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AMF answers to European commission consultation: an EU framework for simple, transparent and standardised securitization

Executive summary

The French Financial Market Authority (AMF) welcomes the opportunity given by the European Commission to comment on an EU framework for simple, transparent and standardised (STS) securitisation. Securitisation is an important feature for financing the French economy with already over 200 billion euros of outstanding issued securities (including 150 bn€ approved for trading on a regulated market or public offering). An EU framework should promote a sound securitisation which can be an important channel for diversifying funding sources of the European economy, as long as efficient safeguards are in place to prevent any systemic risk and to enable investors to fully understand the products they invest in.

The European Banking Authority and the Task Force on securitisation markets (TFSM under the aegis of the Basel Committee and IOSCO) have developed criteria for defining high-quality securitisation (respectively simple, standard and transparent securitisation and simple, transparent and comparable securitisation). The AMF supports the initiative of the European Commission to establish specific criteria defining a simple, transparent and standardised (STS) securitisation, based on the principles established by the international works. These criteria should establish an STS certification attesting the sound structure of the securitisation process. However, the EU framework should not introduce too elitist criteria for STS securitisation that would have the opposite effect to that intended, reducing the financing of the economy. The objective of the STS certification should be that a maximum of securitisation vehicles be encouraged to structure themselves according to the STS criteria in order to boost sound securitisation.

1. The standardisation of rules applicable to STS securitisation vehicles should ensure a sound governance of the securitisation vehicle as well as monitoring by an independent actor, approved by a national competent authority, acting in the best interest of investors. The financial crisis has highlighted the limits of a purely contractual model; thus, the AMF is of the view that the STS status should include a third party, independent from the investor, the originator and the servicer, which shall carry out the following checks and controls in the best interest of investors:

- Control the eligibility of assets at inception and throughout the life of the vehicle, with regard to the prospectus or the vehicle's documentation;
- Verify both the cash flows serviced from the assets and the investment payment waterfall;
- Manage conflicts of interest;

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- Manage the risks, including operational risks even if they are not explicitly provided for in the vehicle documentation (for example replacement of an actors of the structure) or related to the changing risk of the underlying assets; and
- Check the retention requirement of an economic interest.

In order to be approved by the national competent authority, the actor shall demonstrate its capability, especially in terms of resources and expertise, to perform these verifications, similarly to an alternative investment fund manager seeking authorisation from its NCA prior to managing investment vehicles. Such a framework would provide for an efficient ongoing supervision by NCAs, as well as the ability to control and sanction misbehaving actors. An authorised actor could then be granted a European "management" passport.

2. The STS label should be dissociated from the credit risk of the underlying assets in order to focus on simplifying the investors' analysis by guaranteeing the quality of the securitisation structure and limiting the conflicts of interest. **These STS vehicles could benefit from a European marketing passport**.
The AMF does not wish to limit STS certification to securitisation transactions with only very highly credit-rated assets or to securitisation solely designed to relieve bank's balance sheets. STS certification must certify a sound structure that allows the investor to properly analyse the credit risk of the underlying assets. If the STS certification were to judge the quality of the underlying assets, it would become a guarantee of the quality of the securitisation and investors, relying on this label, might not perform the necessary due diligence any more. Thus, AMF considers that a simple, transparent and standardised securitisation can include a vast range of assets in terms of credit risk, provided that the securitisation structure is satisfactory and that the credits are properly underwritten. For capital requirement purposes, additional criteria on the credit risk of the assets could be included, within a modular approach, in addition to the STS certification.

3. The implementation process will be crucial for the european framework on STS securitisation to be sound and successful. First, the actor in charge of the governance of the vehicle should be approved for that purpose by a national competent authority (NCA). Then, a public authority should certify the STS criteria of the securitisation process. The AMF believes that the STS certification should not be self-awarded. The certification of the STS status should be granted by a public authority, which is legitimate and powerful enough to withdraw the certification during the life of the securitisation if necessary. Moreover, the AMF would like to emphasise the importance of a consistent interpretation of STS criteria in all EU members states, especially given the mobility of special purpose vehicles. In order to achieve such consistency, the certification will either have to be done directly by an European supervisory authority (ESA) or by NCAs. In the first case, where an ESA were to award the STS status, the day-to-day analysis of securitisation vehicles could be externalised to a private entity as long as the ESA retains responsibility and takes all key decisions. In the second case, a certification by a National Competent Authority could be done together with approving the monitoring actor. Any solution would have implementing costs associated; nevertheless, it is worth pointing out that it is already very common for NCAs to grant authorisations on a day to day basis to both funds and fund managers.

4. AMF is of the view that specific criteria should be introduced for ABCP, which are an effective channel for financing the economy and should be able to qualify for the STS label. While some general criteria such as payment history of underlying assets or the absence of re-securitisation should be adapted in order not to exclude all ABCPs, tailored criteria must curtail certain ABCP specific risks. Alternative criteria for these vehicles could include the following: a guarantee awarded by an approved credit institution (especially in case of maturity mismatch between assets and liabilities), limiting derivatives to interest rate or currency hedging, introducing of diversification ratios and making criteria consistent with those relating to eligibility to money market funds.

5. For STS securitisation, the verification of retention of a net economic interest by the originators, sponsors or original lenders should be performed by the public authority certifying the STS criteria. According to CRR, the investing institution should analyse the information disclosed by originators, sponsors or original lenders to specify the net economic interest that they maintain, on an ongoing basis, in the securitisation (indirect approach). This due diligence is in practice very difficult for investors who can only rely on the statement of the retainer. In the case of an STS securitisation, the AMF is of the opinion that this obligation should be borne by the actor aforementioned approved independent third party responsible for the securitisation (direct approach) or by the authority which will assess the compliance of the securitisation vehicle with the STS criteria.
For non-STS securitisation, a review could be undergone to analyse whether the verification of the retention should be borne by a regulated party to the securitisation process (e.g. sponsor if it is a credit institution or an investment firm), when such an actor exists.
As far as the level of retention of a net economic interest is concerned, the **AMF would not support to reduce the current 5% minimum threshold** to ensure a significant alignment of interests.

6. The AMF supports the establishment of a new specific EU legislation on securitisation that would include a single definition of securitisation by combining the measures applicable to securitisation present in several European sectorial texts. A European legal securitisation vehicle could help enhance standardisation and would be appealing to investors if strong and sound governance is ensured. The revival of securitisation should not be limited to the definition of a high quality STS securitisation but should also ensure consistency between the various European sectorial regulations. A securitisation regulation should move from the current fragmented regulations dedicated to sectorial actors to a consistent treatment of securitisation. The regulation could start by standardising the legal documentation which would be a major step forward, and then, in a second phase, create a legal European vehicle for STS securitisation. Such a solution would be ambitious while workable from the standpoint of practicability. Collective vehicles such as European Long Term Investment Funds, European Venture Capital Funds and Social Entrepreneurship Funds highlight the possibility to achieve a common framework while facing different national regimes.
A European legal vehicle for STS securitisation would create a thorough standardisation at European level by substituting the European legal rules to national specificities. It would thus ensure fair competition (level playing field) between actors in different Member States and facilitate the establishment of a European passport for securitisation. The AMF is therefore in favor of such a new legal status, provided that the governance of the vehicle is sound

(performed by an independent actor, approved by a competent authority, acting in the interest of investors), the labelling is done by a public authority and the vehicle takes into account the specificities of the underlying assets. The “true sale” of the assets to the vehicle to ensure investors have an easy access to underlying assets would also be a crucial component of a new legal vehicle.

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Answers to the Consultation questions

1. Identification criteria for qualifying securitisation instruments

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

The foundation criteria identifying simple, transparent and standardised (S.T.S) securitisation should be detailed enough to define a sound securitisation process but should be dissociated from the credit risk on the underlying assets.

The European Banking Authority and the Task Force on securitisation markets (TFSM under the aegis of the Basel Committee and IOSCO) have developed criteria for defining high-quality securitisation The criteria proposed by the EBA and BCBS-IOSCO are a very good starting point and encompass many common features, especially in terms of governance.

i. As far as the **asset risk** is concerned, based on the IOSCO-BCBS criteria for identifying simple, transparent and comparable securitisations, the AMF would like to emphasize the following as key elements of the European simple transparent and standardised securitisation:

- The **foundation criteria should focus** on the consistency of the underwriting, the homogeneous nature of assets and the asset selection and transfer (true sale). These criteria should ensure that investors aren't misled on the quality of the assets.

- The asset performance history requirement should be **differentiated depending on the underlying asset class**. Indeed data on the asset performance history might be difficult to obtain for certain asset classes. For SMEs, for example, it might be difficult to have enough history for a given small enterprise but possible to obtain data on similar companies. A transition period for these transparency requirements for S.T.S. securitisation would help actors bear the extra costs.

- The payment status, ongoing data and asset performance history might be problematic when they are incompatible with national privacy or consumption laws. Loan level data might be limited by available loan information and a three-year track record of credit difficulties is incompatible with French law.

ii. The EU framework should not introduce too elitist criteria for STS securitisation that would have the opposite effect to that intended, reducing the financing of the economy. Indeed should criteria for STS be too restrictive, the certification would penalise a large segment of the market as non-qualifying securitisation. **The objective of the STS certification should be to encourage as many securitisation vehicles as possible to be structured according to the STS criteria in order to boost sound securitisation**

Some Collateralised loan obligations (CLO), for example, should be eligible to S.T.S. certification as long as during the securitisation lifetime the underlying assets are chosen according to a non-discretionary predefined process. While AMF agrees with EBA and BCBS-IOSCO that active securitisation should not be qualified as simple securitisation, it considers that some CLOs sourced with loans purchased on the secondary market could be eligible when the choice of the underlying asset is made in line with liabilities and not for an arbitrage purposes. However, STS securitisation should not be limited to static securitisation as assets can be added to recharge the vehicle according to the selection criteria of the securitisation.

iii. **The STS label should be dissociated from the credit risk of the underlying assets** in order to focus on simplifying the investors' analysis by guaranteeing the quality of the securitisation structure and limiting the conflicts of interest. The AMF does not wish to limit STS certification to securitisation transactions with very well credit-rated underlying assets or solely designed to relieve bank's balance sheets. STS certification must certify a sound structure that allows the investor to properly analyse the credit risk of the underlying assets. The STS certification should contribute to the detoxification of investors to credit rating agencies by providing them with simple, transparent and standardised information. Thus, the AMF considers that a single, transparent and standardised securitisation can include a vast range of assets in terms of credit risk, provided that the securitisation structure limits other operational risks, specifically credit underwriting, and gives the investor clear information to assess the risk on the assets. The underwriting quality of the underlying assets is indeed essential in order to avoid a resurgence of flawed "originate to distribute" models.

In addition to foundation criteria that define a STS label, additional risk factors on the underlying assets could qualify the structure or a specific tranche to a specific prudential treatment.

iv. The financial crisis has shown the limits of purely contractual special purpose vehicles in which no party has the resources to monitor the deterioration of risks or enough power to act on behalf of investors when an event unreferenced in the legal documentation occurs. The **structural risks** as well as **the fiduciary and servicer risk defined by EBA or IOSCO** are therefore key identification criteria to establish a STS certification attesting the sound structure of a securitisation process. The STS criteria should guarantee that the **governance of the securitisation vehicle is ensured by an independent actor, approved by a competent authority, acting in the best interest of investors**. STS securitisation vehicle must include a third party, independent from the investor, the originator and the servicer, which will be approved *ex ante* by a competent national authority and shall demonstrate competence, particularly in terms of resources and expertise, to carry out the following checks and controls in the best interest of investors:

- Control the eligibility of assets during the structuring of the vehicle and throughout its life, with regard to the prospectus or the vehicle's regulation;
- Verify the cash flows serviced from the assets and the investment payment waterfall;
- Manage conflicts of interest;
- Manage the risks, including operational risks if they are not explicitly provided for in the vehicle documentation (for example the replacement of an actor of the structure) or related to the changing risk of the underlying assets; and

- Check the retention requirement of an economic interest.

The sound governance of the securitisation structure shall not replace investors' due diligence but provide an additional security with extra transparency and limited conflicts of interest.

v. In addition to existing criteria, the AMF would support the addition of **an extra criterion on the simplicity of the waterfall payment and the complexity of credit enhancement mecanisms**. In order for investors' due diligence to be as standard and straightforward as possible, the complexity of the waterfall and the credit enhancement mechanisms should be limited.

2. Criteria for short term instruments

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

Short term securitisation constitutes an important channel to fund the economy efficiently and the AMF believes that ABCP should be able to qualify for S.T.S. securitisation.

The AMF believes ABCP have specific characteristics that require tailored criteria especially as far as **asset performance history**, **payment status of underlying assets and reporting requirements** are concerned. In particular, the payment status must allow prime debtors or prime debt transferor to access the ABCP market. These tailored criteria must also curtail certain specific risks specific to ABCP. Alternative criteria for these vehicles could include the following: a guarantee awarded by an approved credit institution (especially in case of maturity mismatch between assets and liabilities), limiting derivatives to interest rate or currency hedging, introducing diversification ratios and making criteria consistent with an eligibility to monetary market funds.

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

One of the main features of short term securitisation is **the revolving process.** Therefore, it is important that maturity mismatches (maturity of assets longer than that of liabilities) be limited and that the reloading of assets be supported or guaranteed by an external credit support. Moreover, companies that manage their cash positions by securitising their receivables can become highly reliant on the ongoing financing facility provided by ABCPs, which should therefore include a reliable revolving process.

Simple, transparent and standardised ABCP should also comply **with diversification ratios** to limit the reliance on one originator/seller and should therefore allow multi-seller programs[1].Criteria for STS ABCP should also be coherent with **eligibility criteria for money market funds (MMF)** as this will increase their market liquidity.

[1] Special purpose vehicle that provides financing for pools generated by multiple, unaffiliated originators/sellers.

3. Risk retention requirements for qualifying securitisation

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

Retention rules are a crucial feature of the current regulatory framework to ensure the alignment of interests with investors. **STS securitisation should not benefit from any special treatment as far as the 5% minimum retention is concerned.**

Extra comment:

CRR rules are out of the direct jurisdiction of the AMF. However, retention requirements as a whole could be reviewed to clarify the actor retaining the economic interest in the case where assets are bought on the secondary market.
The implementation of risk retention rules for Managed CLOs has indeed raised a legal issue in relation to the identification of the retainer within this specific class of securitisation transactions. The terms 'originator' or 'sponsor' as used in Article 4 paragraph , (13) and (14) of the regulation (EU) No 575/2013 do not match the usual roles played by the parties involved in a Managed CLO transaction. In particular, the sponsor of the managed CLO is usually not qualified to perform long term active portfolio management and needs to outsource it while retaining the full responsibility. The asset manager that performs the portfolio management cannot qualify as a sponsor as its regulatory status (authorised under AIFMD) is often not compatible with the corresponding definition of a sponsor. One solution might be to open the definition of sponsor to asset managers.

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?

For STS securitisation, the verification of retention of a net economic interest by the originators, sponsors or original lenders could be done by the approved actor in charge of the governance of the vehicle or by the public authority certifying the STS criteria. According to CRR (art. 406), the investing institution should analyse the information disclosed by originators, sponsors or original lenders to specify the net economic interest that they maintain, on an ongoing basis, in the securitisation (indirect approach). This approach was useful to prevent European investors from investing in non-EU securitisation that do not respect retention rules. However, the approach is not fully efficient because it is difficult for investors to verify the retention and they heavily rely on the information provided in the securitisation documentation. In the case of an STS securitisation, the AMF is of the opinion that this obligation should be borne by the aforementioned approved independent third party responsible for the securitisation (direct approach) or by the authority which will assess the compliance of the securitisation vehicle with the STS criteria. The direct approach would help investors of STS securitisation to focus on due diligences on the risk of underlying assets.

For non-STS securitisation, a review could be undergone to analyse whether the verification of the retention should be borne by a regulated actor of the securitisation process (e.g. sponsor if it is a credit institution or an investment firm), when such an actor exists.

4. Compliance with criteria for qualifying securitisation

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

The criteria should define a certification that can be awarded to a vehicle if its structure is simple, transparent and standardised. Given that AMF believes that the STS certification should not assess the credit risk of the underlying assets, it should apply to the whole vehicle and not to a given tranche.
A certification awarded ex ante by a public authority would help ensure an efficient ongoing supervision by NCAs, as well as the ability to control and sanction misbehaving actors.

B. How could the procedures be defined in terms of scope and process? (private organization or public authority?)

The implementation process will be crucial for the european framework on STS securitisation to be sound and successful. First, the actor in charge of the governance of the vehicle should be approved for that purpose by a national competent authority (NCA). Then, a public authority should certify the STS criteria of the securitisation process. The AMF believes that the STS certification should not be self-awarded. The actor in charge of managing risks of the securitisation should be approved *ex ante* by the NCA in order to allow an efficient ongoing supervision of the actor by the authority. The certification of the STS status should be granted by a public authority which is legitimate and powerful enough to withdraw the certification during the life of the securitisation if necessary. Moreover, AMF would like to emphasise the importance of a consistent interpretation of STS criteria in all EU members states, especially given the mobility of special purpose vehicles. In order to achieve such consistency, the certification will either have to be done directly by an European supervisory authority (ESA)or by NCAs but with thorough ESMA supervision. In the first case, where an ESA were to award the STS status, the day-to-day analysis of securitisation vehicles could be externalised to a private entity as long as the ESA retains responsibility and takes all key decisions. In the second case, a certification by a National Competent Authorities could be done together with approving the monitoring actor, incurring little marginal cost for the authority. Any solution would have implementing costs associated; nevertheless, it is worth pointing out that it is already very common for NCAs to grant authorisations on a day to day basis to both funds and fund managers.

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

In line with BCBS-IOSCO and ECB-BoE public consultation, the AMF does not see the certification mechanism as intended to provide an opinion on credit risks but make investors' assessments of these risks more straightforward. The AMF does not wish to limit STS certification to securitisation transactions with only very highly credit-rated assets or to

securitisation solely designed to relieve bank's balance sheets. STS certification must certify a sound structure that allows the investor to properly analyze the credit risk of the underlying assets. If the STS certification was to judge the quality of the underlying assets, it would become a guarantee of the quality of the securitisation and investors, relying on this label, may not perform the necessary due diligence any more. Thus, AMF considers that a simple, transparent and standardised securitisation can include a vast range of assets in terms of credit risk, provided that the securitisation structure is satisfactory and that the credits are properly underwritten. For capital requirement purposes, additional criteria on the credit risk of the assets could be added, within a modular approach, in addition to the STS certification.

5. Elements for a harmonised EU securitisation structure

A. What impact would further standardisation in the structuring process have on the development of EU securitisation markets?
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?
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)?
D. If created, should this structure act as a necessary condition within the eligibility criteria for qualifying securitisations?

The AMF supports the establishment of a new specific EU legislation on securitisation that would include a single definition of securitisation by combining the measures applicable to securitisation present in several European sectorial texts. A European legal securitisation vehicle could help enhance standardisation and would be appealing to investors if it ensured strong and sound governance.

The revival of securitisation should not be limited to the definition of a high quality STS securitisation but should also ensure consistency between the various European sectorial regulations. A securitisation regulation should move from the current fragmented regulations dedicated to sectorial actors to a consistent treatment of securitisation. The regulation could start by standardising the legal documentation which would be a major step forward, and then, in a second phase, create a legal European vehicle for STS securitisation. Although a legal European vehicle might seem ambitious, several examples show that it is workable in practice. For example, the European Long Term Investment Fund (ELTIF) has achieved a common framework in spite of different national regimes.
A European legal vehicle for STS securitisation would create a perfect standardisation at European level by substituting the European legal rules to national specificities. It would thus ensure fair competition (level playing field) between actors in different Member States and facilitate the establishment of a European passport for securitisation. The AMF is therefore in favour of a new legal status, provided that the governance of the vehicle is sound (performed by an independent actor, approved by a competent authority, acting in the interest of investors), the labelling is done by a public authority and the vehicle takes into account the specificities of the underlying assets.

The legal framework of the European legal securitisation vehicle should specify investors' rights on the underlying asset, as well as all other assets (reserve account in case over-collateralisation, escrow account, trust account or special purpose account etc ...), the articulation of the various tranches of liabilities and potential bankruptcy of the securitisation vehicle. This legal status would also define the responsibilities of the various players in the securitisation structure and possible pursuits, sanctions or fines.
The biggest challenge in establishing this ambitious vehicle would be the application of a single law on bankruptcy of the vehicle counterparts. In terms of the underlying assets, however, the national bankruptcy law would remain applicable in case of bankruptcy of a company on which the vehicle is exposed.
This European vehicle could draw on a number of strong points of the French securitization vehicles (called "organisme de titrisation" - OT). In particular, under Article L214-169, L214-173 and L214-175 of the French Monetary and Financial Code, the cash flows paid to a French securitisation vehicle (OT) can be credited to a trust account opened by a third party on behalf of the OT, to prevent the money being seized in case of bankruptcy. Moreover, according to book VI of the French Commercial Code, the OT is not subject to collective procedures for bankruptcy under French law; therefore, the creditors of the OT can not carry out civil enforcement actions on OT's assets, notwithstanding the payment waterfall.

Given the difficulties associated with the creation of a new European securitisation legal vehicle and considering the importance of boosting securitisation at European level in the short term, the new European regulation could establish a **standardised legal documentation**, for a transitional period, which would adapt to specificities of each Member State law. This master agreement would have to provide with specific provisions for different asset classes and would be more flexible than a common legal vehicle to adapt to national specificities. A master agreement could be used by both STS and non STS securitisation.

6. Standardisation, transparency and information disclosure

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?

The AMF is of the opinion that transparency and reporting to investors should be adapted **depending on the underlying asset class**. The reporting and prospectus should be as harmonised as possible.
The following key elements would usefully enhance the quality of information:

- in terms of comparability: a fixed reporting frequency and a standardised reporting and prospectus format should be defined for each asset class.
- in terms of reliability: the reporting should be made available by the third party in charge of the governance of the vehicle, based on the information given by the issuer. The prospectus should be reviewed by this third party and updated as soon as risk triggers are reached.
- in terms of frequency: depending on the asset class, the frequency of reporting should be aligned on the frequency of payments to investors of the securitisation

vehicle. The AMF is of the opinion that a bi-annual reporting would be the minimum frequency for the reporting so that the securitisation can be qualified as STS.

The securitisation website required by CRA 3 regulation is also a very important step towards further transparency. CRA III includes a duty of transparency for securitisation actors : article 8b) of Regulation 462/2013 amending Regulation (EC) No 1060/2009 on credit rating agencies defines responsibilities of issuers, originators and sponsors (of a structured finance instruments defined as securitisation referring to CRR) in providing information to investors. This information will be published on a dedicated website (to be determined by ESMA) in line with applicable local laws and will enable investors or prospecting investors to analyse and conduct stress tests on the structure of the transaction, underlying assets, cash flows, credit risk and collateral before determining whether to invest.

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

See the answer to question 6/A.

*C. To what extent should disclosure requirements be adjusted – especially for loan-level data (*For example, securitisation encompassing revolving underlying assets (e.g. credit card receivables), compared to static pools (e.g. residential mortgages)*) – to reflect differences and specificities across asset classes, while still preserving adequate transparency for investors to be able to make their own credit assessments?*

As stated before, the AMF is of the opinion that the level of information which is necessary should depend on the underlying asset class. The information delivered on very granular portfolios should rely on statistical models and detailed indicators instead of on a loan by loan reporting.

On the contrary, the information delivered on non-granular portfolios, with an observable number of underlying assets, should be disclosed on a loan-level basis to enable investors to perform credit risk assessment on each underlying asset.

In any case, the investor should be aware of the evolution of the quality of the assets and the level of risk on the underlying pool. In particular, the reporting should inform the investor whenever a certain level of risk is achieved, or some pre-defined triggers are reached. The documentation should also be updated so as to reflect such changes.

Extra comment:

The AMF is of the opinion that ABCP securitisations should be dealt with separately and in a particular way in terms of information delivered to investors. Indeed, ABCP transactions present the following specificities:

- Certain confidential information need to be kept secret at the risk of harming the corporate and interfering with the confidential relationship existing between the

corporate and its customer (for example, the procedures and principles of the credit and collection policy –to ensure timely payment of its receivable accounts- of the corporate sellers);
- The information, on a loan-level basis, does not entirely reflect the level of risk taken, since the credit risk is fully or partly covered by external credit support;
- Larger ABCP programmes may contain between 800,000 and 1,000,000 single receivables at any given time, purchased from customers on almost daily basis. Therefore, when the reporting is sent to the investor, the data delivered can already be outdated.

For those reasons, the AMF is of the opinion that aggregate information should be disclosed to investors concerning the ABCP securitisation.

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?

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

N/A

7. Secondary markets, infrastructures and ancillary services

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

8.B What should be done to support ancillary services (e.g. swaps providers, liquidity facility providers, depositaries)*? Should the swaps collateralisation requirements be adjusted for securitisation vehicles issuing qualifying securitisation instruments?*

It might be difficult for securitisation vehicles to make provisions for margin calls since they have no own funds. However, the AMF does not wish to provide a full exemption for securitisation vehicles to Regulation 648/2012 on derivatives traded over the counter, central counterparties and trade repositories (European Market Infrastructure Regulation EMIR), as it could expose counterparties of securitisation vehicles to significant risks.
Securitisation vehicles often have few restrictive rules under EMIR as they are considered as non-financial counterparties given the exemption for their manager provided by article 2.3 of AIFMD. Securitisation vehicles therefore don't have to post collateral for their derivatives under EMIR, unless their derivatives portfolio (excluding interest rates and foreign exchange hedging) reaches such volumes that the generated risk is comparable to the one created by financial counterparties.

The AMF is of the opinion that a securitisation vehicle governed by an approved entity exempted from AIFMD, which only uses derivatives to hedge the foreign exchange or

interest rate risks (one of the STS criteria according BCBS-IOSCO and EBA) should be a non-financial counterparty under EMIR and should not be required to post collateral. However, non STS securitisation should not benefit from any special exemption.

Moreover, the (un)availability of eligible swap providers and providers of other ancillary services has hindered the development of securitisation. The problem is specifically due to the overreliance on external credit ratings. Indeed external credit ratings are hard wired in contracts and internal regulations governing the functioning of securitisation. For rated transactions, it is generally accepted that credit rating agencies impose external "requirements" (in terms of credit ratings) to the securitisation structure as regards a series of external service providers that end up being determining and constraining parameters for the functioning of the structures. One option to explore might to see how monitoring the creditworthiness of ancillary service providers could be carried out by the third party referred to in question 1 in charge of the governance of the vehicle (similarly to what has been introduced in asset management in order to limit the reliance on CRA).

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

N/A

8. Prudential treatment for banks and investment firms

Prudential treatment is not in the direct field of AMF; hence, no detailed answers are provided in this section.

The AMF is of the opinion that the simple, transparent and standardised certification should be isolated from prudential treatment. The STS label should be dissociated from the credit risk of the underlying assets in order to focus on simplifying the investors' analysis by guaranteeing the quality of the securitisation structure and limiting the conflicts of interest. The AMF does not wish to limit STS certification to securitisation transactions high rated underlying assets or to securitisation solely designed to relieve bank's balance sheets. STS certification must certify a sound structure that allows the investor to properly analyse the credit risk of the underlying assets. If the STS certification was to judge the quality of the underlying assets, it would become a guarantee of the quality of the securitisation and investors would not perform the necessary due diligence any more. Thus, AMF considers that a single, transparent and standardised securitisation can include any assets in terms of credit risk, provided that the securitisation vehicle structure is satisfactory and that the credits are properly underwritten.

For capital requirement purposes, additional criteria on the credit risk of the assets could be added in addition to the STS certification.

A. All securitisation

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?

N/A

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

N/A

B. Qualifying (STC) securitisation

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

N/A

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

N/A

9. Prudential treatment of non-bank investors

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

N/A

A. Insurance:

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?

N/A

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

N/A

B. Other investors

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

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

Yes several adjustments would be useful.
The definitions of securitisation in different regulatory frameworks should be harmonised.

For instance, Directive 2007/16/EC (implementing the UCITS directive as regards the clarification of certain definitions) defines financial instruments that are backed by other assets in an inconsistent way and opens the door to circumvention. In order to avoid circumventions of UCITS's main requirements on investments (notably liquidity, valuation and transferability of eligible assets), the definition should be amended. For that purpose, aligning this amended definition with an AIFMD definition would contribute to clarity.

Another example is AIFMD which includes two definitions of securitisation:
-The first is '*securitisation positions'*, which actually refers to exposures to entities that perform securitisation under the prudential approach (tranching).
-The second definition is '*Securitisation Special Purpose Entities (SSPE)'*: entities whose sole purpose is to carry on a securitisation or securitisations within the meaning of Article 1(2) of Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions and other activities which are appropriate to accomplish that purpose.
Having multiple definitions increases the legal risk and the possibility for loopholes. It is therefore crucial to add coherence to the multiple references to securitisation in EU law.

10. Role of securitisation for SMEs

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

SME financing could benefit from this securitisation framework but specific criteria must be used. In particular, criteria related to financial transparency and asset performance history should be adapted to reduce the administrative burden for SMEs. In addition it might be difficult to have enough history for a given small enterprise but possible to obtain data on similar companies. A transition period for these transparency requirements for S.T.S. securitisation would help actors bear the extra administrative costs.

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

N/A

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

N/A

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

N/A

11. Miscellaneous

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?

The AMF supports the establishment of a new specific EU legislation on securitisation that would include a single definition of securitisation by combining the measures applicable to securitisation present in several European sectorial texts. A European legal securitisation vehicle could help enhance standardisation and would be appealing to non EU investors if it ensures strong and sound governance. The revival of securitization should not be limited to the definition of a high quality STS securitization but should also ensure consistency between the various European requirements (definitions, retention rules, transparency rules in CRA III). The creation of a European single regulatory text dedicated to securitisation would end the fragmentation of regulations dedicated to actors to focus on specific rules on the product instead of the different investors.

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

N/A

18.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 their effectiveness or consistency?

N/A