Consultation questions:

Question 1: Do you agree with the provisions in this Article with respect to the application of the retention options on the NPE securitisations, and the "net value" regime of the NPE securitisations? Are the retention options specified under Articles 4 to 8 sufficiently clear using the net value regime? Are there any other aspects of NPE securitisation and the net value regime that should be clarified in the RTS?
The definition of "non-refundable" requires that the discount is not structured in a way that it can be refunded to the originator. We would suggest to adjust the wording of this definition in order to make ascertain that (1) a purchase price discount is also non-refundable if the nominal value of all issued tranches is assumed to be equal or lower than the sale price of the portfolio, i.e. depending on provisions already booked, the originator incurs a corresponding loss in this amount and (2) the potential unexpected upside. defined as excess/variable return, might be distributed to the originator/original lender if it holds the junior tranche.

Question 2: Do you agree with the provisions with respect to the synthetic excess spread? Are there any aspects relating to the synthetic excess spread being considered in the measurement of the material net economic interest that should be clarified in these RTS, taking into account that separate RTS will be developed that will determine the exposure value of the synthetic excess spread?
As long as the separate RTS on the exposure value of the synthetic excess spread does not impose additional hurdles with regard to risk retention, we can agree with the wording of Art 10

Question 3: Do you agree with the provisions set out in this Article on fees payable to the retainer?
We would appreciate a confirmation that this only refers to fees that are directly linked to the risk in the portfolio, and not fees for general purposes.

Question 4: Do you agree with the provisions with respect to securitisations of own issued debt instruments?
Could you please add at the end of the Article "or similar own debt instruments", in order to align with Recital 7.

Question 5: Do you agree with the provisions with respect to resecuritisations?
While we do agree with the wording of Art 17, we would like to comment on Recital 8 with regard to this Article. Recital 8 states that "As a general rule, the first securitisations(s) of exposures and the second "repackaged" level of the transaction should be treated as separate for the purpose of meeting the risk retention requirement and accordingly, there should be an obligation to retain a material net economic interest at each of those levels" and it continues stating "The same requirement should apply to transactions with multiple underlying securitisations, such as ABCP programmes".
The latter however seems to conflict with the fact that under SECR Art 8.4 fully supported ABCP programmes meeting certain criteria are exempted from being classified as resecuritisations.
Can we assume that the statement in Recital 8 only refers to partially supported ABCP programmes and/or those programmes not meeting the conditions of SECR Art 8.4 ? Could you please confirm this ?

Question 6: Do you agree with the provisions in this Article with respect to assets transferred to SSPE? Are there any additional aspects that should be further specified in these RTS, taking into account that no clarification is provided with respect to Recital 11 of the Securitisation Regulation (for example, do you see any specific implications for the securitisations of NPE securitisations and how these should be tackled)?
We would appreciate a clarification of how Recital 11 of the Securitisation Regulation interacts with this Art 18. Especially the right of originators or sponsors to select ex-ante assets with a higher-than-average credit-risk profile as long as this is clearly communicated to (potential) investors seems to be missing from Art 18.

Question 7: Do you agree with the provisions set out in this Article with respect to expertise of the servicer of a traditional NPE securitisation?
We notice that the provisions in this Art 19 are much stricter than the requirements as stipulated in the EBA Guidelines on the STS criteria. Especially Art 19.2 is very rigid in terms of years of experience, asking for a back-up servicer and not taking into account the possibility of an entity being prudentially regulated.

Question 8: Do you have any comments on the remaining Articles of these draft RTS?
What we are missing in the draft RTS is guidance on risk retention where a traditional (true-sale) securitisation was executed on a portfolio of underlying assets that is also (partially) hedged by a synthetic securitisation.
Recital 5 states that it is not prohibited to hedge any interest in excess of the minimum material net economic interest of 5% as long as these circumstances are disclosed in amongst others the prospectus. We would appreciate EBA guidance on how this would work in the following scenarios:
Scenario 1:
A traditional (true-sale) securitisation complies with risk retention rules by way of retention of the first loss tranche. This first loss tranche exceeds the minimum retention of 5% and retains for example 20% (comprised of a class

C and a class B note). What would be the considerations if at a later stage a (either first or second loss) synthetic securitisation on a pool of assets is structured which in part overlaps with the pool in the first true sale securitisation assuming that the overall risk retention on the true-sale securitisation is still a minimum of 5% although this could hedge part of the first 5% of losses in the first loss tranche.

Scenario 2:

In line with scenario 1, in case not only the class B and C notes which together amount to 20% are retained, but also the class A notes (thereby fully retaining the transaction), how would a situation be considered where the credit risk on the class B and C notes would be hedged as long as the class A notes are also fully retained? As Article 6.3(d) of the securitisation regulation states: "the retention of the first loss tranche and, where such retention does not amount to 5 % of the nominal value of the securitised exposures", the question arises whether the class A notes can be counted towards the retained position as the class B and C notes already amount to 5% of the nominal value of the securitised exposures, while, as the transaction is fully retained, effectively all risks of the traditional securitisation transaction are retained.