EBA Consultation Paper on the Draft Regulatory Technical Standards Amending Delegated Regulation (EU) 2016/2252 on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012 in the context of the STS securitisation under Regulation (EU) 2017/2402.

This document provides the response of the Dutch Securitisation Association ("DSA") on the EBA Consultation Paper dated 4 May 2018.
We welcome the opportunity to commend on this Consultation Paper.

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 and Consumer ABS 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 commend, on behalf of all Dutch issuers joined in the DSA, on the EBA Consultation Paper on the draft RTS on risk mitigation techniques for OTC-derivative contracts not cleared by a CCP(individual DSA members may also provide their own comments).

Our comments

Question 1: Do stakeholders agree with the amendments for Delegated Regulation (EU) No 2251/2016 suggested in this CP?
We do agree, subject to our answers below.
Furthermore we wonder whether the amendments are also applicable to transactions issued before 1 January 2019 that are considered STS under the Transitional provisions of Art 43 of Regulation (EU) 2017/2402. If not so, these transactions might become subject to the Financial Counterparty status as currently considered in the EMIR review, which would create a difficult situation, or best case be regarded as Non Financial Counterparties, which also could create problems for those groups exceeding the relevant thresholds.

Question 2: Are there any additional or alternative requirements for securitisations that stakeholders view should be introduced in Delegated Regulation (EU) No 2251/2016 following the amended mandate in Article 11(15) of EMIR?
Not that we are aware of.

Question 3: Do stakeholders consider that the condition in draft Article 30a(2)(a) results in a treatment consistent with that provided in Article 30(2)(b) of Delegated Regulation (EU) No 2251/2016?
Not really. Compensating recourse to the issuer by the disallowance of a waiver of the pari passu condition is not something that can be easily justified with any "hard numbers".

Question 4: Do stakeholders consider that the non consideration of the waiver of the pari-passunrank, in conjunction with the minimum 2% credit enhancement, results in a similar protection of the OTC counterparty in the cases of STS securitisations as in the case of covered bonds? Or would it instead be necessary to retain the waiver currently available for covered bonds also for exceptional situations under STS securitisations?

The same problem applies as indicated in our answer on Q3. While the comparison of 2% overcollateralisation and 2% credit enhancement for senior notes certainly seems logic, comparing the waiver of the pari passu rank with any other kind of protection is not really a viable possibility.