International Banking Federation

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September 28, 2017

Dear Sir/Madam:

Subject: Draft IBFed response to the Basel Committee on Banking Supervision and the Board of the International Organisation of Securities Commission consultation on *"Criteria for identifying simple, transparent and comparable short-term securitisations"*

The IBFed[1] is pleased to provide comments on the BCBS and IOSCO consultative document, "*Criteria for identifying simple, transparent and comparable short-term securitisations*".[2]

We welcome the BCBS and IOSCO's decision, following its earlier consultation on the application of the STC framework to term asset-backed security transactions, to widen the scope of STC criteria to include asset-backed commercial paper (ABCP) programmes, and to tailor them for the specificities of such shorter-term securitisations. These can provide a cost-effective, source of funding for corporate entities, financial institutions, and financial companies that are important engines of economic growth.

[1] The International Banking Federation (IBFed) was formed in 2004 to represent the combined views of our national banking associations. The IBFed collectively represents more than 18,000 banks, including more than two thirds of the largest 1000 banks in the world. IBFed member banks play a crucial role in supporting and promoting economic growth by managing worldwide assets of over 75 trillion Euros, by extending consumer and business credit of over 40 trillion Euros across the globe, and by collectively employing over 6 million people. The IBFed represents every major financial centre and its members' activities take place globally. This worldwide reach enables the IBFed to function as a key international forum for considering regulatory and other issues of interest to the global banking industry. For more information visit: www.ibfed.org

[2] http://www.bis.org/bcbs/publ/d414.pdf

We support the BCBS-IOSCO objective of facilitating the analysis by originators, investors and sponsors alike of the assessment of risks in relation to investment in securitisation exposures and agree that the development of STC criteria should not substitute for their own due diligence.

We caution that the development of the short-term STC criteria should not cut across existing structures and practices in such a way that substantive changes to current ABCP programmes would be required. We believe that a more principles-based approach, which would allow for some degree of tailoring for features of programmes that may exist in different jurisdictions, would be preferable. As the consultative document is currently worded, a large number of current ABCP programmes would not comply with the criteria. At the very least, there should be a reasonable transition period that would allow sufficient time for any necessary changes to existing programmes to be made. However, our preference is for the proposed criteria to accommodate existing and future programmes in a flexible way rather than create a one-size-fits all 'template'.

We provide below our responses to the ten questions posed in the CP.

Q1. Do respondents agree with the short-term STC criteria set out in the Annex? In particular, are the criteria clear enough to allow for the development of STC short-term securitisations by the financial industry?

The criteria should accommodate a range of short-term STC structures, rather than imposing a single model of short-term STC compliance, which risks creating a needless and expensive re-engineering of existing programmes given that many of the objectives of the criteria have already been met through industry initiatives that, inter alia, promote greater transparency.

In particular, criterion A2 (asset performance history), which requires performance history of 5 years for retail and 7 years for non-retail is too long and would be onerous to obtain. We suggest a period of 5 years, except for trade receivables and other short-term receivables for which the historical period should be three years.

We are also concerned by the criterion B7 requirement that the commercial paper issued by the conduit should be fully supported by the sponsor in respect of credit, liquidity and any material dilution risks of the underlying asset pool financed by the conduit. We note that not all markets have ABCP programmes that are fully supported. Even though those markets are functioning well, this may effectively preclude all the programmes in those jurisdictions from being STC compliant unless the liquidity framework used for ABCP in those markets is significantly overhauled. However, if BCBS-IOSCO do consider full support is necessary, it should not also be a requirement that the sponsor should have fiduciary duties towards the investor as described in criterion C17. In the event of full support, investors will only be making their investment assessment based on the sponsor's credit worthiness, as the sponsor will be the primary source of repayment. There should be no further fiduciary responsibility to be accountable to the investor by way of the representations and warranties described in C17.

We also question the need for a cap on maturity transformation under criterion B14. We feel the concept itself, and in particular the suggested 1 to 3 year limit, fails to recognize the nature of the ABCP industry, and the assets being securitised, in a number of markets. In certain markets, such as Canada, the ABCP industry is dominated by longer-dated assets, including mortgages, retail auto loans and leases, and equipment loans and leases, that may have maturities of between five and eight years. With the aforementioned sponsor support of ABCP conduits, whether full or partial, we question the need for a maturity cap and feel that it would preclude transactions of some commonly securitised asset classes from being able to comply with the STC framework for short-term securitisations. As well, we believe that the maturity transformation risk in ABCP conduits has been significantly reduced by the introduction of global liquidity standards post-financial crisis.

Q2. Which additional criteria would respondents consider necessary, if any, and what additional provisions would be useful or necessary to support the use of the short-term STC criteria? Are there particular criteria that could hinder the development of sustainable securitisation markets due, for example, to the cost of their implementation?

We prefer a principles-based approach, so we do not believe further criteria are required; moreover, we are concerned that additional criteria may further constrain the flexibility we believe is required to accommodate the different assets and structures prevalent in short-term STC securitisation market.

As we note above, we think the requirement for full sponsor support is unduly onerous and may have the unintended consequence of reducing investors' appetite to undertake proper due diligence.

Q3. Do respondents find the split of short-term STC criteria between conduit level and transaction level appropriate? And if not, which criterion does not appear appropriate?

Yes, this split is appropriate recognising as it does the different interests of investors and sponsors.

Q4. Do respondents agree that the right balance has been achieved in the short-term STC criteria between the level of transparency needed by investors exposed to commercial paper issued by STC ABCP conduits and the need to protect the "private" nature of the underlying transactions financed by such STC ABCP conduits?

Yes, we are pleased that the confidential nature of underlying transactions financed by the ABCP conduit has been recognised, and that BCBS-IOSCO have concluded that full disclosure of potentially sensitive information to investors is not appropriate.

However, we are concerned about the negative impacts on the short-term securitisation market that the application of criterion A4 "Consistency of underwriting" could bring.

> 1. "when underwriting standards change, it will receive from sellers disclosure about the timing and purpose of such changes"
> 2. "The sponsor should also inform investors of the material selection criteria applied when selecting sellers (including where they are not financial institutions)"

In part 1, the required disclosure by sellers of changes to their underwriting standards should be limited to 'material' change. If sellers are required to disclose every change in their underwriting standards, this will impose an excessive burden on sellers that could discourage sellers from securitising their assets. The sponsors material selection criteria, referred to in part 2 are normally confidential. If what is envisioned is a general description of the due diligence criteria that a sponsor applies in selecting sellers, this may not be a concern; however, if a detailed outline of specific criteria is required to be disclosed, the level playing field among sponsors will be impaired.

Terms and definitions

Q5. Do respondents agree with the proposed definitions in the Annex, in particular for "transactions"? Are there any other key terms that need to be defined?

The definitions are helpful and accurate. As amendments, we would suggest:

- Including 'note purchase' in the transaction definition
- Adjusting the definition of sponsor to include affiliates to recognise that in some structures the administrator of the conduit may be an affiliate of the sponsor. Where this is the case, it will be more appropriate for administering affiliates to make certain of the proposed representations and warranties.

Criterion: A. Asset risk – 1. Nature of assets

Q6. Do respondents agree with the way the criterion deals with re-securitisation concerns?

Yes, we agree that re-securitisations should not be included in STC short-term securitisations.

Criterion: B. Structural risk – 7. Full support

Q7. Do respondents agree that STC short-term securitisations should be fully supported and that the criterion related to such support is appropriate?

No, we do not agree that STC short-term securitisations should be fully supported, for the reasons we note in our response to Q1 & 2 above.

Criterion: B. Structural risk – 10. Payment priorities and observability

Q8. Do respondents agree that the level of transparency to be provided via disclosure regarding payment priorities and observability is appropriate? Do respondents believe that additional disclosure is needed (eg breach of triggers)? If so, please specify the disclosure.

The proposed disclosure requirements generally reflect current practice in short-term STC securitisations, so we agree that the level of transparency that will be provided is appropriate at the conduit level, but it may not be necessary or practical to include summary cash flows and waterfalls for every transaction in the conduit. This presupposes that what is intended for certain of the disclosure items, such as payment priorities, is a general description rather than a specific transaction-by-transaction description that would be administratively burdensome.

As well we are unclear why extendible commercial paper (CP) should not be eligible for inclusion in STC short-term securitisations, and would welcome an explanation of BCBS-IOSCO's concerns in this regard.

Criterion: B. Structural risk – 14. Cap on maturity transformation

Q9. Do respondents agree that the proposed methodology to calculate the average maturity of the transactions funded by the ABCP conduit is appropriate? Do respondents agree that the limit on maturity transformation should be set at a value between one and three years?

We do not agree that there should be a cap on maturity transformation. With the level of support provided by sponsors, whether full or partial (net of defaulted assets), to address the maturity mismatch in ABCP conduits, we do not believe that there is any incremental risk to the investor that is being addressed by the proposed maturity cap. The requirement for a maturity cap will limit the application of the STC framework for short-term securitisations in a number of markets. In addition, we believe that the risk that the BCBS-IOSCO is seeking to address by the cap has been significantly reduced by the introduction of global liquidity standards.

The term of the investor's investment will not exceed one year, so it is unclear to us how a maturity mismatch cap would provide extra protection.

Criterion: C. Fiduciary and servicer risk – 16. Fiduciary and contractual responsibilities

Q10. Do respondents agree that the fiduciary and contractual responsibilities of the sponsor and other parties are adequately defined? Is the level of transparency and disclosure about these responsibilities (representations and warranties, procedures, policies etc) to be provided to investors sufficient?

Yes, we agree that the respective responsibilities are adequately defined, and we also agree that the level of transparency provided to investors is sufficient. Again, we would argue that the responsibilities required from a sponsor under the proposed framework should not go beyond what is currently being provided. We feel the proposed framework fails to take into consideration the current practice in a number of well-functioning ABCP markets and the changes made in those markets subsequent to the financial crisis. As well, if BCBS-IOSCO insists that STC short-term securitisations should be fully supported by sponsors, we question the need for any of these additional fiduciary and contractual criteria.

Conclusion

In conclusion, while we appreciate the BCBS and IOSCO seeking to support the ABCP conduit market by expanding the STC framework to include short-term securitisations, we believe the proposed criteria go beyond what is necessary and practicably achievable and place an unduly onerous burden on sponsors. We believe many of the goals of the BCBS and IOSCO around disclosure and transparency, and sponsor responsibility, are already in place in a number of markets, and the proposed STC framework should follow these market practices in order for the framework to have a meaningful impact. As currently drafted, we believe ABCP conduits in certain jurisdictions will not be able to meet the STC criteria for short-term securitisations due to structural differences; therefore, we are concerned about the competitive disparities this creates.

We thank you for taking our comments into consideration, and we look forward to future discussions on these issues.

Yours sincerely,

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Deborah L. Crossman

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