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	BSBV 64/Dr.Egger	3137	12 May 2015

Re: **Response to consultation document "An EU framework for simple, transparent and standardised securitisation"**

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as representative of the entire Austrian banking, insurance and pension funds industry, appreciates the possibility to comment on the above mentioned Consultation Paper and would like to submit the following position.

Questions 1A and B:
We would **appreciate a unification of the STS criteria** across relevant aspects of EU law (applying for banks, insurers and asset managers). For example there are differences between the BCBS & IOSCO (Consultative Document on "criteria for identifying simple, transparent and comparable securitisations from 11 December 2014) and EBA (EBA/DP/2014/02 from 14 October 2014) criteria regarding the payment status: BCBS proposes no defaulted or delinquent credit claims or receivables to be allowed whereas EBA only excludes defaulted. Exposures in arrears have a higher credit risk and should therefore not be included under qualifying securitisations. We agree with the BCBS proposal which also has the advantage of no need to define a defaulted exposure.

In our opinion, **synthetic securitisations should not be excluded** from the framework for simple standard and transparent securitisations. Synthetic securitisations can be structured in a way to fulfil all mentioned criterion for qualifying securitisations. The non-compliance of legal true sale under criterion 3 and again mentioned under criterion 1 (legal and economic transfer) can be replaced with e.g. funded trustee accounts from investors and the originator. The investors pay the notes notional on a trustee account to cover losses of the underlying assets. The originator pays the interest on the notes on a trustee account for fulfilment of its payment obligations until maturity. Moreover, not including synthetic transactions would also be a differentiation from CRR in which for traditional as well as synthetic transactions the same capital requirement calculations apply. Synthetic securitisation offers a less costly and complex alternative for banks to benefit from one of the major purposes of securitisation, namely risk transfer and freeing up capital for further lending, especially to SMEs.

Question 2:
We agree with Bank of England (BoE) and ECB (Joint response from the Bank of England and the European Central Bank to the Consultative Document of the EC, March 2015) that for ABCP separate criteria should be developed.

Question 3A:
No further adjustment needed on risk retention requirements for STS securitisation. However, it would be helpful if **further clarification** is provided on the Art. 405 c) retention option in combination with a replenishment feature in the transaction and the application of the eligibility criteria on the potentially securitized exposures, the securitized and the retained exposures during the replenishment period.

Question 3B:
For STS securitisation as the risk retention requirement is part of the criteria the consisting indirect approach would be complemented with the direct approach.

Questions 4A, B and C:
We agree with BoE and ECBs process proposal: self-attestation by the Securitising Party combined with supervisory oversight

Questions 5A, B, C and D:
We agree with BoE and ECBs answer that a standardisation initiative would have to take into account the national differences in contractual, property and insolvency laws and practices.

Questions 6A, B, C:
As mentioned in the BoE and ECBs answer further standardisation of investor reports and loan level data would facilitate analysis, comparability and monitoring for investors. Certain minimum standards and market definition on important ratios should be embedded in reports and loan data. Both should be available free of charge at a centralised data base such as the European Data Warehouse.

Question 7A:
We agree with BoE and ECBs answer that sufficient information allows investors to make their own assessment and reduce reliance on ratings. This will be supported by the implementation of the high quality criteria.

Question 7B:
The publication of the uncapped ratings as well as full transparency of the rating process would provide more clarity for investors.

Questions 8A and C:
See reply to 6 (centralised data base)

Question 8B:
We support BoE and ECBs view that all STS securitisation vehicles meeting the definition of an Securitisation Special Purpose Entity (SSPE) under CRR should be exempted from the

legislative requirements to provide collateral based on the arguments quoted in the central banks answer.

<u>Question 9:</u>
Given the very strong historic performance of core European ABS asset classes which will also be mostly covered by the high quality criteria, risk weights of the Basel II framework for most senior classes are appropriate. A correction of the "one-size-fits-all" shortage of the current regulatory approach is however necessary and will be provided by the STS criteria.

<u>Question 10:</u>
In our view, the BCBS Document "*Revisions of the Securitisation Framework*" *(*11 December 2014) includes a number of provisions which we prefer over those included in the documents published in late 2012 and in December 2013. However, we believe that it still unfairly and unjustifiably punishes asset classes that have performed well during the last fifteen years. We would have welcomed if the BCBS had introduced a more specified approach based on the observed performance and based on treating the asset classes differently. We feel that this is a severe conceptual shortcoming. Our view is backed by the empirical evidence of a wide divergence in performance of different securitised asset classes. As already documented in our response to the second proposal on a revised securitisation framework, practically all of the European cash securitisation sub-sectors, with the exception of CMBS transactions, have performed extremely well throughout the financial crisis. **The final risk weights are still too conservative due to the lack of differentiation between asset classes which is considered to be a conceptual - and the most determining - shortcoming identified in the paper.**

In summary, the risk weights required for senior AAA 5-year securitisation exposures have decreased to 20%, instead of 25% as proposed in the 2nd Consultation Paper in December 2013. The floor risk weights remained unchanged at 15% (table 2 on page 21 and point 70 on page 22), representing an 8% increase from the current regulations under Basel III. As a result, even the revised risk weighting proposals render new investment essentially uneconomic for a bank. In our view, the implementation of the proposed risk weights for securitisation exposures would lead to a situation where ABS transactions would no longer be attractive for credit institutions originating and retaining ABS tranches as well as credit institutions investing in ABS.

In contrast to these ideas, the ECB through its ABS purchase programme from October 2014 has underlined the significant importance of securitisations promoting credit lending for business and supporting economic growth in the Eurozone. As well, several European institutions such as the European Commission and the European Banking Authority (EBA), the Bank of England and several finance ministers have emphasised the important role of securitisations for the real economy in various papers and statements.

Holders of legacy asset backed securities will find the risk weight of their portfolio increase by orders of magnitude – even where those portfolios may have already suffered from such a cliff effect by virtue of downgrades that were exercised in light of tightened rating agency rationales and in many cases notwithstanding strong performance.

An example: A tranche with 5% thickness originally rated “A” that has been downgraded to “BBB” due to changes in the rating agency rationale although the underlying assets are still performing strongly would now see its risk weight increased from the original 20% to 304%. One potential upshot from this would be a forced selling of otherwise creditworthy bonds, which would lead to losses for banks that could otherwise be avoided. It would also lead to an erosion of their capital base. We doubt that this is an intended consequence.

Specific Comments to the revised securitisation framework

Senior – non senior tranches differentiation
Rating agencies already take the seniority into account in their models and the resulting ratings. The Basel Committee overrules the model results with the separation in senior and non-senior tranches and implicitly assumes better performance of senior tranches compared to non-senior tranches from other transactions with the same rating. For example, a CCC senior Greek RMBS would receive a 505% RW (and possibly lower when applying the risk-weight cap for senior securitization exposures) compared to a 5 years UK RMBS CCC non-senior 5% tranche with a more than twice a risk weight of 1,187.5%! For BB to B rated tranches the difference between senior and non-senior tranches is even roughly threefold.

Therefore, we strongly propose to eliminate the differentiation between senior and non-senior tranches especially for retail ABS.

The application of the proposed senior risk weight for non-senior tranches would, for example, result in a 105% risk weight for a 5 year BBB rated tranche or 8,4% capital. It would also lead to a coverage of 38 times the European ABS and European RMBS loss rates of 0,22% and 0,25% respectively, according to a Fitch study of 2000-2011 losses for ABS.

For maturity and thickness the Basel Committee uses the external ratings as basis for RW calculation but alters the model results with double counting and differentiation between senior and non-senior tranches which is already accounted for in the rating agency’s models.

Tranche maturity
We believe that the introduction of legal final maturity for measuring tranche maturity for pass-through ABS is concerning.

A vast portion of pass-through ABS will pay off fully or very significantly before five years. The maturity is however already taken into account by the external rating. Longer legal maturities result in higher loss rates and thus higher required credit enhancement in rating agency’s models. Still, the Basel Committee uses the maturity and its definition to increase the risk weight with a kind of double counting. In contrast to other asset classes a time horizon over one year is used.

Therefore, we propose again to use weighted average life (WAL) as the measure for tranche maturity.

Hierarchy approaches

Generally, we agree with a single simpler hierarchy for determining risk weights introduced in the 2nd Consultation Paper which was confirmed in this Consultation Paper (only three primary approaches in place).

Internal Ratings Based Approach (SEC-IRBA)

Although the SEC-IRBA is more senior in the hierarchy than the SEC-ERBA most banks will be unable to use the most senior approach.

The IRBA model requires bank investors to have sufficient performance data and inputs for the formula to be used. However, most bank investors are unlikely to have these inputs. For example, an Austrian bank is unlikely to have loan level data for Portuguese mortgages. Even where a bank does have some data on Portuguese mortgages, it is unclear whether the supervisory authority will permit the bank to use the IRBA.

Consequently, using IRBA is hardly possible where the bank is not the originator of the underlying pool or where the securitisation consists of collateral from another country. As a result, we expect that risk weights on securitisation will be largely driven by ERBA.

External Ratings Based Approach (SEC-ERBA)

We welcome the decision that the pool granularity aspect is no longer included in the securitisation framework when ratings are used based on the fact that credit rating agencies already take granularity into account when assessing a rating to a tranche.

We disagree with the Basel Committee's position that ratings do not fully reflect the effects of tranche thickness and maturity in a capital adequacy context. For example in the case of Moody's ratings, the tranche thickness is fully taken into consideration. Furthermore, as all ratings from credit rating agencies are ratings of the maturity of the exposure, maturity is also taken into consideration.

High quality ABS – reduction of RW

We support the initiative of the EBA and the Basel/IOSCO Consultation Paper on simple, standard and comparable securitisation to differentiate high quality ABS from broader ABS according to specific criteria if preferential RW treatment (below the current proposed RW) is given to high quality ABS.

Summary

Loss rates given in certain sub-sectors (US HEL, Alt-A, re-securitisation) and rating migration were used by the regulators to apply disproportionate risk weight levels for the overall market ignoring the strong performance of sectors serving the real economy as important long-term financing instruments. Moreover, the sub sectors used as basis for the risk weight recalibration have been virtually non-existent since the start of the crisis whereas the sectors contributing to the lending to the economy such as high quality RMBS and consumer ABS that have started to recover from their post-crisis issuance lows are still heavily penalized in the latest Consultation Paper although slightly improved compared to the 2nd Consultation Paper. This issue will hinder the revival of this important funding and risk transfer instrument.

Question 11:

STS securitisations should benefit from lower capital requirements compared to the CRR requirements and for non-qualifying securitisation transactions the capital requirements of the CRR should not be increased (in contrast to the revisions to the securitisation framework).
A calibration towards near neutrality for qualifying securitisation compared to its underlying exposures as also proposed in EBA's discussion paper on STS securitisations will make the asset class economically feasible for originators again.

Question 12:

We agree with BoE and ECBs view that the criteria should be standardised for various pieces of European legislation and thus help to reduce regulatory uncertainty.

Question 13:

See reply to 6 and 5 (standardisation of investor reports, loan tapes and prospectus)

Question 14:

We agree with BoE and ECBs answer on the insurance sector

Question 15A:

See reply to 6 and 5 (standardisation of investor reports, loan tapes and prospectus)

Question 15B:

See reply to 12 (common terminology for STS across regulatory frameworks)

Questions 16A, B, C and D:

See reply to 6 and 5 (standardisation of investor reports, loan tapes and prospectus)

Question 17:

See reply to 12 (common terminology for STS across regulatory frameworks)

Question 18A:

We agree with BoE and ECBs answer

Question 18B:

See reply to 12 (common terminology for STS across regulatory frameworks)

Yours sincerely,

Dr. Franz Rudorfer
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