<u>Simple:</u> only homogenous (per seller) pools of short term assets (liquidating within [x] year) originated in the ordinary course of the seller’s business,
<u>Transparent:</u> standardised conduit report with stratification tables per pool, min. 3-5 years of historic data, disclosure of Conduit documentation (but not Transaction documentation).
<u>Standardised/Comparable:</u> full mitigation of currency, interest and liquidity risk, pass through of ABCP funding rate, stop-issuance triggers, waterfall with standard payment priorities.

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

Credit risk criteria should incorporate the amount of credit and dilution risk taken by the seller (first loss, as opposed to second loss taken by the sponsor bank through the L/C and/or Liquidity Back-up lines).

**Question 3:**

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

There should not be specific retention rules for qualifying or non-qualifying instruments. However, the current European retention rules should be revised and better aligned with US retention rules.
Especially the exemption for US mortgages as compared to the full 5% retention for prime European RMBS, where loss rates are well below 1%, disturbes the level playing field.

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

First and foremost, rules should be aligned between the US and Europe (see also Question 3A. above).
Furthermore, it is crucial for a workable implementation of the criteria (see also Question 4 below) that investors can very easily and quickly verify the qualifying status of a transaction. For Dutch RMBS transactions under the DSA standard, this is achieved by inserting (standard) language in the Prospectus where the Seller/Originator confirms that the representations and warranties in the documentation include compliance with the retention rules under both CRR and AIFMR.

**Question 4:**

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

Investors should be able to rely on a “label” that provides timely (at issuance) confirmation that a transaction meets the foundation criteria. The investors should check the credit criteria, based on the information provided in the Prospectus, loan-level-data etc.
Labelling the credit risk criteria would not be desirable (see also Question 4 C).
Also, the label will be provided upfront; at closing the issuer will confirm his ongoing compliance with the foundation criteria during the life of the transaction (maintaining retention, proper substitution etc.).
Credit review on the other hand is an ongoing effort (by investors), based on the analysis of data provided on a monthly/quarterly basis.

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

First of all the question has to be answered who should provide the label. Self-certification may be possible for certain criteria, but ultimately verification by an external party will be the best approach. Our main objection against self-certification is that it will be seen by investors, politicians and the public as a return of the bad habits that stigmatised the securitisation industry in the last 7 years.
The external labelling party can be a government organisation or a private sector entity like PCS.
We would prefer a private sector solution, more or less comparable to the European Datawarehouse (“EDW”), where the regulator has an effective mechanism to influence decision making, but the actual process is run in a cost effective and flexible way by a private enterprise. For the purpose of labelling qualifying securitisations combining the governance of PCS with an EDW style enterprise would be the most efficient solution in our view.
Scope and processes could be very much the same as for PCS: based on a rule book, professional parties with sufficient staffing flexibility to handle rapidly changing workloads in a timely manner will be hired to liaise with (the lawyers of) the originators during the structuring process in order to produce a label at issuance, so investors can rely on the label when taking an investment decision (based on their own analysis of the credit risks).
The main difference with the current situation will be that the rule book will be developed and maintained by the regulators, in close cooperation with the industry, while currently the PCS members (comprising of issuers, arrangers as well as investors) themselves determine the rules.

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

Labelling the credit criteria would create a credit rating agency type of label, which is not desirable and would lead to “shirking” by investors (according to the IMF staff discussion note of January 29, 2015).
The label should however confirm as part of the transparency check that the contents of the Prospectus, the quality of the loan level data, and other sources of information allow the investor to assess the credit risk of the (relevant tranche in the) transaction.

**Question 5:**

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

We welcome the plans around the European Capital Markets Union and especially the initiatives to harmonise the legal and tax framework in Europe.
In a timeframe of 5-10 years, this could contribute to a more standardised securitisation product and foster the development of the EU securitisation markets.
Our main concern is however the survival of the European securitisation industry in the next 1-2 years. If the product cannot be revitalised in the short run, more standardisation in 5-10 years will not lead to a resurrection of the industry, since the required infrastructure at investor and trading desks, law firms, structurers etc. will have disappeared.
In the very short run more standardisation in the structuring process is hardly achievable. Differences between asset classes and jurisdictions are very much driven by differences in legal and tax frameworks.

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

It would make the analysis for investors simpler, increase efficiency, lower costs and so lower the entrance barrier for investors, especially for non-bank and smaller investors that are currently underrepresented in the securitisation investor universe.

The benefits for issuers are less clear. If ultimately harmonisation would accommodate the combination of pools from different jurisdictions in one transaction, larger securitisation transactions with associated lower costs and higher liquidity would be beneficial to the issuers/originators.

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

Harmonised legislation with regard to true sale mechanisms and clawback provisions would be the most important improvement. Also tax, corporate and insolvency law convergence could be helpful, but one common shape of a securitisation vehicle does not seem to be a necessity.
Rights and subordination rules for noteholders can be harmonised within the current legal environment, but again we doubt whether there is much to gain.

The main impediments to creating a pan-European market are not so much the securitisation structures, but more the rules and regulations with regard to the origination and maintenance of the underlying asset pools: differences in workout regimes, tax deductability etc.

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

Certain aspects of the harmonisation would definitely have to be reflected in the foundation standardisation criteria, but a certain degree of choice (between legal structures etc.) should be left to the issuers/originators.

**Question 6:**

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

Investors should receive timely, comparable and reliable information in as much as possible standardised formats. Information should not be excessive. We (issuers and investors) are wondering what the value-added is of downloading all (100+) documents of a transaction in a repository, if the Prospectus provides all the information needed and/or investors would only be interested to view a handful of key documents. Please see the Annex for more a more detailed discussion of disclosure of documentation.

Also providing cashflow models by issuers is a costly and unnecessary burden, if third parties already provide such models; and multiple models will be confusing for investors.
Harmonising disclosure obligations between all European regulations and eliminating superfluous information obligations, would be extremely beneficial to the development of the European securitisation market.

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

In this respect we would like to point to the initiatives taken by the DSA.
For Dutch RMBS transactions we have developed, next to our standard templates for the table of contents of the Prospectus and the Glossary of defined terms, also the following reporting standards:
-a template Notes and Cash Report, detailing (a.o.) the payments to be made and received by the issuer.
-a template Portfolio and Performance Report detailing the performance of and other developments in respect of a.o. i) the portfolio of receivables backing the notes and ii) the ratings of the counterparties of the issuer.

We would recommend that similar work by private initiatives, as yet per jurisdiction and asset class, would be encouraged.

***C. To what extent should disclosure requirements be adjusted – especially for loan-level data[1] – to reflect differences and specificities across asset classes, while still preserving adequate transparency for investors to be able to make their own credit assessments?***

The current ECB taxonomy for the loan level data provides already for a lot of differentiation between asset classes and jurisdictions. Even at that level of detail a lot of clarification is needed. We see however ongoing improvements in the quality of the loan- level data and expect these data to develop into a valuable tool for both regulators and investors.

**Question 7:**

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

We generally encourage alternatives for the use of external ratings in regulatory models and a reduced mechanistic reliance on external credit ratings. However, as long as ratings and rating agencies are needed, rating ceilings have to be accepted as a given.
Investors should be less depending on ratings; so we are not supportive of creating a new rating category (“uncapped ratings”).

[1] For example, securitisation encompassing revolving underlying assets (e.g. credit card receivables), compared to static pools (e.g. residential mortgages).

As regards alternatives, the proper calibration of the European SSFA as referred to under Question 10, will be a solution for parties able to use the SSFA. This requires however a European approval to use internal models cross border and disclosure of PD's and LGD's to investors.

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

It improves clarity on the ratings, and it does not harm, but we would expect investors to do increasingly their own credit assessment in this respect and infer ratings from properly calibrated capital models like a European SSFA if they are able and allowed to use internal models (see our answer on Question 7 A).

**Question 8:**

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

There should not be a difference in market structure between qualifying and non-qualifying securitisations.
Also, it is very difficult to define "liquidity" criteria for securitisations; if we look at the current PCS criteria, criteria could be minimal transaction size, transparency about distributed amount of paper, admission to a regulated exchange and (co-)manager requirements.

As regards MIFID, we would appreciate to see in future reviews more specific treatment of structured finance transactions. Current rules are more focused on high volume screen trading and less on the more labor-intensive exchange of information associated with trading structured finance products.

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

EMIR is a major problem area for securitisations. While proposed ESMA regulatory standards provide for a specific exemption for Covered Bonds, derivatives used to hedge interest and currency risk in securitisations are treated as any other derivatives. The requirements under the technical standards would include the posting of collateral, which is effectively impossible for a stand-alone operation like a securitisation, but also unnecessary since sufficient protection is provided to swap counterparties through the structural protection embedded in a transaction (ringfencing, priorities in the waterfall etc.). And it creates another unlevelled playing field between Covered Bonds and securitisations.

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

Existing and proposed regulatory treatment of trading book positions of Securitisation tranches lead to excessive capital charges (due to double counts of risk factors and extremely conservative calibration of risk weights) and consequently limited appetite of banks to run a securitisation trading book.
In addition, the large body of regulations and draft regulations specific to asset-backed securities limits the number of investors that will find it worthwhile to invest in ABS and makes investment disproportionately time as well as capital consuming. These aspects by nature limit secondary market liquidity. A trend towards a lower burden of requirements would be helpful.

***Question 9:***

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

The current CRR capital regime is certainly not perfect, and we appreciate the efforts of the BCBS to revise their securitisation framework.
It is however difficult to assess the (in-)adequacy in reflecting risks.

Effectively, losses on most of the (potentially qualifying) European securitisations have been minimal through the crisis, so for the senior tranches a 7% risk weight floor seems rather high than low.
To the extent risk weights exceed the floor, there are 2 major problems in determining how adequate the Basel II regime is:

1) For the external ratings based approach, we are confronted with the fact that since the crisis rating agencies have gradually but consistently increased the level of conservatism in their rating methodologies. Consequently the calibration of risk weights against external ratings has become a moving target.
2) For the IRB, the main problem is the diversity of LGD, PD etc. inputs used in IRB models for the underlying assets, between banks, asset classes and jurisdictions, which makes the comparison very difficult (the IRB-based risk weight for one bank could be widely different from another bank while the quality of the underlying assets at first sight looks comparable).

***Question 10***

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

Changes in the capital requirements should be based on the concept of capital neutrality, a view we share with many parties involved in the European securitisation industry.
So the capital charge for a pool of assets should not be materially different from sum of the capital charges of all tranches of a securitisation of the same asset pool.
And, while admittedly Covered Bonds benefit from dual recourse, the capital charges for a securitisation should not be a multiple of those for a comparable Covered Bond.
So against that background, we do regard the BCBS proposals as unrealistically conservative.
We appreciate that for reasons of global coordination, a new framework will have to use the SFA model, although that could be in the shape of an SSFA, just like the US has included a SSFA in their framework. However, for Europe the parameters and calibration should be reflecting the European credit risk history.
So we suggest to use a European style, properly calibrated, SSFA formula, as developed by Duponcheele, Linden and Perraudin in their November 7, 2014 proposal for a European SSFA, with a risk weight floor of 5%.

***Question 11:***

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

Based on the concept of capital neutrality, capital requirements for qualifying securitisations should be close to the capital requirements for the underlying exposures (and risk weights for the most senior tranches well below the risk weights for the overall pool). For other securitisations, by setting parameters at more conservative levels, capital requirements could be up to double the underlying exposures' capital requirements in order to cover structural and model risk (but with risk weights for the most senior tranches still below the risk weights for the overall pool).

.***Question 12:***

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

Circumstances in the US and EU securitisation markets are indeed rather different. Especially in MBS there are clear differences between US-government guaranteed paper versus European style RMBS versus US private sector MBS.
So while we support the efforts of the BCBS to develop a global framework, we also see a need to adjust the calibration and parametrisation of the models to regional circumstances, but there should be a common basis.
So in the case of retention (see Question 3) we support the use of comparable definitions of how retention can be achieved, but we miss the rationale behind the difference between an investor resp.

originator driven approach in the 2 regions and the lack of exemptions in the EU where in the US the majority of transactions is exempted.
On the other hand, the LCR, differently worked out but based on the same principles, is a good example of how particular European circumstances can be reflected in regulation.
Finally, but most importantly, under the capital requirements framework, there is a global concept of an SFA, which has been implemented in the US in a specifically calibrated and simplified way, and where we would advocate a comparable, but slightly different European SSFA (see Question 9).

***Question 13:***

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

The revival of the European securitisation market will require a major role of institutional investors. Currently, banks are the largest investor in securitisations, but with the limited/reduced role of securitisation in the liquidity buffers, banks are not expected to increase their holdings of securitisation paper considerably.
So securitisations will have to be structured in a way to optimally match the requirements of institutional investors, standardisation and transparency has to be continuously improved, but most importantly the confidence of institutional investors in a stable, predictable and realistic regulatory environment for securitisation should be restored.
For pension funds this implies that they should not become subject to the Solvency II rules, which are rather prohibitive to investing in securitisations, unless Solvency II will be materially revised (see Question 14). The large body of regulations and draft regulations specific to asset-backed securities limits the number of investors that will find it worthwhile to invest in ABS and makes investment disproportionately time as well as capital consuming. These aspects by nature limit both primary and secondary market demand. A trend towards a lower burden of requirements would be helpful.
A specific case in point is the 5 year maturity limit for qualification as Level 2B asset in the LCR, which conflicts with the desire of long-term investors to purchase paper with maturities in excess of 5 year. As long as this 5 year requirement is effective, investors will be hesitant to purchase longer maturities since the secondary market for longer maturities will be limited (with all “LCR-investors” on the sideline), while pre-LCR we have seen no proof of longer (than 5 year) maturities being less liquid.

**Question 14:**

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

In our opinion, the approach to determine capital charges under Solvency II (and also Liquidity under the LCR) based on generic spread volatility, produces results that are not reflective of reality. The resulting charges for Securitisations are a multiple of those for Covered Bonds (not surprising since Covered Bonds benefitted from 2 ECB purchase programs during the crisis, adding artificial liquidity to the market and consequently compressing spreads) and whole loan portfolios.
Conceptually we would be in favour of an approach based on credit risk factors, like the BCBS applies in its securitisation framework.
However, changing the methodology of Solvency II may currently not be realistic, so amendments in the spread risk parameters are the best way to mitigate the negative impact of Solvency II on investments in securitisations.
In that respect both a reduction in the percentage per annum and a smoothening of the duration impact should be considered. Especially the percentages for Type 1 securitisations (2.1% for quality step 0; 3% for quality steps 1, 2 and 3) seem to be rather artificial and prime candidates for amendment.
The duration element has a less dramatic impact, since for most transactions it is capped at 5 years anyway.

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

For Type 1 transactions the requirement of being the most senior tranche could be dropped, irrespective of the credit quality step of the tranche. The current Solvency II regulation unfortunately mixes foundation criteria with credit risk criteria (minimum credit quality step 3). In our view, any tranche of a transaction meeting the foundation criteria should be qualifying for lower capital charges than the very punitive Type 2 charges that are currently applicable to a tranche not being the most senior.

**Question 15:**

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

Outside the well known conservative investors like insurance companies and pension funds, there is obviously also an universe of asset managers, hedge funds etc. interested in a combination of higher risk/higher return.

It is especially important to develop this investor group, since selling of the lower rated tranches of securitisation transactions is instrumental to regaining capital relief for securitisation transactions.

On top of that, also non-STS, more bespoke and/or less granular transactions can be very important for the funding of the "real" economy (examples: infrastructure financing, multi-family CMBS, certain parts of the SME spectrum).

The best way forward however to expand this specific investor base, is to increase the supply of all kinds of securitisation paper. It all starts with a stable, predictable and well calibrated regulatory environment; this will increase the supply of paper, next there will be a resurgence of general investor interest, followed by more supply of more challenging transactions (both capital relief and non-qualifying) and ultimately more activity of a diverse group of investors however without the pre-crisis problems recurring because generally applicable (for both STS and non-STS) regulation, like retention rules, is now available to prevent excesses.

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

These frameworks should move away from an investor driven model, just like we indicated for risk retention (see Question 3.).

To the extent investors remain responsible for checking originator compliance with retention and due diligence requirements, a flexible labelling system should provide investors in a timely way with the necessary checks.

And obviously harmonisation between all regulatory frameworks, including UCITS and AIFMD, would be good for the market.

**Question 16:**

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

In addition to the need to improve, just like for the whole securitisation market, (clarity about) regulatory treatment for qualifying SME transactions, there is a need to create sufficiently large eligible asset pools. By increasing standardisation of SME loan products and improving the credit quality and margins of the SME loans, sufficiently large pool cuts can be made to justify securitisation at acceptable economic terms.

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

There are no specific market failures around SME securitisations, but all the problems around other asset classes are multiplied in SME securitisations because of the less granular, less standardised and more credit risk sensitive nature of SME assets as compared to mortgages, carloans, credit cards etc.

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

This has to be taken up first per jurisdiction. A European "solution" can be developed in parallel, but would not provide the much needed quick wins.
For standardisation of securitisation structures, we refer to (our answer on) Question 5.

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

The main bottlenecks are (uncertainty about) regulatory treatment and the economics of the transactions. If and when these hurdles have been taken away, in the longer run standardisation and better credit information at loan level could be next steps to further grow this market.

**Question 17:**

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

Harmonisation and standardisation are extremely important, but do not necessarily require a single instrument. However, one of the lessons learned from the drafting of the Solvency II and LCR requirements for qualifying (Type 1, Level 2B) securitisations is that the wording of securitisation legislation is a delicate matter. So a concerted effort to properly address all legal issues around securitisation in one instrument may have its benefits.
Issues to be covered could include:
-standard definitions (for default, just as an example).
-standard disclosure requirements without duplication.
-foundation criteria for qualifying securitisations.
-regulation applicable to all securitisation asset classes (incl. ABCP, but also CMBS, CLO's etc.).
-a level, or at least comparable, playing field between different groups of investors and issuers.

**Question 18:**

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

First and foremost the negative perception about securitisation should be taken away.
Here is a task for regulators and politicians to perform.
On top of that, we miss in most consultations attention for the main value-added of securitisation (next to tranching in distinct risk/reward profiles), being risk transfer and capital relief.
Some of the impediments to redevelop effective risk transfer can be addressed by financial market regulators directly, like the elimination of time call options in the most recent guidelines for Significant Risk Transfer ("SRT"), which should be reviewed before risk transfer can be redeveloped.
Other hurdles have been created by international accounting standards eliminating deconsolidation, which should be addressed by the relevant accounting standard setters.

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

NSFR: just like the LCR, the NSFR, as currently proposed, discriminates against securitisation.

Large Exposures (art 390(8)CRR): although the regulation itself is not designed in a negative fashion, the mere limitation on exposure concentration reduces the effectiveness of securitisation.

SRT (art 243/244 CRR): see our answer on Question 18A.

Risk retention and due diligence (art 405-409  CRR): see our answers on Question 3.

Cost of Credit Protection Purchased: after the March 2103 consultation by the BCBS, the market is living in uncertainty.

## Conclusion

The DSA is strongly supporting a fast determination of STS criteria and the associated better calibrated regulations which should create a more level playing field for ABS/RMBS as compared to Covered Bonds and Whole loan transactions.
We agree with regulators to focus first on true sale, granular, retail and SME transactions.
As concerns the concept of (STS) criteria, it makes sense to apply them, as proposed, to transactions and not just senior tranches, and to limit the inclusion of credit risk criteria, since STS criteria should not be a substitute for a proper credit analysis by investors.

On the practical implementation we have however a number of serious concerns:

-there are many and sometimes detailed criteria; the example of the LCR/Solvency II criteria has demonstrated that this may lead to complicated legal interpretations.

-in the view of both issuers and investors (and most likely politicians and the general public), self-certification would be the wrong way to determine compliance with the criteria.

-there is a tendency to ask for over-disclosure; providing all documentation and 2 different cash flow models will create a due diligence burden for investors that will negatively impact the willingness to even consider investing in such overregulated product.

The efforts of the EC to include all regulatory impediments to securisation in their analysis is highly appreciated. We especially ask attention for Solvency II, the LCR, EMIR, SRT and the Trading Book treatment.

Finally on two specific, but very important, and interrelated issues our comments can be summarised as follows:

-SME securitisation: this will require more standardisation of the assets to be securitised. But also important will be the development, in a “second round” of STS criteria for synthetic securitisations and ABCP/trade receivables, techniques that are very important for the re-development of SME securitisation.

-Capital relief transactions: apart from the accounting treatment, also issues covered in this consultation, like (again) synthetics and the SRT guidelines would have to be addressed in order to promote capital relief transactions.

**Annex to DSA response on European Commission Draft Consultation Document "An EU framework for simple, transparent and standardised securitisation"**

Notice: this Annex has been developed at the initiative of the DSA members in close cooperation with one of the large issuers in the Dutch RMBS market and a representative group of Dutch investors.
Due to time constraints, the contents could not be authorised by all DSA members and securitisation specialists of the Dutch Bankers Association.

Documentation disclosure (Question 6 A.)

First of all, we would like to clarify, that any certification organisation should get access to all documentation. Please see our answer on Question 4 for our objections against self-certification and our strong preference for certification by an axternal labeling party.

As regards timing, draft documentation should be available to the certification organisation pre closing (in order to warrant a speedy certification process), and final documentation should be available in a repositiry accessible to investors shortly after closing.

Disclosure of documentation in this repository should however be limited to matererial and relevant documentation.
A workable solution for determining "material and relevant" would be to look at what is referred to in an Offering Circular as being available for inspection at the offices of the Securitiy Trustee and the Paying Agent.
If we take this list from a recent Offering Circular, it encompasses:

-the Prospectus;
-the deed of incorporation including the articles of association of the Issuer;
-the Mortgage Receivables Purchase Agreement;
-the Paying Agency Agreement;
-the Trust Deed;
-the Secured Creditors Agreement;
-the Issuer Mortgage Receivables Pledge Agreement;
-the Issuer Rights Pledge Agreement;
-the Issuer Accounts Pledge Agreement;
-the Servicing Agreement;
-the Administration Agreement;
-the Participation Agreements;
-the Issuer Account Agreement;
-the Cash Advance Facility Agreement;
-the Swap Agreement;
-the Conditional Deed of Novation;
-the Beneficiary Waiver Agreement;
-the Master Definitions Agreement;
-the Commingling Guarantee;
-the Construction Deposits Guarantee; and
-the deed of incorporation including the articles of association of the Security Trustee.

but excludes (amongst others) bilateral agreements like:

-the Subscription Agreement;
-the Netting Agreement designation letter;
-the Side Letter Partial Repurchase Receivables;
-the Funding Agreement; and
-the Recourse Agreement.

as well as:
-the Closing Certificates;
-Payment letters; and
-Rating Letters (but rating information will be available at the websites of the CRA’s).